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Gubernatorial Approvals

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

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

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

[OAR Docket #08-1129]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
87:10-1-2. Definitions [AMENDED]
Subchapter 3. Flexible Benefits Plan Provisions
87:10-3-2. Benefit plans offered as part of the flexible benefits plan [AMENDED]
Subchapter 13. Eligibility Requirements
87:10-13-4. Elections and changes [AMENDED]
Subchapter 17. Benefit Plan Election
87:10-17-3. Employee election of benefit plans [AMENDED]
Subchapter 19. Benefit Allowance
87:10-19-1. Flexible benefit allowance [AMENDED]
87:10-19-2. Costs in excess of flexible benefits allowance [AMENDED]
Subchapter 27. Health Care Reimbursement Account Option
87:10-27-2. Definitions [AMENDED]
87:10-27-3. Requirements for eligibility [AMENDED]
87:10-27-14. Health savings accounts distributions [NEW]
Subchapter 31. Coverage Continuation and Refunds
87:10-31-2. Refund for over deductions [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2008

[OAR Docket #08-1129; filed 6-4-08]

TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT

[OAR Docket #08-1144]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
120:10-1-1 through 120:10-1-10 [AMENDED]
Subchapter 3. Specific District Regulations
120:10-3-8. [AMENDED]
120:10-3-13. [AMENDED]
Subchapter 5. General District Provision and Additional Zoning Regulations
120:10-5-13 through 120:10-5-15 [NEW]
Subchapter 11. Historical Preservation and Landmark Board of Review
120:10-11-4. [AMENDED]
Subchapter 15. Signage ~~Guidelines~~ Regulations
120:10-15-1 through 120:10-15-15. [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1144; filed 06-06-08]

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

[OAR Docket #08-1148]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 4. Supplier Provisions
580:15-4-6. [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1148; filed 06-06-08]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 35. FLEET MANAGEMENT DIVISION

[OAR Docket #08-1146]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
580:35-1-10 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1146; filed 06-06-08]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 1. ADMNISTRATIVE OPERATIONS

[OAR Docket #08-1073]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Purchasing
610:1-11-3. Definitions [AMENDED]
610:1-11-14. Purchases in excess of $25,000 [AMENDED]
610:1-11-15. Purchases in excess of $100,000 [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-1073; filed 5-28-08]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #08-1074]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Oklahoma Tuition Aid Grant Program
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]
Subchapter 23. Oklahoma Higher Learning Access Program (OHLAP)
610:25-23-1. Purpose [AMENDED]
610-25-23-2. Eligibility of participants [AMENDED]
610:25-23-3. Applications [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing program benefits [AMENDED]
610:25-23-6. Retaining eligibility in postsecondary education [AMENDED]
610:25-23-7. Payment of awards; policies and limitations [AMENDED]
610:25-23-8. Administrative responsibilities [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-1074; filed 5-28-08]

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

[OAR Docket #08-1136]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Membership Provisions
715:10-1-6 [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-4 [AMENDED]
Subchapter 13. Contributions For Membership Service
715:10-13-3.1 [REVOKED]
Subchapter 15. Service Retirement
715:10-15-6. [AMENDED]
715:10-15-11 [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-7 [AMENDED]
715:10-19-8 [AMENDED]
Subchapter 21. Investment Policy
715:10-21-2 [AMENDED]
715:10-21-3 [REVOKED]
715:10-21-4 [REVOKED]
715:10-21-5 [REVOKED]
Subchapter 23. State And Education Employees Group Health and Dental Insurance Program
715:10-23-1 [AMENDED]
715:10-23-2 [AMENDED]
715:10-23-3 [AMENDED]
715:10-23-5. Retired members ineligible for health insurance supplement [AMENDED]
Subchapter 25. Qualified Domestic Order
715:10-25-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1136; filed 06-05-08]

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

[OAR Docket #08-1130]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
87:10-1-2. Definitions [AMENDED]
Subchapter 3. Flexible Benefits Plan Provisions
87:10-3-2. Benefit plans offered as part of the flexible benefits plan [AMENDED]
Subchapter 13. Eligibility Requirements
87:10-13-4. Elections and changes [AMENDED]
Subchapter 17. Benefit Plan Election
87:10-17-3. Employee election of benefit plans [AMENDED]
Subchapter 19. Benefit Allowance
87:10-19-1. Flexible benefit allowance [AMENDED]
87:10-19-2. Costs in excess of flexible benefits allowance [AMENDED]
Subchapter 27. Health Care Reimbursement Account Option
87:10-27-2. Definitions [AMENDED]
87:10-27-3. Requirements for eligibility [AMENDED]
87:10-27-14. Health savings accounts distributions [NEW]
Subchapter 31. Coverage Continuation and Refunds
87:10-31-2. Refund for over deductions [AMENDED]
AUTHORITY:
Oklahoma State Employees Benefits Council; 74 O.S., § 1361 et seq.
DATES:
Comment Period:
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March 25, 2008
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April 4, 2008
Submitted to House:
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Submitted to Senate:
April 4, 2008
Gubernatorial approval:
May 9, 2008
Legislative approval:
Approved May 22, 2008, by SCR 102, waiving the Legislature's thirty legislative-day review period
Final adoption:
May 22, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 27. Health Care Reimbursement Account Option
87:10-27-2 Definitions [AMENDED]
87:10-27-14 Health Savings Accounts Distributions [NEW]
Gubernatorial approval:
September 4, 2007
Register publication:
25 Ok Reg 79
Docket number:
07-1383
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The changes to Chapter 10 add the definition of "dependent" for clarification purposes; remove the trade name "SoonerChoices" as it is no longer used; clarify language specific to the default elections resulting when employees fail to make their own elections; clarify reinstatement rights, specific to life insurance, of employees reemployed within twenty-four (24) months of termination; clarify reinstatement rights, specific to vision insurance and health care and dependent care reimbursement accounts, of employees reemployed after thirty (30) days from termination; define "rollover distributions" from flexible spending accounts to health savings accounts and add new language that gives the Council the discretion to permit employees to rollover said distributions, as permitted by federal law outlined in Internal Revenue Notice 2007-22; provide language that prohibits flexible spending account elections for employees terminated and reinstating employment within the same calendar year; update language specific to the administrative processes involved with refunding premiums to employees when over deductions take place; and update references citing state statutes to bring the same up to date with statutory changes.
CONTACT PERSON:
Craig A. Cates, Executive Manager, Agency & Regulatory Affairs, Oklahoma State Employees Benefits Council, 120 North Robinson Avenue, Suite 1100, Oklahoma City, Oklahoma 73102, 405-609-3440

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

87:10-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise, and wherever appropriate, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other gender.

"Account" means a record keeping account established on the books of the Plan Administrator.

"Act" means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.

"Authorized Submission Procedure" means an acceptable method of submitting enrollment and/or change documents which may include submission via electronic transmissions to the Plan Administrator.

"Board" means the Oklahoma State and Education Employees Group Insurance Board.

"Cafeteria plan" means an employer-maintained benefit plan under which participants are employees and the participants may choose between cash and nontaxable benefits, as defined in Internal Revenue Code Section 125(d) and regulations promulgated thereunder.

"Change in Status" means a change that a participant may be allowed to make during a Plan Year provided that the change is based on prevailing IRS guidance, is allowed by the Plan Administrator, and complies with all eligibility rules and consistency requirements.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 as it applies to an employees right to continue certain coverage under the Flexible Benefits Plan.

"Dependent" means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried child up to the child's twenty-third [23rd] birthday, regardless of residence, provided that the member is primarily responsible for the child's support. This includes a stepchild or child who lives with the member in a regular parent-child relationship, or a child living with the member in a normal parent-child relationship where the member has adopted the child, or has been appointed guardian by a court. It also includes a stepchild who does not live with the member, when the primary member's spouse is covered by the Plan and has been ordered by a court to provide health insurance for his/her children, regardless of residence. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-three [23]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet **the Plan requirements. [74 O.S.Supp.2006, §1303(13)].**

"Effective date of the plan" means January 1, 1990 or as restated.

"Employer" or **"Employing agency"** has the same meaning as **"Participating employer"** as defined in Section 1363(14) of Title 74.

"Enrollment period" means the period of time, as determined and announced by the Plan Administrator each Plan Year during which eligible employees shall make an election of benefits. The period of time shall end no later than thirty (30) days before the beginning of the Plan Year for which the elections are to be effective.

"Entry date" means the first day of the Plan Year except for an employee who first satisfies the requirements for eligibility during the Plan Year (including rehired employees), in which case the entry date shall be the first day of the month next following the satisfaction of the application requirements for eligibility, in accordance with 87:10-3-1.

"FMLA" means the Family and Medical Leave Act of 1993.

"Flexible Benefits Plan" means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.

"Flexible Benefits Plan Rules" means the rules promulgated by the Plan Administrator to implement and administer the State Employees Flexible Benefits Plan.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, 26 USC, I et seq. as amended from time to time.

"Irrevocability Rule" means the rule that requires an enrollment election in any Plan benefit to remain in force throughout the entire Plan Year.

"Period of coverage" means the Plan Year during which coverage of benefits under the Flexible Benefits Plan is available to a participant. An employee who becomes eligible to participate during a Plan Year may participate for a period lasting until the end of that Plan Year. In this case, the interval commencing on the employee's entry date and ending as of the last day of eligibility for that Plan Year.

"Permitted Exception" means an exception allowed to the Irrevocability Rule by the Plan. Any changes based on these exceptions must be on account of and correspond with the underlying event.

"Plan Administrator" means the Oklahoma State Employees Benefits Council.

"QMCSO" means a Qualified Medical Child Support Order.

~~**"SoonerChoices"** means the trade name adopted by the Plan Administrator to refer to the State Employees Flexible Benefits Plan.~~

"Statutory nontaxable benefit" means a benefit provided to a participant under the Flexible Benefits Plan, the value of which is not included in the participant's gross income by a specific provision in the Internal Revenue Code and is permissible under the Flexible Benefits Plan in accordance with Section 125 of the Internal Revenue Code.

"USERRA" refers to the Uniformed Services Employment and Reemployment Rights Act of 1994.

SUBCHAPTER 3. FLEXIBLE BENEFITS PLAN PROVISIONS

87:10-3-2. Benefit plans offered as part of the Flexible Benefits Plan

(a) The basic plan shall be the minimum level of benefits an employee is required to purchase and shall include the basic medical plan, the basic dental plan, the basic life plan, and the basic disability plan as referenced in 74 O.S.Supp.~~1999~~2006, § 1371 unless an employee opts not to choose any benefits pursuant to 74 O.S.Supp.~~2003~~2007, § 1370(A). The Plan Administrator shall establish all the terms, conditions, and details necessary to communicate and administer these plans. The Board shall offer the basic medical plan of benefits as an indemnity plan. All benefits plans, whether offered by the Board, a health maintenance organization or others shall at least meet the minimum requirements of the basic plan. The

Plan Administrator shall evaluate all benefit plans to determine if this requirement has been satisfied.

(b) Only those benefit plans officially offered by the Plan Administrator shall be considered a part of the Flexible Benefits Plan. In addition to the basic plan the Plan Administrator may elect to offer other optional benefit plans. The Plan Administrator shall evaluate and select optional plans for inclusion in the Flexible Benefits Plan.

(c) Each year the Plan Administrator shall contract with each insurance provider other than the Board. In lieu of a contract, the Plan Administrator shall deliver a letter of understanding each year to the Board outlining the basic plan to allow the Board to administer the Board's offered benefit plans adopted as part of the basic plan. The Board shall provide the Plan Administrator a complete description of any enhanced benefit plans the Board elects to offer. The Plan Administrator shall determine that these elected plans meet the minimum benefit levels of the basic plan. All insurance providers shall provide claims and other financial information as the Plan Administrator may require.

SUBCHAPTER 13. ELIGIBILITY REQUIREMENTS

87:10-13-4. Elections and changes

The elections and changes are to indicate an employee's choice of ~~SoonerChoices~~flexible benefit plan options, change elections, provide personal data, or effect other actions permitted by the provisions of this Chapter; to allow the employing agency to record the employee's choices and provide information to the Plan Administrator; for the Plan Administrator to record acceptance or denial of the employees choices and to provide procedures effecting an employee's elections or changes.

SUBCHAPTER 17. BENEFIT PLAN ELECTION

87:10-17-3. Employee election of benefit plans

(a) Choices of benefit plans shall be made by a new eligible employee within thirty (30) days after date of employment. This thirty (30) day period shall be known as the employee's enrollment period. Each new employee failing to make such a valid election will be deemed to have elected employee-only coverage under the ~~basic State health plan~~HealthChoice High Option Health Plan, ~~basic State~~HealthChoice ~~dental~~Dental ~~plan~~Plan, HealthChoice basic ~~State~~ term life ~~plan~~policy, and ~~basic State~~the HealthChoice disability plan.

(b) Choices of benefit plans shall be made on a Plan Year basis by the eligible employees during the enrollment period as set by the Plan Administrator. The Plan Administrator will establish eligibility requirements for all benefit plan options each year.

(c) Eligible employees are required to elect medical, dental, life and disability plans except as provided in the following paragraphs. Employees who fail to make a valid election during each designated enrollment period will be deemed to have elected the same plans elected during the most recent enrollment period during which a valid election was made. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option Health Plan and/or HealthChoice Dental.

~~(d) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan pursuant to the provisions of this section or elect to participate in the basic plan and purchase a TRICARE supplement plan in lieu of any other medical plans offered for the Plan Year subject to the provisions of this section.~~

(d) A former employee who is reemployed by the same participating employer within twenty-four (24) months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by the Plan. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at the Board, benefits will be paid to the decedent's estate.

(e) A former active State employee who is reemployed by the State after thirty (30) days from termination will not be eligible to reenroll in vision plans, Health Care Reimbursement Accounts and Dependent Care Reimbursement Accounts throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.

(1) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan ~~or can elect to participate in the Flexible Benefits Plan and purchase a TRICARE Supplement plan in lieu of any other medical plans offered for the Plan Year only~~ if the following conditions are met prior to the close of each annual enrollment period ~~beginning with the enrollment period for Plan Year 2004~~:

(A) The employee must provide proof that he or she is retired from a branch of the United States military; and

(B) The employee must provide proof of health coverage through a federal plan; and

(C) The employee must make a proper election not to participate in the Flexible Benefits Plan ~~or to participate in the Flexible Benefits Plan and purchase a TRICARE Supplement plan in lieu of any other medical plans offered for the Plan Year~~.

(2) The Council has the authority to determine the type of information that satisfies the requirements of this subsection.

(3) An eligible employee making an election not to participate under paragraph (1) of this subsection must make such an election each Plan Year.

(A) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has never previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan or may make an election not to participate under paragraph (1) of this subsection. If the employee who is eligible to, but has never previously made an election not to participate under paragraph (1) of this subsection, fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection, the employee will be deemed to have elected coverage that was in effect during the previous Plan Year. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option ~~health~~Health ~~plan~~Plan and/or HealthChoice Dental.

(B) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan, or may make an election not to participate under paragraph (1) of this subsection. If an employee who has previously made an election not to participate under paragraph (1) of this subsection fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection during the annual enrollment period, the employee will be deemed to have elected employee-only coverage under the HealthChoice High Option ~~health~~Health ~~plan~~Plan, the HealthChoice ~~dental~~Dental ~~plan~~Plan, the HealthChoice basic ~~State~~term life ~~plan~~policy, and the ~~basic State~~HealthChoice ~~disability~~Disability ~~plan~~Plan.

(4) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from participating in any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan at any time during the Plan Year for which he or she made the election. Upon re-entry into the state benefits package either through an acceptable midyear event or at the annual Option Period enrollment, benefit options which were declined through the opt-out election by retired military state employees will not automatically be reinstated. The retired military employee must reapply for and be approved through satisfactory evidence of coverage (EOI) before any amounts of Supplemental Life Insurance will again be issued. Only the Basic Life amount (20,000) will be automatically reinstated upon such re-entry. No Guaranteed Issue levels of Supplemental Life will be available.

(5) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from electing coverage for his or her dependents under any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan prior to or at any time during the Plan Year for which he or she made the election.

(6) An eligible employee making an election not to participate under paragraph (1) of this section may continue participation in any of the following:

(A) Benefit plans available under the ~~Flexible~~flexible ~~Benefit~~benefit ~~Plan~~plan other than a health plan, dental plan, life plan, supplemental life plan, dependent life plan, and a disability plan;

(B) Health Care Reimbursement Account Option;

(C) Dependent Care Reimbursement Account Option; and the

(D) Insurance Premium Conversion Option.

(~~d~~f) Each employee who meets the eligibility requirements but fails to make a proper election under the Flexible Benefits Plan shall be deemed a participant in the Flexible Benefits Plan.

(~~e~~g) Coverage shall be effective for a new participant beginning on the first day of the month following the participant's first day in an active pay status.

(~~f~~h) Eligible employees may elect to cover a dependent under the following insurance plans: health insurance, dental insurance, dependent life insurance, or vision insurance. When one eligible dependent is covered, all eligible dependents must be covered for all plans except the dependent life insurance plan. An eligible employee cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.

(~~g~~i) Primary participants electing coverage for eligible dependents cannot enroll the dependents in a benefit plan or a coverage that differs from the benefit plan or coverage chosen by the primary participant.

(~~h~~j) In order for an eligible employees to choose health plan coverage under a Health Maintenance Organization (HMO) plan, the eligible employee must reside or be employed within the selected HMO's service area.

SUBCHAPTER 19. BENEFIT ALLOWANCE

87:10-19-1. Flexible benefit allowance

(a) Each participating employer shall credit to each of its participating employees the specified amount as determined by law, as a flexible benefits allowance. Each participant must use a portion or all of their flexible benefit allowance to purchase at least the basic plan.

(b) An eligible employee making an election not to participate under OAC 87:10-17-3(c)(1) will not be eligible for or credited with any amount of the employee or dependent flexible benefit allowance.

~~(c) An eligible employee making an election to participate under OAC 87:10-17-3(c)(2) will be eligible for the employee and dependent flexible benefit allowance set by 74 O.S. § 1370(D).~~

87:10-19-2. Costs in excess of flexible benefits allowance

If a participant elects benefits whose cost exceeds the participant's flexible benefits allowance, the excess cost shall be paid for with pay conversion dollars. At the participant's option, pay conversion dollars may be designated as pre-tax (premium conversion) dollars or after-tax dollars. *The elected amount ~~of pay conversion dollars~~ shall be deducted from the participant's compensation in ~~substantially~~ equal amounts each pay period ~~during the participant's period of coverage~~over the plan year* [74 O.S.Supp.2007, ~~74:~~§1370~~(c)~~(F)].

SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION

87:10-27-2. Definitions

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

"Dependent" means an individual who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"Health care reimbursement account" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Medical care expenses" means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.

"Grace Period" means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"Rollover Distributions" means distributions to a Health Savings Account of balances remaining at year end for employees who qualify pursuant to State and federal law.

"Run Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

87:10-27-3. Requirements for eligibility

(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the health care reimbursement account option.

(b) A former employee who is reemployed by the same participating employer after thirty (30) days from termination will not be eligible to reenroll in a Health Care Reimbursement Account throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.

87:10-27-14. Health Savings Accounts Distributions

The Council has discretion to permit rollover distributions to a Health Savings Account as allowed by State and federal law.

SUBCHAPTER 31. COVERAGE CONTINUATION AND REFUNDS

87:10-31-2. Refund for ~~overdeductions~~over deductions

(a) It is the participant's duty to notify the agency coordinator of a change in eligibility for himself, his spouse or his dependents. Any refund of payment for any over deduction shall be made only when the Plan Administrator is notified in writing no later than sixty (60) days from the actual date of the ~~overdeduction~~over deduction. No refund will be made for ~~overdeductions~~over deductions which occurred more than sixty (60) days prior to the date written notification is received by the Plan Administrator.

(b) Refunds for excess deductions due to administrative error of the agency shall be limited to either the beginning of the Plan Year in which the error was discovered or the beginning of the calendar year in which the error was discovered, whichever is later.

(c) A refund of premium form shall be completed by the employee and submitted to the Plan Administrator for approval. If approved, the ~~Plan Administrator~~applicable payroll office will issue a payroll voucher to the employee for the amount of refund due. When the Plan Administrator does not approve a refund, the Plan Administrator shall notify the employee.

(d) Any benefits paid under this plan for an ineligible employee, spouse or dependent may be offset against any refund due for ~~overdeduction~~over deduction.

[OAR Docket #08-1130; filed 6-4-08]

TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION

CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT

[OAR Docket #08-1145]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [AMENDED]

120:10-1-1 through 120:10-1-10 [AMENDED]
Subchapter 3. Specific District Regulations [AMENDED]
120:10-3-8 [AMENDED]
120:10-3-13 [AMENDED]
Subchapter 5. General District Provision and Additional Zoning Regulations
120:10-5-13 through 120:10-5-15 [NEW]
Subchapter 11. Historical Preservation and Landmark Board of Review
120:10-11-4. [AMENDED]
Subchapter 15. Signage ~~Guidelines~~Regulations [AMENDED]
120:10-15-1 through 120:10-15-15 [AMENDED]

AUTHORITY:
Capitol-Medical Center Improvement and Zoning Commission, 73 O.S., Section 83.4

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N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The rules update the zoning regulations in compliance with Title 73, Section 82.1 O.S. and in support of the recommended policies and goals of the Capitol-Medical Center Improvement and Zoning District Master Plan and the Oklahoma Health Center Master Plan (2007) as they relate to the University of Oklahoma Health Sciences Center and the Oklahoma Health Center. Revisions to Subchapter 3 update rules related to the Health Center District (HC) for the purposes of growth, functionality, development, and redevelopment of the Oklahoma Health Center; and the Health Center Commercial District (CHC) for the purposes of regulating medium intensity commercial uses that support the Oklahoma Health Center and the adjacent residential community.

New rules in Subchapter 5 create overlay zoning districts for transition areas identified for redevelopment and revitalization of areas in the district known as Health Center Mixed Use Overlay Districts (MXD) and Mixed Use Overlay District-1, Health Center Commercial (MXD-1) and Mixed Use District-2, Limited Health Center Commercial (MXD-2), for the purposes of regulating selective low to medium intensity uses that can integrate with the Health Center and residential community allowing for medium to small capital investments and adaptive re-use of existing structures.

Revisions to Subchapter 11 provide the Commission with the ability to continue to provide service to owners of Historic Preservation and Historic Landmark zoned properties in the event that the Historical Preservation and Landmark Board of Review cannot achieve the quorum.

Revisions to Subchapter 15, Signage Guidelines, change the title of the subchapter, update and further clarify the criteria established by the subchapter to properly control signage applicable to zoning districts except where otherwise provided. Revisions also correct existing rule language that implies the rule is advisory and not regulatory.

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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

120:10-1-1. Purpose

The regulations ~~contained~~ in this Chapter are necessary to encourage the most appropriate use of land; to maintain and stabilize the value of property; ~~reduce fire hazards~~ and improve public safety and safeguard the public health; to decrease traffic congestion and its accompanying hazards; to prevent undue concentration of population; to create a comprehensive and stable patter of land uses upon which to plan for transportation, ~~water supply, sewage,~~ schools, parks, ~~public utilities,~~ public buildings, and other facilities; to bring about the coordinated physical development of the District in accordance with present and future needs~~; and to insure efficient expenditure of public funds~~.

120:10-1-2. Citation

In accordance with ~~This Chapter, in pursuance of~~ the authority granted by the Legislature of the State of Oklahoma in Title 73, Chapter 4, Sections 82.1-83.14, as amended, of the Oklahoma Statutes, this Chapter shall be known and cited as the Capitol-Medical Center Improvement and Zoning District ~~Regulation~~ Regulations ~~and may be cited as such~~.

120:10-1-3. Definitions

For the purpose of this Chapter, words used in present tense shall include the future tense; words in the singular number include the plural and words in the plural include the singular, except where the natural construction of the writing indicates otherwise. The word "shall" is mandatory and not ~~directory~~ discretionary. In addition the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Accessory building" means a ~~subordinate~~ secondary building ~~or a portion of the main building~~, the use of which is incidental to that of the ~~dominant use~~ of the main building ~~or~~ on the premises.

"Accessory use" means a secondary use or occupancy ~~customarily incidental, appropriate and subordinate~~ compatible to the ~~main use of the land or buildings located upon the same premises~~ principal use of the main building.

"Adult day care center" means a public or private facility where for compensation, a staff provides day care services to four (4) or more unrelated functionally impaired or physically disabled adults; services include, but are not limited to meals, recreation, socialization skills, counseling, and therapy.

"Advertising sign" or **"structure"** means any ~~cloth, card, paper, metal, painted, glass, wooden, plastic, plaster, stone or other sign, device or structure of any character whatsoever, including statuary, placed for outdoor advertising purposes on the grounds or any tree, wall, bush, rock, post, fence, building or structure. The term "placed" shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving, or otherwise fastening, affixing or making visible in any manner whatsoever. The area of an advertising structure other than a sign shall be determined as the area of the largest cross section of such structure. Neither directional, warning nor other signs posted by public officials in the course of their public duties shall be constructed as advertising signs for the purpose of definition~~ metal, wood, plastic, plaster, stone, or other sign placed for outdoor advertising purposes on the ground or any wall, post, building, or structure.

"Alley" means a street ~~less than thirty (30) feet wide, if it existed prior to the enactment of these Regulations, and less than fifty (50) feet wide, if created after the enactment of these Regulations. This definition shall not apply to half-street, as hereinafter defined, and shall not restrict the development of property adjacent to a half-street, said property being only that for which the half-street was dedicated~~ but not a public street, located between or behind buildings that is used to provide a secondary or service access to the abutting properties..

"Alterations" means the changing or ~~remodelling~~ remodeling of a building or structure which does not add to or otherwise increase the building's physical size or floor area.

~~**"Apartment house"** (See "Dwelling, multiple")~~

"Automobile" means a self-propelled mechanical vehicle designed for use on streets and highways for the convenience of goods and people including but not limited to the following: passenger cars, trucks, buses, motor scooters, and motorcycles.

"Automobile repair and service" means a facility for the care, servicing, repair, or equipping of automobiles.

"Automobile service stations" means ~~any~~ an area of land~~, including structures, thereon, that is~~ used for the sale of gasoline or oil fuels, but not butane or propane fuels, or other automobile accessories, ~~and~~ which may or may include facilities for lubricating, washing, cleaning or ~~otherwise~~ servicing automobiles but not including painting ~~thereof~~.

"Automobile wrecking" or **"Salvage yard"** means an area outside of a building where motor vehicles are disassemble, dismantled, junked, or "wrecked"; or where motor vehicles not in operable conditions or used parts of motor vehicles are stored.

"Basement" means ~~a story partly or wholly underground~~ the lowest story of a building either partly or entirely below grade. A basement is counted as a story for the purpose of height regulations~~, if subdivided and~~ used for ~~business and used for business or dwelling~~ purposes ~~by~~ other than ~~a janitor employed~~ employees on the premises.

"Boarding house" means a building other than a hotel, where, for compensation and by prearrangement for definite periods, meals, or lodging and meals are provided for three (3) or more persons, but not exceeding twenty (20) persons.

"Building" means ~~any structure intended for shelter, housing, or enclosure of persons, animals, or chattel. When separated by dividing walls without openings, each portion of such structures so separated shall be deemed a separate structure~~ a more or less enclosed permanent structure intended for occupance and use as, but not limited to housing, commerce, and industry..

~~**"Building coverage"** means the percentage of the lot area covered by the buildings. The building area shall include all overhanging roofs.~~

"Building area" means the total area of a site which is covered by a building or buildings as measured on a horizontal plane at ground level, terraces and uncovered porches are excluded from the total area.

"Building height" means the vertical distance from the average line of the highest and lowest points of that portion of the lot covered by the building to the highest point of coping of a flat roof, or in the ~~deckline~~ deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof.

"Building line" means a line established by law usually parallel to a property line, beyond which a structure may not extend; this does not apply to uncovered entrance platforms, porches, terraces, and steps.

"Building main" means ~~a building in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be a main building on the lot on which it is situated~~ the structure constructed on the lot for occupation by the principal use.

"Building site" means ~~a single parcel of land occupied or intended to be occupied by a building or structure~~ an area or parcel of land with defined limits on the location or proposed location of buildings or structures.

"Carport" means ~~a permanent roofed structure permanently open on at least two (2) sides, designed for or occupied by private passenger vehicles~~ a covered shelter opened on one or more sides designed for storage of private motor vehicles..

"Certificate of Appropriateness" means the official document issued by the Historical Preservation and Landmark Board of Review approving and/or concurring in ~~any application for permit for the erection, demolition, moving, reconstruction, restoration, or alteration of any structure in the Historic Preservation or Landmark District or approving and/or concurring in any application for zoning redistricting or general plan amendment of any area in the Historic Preservation District~~ the application for permission to construct, demolish, relocate, reconstruct, restore, or alter any structure designated by the authority of this regulation..

"Child care center" means any ~~child care facility receiving six (6) or more children~~ public or private facility where for compensation receives six (6) or more children under the age of thirteen (13) years not of common parentage, for full-time or part-time care apart from their natural parents,. legal guardians or custodians..

"Child care facility" means ~~any public or private place or institution which receives children under the age of sixteen (16) years not of common parentage, for full-time or part-time care apart from their natural parents, legal guardians or custodians,~~

~~when received for compensation and which is owned or controlled by a political subdivision, corporation, an unincorporated organization or association, or individual~~ a facility where a program is operated by a person, public or private institution where for compensation and definite time periods children under the age of 13 are received and provided full-time or part-time care, the program may or may not include educational, recreational, and social activities.

"Child care home" means any child care facility receiving five (5) or less children.

"Childhood development center" means a public or private facility that offers a development program for children with learning or physical disabilities, services provided include, but are not limited to, testing, screening, counseling, treatment, therapy, and educational programs.

"Commission" means the Capitol-Medical Center Improvement and Zoning Commission.

"Community treatment center" means a public or private facility that does not include residential accommodations, where a staff of professionals evaluate and provide treatment for persons suffering or recovering from physical, emotional, or substance abuse problems.

"Court" means an open, uncovered, unoccupied space, ~~other than a yard on the same lot with a building or group of buildings and which is bordered on two (2) or more sides by such a building or buildings~~ partially or fully surrounded by walls or buildings..

~~**"Court, inner"** means a court other than an outer court. The length of an inner court is the minimum horizontal dimension measured parallel to its longest side. The width of an inner court is the minimum horizontal dimension measured at right angles to its length.~~

~~**"Court, outer"** means a court the full width of which opens into a required yard, or street, or alley. The width of an outer court is the minimum horizontal dimension measured in the same general direction as the yard, street, or alley upon which the court opens. The depth of an outer court is the minimum horizontal dimension measured at a right angle to its width.~~

"Courtyard" means an open area that is partially or fully enclosed by one or more building and/or by walls.

"Drive-in restaurant" means ~~any establishment where food, frozen dessert and/or beverage is sold to the consumer and where motor vehicles parking space is provided where such food, frozen desert and/or beverage is intended to be consumed in the motor vehicle parked upon the premises outside of the building~~ an establishment designed to permit its patrons to purchase and consume food and/or non-alcoholic beverages while they remain in their automobiles on the premises..

"Drug treatment center" or **"halfway house"** means a facility ~~in which~~ where unrelated persons, reside temporarily while recovering from treatment for ~~drug addiction~~ chemical dependence, alcoholism or ~~metal~~ a psychological illness.

"Dry cleaning" or **"laundry, self-service"** means ~~any attended or unattended place,~~ a building or ~~portion thereof,~~ part of a building available to the general public for the purpose of washing, drying, ~~extracting moisture from,~~ or dry cleaning wearing apparel, ~~cloth, fabrics~~ and textiles ~~of any kind~~ by means of mechanical ~~appliance~~ appliances which ~~is~~ are operated primarily by the customer or an attendant.

"Dwelling" means ~~any~~ a building, ~~or portion thereof, which is~~ designed or used as living quarters for ~~one~~ 1 or more families, but not including house trailers, mobile homes, or travel trailers.

"Dwelling, attached" means a ~~dwelling having any portion of each two (2) walls in common with adjoining dwellings~~ residential building sharing 1 or more of its sidewalls with an adjoining unit.

"Dwelling, detached" means a dwelling standing completely alone, not sharing a wall with another dwelling having open space on all sides.

"Dwelling, single-family" means a dwelling designed to accommodate and be occupied by ~~one (1)~~ 1 family.

"Dwelling, ~~two-family~~ two unit" means a ~~dwelling~~ building for residential use designed to accommodate 2 family units to be occupied by ~~two (2)~~ 2 families living independently of each other.

"Dwelling, ~~multiple-family~~ multi-unit" means a ~~dwelling~~ building for residential use designed to accommodate several separate family units, usually for occupancy by ~~three (3)~~ 3 or more families living independently of each other~~, exclusively of auto or trailer courts or camps, hotels, or resort-type hotels~~.

"Dwelling, "row house" or **"town house"** ~~means three (3) or more dwelling units attached at the side or sides, each unit of which has a separate outdoor entrance and is designed to be occupied and may be owned by one (1) family.~~ 1 of a series of houses constructed in an unbroken row, sharing 1 or more of its sidewalls with a neighbor; each unit has a separate outdoor entrance and is designed to be occupied by 1 family.

"Exterior architectural feature" means ~~the architectural style and general arrangement of the exterior of the structure including type, color, and texture of the building materials and including all windows, doors, lights, signs and other fixtures appurtenant thereto~~ any architectural design element or detail that characterize an architectural style including but not limited to building materials, windows, signage, doors, iron work, and other ornaments..

"External improvement" means any ~~structure, place, work of art, landscape element, or other object constituting a physical betterment of real property which is visible from a public way or adjoining properties~~ any installation or physical change made to a property to increase its value and/or improve its aesthetic quality..

"Family" means one or more persons related by blood, adoption, or marriage, living and cooking together as a single ~~housekeeping unit~~ household, exclusive of household servants~~. Not~~ ; or ~~more than two (2)~~ 2 persons living and cooking together as a single ~~housekeeping unit~~ household~~, though~~ although not related by blood, adoption or marriage shall ~~be deemed to~~ constitute a family.

"Floor area, gross" means the ~~sum of the gross horizontal areas of all of the floors of a building or buildings, measured from the exterior face of exterior walls or from the center line~~

~~of walls separating two buildings, and including but not limited to, the following spaces.~~

~~(A) Basements.~~

~~(B) Elevator shafts and stairwells at each floor.~~

~~(C) Floor space for mechanical equipment with structural head room of seven (7) feet.~~

~~(D) Penthouse.~~

~~(E) Attic space providing head room of seven (7) feet or more.~~

~~(F) Interior balconies, mezzanines and enclosed covered porches and enclosed steps.~~

~~(G) Accessory uses in enclosed covered space, but not including space used for off-street parking.~~ area within the perimeters of the outside wall of a building as measured from the inside surface of the exterior walls, with no deduction for hallways, stairs, closets, thickness of walls, columns or other interior features.

"Floor area net" means the ~~total floor area within a building devoted or intended to be developed to a particular use, with structural head room of seven (7) feet or more, whether above or below the finished lot grade, excluding (a) elevators, stairwells, hallways, walls and partitions, and (b) floor space permanently devoted to a parking space or parking spaces, mechanical equipment, closets, washrooms, or other items permanently preventing the floor space from being occupied by person while engaged in the use~~ actual occupied area of building devoted or intended to be developed to a particular use, with structural head room of seven (7') feet or more, whether above or below the finished lot grade, not including accessory unoccupied areas or thickness of walls..

"Floor area ratio" means a mathematical expression determined by dividing the gross floor area of a building by the lot area ~~of the lot~~ on which it is located as:

$$\frac{\text{Floor Area}}{\text{Lot Area}} = \text{Floor Area Ratio.}$$

"Frontage" means the length of a lot line or a building site along a street or other public way.

"Garage or parking structure" means a building for short term storage of motor vehicles, having 2 or more tiers or levels and at least 2 partially open sides.

"Garage apartment" means a dwelling unit ~~for one (1)~~ occupied by 1 family ~~erected~~ constructed above a private garage.

"Garage, private residential" means an accessory building or ~~a~~ part of a main building used for storage ~~purposes only for automobiles used solely by~~ of motor vehicles owned by the occupants and ~~their~~ guests of the main building ~~to which it is accessory~~.

~~**"Garage, public"** means any garage other than a private garage, available to the public, used for the care or servicing of automobiles where such vehicles are parked or stored for remuneration, hire, or sale.~~

~~**"Garage, repair"** means a building in which are provided facilities for the care, servicing, repair, or equipping of automobiles.~~

"Good repair" means a condition which not only meets the minimum standards of health and safety, as detailed in the International Building ~~Officials and~~ Code ~~Administrations (BOCA)~~ Book of the City of Oklahoma City, but which also guarantees continued attractiveness, ~~continued~~ structural soundness, and ~~continued~~ usefulness.

"Gross floor area" (See "Floor area gross")

"Ground coverage ratio" means a mathematical expression determined by dividing the gross floor area of a building by the area of the lot on which it is located as:

$$\frac{\text{Floor Area}}{\text{Lot Area}} = \text{Floor Area Ratio.}$$

"Health care facilities" means any facility related to health care and/or treatment of physical or emotional illness which include but are not limited to the following:

(A) **"Clinic, dental, medical or mental health"** means a facility for the evaluation, examination, and treatment of physically or emotionally ill out-patients, including all clinic facilities associated with any college within the University of Oklahoma Medical School.

(B) **"Dental or medical laboratories"** means a facility operated for the primary purpose of performing medical or dental diagnostic, testing, analytical or clinical work having a direct relationship to a specific health service.

(C) **"Geriatric care center"** means an outpatient health facility dedicated to the diagnosis, treatment, and care of senior adult patients. The clientele may or may not participate in clinical research or other health or social service programs administered by the center.

(D) **"Hospital"** means an institution providing inpatient medical, surgical, or trauma care for the sick and injured, which include support services that are fundamentally associated with the facility.

(E) **"Health center"** means a group of facilities providing health services, including but not limited to research laboratories, inpatient and outpatient treatment and services, institutions of higher education, service centers, and residential accommodations.

(F) **"Health center residential"** means residential dwelling units owned and operated by Health Center members for the purpose of housing staff, students, employees, and visiting health care professionals.

(G) **"Health Sciences Center Facilities"** means all of or any part of the University of Oklahoma's College of Medicine and other colleges.

(H) **"Medical research laboratory"** means a facility operated for the primary purpose of performing research, analytical or clinical research associated with the provision of health care services. Laboratories engaged in producing or manufacturing for commercial sales or distribution are not considered to be research laboratories.

(I) **"Public health facility"** means a facility primarily utilized by a health organization to provide public health services including related facilities such as laboratories, clinics, and administrative offices and including the Oklahoma State Department of Health.

(J) **"Rehabilitation center"** means a facility operated primarily for the purpose of assisting in the

treatment of temporary or permanently disabled patients and a coordinated approach by many professions is made to the physical, emotional, and vocational evaluation of patients; and, living quarters may be operated as a fundamental part of the facility.

(K) **"Mixed Use Building" means** for the purposes of the Mixed Use Overlay District-1, Health Center Commercial, a building designed and constructed to accommodate 2 or more compatible uses. The uses are separated by interior walls or partitions. Off-street parking is provided for each specific use in a common parking facility. The building may be owned by one or more occupants, or a private individual or group.

"Historical and/or architectural significance" means that which has a special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, region, state or nation.

~~**"Historical area"** means any land or buildings having notable character or qualities of historical and/or architectural significance as determined by the Capitol Medical Center Improvement and Zoning Commission. An area may include structures or other physical improvements on, above or below the surface of the earth.~~

"Historic district" means a geographically definable area with a concentration of linkages of significant sites, building, structures, or monuments that are unified historically, architecturally, or archaeologically.

"Home occupation" means ~~any occupation or profession carried on by a member of a family residing on the premises, which is incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof; provided that not more than one (1) person, other than a member of the family residing on the premises, is employed; providing that no trading in merchandise is carried on and in connection with which there is no display of merchandise or sign other than one (1) non illuminated nameplate, not more than two (2) square feet in area is attached to the main or accessory building, and no mechanical equipment is used or activity is conducted which creates any noise, dust, odor, or electrical disturbance beyond the confines of the lot on which said occupation is conducted. The conducting of a beauty or barber shop, tea room or restaurant, rest home, real estate office, or cabinet, metal or auto repair shop shall not be deemed a home occupation.~~ an occupation or profession carried on by a family or member of a family residing on the premises, which does not change the character and is secondary to the use of the dwelling for dwelling purposes and to which the following restrictions apply:

(A) not more than 1 person, other than a family member residing on the premises, is employed;

(B) no trading in merchandise is carried on in connection with the business;

(C) no display of merchandise or signs other than 1 non-illuminated nameplate, not more than 2 square feet in area or 9" in diameter attached to the main or accessory building; and,

(D) no mechanical equipment is used or activity is conducted which creates noise, dust, odor, or electrical disturbance beyond the confines of the lot on which the occupation is conducted;

(E) Beauty or barber shop, tea room or restaurant, rest home, real estate office, or cabinet, metal or auto repair shop are not considered a home occupation.

(F) Any other restrictions the Commission determines are necessary to protect the environment and the quality of the residential area in which the use is located.

"Hotel", means a building or group of ~~building~~ buildings under one ownership containing six (6) or more sleeping rooms ~~occupied,~~ intended ~~or designed~~ to be occupied as the more or less temporary abiding place of persons who are lodged with or without meals for compensation, ~~but not including an auto or trailer court or camp, sanatorium, hospital, asylum, orphanage or building where persons are housed under restraint~~.

"Humanitarian or Philanthropic Foundation" means a facility owned and operated by a charity, legal nonprofit organization, religious institution or quasi-public entity where the primary source of operating funds is donations, and the services provided are offered directly to the general public and serve the public interest.

"Institution" means a ~~building occupied by a nonprofit corporation or nonprofit establishment for public use~~ public or private organization or foundation dedicated to providing a service to the public.

"Intermediate care facility" means a health care facility for individuals who are disabled, elderly, or non-acutely ill, usually providing less intensive care than offered at a hospital or skilled nursing facility.

"Kennel, public" means any lot or premises on which four (4) or more dogs more than six (6) months of age are kept for compensation.

"Lot" means ~~any plot of land occupied or intended to be occupied by one building, or a group of buildings, and accessory buildings and uses, including such open spaces as required by these Regulations and other laws and ordinances, and having it principal frontage on a street~~ a parcel of land with principal frontage along a street, including open space as required by this regulation and other laws and ordinances.

"Lot area" means the total horizontal area included within lot lines.

"Lot, corner" means a lot of which at least ~~two~~ 2 adjacent sides abut streets for their full lengths ~~on a street~~, provided that the interior angle at the intersection of ~~such two (2)~~ the 2 sides is not less than ~~one hundred thirty-five degrees~~ a code-specified distance.

"Lot, depth" means the ~~average~~ distance from the ~~street line~~ front of the lot to ~~its~~ the extreme rear line~~, measured in the general direction of the side lines~~ of the lot.

"Lot, double frontage" means a lot ~~having a frontage on two (2) non-intersecting lots streets, as distinguished from a corner lot~~ bounded by 2 streets on the front and back.

"Lot, frontage" means ~~that dimension of a lot or portion of a lot abutting on a street, excluding the side dimension of a corner lot~~ the boundary line of a lot that abuts a street, or, if

it abuts more than one street, then the street designated by the owner.

"Lot, interior" means a lot other than a corner lot.

"Lot, lines" means the ~~lines bounding a lot as defined herein~~ the legal defined boundary or limit of a parcel of land.

~~**"Medical facilities"** means any facility related to health care and/or treatment of the physically or mentally ill which may include by are not limited to the following:~~

~~(A) "Convalescent home" or "Nursing home" means a health facility where person are housed and furnished with meals and continuing nursing care for hire.~~

~~(B) "Dental clinic", "medical clinic", or "mental health clinic" means a facility for the examination and treatment of physically or mentally ill and afflicted human out patients, provided, however, that patients are not kept overnight except under emergency conditions.~~

~~(C) "Health Sciences Center Facilities" means all of any part of the University of Oklahoma's College of Medicine or other colleges including residential structures for the purpose of housing staff, trainees, students or employees.~~

~~(D) "Hospital" means an institution providing health services primarily for human in patients medical or surgical care for the sick or injured and including related facilities such as laboratories, out patient departments, training facilities, central service facilities, and staff offices which are an integral part of the facility.~~

~~(E) "Medical center" means a group of facilities providing health services, including medical research and other related facilities such as laboratories, in patient departments, training facilities, central service facilities, and living quarters operated as an integral part of the facility.~~

~~(F) "Medical center housing" means residential structures owned and operated by hospitals and other health facilities for the purpose of housing staff, trainees, students and employees.~~

~~(G) "Public health center" means a facility primarily utilized by a health unit for the provision of public health services including related facilities such as laboratories, clinics, and administrative offices operated in connection therewith and including the State Health Department of Oklahoma.~~

~~(H) "Rehabilitation center" means a facility operated primarily for the purpose of assisting in the rehabilitation of disabled persons and in which a coordinated approach by many professions is made to the physical, mental, and vocational evaluation of such persons and to furnishing of such services as are required and living quarters operated as an integral part of the facility.~~

~~(I) "Medical research laboratories" means a facility operated for the primary purpose of performing medical or dental research, diagnostic, testing, analytical or clinical work having a direct relationship to the provision of health services, which shall include, but are not limited to, those primarily engaged in medical research or in the fields of radiology, menatology, serology and immunology, parasitology, pathology, histology, cytology, toxicology, and pharmacology; provided, however, that laboratories engaged in production controls or in the manufacture of products for commercial sales or distribution are not considered to be research laboratories under the terms of this definition.~~

~~(J) "Sanatorium" means an institution providing health facilities for in patients medical treatment, or treatment and recuperation using natural therapeutic agents.~~

~~**"Mobile home"** means a single family dwelling designed for transportation on streets and highways on its own wheels or on a flatbed or other trailer, both highway and rail, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, location of jacks or permanent functions, connection to utilities, and similar operations. Unless otherwise indicated in the text of this Chapter, the term "mobile home" shall refer to an "independent mobile home".~~

"Motel" ~~(See "Tourist court")~~ means an area containing 1 or more structures designed or inteended to be used as temporary sleeping facilities of one or more transient families intended primarily for automobile transients.

"Nonconformance" means a lawful condition of a structure or land which does not conform to the regulations of the zoning district in which it is situated. This may include, but is not limited to failure to conform to use, height, area, coverage, or off-street parking requirements.

"Nonconforming use" means a structure or land lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

"Office building" means a building that is used for professional or clerical purposes, no part of which is used for swelling purposes.

"Ordinary maintenance and repair" means any work, in a historical zoning district ~~for which~~ that does not require a Certificate of Appropriateness ~~is not required~~ by law, where the purpose ~~and effect~~ of ~~such~~ the work is to correct any ~~deteriorated or decay~~ deterioration or damage to any part of a structure ~~or any part thereof~~ and to restore the ~~same~~ structure, as ~~nearly~~ near ~~as practicable,~~ to its condition prior to the occurrences of ~~such~~ the ~~deterioration, decay or~~ damage.

"Parking space" means a permanently surfaced area, enclosed or unenclosed, with permanently surfaced driveways connecting the parking space with a street or alley for permitting ingress and egress sufficient in size to store ~~one (1)~~ 1 ~~automobile~~ vehicle ~~together with permanently surfaced driveway connecting the parking space with a street or alley and permitting ingress or egress of an automobile. For purposes of this Chapter, the size of a parking space for one (1) vehicle shall consist of a rectangular area having dimensions of not less than nine (9) feet by twenty (20) feet plus adequate area for ingress and egress~~.

"Planned unit development" means a development planned in accordance with the provisions of Section 120:10-5-11 of this Chapter.

"Premises sign" means any sign that identifies the legal or exact firm name of the business on the premises or advertises any service or product being offered for sale.

"Public administration use" means the ~~legislature~~ legislative, judicial, and executive branches, and the administrative and regulatory activities of the government of the State of Oklahoma. ~~including:~~

~~(A) "Executive offices" means offices of the Governor and other advisory and interdepartmental committees and /or commissions.~~

~~(B) "Legislative bodies"~~

~~(C) "Justice, public order and safety" means courts of law, Attorney General's office, police and other law enforcement bodies.~~

~~(D) "Regulatory bodies" means agriculture, transportation, economic programs, licensing programs, housing programs, wildlife conservation, education, public health and welfare programs.~~

"Reconstruction" means the work of rebuilding a structure, but not attempting to put it back to its exact original form.

"Recreational vehicle" means a manufactured vehicle dually used as both a vehicle and a temporary travel home for camping to full time living.

"Recreational vehicle park" means a plot of land that accommodates 1 or more recreational vehicles or travel trailers on a temporary basis.

"Recreation vehicle space" means a portion of land within a neighborhood or recreational vehicle park designed to accommodate 1 recreational vehicle or travel trailer.

"Rest home" (See "Convalescent home").

"Restoration" means the ~~work of putting a structure back into it near or exact original form, where it has been modified since original construction, but deteriorated due to neglect, or has been damaged~~ process of accurately recovering all or part of the form and detail of a resource and its settings as it appeared at a particular period of time by means of removal of later work and the replacement of missing earlier work..

~~**"Row house"** (See "Dwelling, row house").~~

"Set back" means the minimum distance between a reference line, usually the ~~lot~~ property line and the building ~~line~~ or a portion of the building.

~~**"Sheltered care home"** means a facility for the maintenance and personal care, exclusive of nursing care of person incapable of maintaining a private, independent residence.~~

"Sign" (See "Advertising sign or structure").

"Site development plan" means a plan of a construction site drawn at a scale ~~of not less than fifty (50) feet is equal to one (1) inch~~ which shows the ~~topographic characteristics of the site at a contour interval of not less than one (1) foot; the~~ exact ~~location~~ position and dimensions of the buildings and other structures to be constructed including building elevations, yards, ~~courts,~~ landscape, ~~pedestrial~~ pedestrian and vehicular circulation and parking, ~~fences and screening; service areas and courts~~ and other features; ~~the use of each building and area; the height of buildings~~ dimensions and contours of the lot; adjacent ~~streets, alleys, utility drainage~~ roadways and other easements; and the relationship of the development to adjacent areas ~~which it may affect~~.

"Skilled nursing facilities" may be independent or part of a senior continuing care community, 24 hour medical care is available, in addition to custodial care. Residents may be there temporarily for a period of rehabilitation, or may be there for long term care. State regulations define the services that skilled nursing facilities can provide.

"Story" means ~~that portion of~~ the space in a building~~, included~~ between the surface of any floor ~~and the surface of the floor above it, or if there be no floor above it, then the space between the floor and the ceiling next above it~~ levels and a roof above; a basement is usually considered as a story.

"Story, half" means a ~~space under~~ a story within a sloping roof ~~which has the line of intersections of the roof decking and wall face not more than three (3) feet above floor area is finished off for use. A half story containing independent apartment or living quarters shall be counted as a full story~~ usually having dormer windows and occupying about half the area of the floor or floors below..

"Street" means any public or private thoroughfare usually paved, including all area within the right-of-way, such as sidewalks; a public way which ~~affords~~ provides the principal means of access to ~~abutting~~ adjacent property.

"Street, intersecting" means any street which joins another street at an angle, whether or not it crosses the other.

"Structure" means anything constructed or ~~erected~~ assembled, ~~the use of~~ which requires location on the ground or ~~attached~~ attachment to something ~~having a location~~ located on the ground.

"Structural alteration" means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change to the roof or in the exterior walls.

~~**"Tourist court"** means an area containing one (1) or more structures designed or intended to be used as temporary sleeping facilities of one or more transient families intended primarily for automobile transients.~~

"Tourist home" means a dwelling in which sleeping accommodations in not more than four (4) rooms are provided or offered for transient guest for compensation.

~~**"Town house"** (See "Dwelling", "row house", or "town house").~~

~~**"Trailer court"** (See "Mobile home park").~~

"Trailer hauling" means a vehicle to be pulled behind an automobile or truck which is designed for hauling animals, produce, goods, or ~~commodities~~ freight, including boats.

~~**"Trailer, travel"** or **"camping"** means all vehicles and portable structures built on a chassis, designed as a temporary or permanent dwelling for travel, recreational, and vacation use; this is meant to include tent trailers and motor driven travel vehicles, not included in the definition of "independent mobile home". For purposes of this Chapter, a dependent mobile home shall be considered the same as a travel trailer, unless otherwise specified.~~

~~**"Travel trailer park"** means any plot of ground upon which one or more travel trailers, occupied for dwelling or~~

~~sleeping purposes, are located, regardless of whether or not a change is made for such accommodations~~

~~**"Travel trailer space"** means a plot of ground within a travel trailer park designed for accommodation of one travel trailer.~~

"Yard" means an open space ~~at grade~~ between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground ~~upward~~ open to the sky except where otherwise specifically provided in this Chapter.

"Yard, front" means a yard ~~located in front of the front elevations of a building and extending across a lot between the side yard lines and being the minimum horizontal distance between the front property line and the main building or any projection thereof, other than steps~~ of a lot, facing the street that extends from the front line of the building to the front property line and across the width of the lot, with no obstructions or projections in between, other than steps..

"Yard, rear" means ~~a yard extending across the rear of a lot measured between lot lines and being the minimum horizontal distance between the rear lot line and the rear of the main building or any projections other than steps, unenclosed balconies unenclosed porches. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard~~ the yard across the full width of the rear of the lot extending from the rear line of the main building to the real property line. On corner lots, the rear yard shall be considered as parallel to the street on which the lot has its least dimension. On both corner lots and interior lots, the rear yard shall, in all cases be. at the opposite end of the lot from the front yard..

"Yard, side" means the yard between the side line of a building and the adjacent property line extending from the front property line to the rear property line.

"Zoning district" means ~~any section or sections of the Capitol-Medical Center Improvement and Zoning District for which regulations governing the use of building and premises or the height and area of buildings are uniform~~ all property located within the boundaries of the Capitol-Medical Center Improvement and Zoning District as described in 73 O.S., Section 83, as amended..

120:10-1-4. Nature and application

This Chapter classifies and regulates the land, buildings, and structures within the boundaries of the Capitol-Medical Center Improvement and Zoning District ~~as hereinafter set forth~~. ~~The regulations contained in this Chapter are necessary to promote the health, safety, convenience, prosperity and general welfare of the inhabitants, property owners, and homeowners, of the District and of the state in respect of the State Capitol, other state properties and the Oklahoma Health Center by dividing the~~ The District shall be divided into zoning districts ~~and~~ and/or subdistricts regulating ~~therein~~ the use of the land, ~~and~~ the use, location, design, and size of ~~the~~ buildings and structures ~~as to height and number of stories~~, the coverage of land by buildings and structures, the size of yards and open ~~space~~ spaces, density of population, location and design of buildings.

120:10-1-5. Intent of zoning plan

(a) It is the intent of the regulations in this Chapter to provide for the regulation of the uses of land in a manner which is compatible with and necessary for the proper functioning of the Oklahoma Health Center, the Oklahoma State Capitol ~~building~~ Complex Subdistrict buildings and areas, and for the preservation of their monumentality and historical significance; and further to protect private residential, commercial and industrial land uses and the general welfare of the occupants ~~thereof~~ and to provide for the integration of the uses of land within the established District and the uses of land ~~within~~ in the ~~larger area embracing the~~ Oklahoma City Metropolitan area, ~~of~~ which ~~said~~ the Capitol-Medical Center Improvement and Zoning District as a part.

(b) It is not the intent of the regulations in this Chapter to provide opportunity for ~~the employment of~~ all uses of land in the metropolitan area, but only for those public and private uses which may be normally associated with the present and future needs and the preservation of the urban character of the Capitol-Medical Center Improvement and Zoning District.

120:10-1-6. Regulations of use, height, area, yards and open space

Except as ~~hereinafter~~ otherwise provided in this Chapter, no land shall be used and no building, structure or improvement shall be made, ~~erected,~~ constructed, moved, altered, enlarged, or rebuilt which is designed, arranged, or intended to be used or maintained for any purpose or in any manner except in accordance with the requirements established in the zoning district in which ~~such~~ the land, building, structure, or improvement is located, and in accordance with the provisions of this Chapter relating to any or all districts. The minimum yards and other open space ~~provisions~~ requirements, including the intensity of use ~~provision~~ requirement, contained in this Chapter for each and every building existing at the time of ~~passage~~ the enactment of the regulations of this Chapter, or for any building ~~hereafter erected~~ constructed or structurally altered, shall not be encroached upon or be considered as yard or open space for any other building

120:10-1-7. Capitol-Medical Center Improvement and Zoning District Land Use Plan

The Zoning Regulations are prepared to ~~add~~ support ~~in~~ the implementation of the Master ~~Land Use~~ Plan for the Capitol-Medical Center Improvement and Zoning District and shall be a part of ~~said~~ the Master Plan.

120:10-1-8. Zoning districts

(a) The Capitol-Medical Center Improvement and Zoning District is ~~hereby~~ divided into zoning districts as shown on the Zoning Districts Map in Appendix A of this Chapter, an attested copy ~~thereof~~ is filed with the Oklahoma Secretary of State and the County Clerk of Oklahoma County. The Map, as amended, and all explanatory material ~~therein is hereby made~~ are a part of this Chapter.

(b) The zoning districts established by this regulation and respective symbols ~~therefore~~ shall be as follows:

(1) Residential
  (A) RD-1-Single Family Residence District
  (B) RD-2-Low Density General Residence District
  (C) RD-3-Low Rise General Residence District
  (D) RD-4-High Rise General Residence District
  (E) H-P-Historic Preservation District
(2) Commercial
  (A) CN-Neighborhood Commercial District
  (B) CO-Office Commercial District
  (C) CHC-Health Center Commercial District
  (D) CSC-Commercial Service Center District
(3) Industrial
  (A) I-1-Restricted Light Industrial District
  (B) I-2-Light Industrial District
(4) Other
  (A) P-Public District
  (B) HC-Health Center
  (C) HL-Historical Landmark District
  (D) ABC-Alcoholic Beverage
  (E) PUD, Planned Unit Development
  (F) MXD, Mixed Used Overlay Zoning District

120:10-1-9. Interpretation of district boundaries

Where uncertainty exists with respect to the boundaries of any ~~of the~~ zoning districts ~~set forth~~ listed in 120:10-1-8 as shown on the ~~zoning district map, Appendix A of this Chapter~~ Zoning District Map, the following rules shall apply:

(1) Where district boundaries are indicated as approximately following the center lines of streets, ~~or highways~~ highway right-of-way lines, or railroad right-of way lines, the center lines, street lines, ~~or~~ highway right-of-way lines, or railroad right-of-way lines shall be construed to be ~~said~~ the boundaries.

(2) Where district boundaries are ~~so~~ indicated ~~that they~~ as approximately ~~follow~~ following the lot lines, ~~such~~ the lot lines shall be construed to be ~~said~~ the boundaries.

(3) Where district boundaries are ~~so~~ indicated ~~that they are~~ as approximately parallel to the center lines of streets, or the center ~~line~~ lines of ~~girth of ways~~ right-of-ways lines of highways, ~~such~~ the district boundaries shall be construed as being parallel ~~thereto~~ to and at ~~such~~ a scaled distance ~~therefrom~~ from as indicated on the Zoning District Map in Appendix A of this Chapter.

120:10-1-10. Vacation of public easement

Whenever any street, alley or public easement is vacated as required by law, ~~the classifications of the properties to which the vacation portions of land accrue shall become the classification of the vacated land~~ the vacated portions of lands shall be incorporated into the existing zoning district classification or classifications.

SUBCHAPTER 3. SPECIFIC DISTRICT REGULATIONS

120:10-3-8. Health Center Commercial District (CHC)

~~(a) General description. The Health Center Commercial District (CHC) is intended to provide a land use district for those types of institutional and commercial activities that are associated with and customarily supportive of uses located in the HC, Health Center District and which do not materially detract from nearby residence.~~

~~(b) Uses permitted. Property and buildings in the CHC, Health Center Commercial District, shall be used for only the following purposes:~~

~~(1) Any use permitted in an RD-4, High Rise General Residence District.~~

~~(2) Any of the following uses:~~

~~(A) Artificial Limbs and Braces Sales and Service~~
~~(B) Blood Bank.~~
~~(C) Dental Laboratory.~~
~~(D) Dental Supply House.~~
~~(E) Florist Shop.~~
~~(F) Gift Shop.~~
~~(G) Medical Bookstore.~~
~~(H) Medical Laboratory.~~
~~(I) Optometry Sales.~~
~~(J) Orthopaedic Appliance Sales.~~
~~(K) Office Building.~~
~~(L) Pharmacy.~~
~~(M) Restaurant, but not including drive-in restaurant.~~

~~(3) Name plate, flat sign or premises advertising sign relating only to the principal use.~~

~~(4) Accessory uses and buildings customarily incident to the uses in (1) through (3) of this Section.~~

~~(5) Any building uses for any of the enumerated uses in (1) through (4) of this Section may not have more than forty percent (40%) of its floor area devoted to purposes incidental to the primary use. No material goods offered for sale or stored in connection with the uses enumerated in (1) through (4) of this Section shall be displayed or stored outside of the building.~~

~~(c) Conditional uses permitted on review. Any uses permissible on review in a CO, Office Commercial District in accordance with the provision contained in 120:10-23-9 and including the following uses:~~

~~(1) Sheltered Care Home.~~

~~(2) Halfway House or Drug Treatment Center.~~

~~(3) Any other institutional or commercial activity serving the HC, Health Center District in the manner stated in (1) through (4) of this Section which, in the opinion of the Commission, is similar to those enumerated in this Section and is not more obnoxious or detrimental to the area in which located.~~

~~(d) Height regulations. Except as hereinafter provided in 120:10-5-3, no building shall exceed two and one-half (2 1/2) stories or thirty five (35) feet in height.~~

~~(e) Area regulations.~~

~~(1) Front yard. The minimum depth of the front yard shall be twenty five (25) feet. When a lot has double~~

~~frontage, the front yard requirements shall be complied with on both sides.~~

~~(2) Side yard. Main and accessory buildings shall be set back from all side lot lines not less than one (1) foot for each two (2) feet of building height.~~

~~(3) Rear yard. Main buildings used for residential purposes shall be set back from all rear lot lines not less than twenty-five (25) feet or one (1) foot for each foot of building height, whichever is greater. All other main buildings shall be set back from all rear lot lines one (1) foot for each three (3) feet of building height or fraction thereof.~~

~~(f) Intensity of use. A lot occupied by an eight (8) family dwelling shall contain an area of not less than twelve thousand (12,000) square feet, and for each additional dwelling unit in the building one thousand (1,000) square feet of lot area shall be added.~~

~~(g) Coverage.~~

~~(1) Main and accessory buildings for residential use shall not cover more than forty percent (40%) of the lot area on interior lots and forty five (45%) of the lot area for corner lots, and in no case shall the gross floor area of main and accessory buildings exceed the total area of the lot.~~

~~(2) Main and accessory buildings for uses other than residential shall not cover more than fifty percent (50%) of the lot area and in no case shall the F.A.R. exceed 0.60.~~

~~(3) Not less than twenty percent (20%) of the lot area shall be maintained as and remain as landscaped area and shall not be used for any other purpose including off-street parking.~~

~~(h) Screening requirement. Any use permitted in the CHC, Health Center Commercial District while lying adjacent to a residentially zoned or used property shall be screened by an opaque physical barrier consisting of any one or combination of the following:~~

~~(1) A neat and orderly opaque fence not less than seven (7) feet in height.~~

~~(2) A planting screen consisting of a neat, orderly and healthy screen of evergreens or other suitable plant material not less than five (5) feet in height at the time of installation.~~

~~(3) A landscaped earth mount as approved by the Commission.~~

(a) **General description.** The Health Center Commercial District (CHC) is a special land use district created for institutional and commercial activities associated with and supportive of uses located in the Health Center District (HC) which do significantly impact health center functions or detract from adjacent residential districts.

(b) **Uses permitted.** Property and buildings in the Health Center Commercial District (CHC) shall be used for only the following purposes:

(1) Any of the following uses:

(A) Adult Day Care Center

(B) Blood Bank.

(C) Child Care Center or Childhood Development Center

(D) Community Treatment Center

(E) Dental or Medical Clinic.

(F) Dental or Medical Laboratory.

(G) Dental Supply Sales.

(H) Extended Care Facility.

(I) Humanitarian or Philanthropic Foundations.

(J) Medical Center Housing.

(K) Optometry Sales.

(L) Orthopedic Appliance Sales.

(M) Office Building.

(N) Pharmacy.

(O) Prosthesis Sales and Service.

(P) Rehabilitation Center

(Q) Residential Care Facility

(R) University Bookstore

(S) Any other institutional or commercial activity supporting the Health Center District (HC) which, in the opinion of the Commission, is similar in character to those listed in this Subsection and is not detrimental to the area in which it is located.

(2) Premises identification signage and directional signage as define in OAC: 120:10-5-8 of this Chapter relating only to the principal use.

(3) Accessory uses and buildings typically associated with the uses permitted in this Subsection.

(4) Any building used or constructed for any use permitted in this Subsection may not have more than forty percent (40%) of its floor area devoted to purposes other than the principal use. Material goods offered for sale or stored in connection with the uses permitted in this Subsection shall not be displayed or stored in any yard areas or outside of the building.

(c) **Height regulations.**

(1) No building adjacent to residentially zoned property shall exceed 3 stories or 40 feet in height.

(2) Any building adjacent to any C, HC, or I zoning district shall not exceed 4 stories or 50 feet in height, unless specifically approved by the Commission.

(d) **Area regulations.**

(1) **Front yard.** The minimum depth of the front yard shall be twenty- five (25') feet. When a lot has double frontage, the front yard requirement shall be complied with on both streets.

(2) **Side yard.** Main and accessory buildings shall be set back from all side lot lines not less than one (1') foot for each (2') feet of building height.

(3) **Rear yard.** Main buildings shall be set back from all rear lot lines 1 foot for each 3 feet of building height or fraction thereof.

(e) **Coverage.**

(1) Main and accessory building shall not cover more than fifty percent (50%) of the lot area and in no case shall the floor area ratio exceed 0.60.

(2) Not less than twenty percent (20%) of the lot area shall be maintained as and remain landscaped open area and shall not be used for any other purpose including off-street parking.

(f) **Screening requirement.** Any use permitted in the Health Center Commercial District (CHC) adjacent to a

residentially zoned or used property shall be screened by an opaque physical barrier consisting of any one or combination of the following:

(1) Neat and orderly opaque fence 8 feet in height.

(2) A plant screen consisting of a neat, orderly and healthy screen of evergreens or other suitable plant material compatible to the Oklahoma City environment no less than five (5') feet in height at the time of installation.

(3) A landscaped earth berm at least 30 inches in height above grade as approved by the Commission.

120:10-3-13. Health Center District (HC)

~~(a) Uses permitted.~~

~~(1) Property and buildings in the HC, Health Center District shall be used only for the following purposes:~~

~~(A) Dental or Medical Clinic.~~

~~(B) Heliport.~~

~~(C) Hospital.~~

~~(D) Medical Center.~~

~~(E) Medical Center Housing.~~

~~(F) Medical School Facilities.~~

~~(G) Medical Research Laboratory.~~

~~(H) Public Health Center.~~

~~(I) Rehabilitation Center.~~

~~(J) Sanatorium.~~

~~(2) Accessory buildings and uses customarily incident to the above uses.~~

~~(b) Height regulations. It is the intent of these regulations that the height and area requirements of these uses be adequate for the proper functioning of each and every use. No specific regulations are established.~~

(a) **Purpose.** The Health Center District (HC) is a specialized, high density zoning district that advocates an environment suitable for the commingling of academics, health care, and health care research. The District provides an environment where building design, landscaping, pedestrian connectors, structured parking and activity centers unite to create a campus setting that identifies with wellness. This regulation is formulated to accommodate specialized health care and to provide certain amenities for the Oklahoma Health Center and the University of Oklahoma Health Sciences Center. To assure functionality for each use, the ground coverage ratios and floor area ratios set out in the Master Plan for the Capitol-Medical Center Improvement and Zoning District will be a primary consideration in the construction of main and accessory buildings.

(b) **Uses permitted.** Property and buildings in the HC, Health Center District shall be used only for the following purposes:

(1) Clinic, dental, medical, mental health;

(2) Extended Care Facilities;

(3) Health Center Residential;

(4) Heliport;

(5) Hospital;

(6) Hotel/Motel;

(7) Research Laboratory;

(8) Public Health Facilities; and,

(9) Rehabilitation Center.

(c) **Conditional uses permitted.**

(1) **Mixed use building.** The following uses are permitted exclusively in a mixed use building in the Health Center (HC) zoning district. All applications for a mixed use building shall be reviewed under the procedures established in 120:10-13-9 of this Chapter.

(A) Bank or Credit Union

(B) Barber Shop or Salon

(C) Child Care Facilities

(D) Conference Centers

(E) Copy Centers

(2) **Retail establishment.** Any retail commercial establishment in the opinion of the Commission supports any of the above uses or functions located in the Oklahoma Health Center.

(d) **Height regulations.** It is the intent of these regulations that the height requirements of the uses be adequate for the proper functioning of each and every use. No specific regulations are established.

(e) **Floor area ratio requirement.** For high intensity uses the floor area ratio shall be less than 1.00; for non residential use the medium intensity uses the floor area ratio shall be less than .61.

(f) **Ground coverage ratio.** For high intensity use areas the ground coverage ratio shall be a maximum of 25%; for medium intensity use areas, the ground coverage ratio shall be 50%.

(g) **Variance from regulation.** In cases where a specific piece of land, due to exceptional topography or other extraordinary conditions uncommon to the general area can not meet the Health Center (HC) District requirements, or the applicable code requirements of the International Building Code, the Commission may consider granting a variance to the existing requirements for any use or conditional use permitted in this Subchapter.

(h) **Off-Street Parking.** All off-street parking facilities shall be designed and constructed in accordance with Subchapter 7 and Subchapter 17 of this Chapter. The construction of parking decks and parking garages is encouraged.

(i) **Landscape requirement.** Not less than twenty percent (20%) of the lot area shall be maintained as and remain landscaped open area and/or green space shall not be used for any other purpose including off-street parking.

(j) **Signage.** All premises identification and directional signage shall be designed and constructed in compliance with Subchapter 13 of this Chapter.

(k) **Graphic signage.** In order to provide sufficient direction to guide vehicular and pedestrian visitors and users throughout the Oklahoma Health Center, a Graphic Signage System shall be established. Graphic signage shall effectively communicate and identify the location of emergency/trauma centers, hospital and clinic facilities, streets, and parking facilities. Signage shall be placed in highly visible locations, be easy to read, and provide beneficial destination information. Graphic signage shall be uniform in terms of design, building materials, size, language, text, and graphics. The responsible Health Center agency or agencies shall maintain and upgrade the Graphic Signage as required. All graphic

signage must be reviewed and approved by the Commission prior to installation.

(l) **Specialty Signage.** Plaques or monuments indicating history, honoring a group, individual, or organization may be installed in the Oklahoma Health Center with the Commissions approval provided that they do not interfere with or impede facility functions, pedestrian or vehicular traffic, or emergency and traffic signals.

SUBCHAPTER 5. GENERAL DISTRICT PROVISION AND ADDITIONAL ZONING REGULATIONS

120:10-5-13. Health Center Mixed Use Overlay Districts

(a) **Purpose.** Health Center Mixed Use Overlay Districts are created to establish the foundation for selective long term transition of areas adjacent to the Oklahoma Health Center. The overlay zoning districts may be applied to areas identified as mixed use, transition, redevelopment, or revitalization areas in the Capitol-Medical Center Improvement and Zoning District Master Plan as amended.

(b) **District limitations.** The overlay districts are limited to medium to low intensity desirable integral uses that balance the environment between institution and community, and reflect the desired campus image. Such districts must interface with the environs of the medium intensity residential neighborhood by utilizing existing community commercial as the core for outward mixed development intersecting with specialized commercial developments adjacent to the Health Center campus.

(c) **Proposals.** All proposals in the Health Center Mixed Use Overlay Districts must contain provisions for pedestrian connections, landscaping, open space, signage, off-street parking, and vehicular traffic movement.

120:10-5-14. Mixed Use District-1, Health Center Commercial

(a) **General description.** The Mixed Use District-1, Health Center Commercial (MXD-1) is an overlay zoning district for new development that presents opportunities to enhance the quality of the human environment for the Health Center and community. The uses permitted shall be uses compatible to and supportive of the Oklahoma Health Center.

(b) **Application.** The application of the MXD-1 is limited to property and building located in the Health Center Commercial (CHC) zoning district.

(c) **Permitted uses.** Property and buildings in the MXD-1 may be used only for the following purposes

(1) Any of the following uses:

(A) Conference Center;

(B) Copy Center;

(C) Electronics Equipment Sales or Services;

(D) Financial Institutions;

(E) Health or Fitness Club;

(F) Medical or Dental Associations;

(G) Mixed Use Building;

(H) Office or Professional Services;

(I) Therapy or Rehabilitation Centers;

(J) U.S. Postal Service or Private Parcel Service; and,

(K) Any retail/commercial establishment or institutional use the Commission determines serves the Health Center and adjacent community in a manner that is consistent with the intent and standards established for this overlay district.

(2) Any of the following uses may be permitted in a MXD-1 Building

(A) Coffee shop Professional Services;

(B) Day spa, Salon, Barber Shop, or Manicurist;

(C) Dry Cleaners - provided that cleaning and pressing are not done on site;

(D) Florist Shop;

(E) Gift or Card shop;

(F) Health Food Store;

(G) Medical retail display area or showroom;

(H) Restaurant, but not including drive in or drive thru;

(I) Tag Agent; and,

(J) Any other institutional or retail/commercial establishment the Commission determines serves the Health Center and adjacent community in a manner that is consistent with the intent and standards established for this overlay district.

(d) **Mixed Use Building.** For the purposes of the MXD-1, a mixed use building is a building designed and constructed to accommodate 2 or more compatible uses. The uses are separated by interior walls or partitions. Off-street parking is provided for each specific use in a common parking facility. The building may be owned by one or more occupants, or a private individual or group.

(e) **Professional Services.** For the purposes of the MXD-1, professional services are defined as:

(1) health care professionals;

(2) counseling services;

(3) architects;

(4) engineers;

(5) planners;

(6) attorneys; and,

(7) any other conventional profession the Commission determines serves the Health Center and adjacent community in a manner that is consistent with the intent and standards established for this overlay district.

(f) **Area requirements.** All proposals must meet the established underlying zoning district area, coverage, and height requirements.

(g) **Design characteristics.** Buildings shall be similar in style and architecturally characteristic of designs prevailant in the Health Center. Building materials shall be limited to natural and earth tone colors that harmonize with and reflect the urban landscape and campus environment.

(h) **Minimum site size.** The minimum site size for new development for a single use structure is .5 acres. The minimum site size for a mixed use building is 1.5 acres. No building

shall exceed the 0.60 Floor Area Ratio established by the Capitol-Medical Center Improvement and Zoning District Master Plan as amended.

(i) **Off-street parking and landscaping.** All off-street parking facilities must be in compliance with the criteria established in Subchapter 7. Off Street Automobile and Vehicle Parking and Loading and Subchapter 17. Off Street Facilities Landscape Code.

(j) **Landscape plan required.** The focus of the landscape plan shall be the enhancement of yards, structures, the general environment, and shall provide continuity between streets, driveways, and adjacent buildings.

(1) On site pedestrian connectors shall be oriented and link to existing pedestrian pathways and open space. Connectors shall be constructed of concrete, brick, rock, stone, or similar building materials.

(2) All landscape plantings and materials shall be suitable to the Oklahoma City environment and maintained in good condition at all times. An appropriate irrigation or watering system is required landscaping plantings.

(3) Whenever it is feasible or viable, landscape plantings or materials shall be used to screen undesirable structures or building elements such as, but not limited to, ground mounted hvac units, generators, oil/gas wells, loading docks, or any other functionally necessary equipment.

(k) **Signage.** All identification, premises, and directional signage shall be in compliance with the criteria established in Subchapter 13. Signage Regulations.

(1) For a mixed use building, the Commission may require a limitation on signage or restrict the number, type, or size of signage.

(2) All signage must be approved by the Commission prior to installation.

(l) **Public hearing required.** The MXD-1 is classified as an overlay zoning district. All applications will be reviewed in compliance with the procedures established in Section 120:10-13-5. Upon approval by the Commission, the official zoning district map will be amended to recognize the change in land use.

120:10-5-15. Mixed Use District-2, Limited Health Center Commercial

(a) **General Description.** The Mixed Use District-2, Limited Health Center Commercial (MXD-2) is an overlay zoning district for small capital investment with a mixture of new development and adaptive re-use of qualifying existing structures for occupancy by uses that support the Oklahoma Health Center and adjacent community.

(1) The overlay district is limited to low to medium intensity uses oriented toward specific retail/commercial establishments that serve the residential and health center communities.

(2) New structures shall be designed and constructed of materials compatible with residential urban architecture, and landscape schemes that integrate with the Health Center campus environment.

(3) Existing buildings adapted for re-use shall meet all regulation requirements for the proposed use.

(4) Uses permitted shall be low in noise, pollution, and buffered from adjacent low intensity residential developments.

(b) **Application.** The application of the MXD-2 shall be limited to areas identified and recommended by the Capitol-Medical Center Improvement and Zoning District Master Plan, as amended for Mixed Use District-2, Residential/Health Center. However, all properties in a Single Family Residence (RD-1) zoning district shall be exempt from the MXD-2.

(c) **Permitted uses.** Property and buildings in the MXD-2 may only be used for the following purposes:

(1) Any use permitted in the underlying zoning district;

(2) Courier Service;

(3) Fraternity or sorority house;

(4) Health Center Housing;

(5) Home occupation/home based business as defined in this Subchapter;

(6) Mail order sales;

(7) Photography studio;

(8) Professional office;

(9) Tailor or Alteration shop; and,

(10) Interior Designer.

(d) **Conditional Uses Permitted.** Upon application, the following conditional uses may be permitted in the MXD-2. All applications will be reviewed in compliance with the procedures established in Section 120:10-13-9.

(1) Any conditional use permitted in the underlying zoning district;

(2) Mixed Use Building as defined in this Subchapter;

(3) Any other retail/commercial establishments the Commission determines serves the Health Center and adjacent community in a manner that is consistent with the intent and standards established for this overlay district.

(e) **Professional Services.** For the purposes of the MXD-2, professional services are defined as:

(1) health care professionals;

(2) counseling services;

(3) architects;

(4) engineers;

(5) planners;

(6) attorneys; and,

(7) any other conventional profession the Commission determines serves the Health Center and adjacent community in a manner that is consistent with the intent and standards established for this overlay district.

(f) **Home occupation/Home based business.** For the purposes of the MXD-2, home occupation or home-based business is defined as an owner-occupied dwelling designed for residential purposes where the primary use is residential with a secondary use of a profession or business office. A home occupation or home-based business must comply with the following conditions:

(1) No less than 25% or no more than 50% of the floor area in the main dwelling may be dedicated to the business use.

(2) The business use must be separated from the living quarters by a wall, floor, partition, or other permanent physical barrier.

(3) Home occupation or home-based businesses in the MXD-2 are limited to the uses permitted in this Subchapter.

(4) All property modified for mixed use must have adequate space available for off-street parking and delivery, storage, pedestrian connectors, and landscaping.

(5) Material goods offered for sale or stored in connection with the uses permitted in this Subsection shall not be displayed or stored in any yard areas or outside of the building.

(g) **Area requirements.** Buildings and structures located in the MXD-2 shall comply with the requirements established in this subsection.

(1) **Standards for adaptive reuse.** The standards established in this paragraph apply to all existing buildings and structures proposed to be modified for the uses permitted in the MXD-2.

(A) **Site Size.** Calculation of the site size must include the main building or dwelling, vehicle storage, accessory buildings, and on site storage for equipment, supplies, and other related business resources. Floor area and ground coverage ratio requirements are:

(i) **Low intensity uses.** Structures modified for low intensity reuse or a home occupation or home-based business shall have a minimum site size of 8,000 square feet. The coverage requirement shall be 30% coverage on interior lots and 35% coverage on corner lots. The remainder of land shall be used for pedestrian connectors, landscaping, parking, off-street delivery, and right-of-way.

(ii) **Medium intensity uses.** Structures modified for medium intensity reuse shall have a minimum site size of 12,000 square feet and a maximum site size of 14,000 square feet. The Floor Area Ratio shall be less than .61, and the Ground Coverage Ratio shall be 50%. The remainder of land shall be used for pedestrian connectors, landscaping, parking, off-street delivery, and right-of-way.

(B) **Permits and licenses.**

(i) For all structures modified for reuse and certain home occupations, a building permit must be obtained from for the City of Oklahoma City for interior remodel, improvements adjacent to the right-of-way, and all other improvements related to the infrastructure.

(ii) Prior to the occupancy of a structure approved for reuse, a Certificate of Occupancy must be obtained from the City of Oklahoma City.

(iii) For any use that requires licenses or certification, a current copy of a valid licenses or certification should be included with the application at the time of the request for the zoning change or be submitted prior to the commencement of business.

(C) **Addition to existing structures.** Whenever an addition or building expansion is required to modify an existing structure for reuse, the modifications shall be constructed of the same or compatible building materials and designed using architecture characteristic to the existing structure. Such construction shall be in compliance with the area requirements in this Subchapter.

(2) **Standards for new developments.** The standards established in this paragraph apply to all new construction for uses permitted in the MXD-2.

(A) **Site Size.**

(i) **Low Intensity.** New structures designed for low intensity uses shall have a minimum site size of 8,000 square feet and a maximum site size of 10,000 square feet. The coverage requirement for low intensity uses shall be 30% coverage on interior lots and 35% coverage on corner lots. The remainder of land shall be used for pedestrian connectors, landscaping, parking, off-street delivery, and right-of-way.

(ii) **Medium Intensity.** New structures designed for medium intensity uses shall have a minimum site size of 12,000 square feet and a maximum site size of 14,000 square feet. The Floor Area Ratio shall be less than .61, and the Ground Coverage Ratio shall be 50%. The remainder of land shall be used for pedestrian connectors, landscaping, parking, off-street delivery, and right-of-way.

(B) **Height regulations.** Except as provided in 120:10-5-3, no building or structure shall exceed 2-1/2 stories or 35 feet.

(C) **Area requirements.** All buildings shall be set back from street right-of-way lines and comply with these requirements.

(i) **Front yard.** Minimum depth of the front yard shall be 25 feet and no building shall vary more than 6 feet from the existing average residential set-back line on the street where it is proposed for construction.

(ii) **Side yard.** Side yard shall have a minimum width of 5 feet. On any corner lot, a building shall be set back a distance of 15 feet from the street line on the intersecting street. All corner lots must be in compliance with 120:10-5-4(3). Sight line at intersection..

(iii) **Rear yard.** Rear yard shall be 25' or 20% of the depth of the lot, whichever is smaller.

(D) **Design Characteristics.** All newly constructed structures shall be designed to reflect architectural elements characteristic to the environment of urban residential neighborhood. Building materials shall be compatible with materials on existing structures.

(E) **Off-street parking and landscaping.** Off-street parking shall be in compliance with 120:10-7-1 and applicable zoning district requirements. Landscaping of off-street parking facilities and parking areas shall be in compliance with Subchapter 17 of this Chapter. With the exception of handicapped parking and access, facilities for off-street parking and off-street deliveries shall be located at the rear of the lot.

(F) **Landscape plan required.** The landscape plan shall contain provisions for pedestrian connectors, landscaped yards, fences/walls, methods used to achieve sight proof screening of off-street parking and access, accessory buildings, mechanical equipment, and an adequate sprinkler or watering system.

(i) All plantings shall be native to the Oklahoma City environment and maintained in good condition at all times.

(ii) All street-side landscaping, particularly front yard areas and main entrances shall compliment and enhance the urban neighborhood streetscape.

(iii) Landscape buffers and screens should be used as much as possible in lieu of fences or walls.

(iv) The Commission may require additional landscape planting(s) or material(s) to protect and preserve adjacent residentially used property.

(G) **Signage.** All identification and premises signage shall be in compliance with the criteria established in Subchapter 13. Signage Regulations. The Commission may require a limitation on directional signage or restrict the number, type, or size of signage. All signage must be approved by the Commission prior to installation.

(H) **Public Hearing Required.** The MXD-2 is classified as an overlay zoning district. All applications will be reviewed in compliance with the procedures established in Section 120:10-13-5. Upon approval by the Commission, the official zoning district map will be amended to recognize the change in land use.

SUBCHAPTER 11. HISTORICAL PRESERVATION AND LANDMARK BOARD OF REVIEW

120:10-11-4. Board of Review meetings, rules, quorum and duties of Director

~~The Board of Review shall adopt rules for the conduct of its business in accordance with the provisions of this Subchapter. The Board shall elect a Chairman, Vice Chairman, and Secretary who shall serve for one year and who shall be eligible for re-election. All meetings of the Board of Review shall be open to the public. Any person, or his duly appointed representative, shall be entitled to appear and be heard on any matter before the Board. A majority of the Board shall constitute a quorum and action taken at any meeting shall require the affirmative vote of the majority of the Board of Review. The Director of the Capitol-Medical Center Improvement and Zoning Commission shall act in an advisory capacity to the Board and shall participate in its discussion but shall have no right to vote. The Director of the Capitol-Medical Center Improvement and Zoning Commission shall assist the Board of Review in discharging its duties.~~

(a) **Rules.** The Board of Review shall adopt rules for the conduct of its business in accordance with the provisions of this Subchapter.

(b) **Officers.** The Board shall elect a Chairman, Vice Chairman, and Secretary who shall serve for one year and who shall be eligible for re-election.

(c) **Board meetings.** All meetings of the Board of Review shall be open to the public. Any person, or his duly appointed representative, shall be entitled to appear and be heard on any matter before the Board.

(d) **Quorum.** A majority of the Board shall constitute a quorum and action taken at any meeting shall require the affirmative vote of the majority of the Board of Review. The Director of the Capitol-Medical Center Improvement and Zoning Commission shall act in an advisory capacity to the Board and shall participate in its discussion but shall have no right to vote.

(e) **Lack of Quorum.** In the event circumstances prohibit the Historical Preservation and Landmark Board of Review's ability to continue to operate in compliance with the quorum and/or membership requirements established in 120:10-11-4 of this Subchapter, all duties and responsibilities listed in Subsections 120:10-11-5 through 120:10-11-9 will be temporarily assumed by the Capitol-Medical Center Improvement and Zoning Commission. In the interim, the Commission will continue to actively work to fill the vacated positions on the Board.

(f) **Staff.** The Director of the Capitol-Medical Center Improvement and Zoning Commission shall assist the Board of Review in discharging its duties.

SUBCHAPTER 15. SIGNAGE ~~GUIDELINES~~ REGULATIONS

120:10-15-1. Purpose

In order to maintain aesthetic quality within the district, regulations and policies for green space, public right-of-ways, vistas and landscaping have been established. A standard for signage is desirable and necessary to preserve architecturally significant building features, topography and the landscape, and if properly used, will create harmony between building, landscape and signage. Signage is a secondary use and its objective is to direct and identify. These rules establish ~~guidelines and~~ criteria to properly control signage and are applicable in all zoning districts except where otherwise provided.

120:10-15-2. Applicability

~~Signage guidelines in these~~ These rules are ~~establish a coordinated,~~ established to coordinate an environmental

graphic system providing for business identification and information communication that is simple, sophisticated and serves to decrease the amount of visual clutter. Unless specifically approved, no sign shall be constructed, erected, installed or reinstalled unless it conforms to the criteria ~~and guidelines~~ of this Subchapter and all other applicable regulations for the Capitol-Medical Center Improvement and Zoning District. Any sign legally existing on the date of the formal adoption of this Subchapter that does not conform to the provisions of the Subchapter or the zoning district regulations shall be considered a legal, non-conforming use or structure and may continue in such status until it is abandoned or removed by the owner. When applicable, signage must be in compliance with the Americans with Disabilities Act.

120:10-15-3. Definitions

For the purpose of this Subchapter, words used in present tense shall include the future tense; words in the singular number include the plural and words in the plural include the singular, except where the natural construction of the writing indicates otherwise. The word "shall" is mandatory and not ~~directory~~ discretionary. In addition, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advertising sign or structure" means any metal, wood, plastic, plaster, stone, or other sign placed for outdoor advertising purposes on the ground or any wall, post, building, or structure.

"Banner sign" means a non-rigid sign on which characters, letters, illustrations or ornamentations are applied to a flexible substrate.

"Canopy sign" means a sign affixed to the visible surface(s) of an attached or freestanding canopy.

"Commission" means the Capitol-Medical Center Improvement and Zoning Commission.

"Construction sign" means a temporary sign not greater than ~~thirty-six (36)~~ 36 square feet in area displayed on or adjacent to property or premises for the purpose of announcing contemplated improvements ~~or firms making improvements on the property or premises or the property or premises adjacent to that on which the sign is placed~~. One sign per street frontage shall be permitted, but no more than two signs per site.

"Directional sign" means any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

"Freestanding sign" means a sign principally supported by a structure affixed to the ground and not supported by any building, including signs supported by one or more columns, poles, masonry base, or braces placed in or upon the ground.

"Illuminated sign" means a sign characterized by the use of artificial light. An internally illuminated sign projects light through its surface(s). An externally illuminated sign reflects light off of its surfaces.

"Informational sign" means a sign that informs or gives notice of something required or of worthwhile attention. Informational signs include, but are not limited to, warning signs, emergency vehicle ~~entrance~~ entrances, hazardous materials, and pedestrian/school ~~crossing~~ crossings.

"Outdoor Advertising sign" means any sign ~~displaying subject matter for purposes other than advertising any service and/or products being offered for sale on the premises where the sign is located~~ that advertises an activity, service or product and is located on premises other than the premises at which the activity or service occurs or the product is sold or manufactured.

"Parapet sign" means a sign affixed to the visible surface of the building facade above the line of the structural roof or on a parapet wall.

"Placard/Professional name plate" means a ~~wall mounted~~ wall-mounted flat plate, slab, or disk not greater than 2 square feet in area or 9 inches in diameter that contains the name and/or logo, address, and occupation of the individual or firm engaged in a ~~recognized~~ profession.

"Pole-mounted sign" means any sign erected on a pole or poles, which is entirely or partially independent of any building for support.

"Portable sign" means any mobile outdoor sign used as a form of temporary advertisement.

"Premises sign" means any sign that identifies the legal or exact firm name of the business on the premises or advertises any service or product being offered for sale.

"Real estate sign" means a temporary non-illuminated sign not greater than 20 square feet in area, displayed for the purpose of offering property or premises for sale or lease.

"Roof sign" means any sign erected across or over the roof of any building.

"Sign face area" means the area comprising the message portion of the sign, not including the support structure, only the face or faces which may be seen from one direction at a time.

"Specialty signage" means ~~on-or-off~~ on-or off-premises signage, or a system of signage located in a yard area, street median, public or private park with the primary purpose of identifying a development, including residential developments, or providing identification, information, or direction. This definition does not include directional ~~sign~~ signs or informational ~~sign~~ signs as defined in this ~~guideline~~ Subchapter.

"Temporary sign" means a sign of a transitory or temporary nature intended to display either commercial or noncommercial messages.

"Wall sign" means any sign mounted flush against the facade of ~~the~~ a building or on the outside wall of any building that is supported throughout its entire length by the wall or walls. Wall signs shall not project more than one foot from the surface of the wall.

120:10-15-4. Principal Signage

(a) **Size.** All signs must be proportionate to site size and/or the size of the structure and shall not exceed the height limitations of the zoning district in which the sign is located or the height limitations designated by OAC 120:10-5-3. All signs shall be in compliance with the Signage Table (Appendix D) of this Chapter.

(b) **Location.**

(1) All signage must be in compliance with the setback requirements for the zoning district in which it is located.

No signs, other than official traffic signs and parking control signs, will be located within the right-of-way of any public street without an approved permit from the City of Oklahoma City.

(2) No part of the sign, including the footing, shall be located closer than 5 feet from the side and rear property lines. No part of the sign, including the footing, shall be located closer than 1 foot from the front property line.

(3) No sign will be erected at the intersection of any street in a location that will obstruct free and clear vision or, at any location that by its position, shape, or color interferes with or obstructs the view of or may be confused with any authorized traffic sign, signal or device.

(4) In no case shall any sign invade the "Sight lines at intersections" established in OAC 120:10-5-4(3).

(c) **Aesthetic quality.** Signage is an accessory use, with its only function being to advertise, direct or identify. All signs should be designed to ~~compliment~~ complement the structure and landscape and give the appearance of an additional architectural feature or element. Materials must be similar or complementary to those used in the main building. Signage must be appropriate to the existing architectural vocabulary and meet the approval of the Commission.

120:10-15-5. Materials

(a) Signage material must be compatible with building materials in texture and color. The use of the same materials as the primary structure is usually acceptable and appropriate.

(b) No plastic or vinyl signs are permitted in the Health Center District (HC) or the Capitol Complex Subdistrict on a permanent basis, unless ~~exclusively~~ expressly approved by the Commission.

120:10-15-6. Illumination

(a) To properly integrate signage into the existing environment and to effectively create enhancement after dark and not a daytime effect, all illuminated signs will be illuminated from a concealed source, preferably a ~~ground mounted~~ ground-mounted source.

(b) Illuminated signs shall be designed so as not to interfere with the operation of traffic lights or other traffic control devices, and shall not create objectionable glare in any residential district or public building or area.

(c) All internally illuminated signs shall be approved by the Commission prior to construction and/or installation.

120:10-15-7. Secondary Signage

(a) All directional and informational signage as defined in this Subchapter shall be designed with consideration of visitors, patients, students and others and clearly identify pedestrian and vehicular circulation patterns, building, parking and bus stop locations.

(b) Directional and informational signage for developments shall be uniform in terms of character. All plans must be submitted for prior review and must include, ~~but not be limited to~~ at minimum, quantity, location, type, size, lighting, landscaping, and materials of all proposed signage

120:10-15-8. Specialty Signage

(a) ~~Ground mounted~~ **Ground-mounted** signage.

(1) For residential districts, the maximum width of all ~~ground mounted~~ ground-mounted signs shall be 5 feet for each 25 feet of street frontage, and 1 foot for each additional 25 feet of street frontage, up to a maximum of 50 feet. No sign shall exceed 6 feet in height.

(2) For non-residential developments, the maximum height for all ~~ground mounted~~ ground-mounted signs shall be 5 feet for each 25 feet of street frontage, and 1 foot for each additional 25 feet of street frontage, up to a maximum of 150 feet. The overall height of any ground-mounted sign shall not exceed 8 feet. Any variance from this requirement shall be approved in advance by the Commission.

(b) ~~Pole mounted~~ **Pole-mounted** signage.

(1) All ~~pole mounted~~ pole-mounted directional and informational signs must be installed at a height visible to vehicular traffic, but must not obstruct vehicular movement or pedestrian routes.

(2) All ~~pole mounted~~ pole-mounted signs must be installed in concrete or be bolted, anchored or secured to a concrete, cement, or other equally effective bonding material or surface.

(3) With the exception of historical markers and neighborhood identification signs, ~~pole mounted~~ pole-mounted signage is prohibited in all residential zoning districts.

(4) All median ~~pole mounted~~ pole-mounted signs shall be installed in the center of the median. The center is the centerline of the street or the centerline of the median, as measured from edge to edge.

(5) The maximum width of any median sign shall be no greater than 15 percent of the total width of the median or island in which it is located. The maximum overall height of any pole-mounted sign shall not exceed 12 feet.

120:10-15-9. Temporary Signage

(a) The term temporary signage shall include signage advertising ~~short term~~ short-term or special events. ~~These temporary~~ Temporary signs shall be subject to the same standards as permanent signage including but not limited to size, height, ~~set back~~ setback, and location. All ~~short term~~ short-term or special event signage shall be removed no later than 10 days after the conclusion of the advertised event.

(b) Temporary signage ~~can~~ may be installed or displayed only upon the express written approval of the Commission and in accordance with terms established for such display in order to insure the protection of public safety, prevent interference with traffic lights and control devices, and protect adjacent uses of land. Applications and plans for permission to install temporary signs shall be made to the Commission not less than 30 days prior to the date installation is planned. The written authorization for temporary signs shall be for a length of time specified by the Commission and the sign shall be removed by the owner on or before the expiration date of the permit.

(c) All banner signs, real estate signs and construction signs, as defined in this ~~subchapter~~ Subchapter, are temporary in nature.

(d) All real estate signs shall be removed upon the sale of the property and all construction signs shall be removed ~~shall be removed~~ within 10 days after the substantial completion of the improvement.
(e) One construction sign per street frontage is permitted. Advertising on construction trailers counts as one construction sign.

120:10-15-10. Prohibited Signage
(a) Outdoors advertising signs, ~~pole~~ pole-mounted signs, and roof signs are permitted only in the I-2, Light Industrial District.
(b) Portable signs are prohibited in all zoning districts.
(c) Other than official traffic signs and lighted pedestrian warning signs, flashing and blinking signs are prohibited.
(d) No unauthorized sign shall be attached to any utility pole, light standard, bus shelter or kiosk, street tree or any other public facility located in the public right-of-way.

120:10-15-11. Limitation Per Site
One ~~ground-mounted~~ ground-mounted principal sign per street frontage and one ~~building-mounted~~ building-mounted principal sign per street frontage, or~~,~~ a combination of the two, shall be permitted. The number of directional/~~information~~ informational signs shall be determined based upon ~~the~~ need.

120:10-15-12. Maintenance Provision
(a) Signage shall be constructed of materials that can be easily maintained and ~~that~~ do not weather quickly. All approved signs must be properly maintained. Whenever a sign becomes dilapidated or falls into a state of disrepair or ruin, in whole or in part, all portions of the sign shall be removed from the premises.
(b) Whenever a sign is determined to be insecure, ~~pose a danger, be deemed~~ unsafe, ~~be~~ dilapidated, or is in any way maintained in violation of the provisions of this ~~subchapter~~ Subchapter or the zoning district regulations, the Commission will send written notification of such findings to the owner. The owner shall have 10 days from the date of the written notice to bring the sign into conformance or remove the sign. If the owner does not comply within 10 days, the Commission will issue a citation for non-compliance in accordance with the procedures in Title 73, §83.13.

120:10-15-13. Landscaping Requirement
(a) To soften the impact of signage, landscaping will be required for certain ~~ground-mounted~~ ground-mounted signs. The Commission will review and approve all landscaping for signage.
(b) Landscaping shall be provided by the use of grasses, ground cover, trees, shrubs or other live landscape materials.
(c) An appropriate irrigation or watering system is required for landscape plantings.
(d) All plant material shall be horticulturally appropriate and compatible with the Oklahoma environment. Any plantings that die due to weather, neglect or damage shall be replaced by the owner and comply with the approved plan

120:10-15-14. Legal Non-conforming signs
Any sign legally existing on the effective date of this Subchapter that does not conform to use, location, height or size with the regulations of the zone in which the sign is located, will be considered a legal nonconforming use or structure and may continue in such status until it is either abandoned or removed by the owner. If the sign is damaged to the degree that it requires removal or becomes dilapidated, it shall be replaced with a sign that complies with the provisions of this ~~subchapter~~ Subchapter.

120:10-15-15. Building Permit Required
Plans for all premises signs and temporary signs, with the exception of real estate signs, shall be submitted to the Commission for approval~~,~~ prior to erection. The Commission shall reserve the absolute right to determine the appropriateness of signage prior to the issuance of a building permit. ~~Determination for approval~~ Approval of signage shall be based on compliance with the provisions of this Subchapter as well as the design, location, general character and the ability of the signage to integrate into the existing environment.

[OAR Docket #08-1145; filed 06-06-08]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 10. CONSUMER LEASING

[OAR Docket #08-1110]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Disclosures
160:10-5-1.1 [AMENDED]
160:10-5-1.4 [REVOKED]
Subchapter 7. Advertising
160:10-7-1.1 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 14A O.S., § 6-104(1)(e) and (2)
DATES:
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March 20, 2008
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April 23, 2008
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May 14, 2008

Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.
CONTACT PERSON:
Jack Stone, Deputy Administrator, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105, 405-522-4661.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 5. DISCLOSURES

160:10-5-1.1. General disclosure requirements

(a) **General requirements.** A lessor shall make the disclosures required by 160:10-5-1.2, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section. The disclosures required by this chapter may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). For an advertisement accessed by the consumer in electronic form, the disclosures required by 160:10-7-1.1 may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act.

(1) **Form of disclosures.** The disclosures required by 160:10-5-1.2 shall be given to the lessee together in a dated statement that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. Alternatively, the disclosures required to be segregated from other information under paragraph (a)(2) of this section may be provided in a separate dated statement that identifies the lease, and the other required disclosures may be provided in the lease contract or other document evidencing the lease. In a lease of multiple items, the property description required by 160:10-5-1.2(1) may be given in a separate statement that is incorporated by reference in the disclosure statement required by this paragraph.

(2) **Segregation of certain disclosures.** The following disclosures shall be segregated from other information and shall contain only directly related information: 160:10-5-1.2(2) through 160:10-5-1.2(6), 160:10-5-1.2(7)(B), 160:10-5-1.2(8)(C), 160:10-5-1.2(9)(A), 160:10-5-1.2(10), and 160:10-5-1.2(13)(A). The headings, content, and format for the disclosures referred to in this paragraph shall be provided in a manner substantially similar to the applicable model form in the appendixes of this chapter.

(3) **Timing of disclosures.** A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

(4) **Language of disclosures.** The disclosures required by 160:10-5-1.2 may be made in a language other than English provided that they are made available in English upon the lessee's request.

~~(5) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:10-5-1.4.~~

(b) **Additional information; nonsegregated disclosures.** Additional information may be provided with any disclosure not listed in paragraph (a)(2) of this section, but it shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosure required by this chapter.

(c) **Multiple lessors or lessees.** When a transaction involves more than one lessor, the disclosures required by this chapter may be made by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

(d) **Use of estimates.** If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate that is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this chapter.

(e) **Effect of subsequent occurrence.** If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of this chapter.

(f) **Minor variations.** A lessor may disregard the effects of the following in making disclosures:

(1) that payments must be collected in whole cents;

(2) that dates of scheduled payments may be different because a scheduled date is not a business day;

(3) that months have different numbers of days; and

(4) that February 29 occurs in a leap year.

160:10-5-1.4. Electronic communication [REVOKED]

~~(a) **Definition.** "Electronic communication" means a message transmitted electronically between a lessor and a lessee in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.~~

~~(b) **General rule.** In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a lessor may provide by electronic communication any disclosure required by this chapter to be in writing.~~

~~(c) **When consent is required.** Under the E-Sign Act, a lessor is required to obtain a lessee's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:10-7-1.1 are deemed not to be related to a transaction.~~

~~(d) **Address or location to receive electronic communication.** A lessor that uses electronic communication to provide disclosures required by this chapter shall:~~

~~(1) send the disclosure to the consumer's electronic address; or~~

~~(2) make the disclosure available at another location such as a web site; and~~

~~(A) alert the lessee of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the lessor's option). The notice shall identify the transaction involved and the address of the Internet web site or other location where the disclosure is available; and~~

~~(B) make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the lessee of the disclosure, whichever comes later.~~

~~(3) **Exceptions.** A lessor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosures required under 160:10-7-1.1.~~

~~(e) **Redelivery.** When a disclosure provided by electronic communication is returned to a lessor undelivered, the lessor shall take reasonable steps to attempt redelivery using information in its files.~~

SUBCHAPTER 7. ADVERTISING

160:10-7-1.1. Advertising

(a) **General rule.** An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) **Clear-and-conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.

(1) **Amount due at lease signing.** Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(B) of this section shall not be more prominent than that disclosure.

(2) **Advertisement of a lease rate.** If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in 160:10-5-1.2, with the exception of the notice in 160:10-5-1.2(19) required to accompany the rate; and lessor shall not use the term "annual percentage rate," "annual lease rate," or equivalent term.

(c) **Catalogs ~~and~~or other multipage advertisements~~.~~ ; electronic advertisements.** A catalog or other multipage advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(d) **Advertisement of terms that require additional disclosure.**

(1) **Triggering terms.** An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(A) the amount of any payment; or

(B) a statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2) **Additional terms.** An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(A) that the transaction advertised is a lease;

(B) the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(C) the number, amounts, and due dates or periods of scheduled payments under the lease;

(D) a statement of whether or not a security deposit is required; and

(E) a statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(e) **Alternative disclosures - merchandise tags.** A merchandise tag stating any item listed in paragraph (d)(1) of this section may comply with paragraph (d)(2) of this section by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.

(f) **Alternative disclosures - television or radio advertisements.**

(1) **Toll-free number or print advertisement.** An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(A) through (C) of this section, and -

(A) lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(B) directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(2) **Establishment of toll-free number.**

(A) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.

(B) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

[OAR Docket #08-1110; filed 6-3-08]

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

[OAR Docket #08-1111]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Open-End Credit
160:45-3-1 [AMENDED]
160:45-3-2 [AMENDED]
160:45-3-3 [AMENDED]
160:45-3-13 [AMENDED]
160:45-3-14 [AMENDED]
Subchapter 5. Closed-End Credit
160:45-5-1 [AMENDED]
160:45-5-3 [AMENDED]
160:45-5-7 [AMENDED]
160:45-5-8 [AMENDED]
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-1 [AMENDED]
160:45-9-2 [AMENDED]
Subchapter 11. Electronic Communication [REVOKED]
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The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.

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 11, 2008:

SUBCHAPTER 3. OPEN-END CREDIT

160:45-3-1. General disclosure requirements

(a) **Form of disclosures.**

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, **7/** in a form that the consumer may keep. **8/** The disclosures required by this subchapter may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C.§ 7001 *et seq.*). The disclosures required by 160:45-3-2, 160:45-3-3, and 160:45-3-14 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. **9/**

(3) Certain disclosures required under 160:45-3-2 for credit and charge card applications and solicitations must be provided in a tabular format or in a prominent location in accordance with the requirements of 160:45-3-2.

(4) For rules governing the form of disclosures for home-equity plans, see 160:45-3-3(1).

~~(5) **Electronic communication.** For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see 160:45-11-1.~~

(b) **Time of disclosures.**

(1) **Initial disclosures.** The creditor shall furnish the initial disclosure statement required by 160:45-3-4 before the first transaction is made under the plan.

(2) **Periodic statements.**

(A) The creditor shall mail or deliver a periodic statement as required by 160:45-3-5 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, or if delinquency collection proceedings have been instituted, or if furnishing the statement would violate federal law.

(B) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed under 160:45-3-5(10) in order for the consumer to avoid

an additional finance or other charge. **10/** A creditor that fails to meet this requirement shall not collect any finance or other charge imposed as a result of such failure.

(3) **Credit and charge card application and solicitation disclosures.** The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of 160:45-3-2.

(4) **Home-equity plans.** Disclosures for home equity plans shall be made in accordance with the timing requirements of 160:45-3-3(2).

(c) **Basis of disclosures and use of estimates.** Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) **Multiple creditors; multiple consumers.** If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under 160:45-3-13 is applicable, however, the disclosures required by 160:45-3-4 and 160:45-3-13(b) shall be made to each consumer having the right to rescind.

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this chapter, although new disclosures may be required under 160:45-3-7(c).

7/ The disclosure required by 160:45-3-7(d) when a finance charge is imposed at the time of a transaction need not be written.

8/ The disclosures required under 160:45-3-2 for credit and charge card applications and solicitations, the home-equity disclosures required under 160:45-3-3(4), the alternative summary billing-rights statement provided in accordance with federal regulations, 12 CFR § 226.9(a)(2), the credit and charge card renewal disclosures required under 160:45-3-7(e), and the disclosures made in accordance with federal regulations, 12 CFR § 226.10(b), about payment requirements need not be in a form that the consumer can keep.

9/ The terms need not be more conspicuous when used under 160:45-3-2 generally for credit and charge card applications and solicitations, under 160:45-3-5(4) on periodic statements, under 160:45-3-7(e) in credit and charge card renewal disclosures, and under 160:45-3-14 in advertisements. (But see special rule for annual percentage rate for purchases, 160:45-3-2(b)(1).)

10/ This timing requirement does not apply if the creditor is unable to meet the requirement because of an act of God, war, civil disorder, natural disaster, or strike.

160:45-3-2. Credit and charge card applications and solicitations

(a) **General rules.** The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) **Definition of solicitation.** For purposes of this section, the term "solicitation" means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application.

(2) **Form of disclosures.**

(A) The disclosures in paragraphs (b)(1) through (7) of this section shall be provided in a prominent location on or with an application or a solicitation, or other applicable document, and in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in Appendix G.

(B) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

(C) The disclosure required under paragraph (b)(5) of this section shall contain the term "grace period."

(D) The terminology in the disclosures under paragraph (b) of this section shall be consistent with that to be used in the disclosures under 160:45-3-4 and 160:45-3-5.

(E) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(3) **Exceptions.** This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of 160:45-3-3; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

(4) **Fees based on a percentage.** If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(5) **Certain fees that vary by state.** If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) **Required disclosures.** The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph

(b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) **Annual percentage rate.** Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by 160:45-3-12(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

(A) If the account has a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined.

(B) When variable-rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable-rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(C) of this section.

(C) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the care issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.

(2) **Fees for issuance or availability.** Any annual or other periodic fee, expressed as an annualized amount, or any other fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity.

(3) **Minimum finance charge.** Any minimum or fixed finance charge that could be imposed during a billing cycle.

(4) **Transaction charges.** Any transaction charge imposed for the use of the card for purchases.

(5) **Grace period.** The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average.

(6) **Balance-computation method.** The name of the balance-computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance-computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) **Statement on charge card payments.** A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) **Cash-advance fee.** Any fee imposed for an extension of credit in the form of cash.

(9) **Late-payment fee.** Any fee imposed for a late payment.

(10) **Over-the-limit fee.** Any fee imposed for exceeding a credit limit.

(11) **Balance-transfer fee.** Any fee imposed to transfer an outstanding balance.

(c) **Direct-mail applications and solicitations.** The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.

(d) **Telephone applications and solicitations.**

(1) **Oral disclosure.** The card issuer shall orally disclose the information in paragraphs (b)(1) through (7) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) **Alternative disclosure.** The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either does not impose a fee described in paragraph (b)(2) of this section or does not impose such a fee unless the consumer uses the card, and the card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card.

(e) **Applications and solicitations made available to general public.** The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraphs (e)(1), (2) or (3) of this section.

(1) **Disclosure of required credit information.** The card issuer may disclose in a prominent location on the application or solicitation the following:

(A) The applicable information in paragraph (b) of this section;

(B) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(C) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) **Inclusion of certain initial disclosures.** The card issuer may disclose on or with the application or solicitation the following:

(A) The disclosures required under 160:45-3-4(1) through (3); and

(B) A statement that the consumer should contact the card issuer for any change in the required information, and a toll-free telephone number or a mailing address for that purpose.

(3) **No disclosure of credit information.** If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(A) There are costs associated with the use of the card; and

(B) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(4) **Prompt response to requests for information.** Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(f) **Special charge card rule - - card issuer and person extending credit not the same person.** If a cardholder may by use of a charge card access an open-end credit plan that is not maintained by the charge card issuer, the card issuer need not provide the disclosures in paragraphs (c), (d) or (e) of this section for the open-end credit plan if the card issuer states on or with an application or a solicitation the following:

(1) The card issuer will make an independent decision whether to issue the card;

(2) The charge card may arrive before the decision is made about extending credit under the open-end credit plan; and

(3) Approval for the charge card does not constitute approval for the open-end credit plan.

(g) **Balance computation methods defined.** The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late fees, annual fees and unpaid finance charges do not constitute separate balance-computation methods.

(1) **Average daily balance method.**

(A) **Average daily balance (including new purchases).** This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(B) **Average daily balance (excluding new purchases).** This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) **Two-cycle average daily balance method.**

(A) **Two-cycle average daily balance (including new purchases).** This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(B) **Two-cycle average daily balance (excluding new purchases).** This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

(3) **Adjusted balance.** This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(4) **Previous balance.** This balance is the outstanding balance at the beginning of the billing cycle.

160:45-3-3. Requirements for home-equity plans

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under 160:45-3-12(b).

(1) **Form of disclosures.**

(A) **General.** The disclosures required by paragraph (4) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (4)(D)(iii), the itemization of third-party fees described in paragraph (4)(H), and the variable-rate information described in paragraph (4)(L) of this section may be provided separately from the other required disclosures.

(B) **Precedence of certain disclosures.** The disclosures described in paragraphs (4)(A) through (D)(ii) of this section shall precede the other required disclosures.

(C) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(2) **Time of disclosures.** The disclosures and brochure required by paragraphs (4) and (5) of this section shall be provided at the time an application is provided to the consumer. **10a/**

(3) **Duties of third parties.**

~~(A)~~ ~~**General.**~~ Persons other than the creditor who provide applications to consumers for home-equity plans must provide the brochure required under paragraph (5) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (4) of this section for a creditor's home-equity plan, they also shall provide the disclosures at such time. **10a/**

~~(B)~~ ~~**Electronic communication.**~~ ~~Persons other than the creditor that are required to comply with paragraphs (4) and (5) of this section may use electronic communication in accordance with the requirements 160:45-11-1, as applicable.~~

(4) **Content of disclosures.** The creditor shall provide the following disclosures, as applicable:

(A) **Retention of information.** A statement that the consumer should make or otherwise retain a copy of the disclosures.

(B) **Conditions for disclosed terms.**

(i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(C) **Security interest and risk to home.** A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(D) **Possible actions by creditor.**

(i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (4)(D)(ii) of this section, a statement of such conditions.

(E) **Payment terms.** The payment terms of the plan, including:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. **10b/**

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate, **10c/** showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(F) **Annual percentage rate.** For fixed-rate plans, a recent annual percentage rate **10c/** imposed under the plan and a statement that the rate does not include costs other than interest.

(G) **Fees imposed by creditor.** An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(H) **Fees imposed by third parties to open a plan.** A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(I) **Negative amortization.** A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(J) **Transaction requirements.** Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(K) **Tax implications.** A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(L) **Disclosures for variable-rate plans.** For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules related to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index-value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(5) **Brochure.** The home-equity brochure published by the Board or a suitable substitute shall be provided.

(6) **Limitations on home-equity plans.** No creditor may, by contract or otherwise:

(A) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(B) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse-mortgage transactions that are subject to paragraph (6)(D) of this section) unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(C) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which~~-~~:

(I) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(II) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(III) The consumer is in default of any material obligation under the agreement;

(IV) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(V) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(VI) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(D) For reverse-mortgage transactions that are subject to 160:45-9-3, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

(7) **Refund of fees.** A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (4) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(8) **Imposition of nonrefundable fees.** Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. **10d/**

10a/ The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

10b/ A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

10c/ For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (4)(L)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

10d/ If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

160:45-3-13. Right of rescission

(a) **Consumer's right to rescind.**

(1) **General provisions.**

(A) Except as provided in paragraph (a)(1)(B) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(B) As provided in § 5-204(5) of the Code, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication. Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, **36/** whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire three years after the occurrence giving rise to the right of rescission, or upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with '5-204(1) of the Code.

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.** In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ~~by~~in electronic ~~communication~~form ~~as provided in 160:45-11-1(b)~~in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) **Delay of creditor's performance.** Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those

materials or services is nor secured by the property subject to rescission.

(d) **Effects of rescission.**

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signatures of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

36/ The term "material disclosures" means the information that must be provided to satisfy the requirements in 160:45-3-4 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in 160:45-3-3(4)(E)(i) and (ii) that is required under 160:45-3-4(5)(B).

160:45-3-14. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following **36d/**

(1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.

(2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under 160:45-3-12(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(3) Any membership or participation fee that could be imposed.

(c) **Catalogs or other multiple-page advertisements; electronic advertisements**

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement ~~using electronic communication~~(such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms set forth in 160:45-3-4 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement ~~using electronic communication~~(such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) **Additional requirements for home-equity plans.**

(1) **Advertisement of terms that require additional disclosures.** If any of the terms required to be disclosed under 160:45-3-4(1) or (2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of 160:45-3-3, the advertisement also shall clearly and conspicuously set forth the following:

(A) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(B) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under 160:45-3-12(b).

(C) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) **Discounted and premium rates.** If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) **Balloon payment.** If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result. **36e/**

(4) **Tax implications.** An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard.

(5) **Misleading terms.** An advertisement may not refer to a home-equity plan as "free money" or contain a similarly misleading term.

36d/ The disclosures given in accordance with 160:45-3-2 do not constitute advertising terms for purposes of the requirements of this section.

36e/ A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

SUBCHAPTER 5. CLOSED-END CREDIT

160:45-5-1. General disclosure requirements

(a) **Form of disclosures.**

(1) The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subchapter may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C.§ 7001 *et seq.*). The disclosures required by 160:45-5-1(g), 160:45-5-3(b), and 160:45-5-8 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related **37/** to the disclosures required under 160:45-5-2. **38/** The itemization of the amount financed under 160:45-5-2(3)(A) must be separate from the other disclosures under 160:45-5-2.

(2) The terms "finance charge" and "annual percentage rate," when required to be disclosed under 160:45-5-2(4) and (5) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under 160:45-5-2(1).

~~(3) **Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.~~

(b) **Time of disclosures.** The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in 160:45-5-3(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in 160:45-5-3(b) and 160:45-5-4(c). In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

(c) **Basis of disclosures and use of estimates.**

(1) The disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates and per-diem interest.**

(A) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(B) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(A) That payments must be collected in whole cents.

(B) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(C) That months have different numbers of days.

(D) The occurrence of leap year.

(4) In making calculations and disclosures, the creditor may disregard any irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(A) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(B) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(C) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) If an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. If an alternate maturity date is stated in the legal obligation between the parties, the disclosures shall be based on that date.

(6) **Multiple advances.**

(A) A series of advances under an agreement to extend credit up to a certain amount may be considered as one transaction.

(B) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

(d) **Multiple creditors; multiple consumers.** If a transaction involves more than one creditor, only one set of disclosures

shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter although new disclosures may be required under paragraph (f) of this section, 160:45-5-3, or 160:45-5-4.

(f) **Early disclosures.** If disclosures required by this subchapter are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation: **39/**

(1) any changed term unless the term was based on an estimate in accordance with paragraph (c)(2) of this section and was labeled an estimate;

(2) all changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6(a).

(g) **Mail or telephone orders - delay in disclosures.** If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(A) The circumstances under which the rate may increase.

(B) Any limitations on the increase.

(C) The effect of an increase.

(5) The terms of repayment.

(h) **Series of sales - delay in disclosures.** If a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) **Interim student credit extensions.** For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under 160:45-5-2(4), the payment schedule under 160:45-5-2(7), the total of payments under 160:45-5-2(8), or the total sale price under 160:45-5-2(10).

37/ The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

38/ The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under 160:45-5-2(1), the variable-rate example under 160:45-5-2(6)(A)(iv), insurance or debt cancellation under 160:45-5-2(14), and certain security interest-charges under 160:45-5-2(15).

39/ For certain residential mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

160:45-5-3. Certain residential mortgage and variable-rate transactions

(a) **Disclosure.**

(1) **Time of disclosure.** In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 USC 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by 160:45-5-2 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

(2) **Redisclosure required.** If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in 160:45-5-6, the creditor shall disclose all the changed terms no later than consummation or settlement.

(b) **Certain variable-rate transactions. 45a/** If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier: **45b/**

(1) The booklet titled **Consumer Handbook on Adjustable Rate Mortgages** published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(A) The fact that the interest rate, payment, or term of the loan can change.

(B) The index or formula used in making adjustments, and a source of information about the index or formula.

(C) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(D) A statement that the consumer should ask about the current margin value and current interest rate.

(E) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest-rate discount.

(F) The frequency of interest-rate and payment changes.

(G) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest-rate or payment limitations, negative amortization, and the interest-rate carryover.

(H) At the option of the creditor, either of the following:

(i) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest-rate changes implemented according to the terms of the loan-program disclosure. The example shall reflect all significant loan-program terms, such as negative amortization, interest-rate carryover, interest-rate discounts, and interest-rate and payment limitations, that would have been affected by the index movement during the period.

(ii) The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan-program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(I) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either -

(i) the most recent payment shown in the historical example in paragraph (b)(2)(H)(i) of this section; or

(ii) the initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(H)(ii) of this section.

(J) The fact that the loan program contains a demand feature.

(K) The type of information that will be provided in notices of adjustments and the timing of such notices.

(L) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) **Electronic disclosures.** For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section may be provided to the consumer in electronic form on or with the application.

45a/ Information provided in accordance with variable-rate regulations of federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

45b/ Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.

160:45-5-7. Right of rescission

(a) **Consumer's right to rescind.**

(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. **47/**

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, **48/** whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with § 5-204(1) of the Code.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.**

(1) In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ~~by~~in electronic ~~communication~~form ~~as provided in 160:45-11-1(b)~~in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(A) The retention or acquisition of a security interest in the consumer's principal dwelling.

(B) The consumer's right to rescind the transaction.

(C) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(D) The effects of rescission, as described in paragraph (d) of this section.

(E) The date the rescission period expires.

(2) **Proper form of notice.** To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this chapter or a substantially similar notice.

(c) **Delay of creditor's performance.** Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) **Effects of rescission.**

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) **Consumer's waiver of right to rescind.** The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under 160:45-5-1(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under 160:45-5-4(a)(5).

(g) **Tolerances for accuracy.**

(1) **One-half of 1 percent tolerance.** Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than 1/2 of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(2) **One percent tolerance.** In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by 160:45-9-2), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) is greater than the amount required to be disclosed.

(h) **Special rules for foreclosures.**

(1) **Right to rescind.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(A) A mortgage broker fee that should have been included in the finance charge was not included; or

(B) The creditor did not provide the properly completed appropriate model form in Appendix H of this chapter, or a substantially similar notice of rescission.

(2) **Tolerance for disclosures.** After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) is understated by no more than $35; or

(B) is greater than the amount required to be disclosed.

47/ For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The

creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

48/ The term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in 160:45-9-2(c) and (d).

160:45-5-8. Advertising

(a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) **Advertisement of rate of finance charge.** If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(c) **Advertisement of terms that require additional disclosures.**

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(A) The amount or percentage of any downpayment.

(B) The number of payments or period of repayment.

(C) The amount of any payment.

(D) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this section shall state the following terms, **49/** as applicable:

(A) The amount or percentage of the downpayment.

(B) The terms of repayment.

(C) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

(d) **Catalogs or other multiple-page advertisements; electronic advertisements.**

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement ~~using electronic communication~~(such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(A) The table or schedule is clearly and conspicuously set forth; and

(B) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement ~~using electronic communication~~(such as an advertisement appearing on an Internet Web site) complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

49/ An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used.

SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

160:45-9-1. General rules

(a) **Relation to other subchapters in this chapter.** The requirements and limitations of this subchapter are in addition to and not in lieu of those contained in other subchapters of this chapter.

(b) **Form of disclosures.**

~~(1)~~ ~~**General.**~~ The creditor shall make the disclosures required by this subchapter clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subchapter may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*).

~~(2)~~ ~~**Electronic communication.** For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see 160:45-11-1.~~

(c) **Timing of disclosure.**

(1) **Disclosures for certain closed-end home mortgages.** The creditor shall furnish the disclosures required by 160:45-9-2 at least three business days prior to consummation of a mortgage transaction covered by 160:45-9-2.

(A) **Change in terms.** After complying with paragraph (c)(1) of this section and prior to consummation, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subchapter.

(B) **Telephone disclosures.** A creditor may provide new disclosures by telephone if the consumer initiates the change and if, at consummation:

(i) The creditor provides new written disclosures; and

(ii) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation.

(C) **Consumer's waiver of waiting period before consummation.** The consumer may, after receiving the disclosures required by paragraph (c)(1) of this

section, modify or waive the three-day waiting period between delivery of those disclosures and consummation if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers entitled to the waiting period. Printed forms for this purpose are prohibited.

(2) **Disclosures for reverse mortgages.** The creditor shall furnish the disclosures required by 160:45-9-3 at least three business days prior to:

(A) Consummation of a closed-end credit transaction; or

(B) The first transaction under an open-end credit plan.

(d) **Basis of disclosures and use of estimates.**

(1) **Legal obligation.** Disclosures shall reflect the terms of the legal obligation between the parties.

(2) **Estimates.** If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(3) **Per-diem interest.** For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

(e) **Multiple creditors; multiple consumers.** If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this chapter imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under 160:45-3-13 or 160:45-5-7, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this chapter, although new disclosures may be required for mortgages covered by 160:45-9-2 under paragraph (c) of this section, 160:45-3-7(c), 160:45-5-3, or 160:45-5-4.

(g) **Accuracy of annual percentage rate.** For purposes of 160:45-9-2, the annual percentage rate shall be considered accurate and may be used in determining whether a transaction is covered by 160:45-9-2, if it is accurate according to the requirements and within the tolerances under 160:45-5-6. The finance-charge tolerances for rescission under 160:45-5-7(g) or (h) shall not apply for this purpose.

160:45-9-2. Requirements for certain closed-end home mortgages

(a) **Coverage.**

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount **50**/, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is $412.

(ii) The dollar amount for 1997 is $424.

(iii) The dollar amount for 1998 is $435.

(iv) The dollar amount for 1999 is $441.

(v) The dollar amount for 2000 is $451.

(vi) The dollar amount for 2001 is $465.

(vii) The dollar amount for 2002 is $480.

(viii) The dollar amount for 2003 is $488.

(ix) The dollar amount for 2004 is $499.

(x) The dollar amount for 2005 is $510.

(xi) The dollar amount for 2006 is $528.

(xii) The dollar amount for 2007 is $547.

(xiii) The dollar amount for 2008 is $561.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss

of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992.

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty otherwise permitted by law (including a refund calculated according to the rule of 78s) if:

(A) The penalty can be exercised only for the first five years following consummation;

(B) The source of the prepayment funds is not a refinancing by the creditor or an affiliate of the creditor; and

(C) At consummation, the consumer's total monthly debts (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified by the consumer's signed financial statement, a credit report, and payment records for employment income.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

(B) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

50/ Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to 160:45-5-2(2), and deducting any cost listed in 160:45-9-2(b)(1)(C) and 160:45-9-2(b)(1)(D) that is both included as points and fees under 160:45-9-2(b)(1) and financed by the creditor.

SUBCHAPTER 11. ELECTRONIC COMMUNICATION [REVOKED]

160:45-11-1. Requirements for electronic communication [REVOKED]

~~(a) **Definition.** "**Electronic communication**" means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.~~

~~(b) **General rule.** In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a creditor may provide by electronic communication any disclosure required by this chapter to be in writing.~~

~~(c) **When consent is required.** Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8 are deemed not to be related to a transaction.~~

~~(d) **Address or location to receive electronic communication.** A creditor that uses electronic communication to provide disclosures required by this chapter shall:~~

~~(1) Send the disclosure to the consumer's electronic address; or~~

~~(2) Make the disclosure available at another location such as an Internet web site; and~~

~~(A) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and~~

~~(B) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.~~

~~(3) **Exceptions.** A creditor need not comply with paragraphs (d)(2)(A) and (B) of this section for the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8.~~

~~(e) **Redelivery.** When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.~~

~~(f) **Electronic signatures.** An electronic signature as defined under the E-Sign Act satisfies any requirement under this chapter for a consumer's signature or initials.~~

[OAR Docket #08-1111; filed 6-3-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #08-1134]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 151

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May 21, 2008
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SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
None

ANALYSIS:
In 2008 the Commission is amending in Chapter 5 Rules of Practice, Rule OAC 165:5-3-1 in order to add a section whereby the Commission can accept payments by credit cards from entities and individuals who purchase licenses, permits, pay fines, pay court costs, etc at the Commission. Accepting payments by credit card will decrease the number of checks that are returned to the Commission from banks for insufficient funds, as well as providing a convenient means for entities and individuals to make required payments to the Commission.

In addition to amending OAC 165:5-3-1 five rules in Chapter 5, which apply to the Oil and Gas Conservation Rules in Chapter 10, are being revoked because they no longer are applicable to what they were originally adopted to regulate. These Rules, OAC 165:5-7-14, 165:5-7-22, 165:5-7-23, 165:5-7-24, and 165:5-7-36, are revoked to streamline the Commission process.

Rule 165:5-7-35 and 165:5-9-3 are being amended to eliminate the filing of emergency applications or emergency orders approving commercial disposal facilities. The purpose of the proposed amendments for disposal facilities is to afford Commission staff sufficient opportunity to evaluate applications for permits for commercial disposal facilities

The Commission is also amending OAC 165:5-7-57 to exclude gas utilities from this section, as to the acquisition, control or merger of domestic public gas utilities is addressed in OAC 165:45-3-5.1.

CONTACT PERSON:
Sally Shipley (405) 521-4258.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any emergency application, subsequent pleading, or amended application except a Form 1000 required in OAC 165:10-3-1(b)(A) and (B) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-21, Applications for Tax Exemptions.

(C) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(D) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(G) shall be charged for any informal dispute resolution procedure that commences.

(E) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRPA").

(F) No filing fee shall be paid by a party filing a Consumer Complaint against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such filing fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Conservation docket and other pollution docket base applications - $100.00

(E) Permit to drill - $175.00

(F) mergency walk-thru permit to drill - $500.00

(G) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(H) Permit for one-time land application of water based fluids - $100.00

(I) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(2) **Transportation fees.**

(A) Transportation docket application - $100.00

(B) Other transportation fees:

(i) Intrastate license fees.

(I) Original license application filing fee - $100.00

(II) License sub application filing fee - $100.00

(III) Renewal license application filing fee - $50.00

(IV) License reinstatement application filing fee - $100.00

(V) License name change application filing fee - $50.00

(VI) Earthen or wash pit construction or enlargement application fee - $500.00

(ii) Intrastate certificate or permit fees.

(I) Original certificate or permit application filing fee - $100.00

(II) Certificate or permit sub application filing fee - $100.00

(III) Transfer of certificate or permit application filing fee - $100.00

(IV) Certificate or permit temporary authority application filing fee - $100.00

(V) Certificate or permit representative of estate application filing fee - $100.00

(VI) Certificate or permit reinstatement application filing fee - $100.00

(VII) Delinquent certificate or permit annual report fee - $150.00

(VIII) Certificate or permit name change application filing fee - $50.00

(IX) Voluntary suspension or abandonment of certificate or permit application filing fee - $100.00

(X) Tariff modification (requiring hearing) - $350.00

(iii) Intrastate and interstate fees.

(I) Identification device or per vehicle fee - $7.00

(II) Deleterious Substance License Permit application filing fee - $260.00

(iv) Interstate fees.

(I) Exempt application filing fee - $25.00

(II) Exempt name change - $10.00

(v) International Fuel Tax Agreement decal - $2.00 per vehicle per decal set

(vi) International Fuel Tax Agreement reinstatement fee - $100.00

(vii) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(3) **Utility fee.** Public utility docket application - $35.00

(4) **Consumer Services fee.** Consumer Services docket application - $35.00

(5) **Enforcement fee.** Enforcement docket application - $100.00

(c) **Certified copies.** A fee of $1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Mail-out copies of any file or order - flat fee to cover research, copying and postage not to exceed 30 pages.

(A) 1 to 15 pages - $5.00

(B) 16 to 30 pages - $10.00

(C) Documents exceeding 30 pages - $0.25 per page plus postage

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

(h) **Payments by Credit Card.**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12 Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells), the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

(1) An application.

(2) A complaint.

(3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

(1) The heading, "Before the Corporation Commission of Oklahoma".

(2) The applicant.

(3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.

(4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.

(5) The title of the document.

(6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

(1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.

(2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.

(3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the address and telephone number of the person so signing it. The person signing the application shall be deemed, on signing same, to be certifying that:

(1) He has read the application.

(2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.

(3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Manner of service.** A document may be served on a party of record by regular mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service, which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail shall be complete on the date of mailing except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(g) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application. Thereafter, every document shall be served by the person filing it by regular mail upon all parties of record or, where the record has not been opened, upon the applicant and all named respondents.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures.

(l) **Content of notice.** The notice shall specify:

(1) The time, date, and place of hearing.

(2) Briefly the general nature of the order, rule, regulation or other relief sought.

(3) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.

(4) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

(1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]

~~(a) **Form of application.**~~

~~(1) Each application under OAC 165:10-21, Part 13 shall be filed with the Technical Department on an OCC Form 1139 with the exhibits required by OAC 165:10-21, Part 13.~~

~~(2) Each application under OAC 165:10-21, Parts 6, 7, 8, 9, 11 and 14, shall be filed with the Technical Department on an OCC Form 1534 with the exhibits required by the provisions of OAC 165:10-21, which pertain to each specific gross production tax exemption.~~

~~(3) Each application under OAC 165:10-21, Part 14A shall be filed with the Technical Department on an OCC Form 1535 with the exhibits required by the provisions of OAC 165:10-21, which pertain to sales tax exemptions for electricity sold to operate reservoir dewatering projects.~~

~~(b) **Referral to Conservation Division.** Upon filing of the application with required exhibits, the Commission shall refer the matter to the Conservation Division for the purpose of reviewing the application and making findings and recommendations by report to the Commission.~~

~~(c) **Notice.** No notice shall be required.~~

~~(d) **Right to hearing if application recommended for denial or modification.** If the Conservation Division recommends denial or modification of the application, then the applicant may move for a hearing de novo within ten (10) days after the date of report denying the application.~~

~~(e) **Appeal.** Any person adversely affected by the report of the Conservation Division may appeal said report subject to requirements of OAC 165:5-13-5.~~

165:5-7-22. Multiple zone completions [REVOKED]

~~(a) Each application for the approval of the multiple completion of a well shall be filed on Form 1023 and shall be verified.~~

~~(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location.~~

~~(c) No notice is required to be published.~~

~~(d) If a written objection to the application is filed within fifteen (15) days, after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or his designee who shall file his report and make his recommendations.~~

~~(e) All exhibits which shall be relied upon by the applicant at the hearing on the merits shall be filed with the Court Clerk and provided by the applicant to the Director of Oil and Gas Conservation not less than ten (10) days prior to hearing.~~

165:5-7-23. Production through multiple choke assembly [REVOKED]

~~(a) Each application for the approval of production through a multiple choke assembly in a well shall be filed on Form 1023 and shall be verified.~~

~~(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location.~~

~~(c) No notice is required to be published.~~

~~(d) If a written objection to the application is filed within fifteen (15) days, after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or his designee who shall file his report and make his recommendations.~~

165:5-7-24. Commingling of well [REVOKED]

~~(a) Each application for the approval of the commingling of a well, pursuant to 165:10-3-39, shall be filed on Form 1023 and shall be verified. The following shall be filed with the application:~~

~~(1) An amended Form 1002A.~~

~~(2) Electric well log.~~

~~(3) A perforation report from the perforating company, or comparable information~~

~~(4) A plat showing the locations of all wells producing from the same common sources of supply within a one-half (1/2) mile radius of the subject well.~~

~~(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. An affidavit of mailing shall be filed within five (5) days of filing of the application.~~

~~(c) No notice is required to be published.~~

~~(d) If a written objection to the application is filed within fifteen (15) days after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or designee who shall file a report and make recommendations to the Commission.~~

~~(e) All exhibits which shall be relied upon by the applicant at the hearing on the merits, if required, shall be filed with the Court Clerk and provided by the applicant to the Director of Oil and Gas Conservation not less than ten (10) days prior to hearing.~~

165:5-7-35. Operation of commercial pit and/or commercial soil farming site

(a) **Application.** Each application for authority to operate a commercial pit under 165:10-9-1 and/or a commercial soil farming site under 165:10-9-2 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial disposal facility that requires a permit under OAC 165:10-9-1, or OAC 165:10-9-2.

(b) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data.

(c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing of the application may be grounds for dismissal of the application.

(d) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.

(B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

(A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.

(B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.

(5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:

(A) Caption from application.

(B) Title: Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date on which the last publication was made.

(D) The date of completion of service of process on all respondents in the cause.

(E) Site inspection of the proposed facility.

(2) **Additional protest period.**

(A) After expiration of the protest period, an additional ten (10) day protest shall run:

(i) If the applicant amends the application to change the location of the facility or increase its size; or

(ii) If the applicant files amended exhibits changing the design of the facility.

(B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) **Unprotested Applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or appeal the report as under 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

165:5-7-36. Road oiling [REVOKED]

~~(a) Upon application after notice and hearing, the Commission may issue an order allowing a Board of County Commissioners to apply waste oil to a public street or road.~~

~~(b) The applicant shall publish notice of the hearing in the manner prescribed by OAC 165:5-7-1. The applicant shall publish said notice in a newspaper of general circulation in Oklahoma County and in a newspaper of general circulation in the county where application of waste oil is proposed to be applied.~~

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 5. PUBLIC UTILITIES

165:5-7-57. Acquisition, control, or merger of domestic public utilities.

(a) An application for approval of the acquisition, control or merger of a domestic public utility, pursuant to 17 O.S. §§191.1 et seq., excluding gas utilities, and an electric cooperative, pursuant to 17 O.S. §158.50, shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (a)(1) of this Section.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application.

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition.

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(10) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.

(b) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (a) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (a) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(c) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change. Hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers at least twenty (20) days prior to the date of the hearing.

(d) Any merger or other acquisition of control shall be deemed approved unless the Commission has, within thirty (30) days after the conclusion of such hearing, entered an order disapproving the merger or other acquisition of control.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial disposal facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, or OAC 165:10-9-2.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

[OAR Docket #08-1134; filed 6-5-08]

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

[OAR Docket #08–1135]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Chapter 10. Oil & Gas Conservation [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission: Article IX, §§ 18, 19, Oklahoma Constitution 17 Okla. Stat.§151 et seq.
DATES:
Comment Period:
January 28, 2008 to March 12, 2008
Public Hearing:
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Submitted to the Governor:
March 24, 2008
Submitted to the House:
March 24, 2008
Submitted to Senate:
March 24, 2008
Gubernatorial approval:
April 28, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2008
Final Adoption:
May 15, 2008
Effective Date:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
Most of the adopted rule changes for the Oil and Gas Conservation Division Chapter 10 rules further define and update terms according to 2008 standards and technology. For example the new rule changes will provide guidance for oil and gas operators wanting to drill in the Arbuckle-Simpson Aquifer located in Pontotoc, Murray, and Johnston Counties in Oklahoma. Any operator intending to drill in the Arbuckle-Simpson Aquifer should contact the Technical Services Department of the Oil and Gas Conservation Division at the Corporation Commission prior to filing an intent-to-drill to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)). Under Rule 165:10-7-19 additional requirements will be imposed on soil farmers who file for one-time land applications of water-based fluids from earthen pits and tanks, and for one-time applications of contaminated soils and petroleum hydrocarbon based drill cuttings. The applicants will be required to provide additional information concerning the lands where such constituents are to be spread. And restrictions will now be imposed on land application vehicles. The permits will now include a termination date wherein the permit will no longer be valid. This year the Corporation Commission is adopting rules for the Brownfields Program. These Brownfields rules will be listed under Subchapter 10, which is a new Subchapter in the Chapter 10 rules. These rules will govern the Brownfields Program as authorized and funded by the Federal Environmental Protection Agency (EPA). The Brownfields Program is a voluntary program where funding may be provided to restore land that is contaminated by petroleum, petroleum products, and related wastes such as glycol and drilling muds. The Brownfields rules explain the process to apply, the eligibility process for a site, and the qualifications for Brownfields certification. Another new Subchapter for the Chapter 10 rules this year is Subchapter 29. Under Subchapter 29 the Commission is adopting special rules for oil and gas wells in the areas of Lake Atoka and McGee Creek Reservoirs, which are located in Atoka, Pittsburg and Coal Counties in Oklahoma. These rules will replace old Commission field rules that were defined and setout in prior Commission orders instead of in the Commission rules. The new Subchapter 29 rule lists each Section, Township, and Range in the three relative counties, which are applicable. These rules are intended to further promote the protection of surface and subsurface water supplies in the subject areas.
CONTACT PERSON:
Sally Shipley 522-4258

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 CORPORATION COMMISSION, 2101 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):

SUMMARY:
Most of the adopted rule changes for the Oil and Gas Conservation Division Chapter 10 rules further define and update terms according to 2008 standards and technology. For example the new rule changes will provide guidance for oil and gas operators wanting to drill in the Arbuckle-Simpson Aquifer located in Pontotoc, Murray, and Johnston Counties in Oklahoma. Any operator intending to drill in the Arbuckle-Simpson Aquifer should contact the Technical Services Department of the Oil and Gas Conservation Division at the Corporation Commission prior to filing an intent-to-drill to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)). Under Rule 165:10-7-19 additional requirements will be imposed on soil farmers who file for one-time land applications of water-based fluids from earthen pits and tanks, and for one-time applications of contaminated soils and petroleum hydrocarbon based drill cuttings. The applicants will be required to provide additional information concerning the lands where such constituents are to be spread. And restrictions will now be imposed on land application vehicles. The permits will now include a termination date wherein the permit will no longer be valid. This year the Corporation Commission is adopting rules for the Brownfields Program. These Brownfields rules will be listed under Subchapter 10, which is a new Subchapter in the Chapter 10 rules. These rules will govern the Brownfields Program as authorized and funded by the Federal Environmental Protection Agency (EPA). The Brownfields Program is a voluntary program where funding may be provided to restore land that is contaminated by petroleum, petroleum products, and related wastes such as glycol and drilling muds. The Brownfields rules explain the process to apply, the eligibility process for a site, and the qualifications for Brownfields certification to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)).Another new Subchapter for the Chapter 10 rules this year is Subchapter 29. Under Subchapter 29 the Commission is adopting special rules for oil and gas wells in the areas of Lake Atoka and McGee Creek Reservoirs, which are located in Atoka, Pittsburg and Coal Counties in Oklahoma. These rules will replace old Commission field rules that were defined and setout in prior Commission orders instead of in the Commission rules. The new Subchapter 29 rule lists each Section, Township, and Range in the three relative counties, which are applicable. These rules are intended to further promote the protection of surface and subsurface water supplies in the subject areas.

[OAR Docket # 08–1135; filed 06-05-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #08-1105]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 26. Aboveground 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.

DATES:
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Failure of the Legislature to disapprove the rules resulted in approval by May 15, 2008.
Final Adoption:
May 15, 2008
Effective Date:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The Federal Energy Act of 2005 necessitated operator training, and certain State legislative changes, as well as comments by industry, necessitated these change 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

~~**"Beneath the surface of the ground"** means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.~~

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means discontinuing use of the petroleum storage system for purposes regulated by ~~the Commission~~ PSTD.

"Commission" **or "OCC"** means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for ~~a limited period of time~~ less than 12 months at a construction site.

~~**"Contaminants"** or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.~~

~~**"Corrosion expert"** means a person who has knowledge of the physical sciences, principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be 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 can be used to~~

~~electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the storage tank system (e.g., tank from piping).~~

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

~~**"Excavation area"** means the volume containing the underground piping system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground piping system is placed at the time of installation.~~

"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.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.*

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

~~**"Flammable liquids"** means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.~~

~~(A) Class I liquids.~~

~~(i) Class IA liquids 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 that uses aboveground 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.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"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 it is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance 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, pursuant to Oklahoma Water Resources Board (OWRB) standards that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.~~

~~**"Operational life"** is the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.~~

~~**"Out of service"** means a petroleum storage tank or system that:~~

~~(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and~~

~~(B) Is intended to be placed back in service.~~

~~**"Overfill"** means a release that occurs when a petroleum storage tank is filled beyond its capacity.~~

~~**"Person in charge"** means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility.~~

"Pier" means dock, floating dock, and wharf.

"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 petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

~~**"Protected tank"** means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids,* or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire resistive protection from exposure to a high intensity liquid pool fire.~~

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

~~**"Repair"** means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.~~

"Residential tank" ~~means a petroleum storage~~ is a tank ~~or system~~ located on ~~the~~ property ~~where contents are used by the residential occupants of the property~~ used 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 to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

~~**"Source of ignition"** means 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.~~

"TPH" means total petroleum hydrocarbons.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an petroleum storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or "TOU" means the status of a petroleum storage tank system that has been taken out of service but not removed.

"Used Motor Oil" is any spent oil ~~or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities~~ removed from a motor vehicle.

"Vault" means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank, or related equipment.

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners and operators of aboveground storage tanks which ~~the Commission~~ PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which gives ~~the Commission~~ PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. ~~The Commission~~ PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, 2003, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2003, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-27. 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.~~

165:26-1-28. Variances

~~(a)~~ A variance to a provision of ~~these rules~~ 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) Inspectors and other compliance personnel should work with tank owner/operators and the personnel of other government agencies and support variances as needed to avoid citizens being caught between the conflicting rules of different agencies.~~

~~(c) Tank systems that were properly installed pursuant to earlier fire codes should not be required to change unless:~~

~~(1) The system or some part of it has become hazardous; or~~

~~(2) The changes or upgrades are a mandatory requirement of the Environmental Protection Agency or Oklahoma Corporation Commission. These types of changes must be installed as listed in this Chapter and various facility Subchapters before the deadline dates established. Variances will not be granted for this type of change.~~

165:26-1-30.2. 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 or a reconfiguration of an existing installation to assure the tank owner of compliance. ~~in advance of the change or possible variances from this chapter~~.

165:26-1-30.3. Licensing procedure for aboveground storage tank licensee [RENUMBERED TO 165:26-1-110]

~~(a) Any individual who would like to become an aboveground storage tank licensee must:~~

~~(1) Complete an application form.~~

~~(2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.~~

~~(3) Pass an examination administered by the Commission.~~

~~(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.~~

~~(5) Certify that they will comply with all Commission rules and requirements for aboveground storage tanks.~~

~~(b)The Commission shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Being under indictment or convicted for a criminal act.~~

~~(c) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division shall have the matter investigated and a report made to the Director for consideration. If the Director elects to 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 substantial evidence rests upon the Petroleum Storage Tank Division.~~

~~(d) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

~~(e) Any person who holds an AST license may install or remove AST systems.~~

PART 5. STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

(A) Standard B31.3, 1999 2004, "Chemical Plant and Petroleum Refinery Piping".

(B) Standard B31.4, 1998 2002, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols".

(2) American Petroleum Institute (API) Standards:

(A) Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.

(B) Publication 1628, 1996, "A Guide, The Assessment and Remediation of Underground Petroleum Releases".

(3) American Society for Testing and Materials (ASTM) Standards: Standard E 1739-95, 1995,"Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(4) National Association of Corrosion Engineers (NACE) Standards: Standard Number RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(5) National Fire Protection Association (NFPA) Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".

(6) Underwriter's Laboratory (UL) Standards:

(A) Standard UL142, 1987 2002, "Steel Aboveground Tanks for Flammable and Combustible Liquids".

(B) Standard UL842, 1980 1999, "Valves for Flammable Fluids".

~~(7) Environmental Protection Agency and National Water Well Association, 1986, EPA:NWWA (TEGD) "RCRA Groundwater Monitoring Technical Enforcement Guidance Document".~~

(7~~8~~) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".

~~(9) 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)".~~

(8~~10~~) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112. ~~, April 17, 2003.~~

(b) The standards set forth in (a) of this Section are also available from the following sources:

(1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.

(2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2,
New York, NY 10016-5990; Telephone (800) 843-2763.

(3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.

(4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.

(5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone(281) 492-0535.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

(7) National Groundwater Association (NWWA), 601 Dempsey Road, Westeville, Ohio 43081; Telephone (614) 898-7791.

(8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.

(9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380;Telephone (918) 494-9696.

165:26-1-32. Other standards and regulations [REVOKED]

~~This Chapter is a part of, or is in addition to, any other standards of nationally recognized associations or any other regulations of federal, state, county, city, or local governing bodies.~~

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

(a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.

(b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.

(c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."

(d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

(e) An owner or operator may satisfy the requirements of this Subchapter by use of the ~~Petroleum Storage Tank Release Environmental Cleanup~~ Indemnity Fund. There is a deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3. 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.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

~~The Commission~~ PSTD may require owners and operators of aboveground storage tank systems to provide information it ~~the Commission~~ deems necessary for the protection of human health, the environment and to assure the safety of people and property. Use of the designated ~~OCC~~ PSTD 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, PST Division webpage: www.occeweb.com follow link to Petroleum Storage Tank Division and link to PST Compliance Forms.

165:26-1-42. New tank systems

(a) Owners of all aboveground storage tanks regulated pursuant to this Chapter must notify ~~the Commission~~ PSTD of the existence of their tanks if the tanks are covered by these rules and have not already been registered. The notice must be on a form prescribed by ~~the Commission~~ PSTD (Form 7530 Registration for Petroleum Storage Tanks) and specify, at a minimum, the date of installation if known, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, type of

secondary containment, and type of regulated substance being stored unless otherwise specified. Thereafter, owners must notify the ~~Commission~~ PSTD of new tanks within 30 days of tank installations by application of Form 7530.

(b) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give the PSTD ~~Petroleum Storage Tank Division~~ notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form.

(c) 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 PSTD registration form must be submitted with copies of the installation testing.

(~~c~~d) Owners ~~of new systems~~ and AST Licensees must certify~~, either in~~ on the ~~notification~~ PSTD Registration form ~~or attachments to the form, the following:~~ that the installation of tanks and piping meet the requirements of this Chapter.

~~(1) Installation of tanks and piping meets the requirements of this Chapter.~~

~~(2) The release detection method utilized meets the requirements of this Chapter.~~

~~(d) All owners of new aboveground storage tank systems must ensure that the AST licensee certifies in the notification form that the methods used to install the tanks and piping comply with the requirements of this Chapter.~~

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify ~~the Petroleum Storage Tank Division~~ PSTD at least 14 days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date. An authorized agent of ~~the Commission~~ PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal.

165:26-1-47. Transfer of ownership

When the owner of an aboveground storage tank transfers ownership of the facility or tank to another person, the new owner must notify the Commission within 30 days of the transfer. The notice must specify at a minimum, the name of the new owner, the location of the facility and the date of the transfer of ownership. In addition, the former owner must advise ~~the Commission~~ PSTD of the name and address of the new owner.

165:26-1-48. ~~Underground~~ Tank and line tightness testing

(a) ~~The results of any tank~~ Tank and line tightness ~~testing~~ test 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 to PSTD within 24 hours by the owner, ~~and/or~~ operator, their employees or agents, and also independently by the person or company performing the test. ~~within 10 days of the testing.~~ Complete test results must be submitted within 7 days of the testing. ~~The notice shall include:~~

~~(1) The types of testing equipment used.~~

~~(2) The name of the company performing the test.~~

~~(3) The name of the tester performing the test.~~

~~(4) The method of testing used.~~

~~(5) The results of the test.~~

~~(6) The details of steps taken or to be taken by the owner to repair, replace, or remove the tank system.~~

(b) Hydrostatic line tightness tests must be conducted in accordance with and reported on the prescribed ~~Commission~~ PSTD form.

(c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.

PART 9. RECORDKEEPING

165:26-1-55. Availability of records

(a) Owners and operators of regulated aboveground storage tank systems must cooperate with ~~Commission~~ PSTD requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required pursuant to this Chapter ~~shall~~ must be kept~~: At~~ at the facility and available for immediate inspection by the PSTD Fuel Specialist ~~Commission;~~ or ~~(2) Available~~ be readily available ~~for inspection by the Commission~~ upon request.

(b) Failure to have the required records available when requested by PSTD ~~the Commission~~ may result in an enforcement action.

~~(c) The owner may voluntarily forward the required records for compliance inspection monthly to the PSTD. These records will be made electronically available only to the PSTD Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.~~

(~~d~~c) Release detection records must be maintained on forms specified by PSTD ~~the Commission~~.

(~~e~~d) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by ~~the Commission~~ PSTD must be transferred at no cost to the new owner or operator.

165:26-1-57. Tank installation, closure and removal records

(a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to ~~the Petroleum Storage Tank Division~~ 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 aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. ~~These closure and removal records must provide the results of any excavation area site assessment required in 165:26-2-214, "Assessing the site at tank closure or change in service." These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:~~

~~(1) By the owner or operator who took the aboveground 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 the owner's representative (as directed by the owner) must submit the PSTD Closure Report Form and all required attachments ~~a report in writing~~ to ~~the Commission~~ PSTD within 45 days from the date the tanks are permanently closed. 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 all samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed storage tank consultant in supervisory control of the sampling.~~

~~(6) An OCC registration form, signed by the owner, showing the tank as permanently removed.~~

~~(7) An OCC closure report form with the signature of the Remediation Consultant and AST licensee.~~

165:26-1-58. Release detection and corrosion protection records

(a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of one year.

(b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") 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 created in accordance with National Association of Corrosion Engineers (NACE) recommended practices with drawings ~~or plans~~ depicting all of the CP system components and a description of the materials used. ~~, along with the credentials of the company which designed the system.~~

(2) Suitability study performed to determine if a tank could be upgraded with corrosion protection.

(~~2~~3) Rectifier readings for impressed current systems conducted at least every 60 days.

(~~3~~4) Results of the last three inspections or CP system tests completed by a corrosion tester.

~~(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.~~

165:26-1-59. Spill and overfill records

Owners and operators of aboveground storage tank systems must keep records of spills and overfills for review and inspection by ~~the Commission~~ PSTD for a period of 3 years.

165:26-1-61. Inventory records [REVOKED]

~~(a) Accurate daily inventory records must be maintained and reconciled on all fuel storage tanks for indication of possible leakage from tanks or piping required where, due to the nature of the aboveground storage tank and/or its secondary containment visual inspections are not adequate for purposes of determining whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment. The records must be kept at the premises or made available for inspection by the Commission.~~

~~(b) At a minimum the, records must include, by product, daily reconciliation between sales, use, receipts, and inventory on hand. If there is more than one system consisting of a tank(s) serving a separate pump(s) or dispenser(s) for any product, the reconciliation must be maintained separately for each tank system.~~

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

(a) The PSTD may close (shut down) a 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 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 meter is found to be off in calibration by more than 19 cubic inches per every 5 gallons.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST 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).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the AST 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.

(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 PSTD of the owner's or operator's application for a hearing.

PART 15. LICENSING PROCEDURES

165:26-1-110. Licensing procedure for aboveground storage tank licensee

(a) Any individual who would like to become an aboveground storage tank licensee must:
(1) Complete an application form.
(2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.
(3) Pass an examination administered by PSTD.
(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.
(5) Certify that they will comply with all PSTD rules and requirements for aboveground 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 an AST license; this consists of four hours of continuing education through a Commission approved program every two years.

(d) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:
(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.
(3) Knowingly making false statements or signing false statements, certificates or affidavits to 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 which was not performed by the aboveground storage tank licensee.
(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
(7) Being under indictment or convicted for a criminal act.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the PSTD shall have the matter investigated and a report made to the Director for consideration. 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 substantial evidence rests upon PSTD.

(f) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(g) Any person who holds an AST license may install or remove AST systems.

PART 17. OPERATOR TRAINING

165:26-1-130. Training requirements

Each aboveground storage tank system or group of aboveground storage tank systems at a facility may 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.

165:26-1-132. Operator Class designations

(a) A Class A operator has primary responsibility to operate and maintain the aboveground 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 aboveground storage tank systems.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-1.1. Aboveground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a AST 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. An AST licensee must be present at all times during the installation.

165:26-2-1.2. Compatibility [REVOKED]

~~Owners and operators of all aboveground storage tank systems must use aboveground tanks, piping, ancillary equipment, and containment systems that are made of or lined with materials which are compatible with the substance stored in the system. Fiberglass reinforced plastic tanks are not allowed.~~

165:26-2-1.3. Approved tanks, tank design

The material and construction of the tank must be compatible with the material stored and the conditions of storage such as pressure and temperature.

~~(a) Only storage tanks designed and listed for aboveground use can be used aboveground. Tanks designed and built for underground use cannot be installed for aboveground use.~~

~~(b) Only installers who have been licensed by the Commission's Petroleum Storage Tank Division can install aboveground tank systems or make modifications to existing aboveground tank systems including both aboveground and underground piping.~~

~~(c) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of their approval or within the scope of any of the following:~~

~~(1) Underwriters Laboratories Inc., Standard for "Steel Aboveground Tanks for Flammable and Combustible Liquids," UL 142; Standard for "Aboveground Flammable Liquid Tank Systems," UL 2244; Standard for "Steel Inside Tanks for Oil Burner Fuel," UL 80; or Standard for "Insulated Aboveground Tanks for Flammable Liquids," UL 2085.~~

~~(2) American Petroleum Institute Standard No 650, "Welded Steel Tanks for Oil Storage," eighth edition.~~

~~(3) American Petroleum Institute Specifications 12B, "Bolted Tanks for Storage of Production Liquids," twelfth edition; 12D, "Field Welded Tanks for Storage of Production Liquids," eighth edition; or 12F, "Shop Welded Tanks for Storage of Petroleum Liquids," seventh edition.~~

~~(d) Fuel shall not be dispensed from the tank by either gravity flow or pressurization of the tank.~~

~~(e) All openings shall be located above the maximum liquid level of the aboveground tank on tanks installed after August 18, 2000.~~

165:26-2-2. Emergency pressure release [REVOKED]

~~(a) Aboveground storage tanks must have some form of construction or device that will relieve excess internal pressure caused by exposure to fires and have some form of emergency pressure venting.~~

~~(1) This requirement applies to each compartment of a compartmented tank, the interstitial space (annulus) of a secondary containment type (double walled) tank and the enclosed space of tanks of closed top dike construction.~~

~~(2) This requirement applies to spaces or enclosed volumes, such as those intended for insulation, membranes, or weather shields, that can contain liquid because of a leak from the primary vessel. The insulation, membrane, or weather shield must not interfere with emergency venting.~~

~~(b) In a vertical tank, the construction must take the form of a floating roof, lifter roof, a weak roof to shell seam, or other approved pressure relieving construction.~~

~~(1) The weak roof to shell seam must be constructed to fail preferential to any other seam.~~

~~(2) Design methods that will provide a weak roof to shell seam construction are contained in API 650, "Welded Steel Tanks for Oil Storage", and UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids".~~

~~(c) Where entire dependence for emergency pressure relief is placed upon pressure relieving devices, the total venting capacity of both normal and emergency vents must be enough to prevent rupture of the shell or bottom of the tank if vertical, or of the shell or heads if horizontal.~~

~~(1) These devices must be vapor tight. They may be a self closing manhole cover, or one using long bolts that permit the cover to lift under internal pressure, or an additional or larger relief valve or valves.~~

~~(2) The total capacity of both normal and emergency venting devices must not be less than that derived from the table in Appendix I.~~

~~(d) Where tank spacing is based on a weak roof to shell seam design, the user must present to the Commission upon request evidence certifying the construction.~~

~~(e) For the purpose of this Section, a floating roof tank is defined as one that incorporates either:~~

~~(1) A pontoon or double deck metal floating roof in an open top tank in accordance with API 650, "Welded Steel Tanks for Oil Storage," or~~

~~(2) A fixed metal roof with ventilation at the top and roof eaves in accordance with API 650 and containing a metal floating roof or cover meeting any one of the following requirements:~~

~~(A) A pontoon or double deck metal floating roof meeting the requirements of API 650, or;~~

~~(B) A metal floating cover supported by liquid-tight metal floating devices that provide sufficient buoyancy to prevent the liquid surface from being exposed when half of the flotation is lost.~~

~~(3) An internal metal floating pan, roof, or cover that does not meet the requirements above, or one that uses plastic foam (except for seals) for flotation, even if encapsulated in metal or fiberglass, will be considered a fixed roof tank.~~

165:26-2-3. Aboveground storage tank spacing

Spacing (shell to shell) between any two adjacent aboveground tanks for tanks storing Class I, II, or IIIA stable liquids must be according to the table in Appendix H. The minimum distance between tanks shall be no less than 3 feet. Variances can be made by ~~the Commission~~ PSTD for pre-existing facilities where deviation from these rules does not pose a serious hazard to people or property.

165:26-2-4. Distance to be kept around tanks

(a) The following distances, at a minimum, must be kept around aboveground storage tanks.

(1) 50 ft (15 meters) from the nearest important building on the same property;

(2) 50 ft (15 meters) from any fuel dispenser;

(3) 50 ft (15 meters) from the nearest side of a public way; and

(4) 100 ft (30 meters) from any property line that is or might be built upon, including the opposite side of a public way.

(b) The distances as set forth in (a) of this may be reduced by 50 percent if the tanks are fire-resistant. The distances as set forth in (a) may be further reduced if the tanks are a fire-protected type aboveground tank or tanks in vaults as per NFPA 30A-4.3.2.4.

(c) ~~Generally, variances~~ A variance may be granted for pre-existing facilities where compliance would be difficult and expensive and the current distances between tanks, property lines or dispensers pose no serious threat to people or property.

165:26-2-5. Requirements on fill pipes

~~(a) Fill pipes that enter the top of a tank must terminate within 6 in. (15 centimeters) of the bottom of the tank. Fill pipes should be installed or arranged so that vibration is minimized.~~

(a~~b~~) Each fill pipe must be identified by a tag or other marking to identify the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank. Color-coding may also be used in addition to marking.

(b~~c~~) If the fill pipe is located within the containment dike a spill bucket is not required.

165:26-2-5.1. General spill and overfill prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. A spill bucket is not required if the fill pipe is located within the containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage.

~~(c) A 90 percent alarm and 95 percent overfill valve are required for any tank installed after July 15, 2000 if the tank is greater than 1,100 gallon capacity or if the tank is filled by a tight fill method.~~

~~(d) Tanks installed prior to July 15, 2000 must have a 90 percent alarm or a 95 percent overfill valve. (e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.~~

(c) One of the following methods must be used to prevent overfilling.

(1) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station.

(2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(3) Direct audible or code signal communication between the container gauger and the pumping station.

(4) A fast response system for determining the liquid level of each builk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a person must be present to monitor gauges and the overall filling of the tank.

(d) Liquid level sensing devices must be tested at least annually to ensure proper operation.

(f~~e~~) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

165:26-2-7. Collision barriers

(a) Aboveground storage tanks exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. The secondary containment dike may serve as a collision barrier provided that it ~~can not~~ cannot be penetrated by a motor vehicle.

(b) When guard posts or collision barriers are installed, the following design shall be acceptable:

(1) They shall be constructed of steel not less than 4 in. (100 millimeters) in diameter and shall be filled with concrete.

(2) They shall be spaced not more than 4 ft. (1.2 meters) on center.

(3) They shall be set not less than 3 ft (0.9 meters) deep in a concrete footing of not less than 15-in. (380 millimeters) diameter.

(c) Dispensing devices, except those attached to containers, must either be mounted on a concrete island or otherwise protected against collision damage by suitable means and must be securely bolted in place. If located indoors, the dispensing device will be located in a position where it cannot be struck by a vehicle that is out of control descending a ramp or other slope. The installation must be in accordance with the manufacturer's instructions.

165:26-2-8. Installation testing

(a) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

(1) All aboveground storage tanks must be tested to manufacturers instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation.

(2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions

(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

(5) All piping should be air tested and monitored continuously during the installation. ~~after the installation and until the completion of the installation or precision tightness test~~.

(6) All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a 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.

(~~6~~7) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's instructions.

(~~7~~8) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).

~~(8) A function test must be performed on all line leak detectors at installation.~~

(9) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period.

~~(10) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.~~

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system 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~~; National Association of Corrosion Engineers Standard RP0193, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;

(3) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(4) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

(c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

PART 5. PIPING

165:26-2-54. Aboveground storage tank piping materials

(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with the piping manufacturers installation recommendations and instructions.

(b) Pipes, valves, couplings, flexible connectors, fittings and other pressure containing parts must be installed in accordance with Petroleum Equipment Institute RP200, *Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling*. ~~Pipes, valves, faucets, couplings, flexible connectors, fittings and other pressure-containing parts must meet the material specifications and pressure and temperature limitations of ASME B31.3, Petroleum Refinery Piping. , or ASME B31.4, Liquid Petroleum Transportation Piping Systems. Materials must be designed to specifications embodying recognized engineering principles, and be compatible with the fluid service.~~

~~(c) Nodular iron must conform to ASTM A 395 Ferritic Ductile Iron Pressure Retaining Castings for Use at Elevated Temperatures.~~

(c) Refer to Subchapter 8 for guidelines regarding over-water piping used at marinas.

(d) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.

(e) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank. ~~Where installed external to the tank, the material must have a ductility and melting point comparable to steel or nodular iron so as to withstand reasonable stresses and temperatures involved in fire exposure or be protected by materials having a fire resistance rating of not less than 2 hours.~~

~~(f) Low melting point materials such as aluminum, copper, and brass, and materials that soften on fire exposure such as plastics, or non-ductile material such as cast iron may be used underground for all liquids within the pressure and temperature limits of ANSI B31, American National Standard Code for Pressure Piping. If these materials are used outdoors in aboveground piping systems handling Class I or Class II liquids, or within buildings handling any liquid, they must be either:~~

~~(1) Resistant to damage by fire,~~

~~(2) Located so that any leakage resulting from the failure will not unduly expose persons, important buildings, or structures,~~

~~(3) Located where leakage can readily be controlled by operation of an accessible remotely located valve(s), or~~

~~(4) Located pursuant to 165:26-2-54(d).~~

~~(g) Piping, valves, and fittings may have combustible or non-combustible linings.~~

~~(h) Nonmetallic piping, including piping systems incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Nonmetallic piping must be built, installed, and used within the scope of their approvals or within the scope of Underwriters Laboratories Inc.'s Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.~~

~~(i) If materials were installed in compliance with state or national codes in existence at the time of the installation, the Petroleum Storage Tank Division will not require a change unless they pose a hazard to people or property.~~

PART 7. VAULT REQUIREMENTS

165:26-2-71. Vaults

A vault is a superior installation system that is not required. When used they are allowed above or below grade and must meet NFPA 30 and NFPA 30A requirements. ~~the following standards:~~

~~(1) A vault must completely enclose each tank. There can be no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank.~~

~~(2) The walls and floor of the vault must be constructed of reinforced concrete at least 6 in. (15 cm) thick.~~

~~(3) The top of an above grade vault must be constructed of noncombustible material and be designed to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault.~~

~~(4) The top of an at-grade or below grade vault must be designed to safely relieve or contain the force of any explosion occurring inside the vault.~~

~~(5) The top and floor of the vault and the tank foundation must be designed to withstand the anticipated loading, including loading from vehicular traffic, where applicable.~~

~~(6) The walls and floor of any vault installed below grade must be designed to withstand anticipated soil and hydrostatic loading.~~

~~(7) The vault must be substantially liquid tight with no backfill around the tank~~

~~(8) There must be enough space between the tank and the vault for inspection of the tank and its appurtenances.~~

~~(9) Abovegrade vaults must be resistant to damage from the impact of a motor vehicle, or suitable collision barriers must be provided.~~

~~(10) Each tank must be in its own vault.~~

~~(11) Adjacent vaults may share a common wall.~~

~~(12) Connections must be provided to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.~~

~~(13) Vaults that contain tanks of Class I liquids must be provided with continuous ventilation at a rate of not less than one cubic foot per minute per one square foot of floor area.~~

~~(A) Failure of the exhaust air flow must automatically shut down the dispensing system.~~

~~(B) The exhaust system must be designed to provide air movement across all parts of the vault floor.~~

~~(C) Supply and exhaust ducts must extend to within 3 in. (7.6 cm), but not more than 12 in. (30.5 cm), of the floor.~~

~~(D) The exhaust system must be installed in accordance with the provisions of NFPA 91, Standard for Exhaust Systems for Air Conveying of Materials.~~

~~(E) Means must be provided to automatically detect any flammable vapors and to automatically shut down the dispensing system upon detection of flammable vapors in the exhaust duct at a concentration of 25 percent of the lower flammable limit.~~

~~(14) Each vault must be equipped with a detection system capable of detecting liquids, including water, and of activating an alarm.~~

~~(15) Means must be provided to recover liquid from the vault. If a pump is used to meet this requirement, it must not be permanently installed in the vault. Electric powered portable pumps must be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code.~~

~~(16) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 q) above ground level.~~

~~(17) Emergency vents must be vapor tight and may be permitted to discharge inside the vault. Long bolt manhole covers will not be permitted for this purpose.~~

~~(18) Each vault must be provided with a way for personnel entry. At each entry point, a warning sign indicating procedures for safe entry must be posted. Each entry point must be secured against unauthorized entry and vandalism.~~

~~(19) Each vault must be provided with a suitable means to admit a fire suppression agent.~~

~~(20) The interior of any vault containing a tank that stores a Class I liquid will be designated a Class I, Division 1 location, as defined in NFPA 70, National Electrical Code. Class I liquids may not be stored or handled within a building having a basement or pit into which flammable vapors can travel unless the area is provided with ventilation that will prevent the accumulation of flammable vapors.~~

~~(21) Vaults that were constructed in compliance with earlier state or national codes in existence at the time of construction will not be required to change unless they pose a danger to persons or property or to persons having to work in or around the vault.~~

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. 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 PSTD. ~~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 they must be made available to ~~the Commission~~ PSTD upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

PART 15. ELECTRICAL

165:26-2-151. Electrical requirements

(a) ~~All electrical work must be installed by a state or federally licensed electrical contractor.~~ All electrical work must be performed by a licensed 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 70, National Electrical Code.

~~(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.~~

~~(d) Refer to the NFPA 30A regulations for the table on Electrical Equipment Classified Areas - Motor Fuel Dispensing Facilities. This table should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.~~

~~(e) Electrical wiring and electrical utilization equipment that is integral with the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.~~

~~(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for class I Division 1 or 2 classified locations, as set forth in Table as in (d) above and in NFPA 70, National Electrical Code.~~

(~~g~~ 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 19. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-191. Repairs to aboveground tank systems

Repairs to an aboveground storage tank must be performed by an AST Licensee. ~~aboveground storage tank licensee pursuant to OAC 165:26-1-30.3.~~ Routine maintenance such as painting and repairs to a product dispensing unit will not be considered repairs to the storage tank system.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

(a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of aboveground storage tanks and/or lines by submitting the PSTD scheduling form. If events require a change in the date of removal, the Division 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 Commission~~ PSTD grants a variance.

(d) ~~All aboveground storage tanks must be removed by an AST licensee.~~ An AST Licensee must remove aboveground storage tank systems.

~~(e) Any company that removes aboveground storage tank systems must have an AST licensee on the job site during removal.~~

165:26-2-212. Temporary removal from service

When an aboveground storage tank system is taken temporarily out of service, the owner or operator must:

(1) Remove all fluid from the tank.

(2) Leave all vent lines open and functioning.

(3) Notify ~~the Commission~~ PSTD of a change in service on the prescribed form.

165:26-2-214. Assessing the site at tank closure or change in service

(a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. Please refer to the PSTD AST sampling guidance document when choosing sample locations. ~~The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner, operator or their representative to schedule the sampling 14 days in advance with the Commission and to advise the Commission at least 48 hours in advance of schedule changes may result in the Commission requiring a post-closure site assessment.~~

~~(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be approximately 5 feet (5') from the outer edge of the AST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.~~

(~~1~~b) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.

~~(2) Levels of contamination in native soils and groundwater that shall require further action at the direction of the commission, are:~~

~~(A) Benzene~~

~~(i) Native Soils - 0.5 mg/kg~~

~~(ii) Groundwater - 0.005 mg/l~~

~~(B) Toluene~~

~~(i) Native Soils - 40.0 mg/kg~~

~~(ii) Groundwater - 1.0 mg/l~~

~~(C) Ethyl Benzene~~

~~(i) Native Soils - 15.0 mg/kg~~

~~(ii) Groundwater - 0.7 mg/l~~

~~(D) Xylene~~

~~(i) Native Soils - 200.0 mg/kg~~

~~(ii) Groundwater - 10.0 mg/l~~

~~(E) TPH~~

~~(i) Native Soils - 50.0 mg/kg~~

~~(ii) Groundwater - 2.0 mg/l~~

~~(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.~~

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) Any sampling at closures must be under the supervision of a licensed Remediation Consultant.

~~(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.~~

(~~f~~e) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 4. RELEASE DETECTION

165:26-3-20. General release detection methods and devices

(a) Owners and operators of new and existing aboveground 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 aboveground 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 aboveground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.~~

~~(c) Owners and operators of all new aboveground 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 must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

(~~e~~c) All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or per the manufacturer's recommendation, whichever is more frequent.

165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping

One of the following methods must be used:

(1) Visual Monitoring

(A) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment area and product transfer area.

(B) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and identify poor maintenance, operating practices or malfunctioning equipment.

(C) Visual inspection of elevated tanks or tanks on concrete slabs.

(D) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank containment has a sound concrete floor.

(E) Visual inspections are not adequate where due to the nature of the aboveground storage tank and/or its secondary containment it cannot be determined whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment.

(2) Monthly Inventory Reconciliation

(A) Product 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) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(ii) 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) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

~~(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.~~

(~~v~~iv) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(~~vi~~v) 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~~vi) Use of ~~OCC~~ the 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.~~

(3) Interstitial Monitoring. Interstitial monitoring can be used for double walled aboveground 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.

(4) Automatic tank gauging systems

(A) Automatic tank gauging systems (ATGs) 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) Automatic tank gauging systems (ATG's) must be third party certified for the size and quantity of the tank. 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 NWGLDE Web Site, will be accepted (nwglde.org).

165:26-3-20.2. Installation and monitoring requirements for underground 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) Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. 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. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(C) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. 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. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

(A) Automatic mechanical line leak detectors and annual line tightness testing

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

(ii) An annual test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements. ~~in accordance with the manufacturer's requirements~~.

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be performed annually by a certified tester.

(B) Sump sensors with automatic line leak detectors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition 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 an ~~automatic~~ mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and

(iv) The system must be function tested annually by simulating a leak in accordance with manufacturer's specifications. ~~and by an actual leak test to test the integrity of the electronic line leak detection equipment.~~ If the system has printer capabilities, attach the electronic line leak detector printout documenting the system shutdown or alarmed when tested.

(4) **Methods of release detection for suction piping.** Each method of release detection for underground suction piping must be performed in accordance with the following requirements.

(A) Sump Sensors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition 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.~~

(B) Annual Line Tightness Testing. A hydrostatic line tightness test must be performed annually by a certified tester.

165:26-3-20.3. 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.~~

~~(3) 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 NWGLDE Web Site (nwglde.org), will be accepted.~~

~~(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.~~

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to ~~the Commission~~ 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 answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3~~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 knowing the inventory control results.

~~(B) Any AST system failure from a third party certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.~~

~~(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the AST system has failed to meet leak detection requirements for that month.~~

~~(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.~~

~~(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24 hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.~~

(4~~5~~) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to

follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD ~~the Commission~~. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate why ~~his or her~~ knowledge of release conditions or monitoring results was delayed.

PART 17. RELEASE INVESTIGATION

165:26-3-171. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the ~~Commission's~~ PSTD staff specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD ~~the Commission~~, using the following steps or another procedure approved by PSTD ~~the Commission~~:

(1) **System test.** Owners and/or operators must conduct tightness tests ~~(according to the requirements for tightness testing in this Chapter)~~ that determine whether a leak exists in the storage tank system. ~~that portion of the tank that routinely contains product, or the attached delivery piping, or both.~~

(A) Owners and/or operators must repair~~,~~ or replace~~, or upgrade~~ the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground 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 AST system in native soil or another location approved by PSTD. ~~the Commission~~. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD licensed Remediation Consultant. ~~For sites where used oil may be involved, as determined through a TPH analysis, analysis for metals, semi-volatiles, and volatiles may be required. TCLP results will be used on a case by case basis to establish cleanup levels or to refer the case to the Oklahoma Department of Environmental Quality for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.~~

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground 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 aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Levels of chemical constituent concentrations that shall confirm a release at the direction of ~~the commission~~ PSTD 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~~ PSTD, after which a remediation may be undertaken under the provisions of Chapter 29.

SUBCHAPTER 4. INSPECTIONS, PENALTIES, AND FIELD CITATIONS

PART 1. INSPECTIONS

165:26-4-1. Owner/operator cooperation

(a) Owners and operators of regulated aboveground storage tank systems must cooperate with inspections, monitoring, and testing requested by or conducted by ~~the Commission~~ PSTD.

(b) Upon request of ~~the Commission~~ PSTD, owners and operators must, at all reasonable times:

(1) Furnish information relating to the owners' or operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.

(2) Conduct monitoring or testing of storage tank facilities.

(3) Permit ~~the Commission~~ PSTD to have access to, and to review, inspect, and copy records relating to storage tank facilities.

165:26-4-3. 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.

165:26-4-5. 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:

(1) Records of installation.

(2) Records of repair and retrofit operations.

(3) Review of release containment practices.

(4) Review of 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 which is necessary to ensure compliance with this Chapter and to protect property, human health and safety and the environment.

165:26-4-6. Exception and Variances [REVOKED]

~~(a) The rules of this Chapter are designed to protect the environment from pollution and persons and property from fire and explosions. If a tank system has been constructed to effectively accomplish these goals, it may not be required to change simply because it does it in a manner different from those spelled out in this Chapter unless the commission determines they pose a serious threat to people, property or the environment.~~

~~(b) Old tanks that were built and installed in compliance with earlier editions of the National Fire Protection Association codes may not be required to upgrade to comply with more recent fire codes, unless in their current condition they pose a serious threat to people, property or the environment.~~

~~(c) Fuel storage tanks that are specifically regulated by another government agency to accomplish the goals of this Chapter may not be required to comply with this Chapter if they are complying with the rules of the other agency.~~

~~(d) The demands of these rules should be modified to avoid placing a tank owner in conflict with another government agency.~~

PART 5. NOTICES OF VIOLATION, WARNING CITATIONS AND FINE CITATIONS

165:26-4-15. Notices of Violation, Warning Citations and Fine Citations

The purpose of this Section is to create a procedure that allows ~~the Commission's Petroleum Storage Tank Division~~ PSTD Fuel Specialists to issue Notices of Violation (NOVs) for any violation(s) found during Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of an NOV will allow petroleum storage tank owners and operators to quickly address and correct the storage tank violation(s) without having to go to court at the Commission.

165:26-4-16. Notices of Violation

(a) When a PSTD Fuel Specialist ~~of the Petroleum Storage Tank Division~~ finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix G.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation, and warn that further PSTD ~~Commission~~ enforcement action may occur if the violation is not corrected.

(2) There are some violations where a Citation will be issued to the tank owner or operator.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the owner of the storage tank facility, if the owner is at the facility. If the owner is not present, operators or managers at the storage tank facility can be given NOVs.

~~(d) The Fuel Specialist will mail or fax a copy of all NOVs to any facility's corporate office at the company's request. The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.~~

165:26-4-17. Re-inspection and 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 will:

(1) Refer the violation to the PSTD ~~Commission's~~ Inspection and Compliance Manager for formal enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard it may be shut down pending a correction of the problem or a hearing on the issue.

165:26-4-18. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission cashier. 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 the citation within the 30 day time frame will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) ~~The Commission~~ PSTD 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 citation, as well as an administrative cost of $250.00.

(d) If a 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 formal enforcement after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement actions. These actions may include the addition of a larger fine and/or assessment of an administrative fee.

(f) An appeal from the hearing may be made to the Commission en banc in accordance with OAC 165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 7. PENALTIES

165:26-4-21. Penalties

~~(a)~~ Pursuant to 17 O.S. § 306, any owner or operator of a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

~~(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day 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.~~

SUBCHAPTER 6. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-6-1. Application

(a) This Subchapter applies to aboveground storage tank systems for aircraft fuel at airports. A storage tank system consists of a stationary tank and the pipes, pumps and dispensers attached to it. ~~It~~ This Chapter does not extend to aircraft fuel servicing vehicles.

~~(b) The purpose of this Subchapter is to protect the environment from pollution and people and property from fire and explosion.~~

~~(c) It extends into airport operations only in so far as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.~~

(b~~d~~) Private airstrips are excluded from this Subchapter.

(c ~~e~~) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-6-2. Timeframes for registration and compliance with rules

(a) Stationary tanks greater than 110 gallons must be registered with ~~the Petroleum Storage Tank Division of the Corporation Commission~~ PSTD.

(b) Airport tank systems must ~~have~~ come into full compliance with the rules of this Chapter and subchapters before ~~July 15, 2005~~ July 1, 2009.

165:26-6-3. Codes and standards

~~The Commission~~ PSTD adopts NFPA 407, which serves as a basis for the standards in this Subchapter. A copy of NFPA 407 is available for inspection at ~~the Petroleum Storage Tank Division~~ PSTD during regular business hours.

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-8-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances kept in aboveground storage tanks at marinas.

(b) ~~Subchapters 1, 2, 3 and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-8-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons must be registered with ~~the Petroleum Storage Tank Division of the Commission~~ PSTD. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 1, 2009 ~~July 15, 2007~~. Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.

(b) All new underground piping at existing facilities must be installed in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-3-9, "Installation and monitoring requirements for underground piping."

(c) All dock or pier product piping from the shoreline to the dispensers at new facilities must be installed according to 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(d) All dock or pier product piping from the shoreline to the dispensers at existing facilities must be upgraded before the deadline date of July 1, 2009 ~~July 15, 2007~~ according to 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(e) Temporary tanks may not be used at marinas.

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-8-88. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers which have a minimum total capacity ~~capability~~ of 40 pounds, Class B, Class C.

(b) A minimum of three extinguishers must be located at the fuel dock and one or more located so they will be within 50 ft. (15m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) ~~Where practical, there should be a frost-proof water hydrant with at least a 5/8" hose on the fuel dock.~~ Piers which extend more than 500 ft. (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

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

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-1. Application

(a) This Subchapter applies to the storage, handling and use of all regulated_substances which are kept in aboveground storage tanks, at facilities which engage in the retail sale of motor fuel.

(b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

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

(a) Tanks at retail facilities ~~except marinas~~ that are greater than 110 gallons must be registered with PSTD. ~~the Petroleum Storage Tank Division of the Commission before January 15, 2001. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks.~~

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

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

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-1. Application

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

(b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

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

(a) Tanks at fleet or commercial facilities with ~~an aggregate~~ a capacity ~~greater than 1,320~~ of 2,100 gallons or greater must be registered with PSTD. ~~the Petroleum Storage Tank Division of the Commission. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks.~~

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

SUBCHAPTER 14. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-14-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances at bulk plant facilities which are kept in aboveground storage tanks. Bulk plants built after July 15, 2000 must comply with this Chapter and Subchapter.

(b) Bulk plants, already in existence on July 15, 2000 will not be required to comply with these rules unless they pose a threat to property, people or the environment. If a safety or environmental threat does exist at a bulk plant, the owner will be required to correct the specific problem.

(c) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-14-2. Timeframes for registration and compliance with rules

(a) Tanks at bulk plants must be registered with ~~the Petroleum Storage Tank Division of the Commission~~ PSTD. The tanks must come in compliance with the rules of this Subchapter before July 15, 2010. Compliance may be required sooner for any part of an existing bulk plant that poses a threat to property, people or the environment.

(b) Temporary tanks will not be allowed at bulk plant facilities.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in aboveground storage tanks for use in emergency generators.

(b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-16-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons that contain fuel for emergency generators must be registered with ~~the PSTD of the Commission~~ PSTD. The tanks must have come into compliance with the rules of this Chapter and Subchapter before July 15, 2005.

(b) There are emergency generators manufactured which have a fuel storage tank built into the unit. A manufactured unit will be accepted as being in full compliance with these rules if:

(1) The storage tank is double-walled and installed according to the manufacturer's specifications or;

(2) The storage tank is single walled with secondary containment built into the unit and installed according to the manufacturer's specifications; or

(3) Its location does not pose a threat to people, property or the environment.

(c) If a manufactured unit has a single walled tank without built in containment, it must be installed in compliance with the containment provision of this Chapter.

(d) If the fuel storage tank is separate from the generator unit, it must meet and be installed according to this Chapter.

APPENDIX G. FINE CITATIONS TABLE [REVOKED]

APPENDIX G. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:26-1-41 and 165:26-1-42; 165:26-1-47 and 165:26-2-212	Failure to register tanks within 30 days of bringing the system into place, or failure to amend registration to reflect changes	$500
165:26-1-70	Failure to pay AST permit fees prior to due date	Not > 50% of fee
165:26-2-5.1	Tank owner/operator accepting delivery into AST that does not have spill protection	$1000
165:26-2-5.1 165:26-2-40 165:26-2-41	Tank owner/operator accepting delivery into AST that does have overfill protection or a required corrosion protection system	$1,000
Notification Requirements		
	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to notify the OCC prior to AST installation or closure.	$500
	Failure to report non-passing tank or line tightness test results.	$500
Required Reports		
165:26-1-57	Failure to submit tank closure report within 45 days	$250
165:29 and 165:26-3-171	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
General Leak Detection Requirements		
165:26-3-77	Failure to notify Commission of indicated release	$250
165:26-3-20.2 and 165:26-20.1	Failure to provide adequate release or leak detection for storage tank system (first offense)	$250

	Second Offense	$500

Rule	Violation	Fine Amount
	Third Offense	$1,000
	Failure to monitor tank(s) for releases as required	$250
165:26-3-20.2	Failure to use approved release or leak monitoring method for piping	$250
165:26-1-55, 165:26-1-57, and 165:26-1-59	Failure to maintain records of release or leak detection monitoring	$250
165:26-1-56	Failure to retain records of calibration, maintenance, and repair of release or leak detection equipment	$250
165:26-3-20.2	Failure to install or inspect leak detection on pressure piping	$250
Spill & Overfill Control		
165:26-3-77	Failure to report a spill (over 25 gallons)	$100
165:26-3-171	Failure to investigate a spill (over 25 gallons)	$100
	Failure to investigate an overfill spill	$100
	Failure to clean up a spill	$500
	Failure to clean up an overfill spill	$500
Operation/Maintenance of Corrosion Protection		
165:26-2-40 and 165:26-2-41	Failure to properly operate and maintain corrosion protection system (first offense)	$150
	Second Offense	$500
	Third Offense	$1,000
165:26-2-42	Failure to properly test corrosion protection system	$250
165:26-1-57	Failure to maintain records of cathodic protection inspections or testing	$250
165:26-2-42	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	$500
	Second Offense	$1,000
165:26-1-58; 165:26-2-40	Failure to provide a Cathodic Protection Design or Suitability Study	$1,000

Rule	Violation	Fine Amount
Release Investigation & Confirmation		
165:26-1-48 and 165:26-3-171	Failure to conduct tightness test(s) to investigate suspected leak(s)	$250
Temporary Closure		
165:26-2-211	Failure to secure all storage tank-related equipment for temporary closure	$250
	Failure to operate and maintain release or leak detection as required in a temporarily closed storage tank system	
Permanent Closure		
165:26-2-214	Failure to measure for the presence of a release before a permanent closure	$500
165:26-1-57	Failure to maintain proper closure records	$250
165:26-2-210	Failure to use licensed AST Remover	$500
Repairs Allowed		
165:26-2-1.1 165:26-2-191	Failure to use an AST licensee to install or repair person to repair	$500
	Second offense or thereafter by owner (per owner, not per facility)	$1000
165:26-2-42	Failure to test storage tank systems cathodic protection within 6 months of repair	$250
165:26-2-8	Failure to perform tightness test on tank system after installation or repair	$300
165:26-1-56	Failure to maintain repair records for operating life of storage tank	$250

Rule	Violation	Fine Amount
Other		
165:15-19-1	Misrepresentation of octane level per location	$500
	Second Offense within a year	$1000
	Third Offense –Closure & Hearing	$5000
165:26-1-31	Failure to follow standard codes for installation	$500
165:26-4-1	Failure to provide records upon request	$100
	Second offense or thereafter by owner (per owner, not per facility)	$500
Administrative Penalty	Any owner or operator of a storage tank 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.	

[OAR Docket #08-1105; filed 5-30-08]

TITLE 165. CORPORATION COMMISSION
CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #08-1104]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Plant, Equipment, and Facilities
165:45-3-5. Sale or disposal of jurisdictional facilities by utility [AMENDED]
165:45-3-5.1 Acquisition, control, or merger of domestic public gas utilities [NEW]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 152
DATES:
Comment Period:
January 14, 2008 to March 12, 2008
Public Hearing:
March 12, 2008
Adoption:
March 12, 2008
Submitted to the Governor:
March 24, 2008
Submitted to the House:
March 24, 2008
Submitted to Senate:
March 24, 2008
Gubernatorial approval:
April 28, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval by May 15, 2008.
Final Adoption:
May 15, 2008
Effective Date:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:45-3-5 was amended and OAC 165:45-3-5.1 was created to identify the information needed and the process to be used when transferring assets or customers. The changes provide for a central location of other provisions applicable to sales and mergers from Title 17 and from OAC 165:5. The amendment to OAC 165:45-3-5 is needed because the current rule was incomplete as to information needed to process an application for the sale or disposal of facilities. The new OAC 165:45-3-5.1 was added to include all applicable requirements from Title 17 of the Oklahoma Statutes and OAC 165:5 to address a request for acquisition, control, or the merger of a domestic water utility.
CONTACT PERSON:
Lenora Burdine (405) 522-1010.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:45-3-5. Sale or disposal of jurisdictional facilities by utility

~~(a) Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer, or dispose to another any portion of its jurisdictional plant or operating system unless the following criteria are satisfied:~~

~~(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdiction; and~~

~~(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which:~~

~~(A) May have a detrimental impact on rates or service levels of customers, shippers or producers; or~~

~~(B) May have a detrimental impact on:~~

~~(i) Competition;~~

~~(ii) The competitive bidding process; or~~

~~(iii) Potential competitors.~~

~~(3) This Section shall not apply to discontinuance of service pursuant to OAC 165:45-11 nor to routine retirement or replacement of items of plant or equipment.~~

~~(4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission.~~

~~(b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall be required to provide a file stamped copy of the application to the Pipeline Safety Department of the Commission.~~

~~(c) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained pursuant to OAC 165:45-9-1 and customer deposit records required to be maintained pursuant to OAC 165:45-11-1.~~

~~(d) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.~~

~~(e) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly fuel filings and monthly reports current.~~

~~(f) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by the Public Utility Division, Consumer Services Division or the Pipeline Safety Department of the Commission.~~

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a natural gas utility's jurisdictional plant or operating system or the transfer of some or all of a natural gas utility's customers to a person or

entity that is not an affiliate of such utility, shall, at least ninety (90) days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with 165:5-7-1, with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Pipeline Safety Division. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing natural gas service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

(1) The names of the parties to the transaction and the addresses of their respective principal places of business;

(2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;

(3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;

(4) A narrative description of how the transferred customers will continue to receive safe and reliable natural gas service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;

(5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;

(6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide natural gas service to the transferred customers after the effective date of the transaction;

(7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for the Public Utility Division and the Consumer Services Division and who will be primarily responsible for:

(A) Customer service issues;

(B) Repair and maintenance issues;

(C) Customer complaint issues;

(D) Authorizing and furnishing refunds to customers;

(E) Tariff issues; and

(F) Receiving notices related to causes docketed at the Commission.

(8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;

(9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;

(10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable natural gas utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;

(11) The information required by 165:45-11-1(q) and (s) and an affirmation that the records and reports required by 165:45-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to 165:45-9 and 165:45-11-1(q) and (s), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for natural gas service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to 165:45-15-2, reflecting the changes or additions to rates and/or terms of service to the Public Utility Division for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to 165:45-1-4.2.

(i) This section does not apply to transactions that involve the acquisition, control, or merger of a domestic public utility pursuant to 17 O.S. §§ 191.1 through 191.13, discontinuance of service pursuant to 165:45-11-10 or 165:45-11-11, nor routine retirement or replacement of facilities.

165:45-3-5.1. Acquisition, control, or merger of domestic public gas utilities]

(a) An original and eight (8) copies of an application for approval, consistent with 165:5-7-1, shall be filed with the Commission's Office of the Court Clerk no less than forty-five (45) days prior to the effective date of any of the following transactions pursuant to 17 O.S. §§191.1 through 191.13:

(1) acquisition of all or any controlling interest in a domestic public utility,

(2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Commission's Pipeline Safety Division. The application shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph.

(2) *The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.* [17 O.S. § 191.3(A)(2)]

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application.

(4) *Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility* or the person controlling the domestic public utility. [17 O.S. § 191.3(A)(4).

(5) *The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in* 17 O.S. §191.2 . . . ;

(6) *The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.* [17 O.S. § 191.3(A)(6)]

(7) *A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.* [17 O.S. § 191.3(A)(7)]

(8) *A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including*

the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore. [17 O.S. § 191.3(A)(8)]

(9) *Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.* [17 O.S. § 191.3(A)(9)]

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) days after the conclusion of such hearing, entered its order approving the merger or other acquisition.

[OAR Docket #08-1104; filed 5-30-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 65. WATER SERVICE UTILITIES

[OAR Docket #08-1103]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Plant, Equipment, and Facilities
165:65-3-5. Sale or disposal of facilities by utility [AMENDED]
165:65-3-5.1 Acquisition, control, or merger of domestic public water utilities [NEW]

AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 152
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None
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None
ANALYSIS:
OAC 165:65-3-5 was amended and OAC 165:65-3-5.1 was created to identify the information needed and the process to be used when transferring assets or customers
CONTACT PERSON:
Lenora Burdine (405) 522-1010.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:65-3-5. Sale or disposal of facilities by utility

~~(a) Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer or dispose to another any portion of its jurisdictional plant or operating system unless the following criteria are satisfied:~~

~~(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdiction; and,~~

~~(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which may have a detrimental impact on rates or service levels of customers.~~

~~(3) This Section shall not apply to discontinuance of service pursuant to OAC 165:65-11 nor to routine retirement or replacement of plant or equipment.~~

~~(4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission.~~

~~(b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall be required to provide a file-stamped copy of the application to DEQ.~~

~~(c) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained pursuant to OAC 165:65-9-1 and customer deposit records required to be maintained pursuant to OAC 165:65-11-2.~~

~~(d) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.~~

~~(e) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly filings and monthly reports current.~~

~~(f) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by the PUD or the CSD.~~

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a water utility's jurisdictional plant or operating system or the transfer of some or all of a water utility's customers to a person or entity that is not an affiliate of such utility, shall, at least ninety (90) days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with 165:5-7-1, with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Department of Environmental Quality. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing water service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

(1) The names of the parties to the transaction and the addresses of their respective principal places of business;

(2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;

(3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;

(4) A narrative description of how the transferred customers will continue to receive safe and reliable water service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;

(5) A narrative description of the principal occupation or business of the acquiring party and all ffiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;

(6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide water service to the transferred customers after the effective date of the transaction;

(7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for the Public Utility Division and the Consumer Services Division and who will be primarily responsible for:

(A) Customer service issues;

(B) Repair and maintenance issues;

(C) Customer complaint issues;

(D) Authorizing and furnishing refunds to customers;

(E) Tariff issues; and

(F) Receiving notices related to causes docketed at the Commission;

(8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;

(9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;

(10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable water utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;

(11) The information required by 165:65-11-3(o) and (q) and an affirmation that the records and reports required by 165:65-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that

effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to 165:65-9 and 165:65-11-3(o) and (q), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is, fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for water service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to 165:65-9-7, reflecting the changes or additions to rates and/or terms of service to the Public Utility Division for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to 165:65-1-5.

(i) This section does not apply to transactions that involve discontinuance of service pursuant to 165:65-11-10 or 165:65-11-11 or routine retirement or replacement of facilities.

165:65-3-5.1. Acquisition, control, or merger of domestic public water utilities

(a) An original and eight (8) copies of an application for approval, consistent with 165:5-7-1, shall be filed with the Commission's Office of the Court Clerk no less than forty-five (45) days prior to the effective date of any of the following transactions:

(1) acquisition of all or any controlling interest in a domestic public utility,

(2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Department of Environmental Quality. The application shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application;

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure,

or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore; and

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic water utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) days after the conclusion of such hearing, entered its order approving the merger or other acquisition.

[OAR Docket #08-1103; filed 5-30-08]

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

[OAR Docket #08-1083]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2. Annual operating fees [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., § 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S.,§ 2-5-101 *et seq*.
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ANALYSIS:
The Department proposes to amend OAC 252:100-5-2.2. The proposed revision will increase annual operating fees for both minor facilities and Part 70 sources. Additional income resulting from a fee increase is needed to cover current and anticipated staffing requirements to administer the Department's programs. Language has also been updated as it relates to Part 70 sources fees which are adjusted automatically each year using the Consumer Price Index.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4218, FAX (405) 702-4101, e-mail cheryl.bradley@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 5. REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES

252:100-5-2.2. Annual operating fees

(a) **Applicability.**

(1) OAC 252:100-5-2.2 applies to all facilities that are sources of air pollution, including government facilities, regardless of whether the source is currently permitted or whether an emission inventory has or has not at any time been submitted for the facility. The owners or operators of Part 70 sources shall pay annual fees that are sufficient to cover the Part 70 program costs. The permitting authority shall ensure that the fees required by OAC 252:100-5-2.2(b)(2) will be used solely for Part 70 program costs.

(2) OAC 252:100-5-2.2 does not apply to de minimis facilities or to permit exempt facilities.

(b) **Fee schedule.**

(1) **Minor facilities.** Beginning July 1, 2008, annual operating fees invoiced for minor facilities shall be $25.12 per ton of regulated air pollutant (for fee calculation). The invoiced annual operating fees shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program.

~~(A) Beginning January 1, 1999, annual operating fees shall be invoiced at $17.12 per ton of regulated pollutant (for fee calculation).~~

~~(B) Beginning January 1, 2003, annual operating fees shall be no more than $22.28 per ton of regulated pollutant (for fee calculation).~~

(2) **Part 70 Sources.** Beginning July 1, 2008, annual operating fees invoiced for Part 70 sources shall be $32.30 per ton of regulated air pollutant (for fee calculation) and shall be adjusted each year pursuant to (b)(3) of this section. The invoiced CPI-adjusted annual operating fees shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program. Any discount would not affect CPI adjustments.

~~(A) From January 1, 1995, until January 1, 1999, the annual operating fee for Part 70 sources shall be $15.19 per ton of regulated pollutant (for fee calculation).~~

~~(B) Beginning January 1, 1999, the annual operating fee for Part 70 sources shall be $17.12 per ton of regulated pollutant (for fee calculation).~~

~~(C) Beginning January 1, 2003, the annual operating fee for Part 70 sources shall be no more than $22.28 per ton of regulated pollutant (for fee calculation).~~

~~(D) The annual operating fee shall be adjusted automatically each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year differs from the Consumer Price Index for the calendar year 1994. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.~~

(3) **Use of Consumer Price Index (CPI) to adjust annual operating fees.** Annual operating fees for Part 70 sources shall be adjusted automatically each year by the percentage, if any, by which the CPI for the most recent calendar year ending before the beginning of such year differs from the CPI for the calendar year 2007. The CPI for any calendar year is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(c) **Payment.**

(1) Fees are due and payable on the invoice due date(s). Fees shall be considered delinquent 30 days after the invoice due date(s). Within five (5) years but not before a grace period of 120 days from the invoice due date, the DEQ may issue an administrative order to recover such fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*, to an owner or operator of a facility who has failed to pay or has underpaid such fees.

(2) If an owner or operator has failed to submit the required annual emission inventory, the DEQ may issue an administrative order to recover fees that would have been invoiced had the emission inventory been submitted when due. The DEQ may issue such order within five (5) years from the date of billing and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*

(3) When a fee overpayment has been made as a result of an error, an owner or operator may seek a credit for such

fee overpayment within five years from the date on which payment of the fee was received by the DEQ.

(d) **Basis for annual operating fees.**

(1) Operating fees shall be calculated on a source-specific basis and based on actual emissions of regulated pollutants (for fee calculation) as set forth in the facility emission inventory unless the owner or operator elects to pay fees on allowable emissions.

(2) Regulated pollutants (for fee calculation) in excess of 4,000 tons per year per pollutant for a Part 70 source shall not be considered in the calculation of the annual fee.

[OAR Docket #08-1083; filed 5-30-08]

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

[OAR Docket #08-1084]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 24. Particulate Matter Emissions from Grain, Feed or Seed Operations
252:100-24-3 [AMENDED]
252:100-24-4 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., 2005 §§ 2-5-101 et seq.
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ANALYSIS:
The Department is proposing to change the reference to OAC 252:100-41 found in OAC 252:100-24-3(b)(2) to OAC 252:100-42, Control of Toxic Air Contaminants. The Department is also proposing to clarify the language in OAC 252:100-24-4(c).
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 24. PARTICULATE MATTER EMISSIONS FROM GRAIN, FEED OR SEED OPERATIONS

252:100-24-3. Applicability, general requirements

(a) **Applicability.** The provisions of this Subchapter are applicable to all new, modified, and existing grain, feed, or seed facilities in the State of Oklahoma.

(1) Facilities in compliance with 252:100-25, 252:100-19-12, and 252:100-29 are not required to comply with this Subchapter.

(2) Facilities in compliance with this Subchapter are exempt from the requirements of 252:100-25 (visible emissions), 252:100-19-12 (process weight), and 252:100-29 (fugitive dust).

(b) **General requirements.**

(1) **Permits required.** In addition to the requirements of this subchapter, each new, modified or existing grain, feed, or seed facility shall comply with the permitting requirements of 252:100-7 or 252:100-8.

(2) **Air toxics emissions.** Grain, feed, or seed facilities that emit toxic air pollutants ~~above the de minimis levels~~ specified in ~~252:100-41~~252:100-42 are subject to all applicable requirements contained therein.

(3) **Record-keeping.** The owner or operator of a facility shall maintain a daily log documenting commodity receipts and load-outs and hours of operation for each. These records shall be maintained for a period of two years and shall be made available for inspection by the DEQ during normal business hours.

(4) **Visible emissions test.** Visible emissions (opacity) testing shall be conducted using EPA reference method 9 contained in 40 CFR, Part 60, Appendix A and must be performed by a Certified Visible Emission Evaluator.

(5) **Determination of emissions.** Emissions from grain, feed, or seed facilities shall be determined by the best available data. This may include actual emissions as determined by stack testing, mass balance calculations, emission calculations using approved published emissions factors, or any other reasonably accurate method approved in advance by the DEQ.

252:100-24-4. Visible emissions (opacity) limit

(a) **Opacity limit.** No person shall allow the discharge of any fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any combination thereof exhibiting greater than 20% opacity. This requirement shall not apply to visible emissions exhibiting greater than 20% opacity emitted during short-term occurrences, which consist of not more than one six-minute period in any consecutive 60 minutes, not to exceed three such

periods in any consecutive 24 hours, during which the average of any six-minute period shall not exceed 60% opacity.

(b) **Alternate opacity limit.** The 20% opacity limit required under 252:100-24-4 (a) may be increased for particulates only provided that the owner or operator demonstrates to the satisfaction of the Air Quality Council at public hearing that those requirements listed in 252:100-25-4 (a) through (c) have been met.

(c) **Exceptions.** Exceptions to the ~~requirements~~20% opacity limit described in 252:100-24-4 (a) are provided as follows:

(1) Visible emissions from loading-out (shipping) shall be no more than sixty-five percent (65%) opacity, and visible emissions from unloading (receiving) shall be no more than fifty-five percent (55%) opacity.

(2) Emissions from pressurized vents or openings without control devices shall either be enclosed, exhausted through a control device, or shall be limited to no greater than ten percent (10%) opacity~~ at any time~~.

(3) Emissions from non-pressurized vents or openings without control devices shall be limited to no greater than 10% opacity~~ at any time~~.

[OAR Docket #08-1084; filed 5-30-08]

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

[OAR Docket #08-1085]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
252:300. Laboratory Accreditation [REVOKED]
AUTHORITY:
Environmental Quality Board and Laboratory Services Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-4-101 *et seq*.
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ANALYSIS:
The rules in this Chapter were substantially rewritten and reorganized into a new proposed chapter. Chapter 300 is being revoked in its entirety, subject to the adoption of Chapter 301.
CONTACT PERSON:
David Caldwell, DEQ, State Environmental Laboratory, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-1000, or david.caldwell @deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

252:300-1-1. Purpose [REVOKED]

~~The rules in this Chapter provide standards for accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater.~~

252:300-1-2. Basis and authority [REVOKED]

~~OAC 252:300 was promulgated and adopted pursuant to the Oklahoma Environmental Quality Code (Code), 27A O.S. § 2-4-101 *et seq.*~~

252:300-1-3. Applicability [REVOKED]

~~OAC 252:300 shall apply to all laboratories certified by or applying to be accredited by the Department of Environmental Quality (DEQ).~~

252:300-1-4. Terms [REVOKED]

~~Terms used in this Chapter shall have the meanings given to them in OAC 252:300-1-6 or the Oklahoma Environmental Quality Code. Any technical term not defined thereby shall be defined by:~~

~~(1) its generally accepted scientific meaning, or~~

~~(2) its standard dictionary meaning.~~

252:300-1-6. Definitions [REVOKED]

~~In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*) and OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure), the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.~~

~~**"Acceptable results"**, as defined in 27A O.S. § 2-4-101, means *a result within limits determined on the basis of statistical procedures as prescribed by the Department.*~~

~~**"Accreditation"** means the process by which the DEQ recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory.~~

~~**"Analyte"** means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure~~

~~and is synonymous with "parameter". For purposes of this Chapter, "analyte" also means one of a set of inorganic or organic chemical, physical, radiochemical or microbiological properties whose value determines the characteristics of a water or wastewater sample.~~

~~**"Applicant"** means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.~~

~~**"Applicant laboratory"** means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.~~

~~**"Approved method"** means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.~~

~~**"Blind audit"** means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.~~

~~**"Certificate"** is defined in 27A O.S. § 2-4-101 and means the same as laboratory accreditation and includes primary accreditation and reciprocity accreditation.~~

~~**"DEQ"** means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.~~

~~**"Evaluation"**, as defined in 27A O.S. § 2-4-101, *means a review of the quality control and quality assurance procedures, recordkeeping, reporting analytical technique of a laboratory for procedures, methodology, personal qualifications, equipment, facilities and measuring or establishing specific parameters.*~~

~~**"Laboratory"**, as defined in 27A O.S. § 2-4-101, means *a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.~~

~~**"Laboratory waste"** means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.~~

~~**"Mobile laboratory"** means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site (conductivity, residual chlorine, pH dissolved oxygen, temperature).~~

~~**"Owner"** means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.~~

~~**"Parameter"** is defined in 27A O.S. § 2-4-101 and is synonymous with "analyte".~~

~~**"Proficiency testing (PT) sample"** means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.~~

~~**"Program"** means the DEQ laboratory accreditation program.~~

~~**"QA Plan" or "Quality Assurance Plan"** means a written description of quality assurance activities that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.~~

~~**"SOP manual"** or **"Standard Operating Procedure manual"** means a document approved by a laboratory director that includes approved methods, equipment and instruments used by the laboratory for analyses.~~

SUBCHAPTER 5. LABORATORY ACCREDITATION PROCESS [REVOKED]

252:300-5-1. Accreditation exception [REVOKED]

~~Operational testing analyses for municipal wastewater treatment systems and water supply systems may be submitted to the DEQ by an unaccredited laboratory if, at the time of the analyses, the laboratory was operated by an individual certified by the DEQ as a laboratory operator and the certified laboratory operator approves and signs the analyses report. For further explanation, refer to and comply with the following rules:~~

~~(1) 252:606 Oklahoma Pollutant Discharge Elimination System Standards - OPDES, 252:606-11-2;~~

~~(2) 252:631 Public Water Supply Operations, 252:631-3-2; and~~

~~(3) 252:710 Waterworks and Wastewater Works Operator Certification 252:710-5-53.~~

252:300-5-2. Types of accreditation [REVOKED]

~~A laboratory may apply at any time for the following types of accreditation for particular analytes or categories:~~

~~(1) **Initial accreditation.** Initial accreditation is a first-time accreditation granted to a laboratory not previously accredited by the DEQ.~~

~~(2) **Interim accreditation.** Interim accreditation is an out-of-time accreditation issued to a DEQ accredited laboratory in analytes for which the laboratory is not currently accredited by the DEQ. A laboratory applying for interim accreditation shall meet the same requirements as a laboratory applying for initial accreditation.~~

~~(3) **Renewal accreditation.** Renewal of accreditation is required annually.~~

252:300-5-3. Classes of accreditation [REVOKED]

~~The following classes of laboratory accreditation are available:~~

~~(1) Drinking Water LaboratoryAccreditation.~~

~~(2) General Water Quality LaboratoryAccreditation.~~

252:300-5-4. Application required [REVOKED]

~~To be considered for accreditation, an applicant laboratory shall submit an application with the DEQ in accordance with OAC 252:4 and demonstrate that it is capable of complying with operational standards~~.

252:300-5-5. Fees [REVOKED]

~~The following fees apply:~~

~~(1) **Initial or interim.** Application fees for initial or interim accreditation include the applicable category fee assessed in subsection (4) of this section and the applicable certification fees as follows:~~

~~(A) Initial Accreditation - $850.00~~

~~(B) Interim Accreditation - $500.00~~

~~(2) **Renewal.** Renewal fees include the applicable category fee assessed in subsection (4) of this section and the renewal application fee.~~

~~(A) Renewal Application Fee - $25.00~~

~~(B) Renewal Late Fee - $250.00~~

~~(3) Accreditation amendment fee - $50.00~~

~~(4) Category fees:~~

~~(A) One Category - $350.00~~

~~(B) Two Categories - $700.00~~

~~(C) Three Categories - $1050.00~~

~~(D) Four or more Categories - $1400.00~~

~~(5) Public water supply system fee exemption - There is no laboratory accreditation fee for public water supply systems that pay the minimum annual public water supply regulatory service rate fee of $0.04 per service connection per month.~~

252:300-5-6. Filing times [REVOKED]

~~(a) **Laboratory responsibility.** Each laboratory is responsible for renewing its accreditation by the annual renewal date. Failure to receive a renewal form and invoice does not exempt laboratories from meeting the renewal deadline.~~

~~(b) **DEQ invoice date.** By April 15 of each year, the DEQ shall mail renewal forms and invoices to each accredited laboratory.~~

~~(c) **Renewal deadline.** The renewal application shall be accurately completed, signed and submitted to the DEQ with the renewal invoice and all applicable fees by 4:30 p.m. or postmarked on or before June 15. Any renewal application which is not accurately completed and is returned to the applicant or which is postmarked after June 15 but received on or before July 15 shall be considered only if accompanied by the renewal fee and a late fee. Any renewal application and fees received or postmarked after July 15 will be returned and accreditation shall not berenewed.~~

~~(d) **Specified dates.** If any date specified in this section falls on a weekend or holiday, the date of the following working day shall be the effective date.~~

~~(e) **Failure to renew.** To become accredited again, a laboratory that failed to renew its accreditation in a timely manner must apply for initial accreditation as a new applicant.~~

252:300-5-7. Application form, format and filing [REVOKED]

~~(a) **General.** An application shall be typewritten, shall be on forms provided by the DEQ, and shall follow the general format designated by the DEQ.~~

~~(b) **Signature and verification.** An application shall be signed by the sole proprietor of an individually owned laboratory, the controlling or managing partner or partners of a laboratory held by a partnership, the authorized agent of a corporate owned laboratory, or the principal executive officer or ranking elected official of a municipality or other local government entity which owns or operates the applicant laboratory. The signer shall verify in the application that it was prepared under his direction or supervision and that the information it contains is, to the best of his knowledge, true, accurate and complete.~~

252:300-5-8. Application content [REVOKED]

~~In addition to other information required by this Chapter, an application shall contain the following information:~~

~~(1) **General:**~~

~~(A) The name, mailing address, street address, telephone number, e-mail address and telefax number (if any) of the applicant.~~

~~(B) The signature, typewritten name, address, telephone number and telefax number (if any) of the authorized representative of the owner.~~

~~(C) The name, mailing address, street address, telephone and telefax number (if any) of the applicant laboratory's authorized technical representative.~~

~~(D) The location(s) (address or legal description) of the laboratory, including county and driving directions.~~

~~(E) Identification of the accreditation type and categories, analytes and/or methods sought.~~

~~(F) The name and address of any owner, stockholder, or officer of the applicant laboratory or any person who receives compensation from the applicant laboratory, who has been or currently is an owner, stockholder, or officer of, or who has received compensation from, any laboratory whose accreditation application has been previously denied or whose accreditation has been previously suspended or revoked in part or in whole by the DEQ.~~

~~(2) **Operational:**~~

~~(A) A listing of equipment to be used for sample analysis, storage and reporting.~~

~~(B) A description of the methods, equipment and instruments used by the applicant laboratory for specific analytes which may be in the form of an SOP manual when required.~~

~~(C) A written laboratory QA plan which includes but is not limited to:~~

~~(i) A listing of laboratory personnel, including the laboratory director, which gives the academic training, experience and analytical and supervisory responsibilities of each; and~~

~~(ii) A narrative description of the methods used for sample receipt, storage and disposal.~~

~~(3) **Proficiency testing:** Results of laboratory's two most recent proficiency testing rounds. Proficiency testing rounds must be at least 30 calendar days apart.~~

~~(4) **Inspection:** A report of a laboratory inspection conducted by the DEQ or a DEQ approved agent within the twelve (12) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site inspection. The inspection report shall verify data submitted in an application, list any deficiencies identified by the inspector and be signed by the inspector.~~

~~(5) **Corrective action plan:** When deficiencies are listed in an inspection report, the applicant shall submit a corrective action plan which specifies deadlines for implementation and completion of the plan. The DEQ may establish conditions, including compliance schedules, for the applicant's corrective action plan.~~

252:300-5-13. Conditions applicable to all accreditations [REVOKED]

~~The following conditions shall apply to all existing certifications and shall be incorporated expressly or by reference into all accreditations issued or renewed after the effective date of this Chapter.~~

~~(1) **Proper operation and maintenance.** The Laboratory shall at all times properly operate and maintain all facilities and equipment installed or used by the Laboratory to achieve compliance with the laboratory accreditation requirements of the Code, rules of the Board as they relate to laboratory accreditation, and the provisions and conditions of this Accreditation. Proper operation and maintenance includes effective performance of operations and adequate funding, operator staffing and training, and the provision of appropriate sample handling equipment. All operational practices and procedures used at this site shall conform to the best possible public health and safety practices.~~

~~(2) **Duty to mitigate.** The Laboratory shall take all reasonable steps to minimize or correct any adverse impact on the environment and the public health resulting from noncompliance with this Accreditation and to minimize or correct any adverse impact on the environment arising from its analytical activities.~~

~~(3) **Duty to provide information.** The Laboratory shall furnish to the DEQ, within a time specified, any information which the DEQ may request to determine:~~

~~(A) whether cause exists for amending, suspending, or revoking this Accreditation;~~

~~(B) compliance with this Accreditation; or~~

~~(C) whether an accreditation should be issued or renewed.~~

~~(4) **Records.** The Laboratory shall keep its Accreditation, the application on which it is based, and copies of all records required to be kept by OAC 252:300 and the provisions of its Accreditation on file at the accredited facility.~~

~~(5) **Reporting requirements.** The Laboratory shall give advance notice to the DEQ as soon as possible of any planned physical alterations or additions to the accredited facility or of any planned changes in the accredited facility or activity which may result in noncompliance with accreditation requirements.~~

~~(6) **Signatory requirement.** All applications, reports, or information submitted to the DEQ shall be signed by the applicant.~~

~~(7) **Consent to conditions.** Commencing analytical activities as a accredited laboratory under DEQ Accreditation shall constitute consent to all conditions of Accreditation.~~

~~(8) **Transfer of accreditation.** Accreditation is not transferrable. An accredited laboratory may apply to amend ownership or change names, provided that facilities, equipment, personnel and all other conditions of accreditation remain unchanged.~~

~~(9) **Duty to apply.** To maintain its accredited status, the Laboratory shall make timely application for annual renewal of Accreditation.~~

~~(10) **Severability.** The provisions of Accreditation are severable, and if any of its provisions or the application of its provisions are held invalid, the application of such provisions to other circumstances and the remaining provisions of the Accreditation shall not be affected thereby.~~

252:300-5-15. Amendments to accreditations [REVOKED]

~~(a) **Changes to be reported.** Changes in laboratory name, ownership, form of ownership, location, and any changes, including personnel and/or equipment changes, which may significantly affect the performance of analyses for which the laboratory was originally accredited, shall be reported in writing to the DEQ within 30 days of occurrence.~~

~~(b) **Other.** With notice to the affected accredited laboratory, the DEQ may amend an accreditation for cause.~~

~~(c) **Recording fee.** A laboratory with an ownership, name or location change shall be assessed a fee for recording and filing the change(s) as set forth in OAC 252:300-5-5.~~

252:300-5-18. Duty to give notice [REVOKED]

~~When an accredited laboratory becomes aware that it failed to submit any material fact or submitted incorrect information in an application or in any report to the DEQ or to a client for submission to the DEQ, it shall promptly submit correct facts or information to the DEQ and/or the client. Failure to make a prompt submission may result in an enforcement action.~~

252:300-5-19. Revocation, suspension or refusal to renew [REVOKED]

~~(a) **Additional Grounds.** In addition to the grounds listed in 27A O.S. §2-3-501 *et seq.*, § 2-4-305(A) and OAC 252:4-7-15, the DEQ may suspend, revoke or refuse to renew in part or in whole the accreditation of any laboratory for the following grounds:~~

~~(1) consistent and significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;~~

~~(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the reliance of others on such misrepresentation;~~

~~(3) failure to correct deficiencies, comply with a corrective action plan, or take other action required by the DEQ pursuant to these rules;~~

~~(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;~~

~~(5) collaboration with other laboratories on results before proficiency testing sample results are submitted to the required agency;~~

~~(6) failure to participate or produce acceptable results in required proficiency testing;~~

~~(7) failure to cooperate with or allow on-site laboratory evaluations, inspections, or access to records;~~

~~(8) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes;~~

~~(9) failure to notify or submit reports to the DEQ as required by this Chapter; or~~

~~(10) any other violation, action or inaction presenting good cause for such action.~~

~~(b) **Notice.** The DEQ may require an accredited laboratory to give written notice to its clients of the suspension or revocation of any part of its accreditation.~~

~~(c) **Procedure.** Proceedings for accreditation revocation, suspension or reinstatement shall be conducted in accordance with 27A O.S. § 2-3-501 *et seq.*, and OAC 252:4, DEQ Rules of Practice and Procedure.~~

SUBCHAPTER 7. GENERAL OPERATIONS [REVOKED]

252:300-7-2. Posting of accreditation [REVOKED]

~~Each accredited participant in the program shall maintain on file a list of the analytes for which it isaccredited and shall provide a copy of such list upon request.~~

252:300-7-3. Personnel and subcontractors [REVOKED]

~~(a) **All accredited laboratories.** All accredited laboratories shall have at least one full-time on-site employee who has laboratory experience in his area of analysis or works under the direct supervision of an individual who has laboratory experience.~~

~~(b) **Drinking water accredited laboratories.** In addition, personnel of drinking water accredited laboratories shall conform with the requirements established by the EPA for laboratories which analyze drinking water. Refer to the Manual for the Certification of Laboratories Analyzing Drinking Water, 5th Edition, January 2005.~~

~~(c) **Water quality accredited laboratories.** A general water quality accredited laboratory shall have an employee or supervisor qualified as follows:~~

~~(1) **Commercial laboratory.** At least one employee or supervisor in a commercial laboratory shall have an earned bachelors degree in chemistry or a closely related field from an accredited institution of higher education, plus two years of analytical experience in an environmental laboratory.~~

~~(2) **Industrial laboratory, including a branch office or substation of a company's laboratory.** An employee or supervisor of an industrial laboratory, including a branch office or substation of a company's laboratory, must meet the educational requirements for a commercial laboratory unless the employee or supervisor is and has been performing environmental testing for not less than two (2) consecutive years and demonstrates satisfactory participation on performance evaluation samples.~~

~~(d) **Subcontractors.** A laboratory may subcontract with another laboratory (subcontractor) for analysis of analytes. Such subcontracting shall be only for those analytes for which the subcontractor is DEQ accredited.~~

252:300-7-6. Facilities, equipment and supplies [REVOKED]

~~(a) **All accredited laboratories.** All equipment, reagents, glassware and supplies necessary for the proper performance of laboratory analyses shall be on hand or readily available on the premises for analytes certified or analytes listed in an application for accreditation. Equipment shall be in good working order and properly maintained and shall consist of, at a minimum, the apparatus and supplies for which the laboratory is accredited. Facilities shall have a sink with hot and cold running water, electricity, a source of distilled and/or deionized water, proper laboratory waste disposal procedures, and other features/equipment necessary to properly perform approved EPA analytical methodologies. Facilities may be physically located apart in separate buildings if the sites are within one (1) mile of each other and under the same direct management.~~

~~(b) **Drinking water accredited laboratories.** In addition to the general facilities, equipment and supply requirements, equipment required of a drinking water accredited laboratory shall include the apparatus and supplies listed by EPA or the DEQ or identified by the EPA for laboratories which analyze drinking water.~~

252:300-7-7. On-site inspections [REVOKED]

~~(a) **Inspections.** Inspections may be unannounced.~~

~~(b) **On-site requirements.** During an inspection the DEQ may require on-site analyses of proficiency test samples by laboratory personnel.~~

~~(c) **Corrective action plan.** Following the inspection the DEQ will provide the laboratory with a copy of the inspection report. The laboratory will be afforded a designated time period in which to correct any listed deficiencies. The DEQ may require a laboratory to develop and implement a Corrective Action Plan (CAP).~~

~~(d) **Out-of-state laboratories.** Out-of-state laboratories already in the program may be required to have an on-site inspection performed by a DEQ approved agent. The laboratory shall be solely responsible for costs associated with the inspection, if any. The inspection report shall be submitted to the DEQ along with a Corrective Action Plan (CAP) if needed.~~

252:300-7-9. Recordkeeping and reporting [REVOKED]

~~(a) The Laboratory shall keep the following records on file in its accredited facility:~~

~~(1) Accreditation and the application on which it is based;~~

~~(2) copies of all records and documentation required to be kept by this Chapter;~~

~~(3) repair and maintenance records;~~

~~(4) reports filed with the DEQ or submitted to clients for filing with the DEQ;~~

~~(5) equipment changes, additions or malfunctions; and~~

~~(6) QA/QC plans and reports.~~

~~(b) Any data report given to a customer by an accredited laboratory shall identify:~~

~~(1) the parameters for which the laboratory is DEQ-accredited;~~

~~(2) the class of DEQ issued accreditation of eachanalyte; and~~

~~(3) which analytes were subcontracted out for analysis and the subcontracting laboratory's DEQ issued accreditation number for each of the subcontracted analytes.~~

SUBCHAPTER 15. PROFICIENCY TESTING [REVOKED]

252:300-15-1. Applicability [REVOKED]

~~The requirements of this subchapter shall apply to proficiency testing for drinking water accredited laboratories and general water quality accredited laboratories.~~

252:300-15-2. Participation required [REVOKED]

~~A laboratory must participate in two single-blind, single-concentration, regularly scheduled Proficiency Testing (PT) studies per calendar year for each analyte in each class of accreditation for which it seeks accreditation or renewal of accreditation. PT samples must be provided by a National Environmental Laboratory Accreditation Program (NELAP) Approved PT Provider and shall conform to all applicable National Environmental Laboratory Accreditation Conference (NELAC) standards.~~

252:300-15-3. PT sample treatment [REVOKED]

~~Samples shall be analyzed and the results returned to the PT study provider no later than 45 calendar days from the scheduled study shipment date. The laboratory shall ensure that all PT samples are handled, *i.e.*, managed, analyzed and reported, in the same manner as actual environmental samples utilizing the same staff, methods as used for routine analysis of that analyte, procedures, equipment, facilities, and frequency of analysis.~~

252:300-15-4. Initial accreditation [REVOKED]

~~To gain initial or interim accreditation, a laboratory shall successfully analyze two consecutive proficiency testing (PT) rounds. Proficiency testing (PT) rounds must have been performed within the last twelve (12) months and at least thirty (30) calendar days apart.~~

252:300-15-5. General requirements [REVOKED]

~~(a) Laboratories seeking to renew accreditation must successfully analyze vendor supplied, regularly scheduled proficiency testing samples approximately six (6) months apart in each calendar year. Failure to meet the semiannual schedule shall be regarded as a failed study on the last day of the seventh (7th) month.~~

~~(b) Laboratories shall successfully analyze at least two (2) PT studies within the most recent three rounds attempted (2 of 3) prior to renewal. Laboratories may analyze additional or supplemental studies; however, such studies must be reported to the DEQ.~~

~~(c) General water quality proficiency testing samples must be Water Pollution (WP) type testing samples.~~

~~(d) Drinking water proficiency testing samples must be Water Supply (WS) type testing samples.~~

~~(e) Petroleum hydrocarbon proficiency testing samples must include benzene, toluene, ethylbenzene and xylene (BTEX) and Total Petroleum Hydrocarbons (TPH). Both soil and water matrices must be analyzed if both soil and water samples are to be accepted by the laboratory.~~

252:300-15-6. Cost responsibility [REVOKED]

~~Laboratories shall bear the cost of any subscription to a proficiency testing program required by the DEQ. The DEQ shall not be charged a fee for the analysis of any proficiency testing samples.~~

252:300-15-7. Alternate program [REVOKED]

~~The DEQ may designate an alternate proficiency testing program if it determines such designation is appropriate.~~

252:300-15-8. DEQ PT samples [REVOKED]

~~As part of a laboratory's proficiency testing, the DEQ may also submit blind audit samples to an accredited laboratory.~~

252:300-15-9. Restrictions on exchanging information [REVOKED]

~~A laboratory shall not attempt to obtain the prepared value of any PT sample from its PT Provider prior to the conclusion of the PT study~~.

252:300-15-10. Maintenance of PT records [REVOKED]

~~The laboratory shall maintain copies of all written, printed and electronic records, including but not limited to bench sheets, raw data, instrument strip charts or printouts, data calculations, and data reports, resulting from the analysis of any PT sample for a minimum of five (5) years. The records shall include a copy of the PT study report forms used by the laboratory to record PT results. All of these laboratory records shall be made readily available during on site inspections of the laboratory.~~

252:300-15-11. Evaluation of PT results [REVOKED]

~~PT study providers shall evaluate results from all PT studies using NELAC mandated acceptance criteria. Each result shall be scored on an acceptable/not acceptable basis.~~

252:300-15-12. PT report [REVOKED]

~~The PT study provider shall provide the participant laboratories and the DEQ a report showing the laboratory's DEQ identification number and EPA identification number, prepared value, the acceptance range, and the acceptable/not acceptable status for each analyte reported by the laboratory and any other information the DEQ deems necessary for accreditation purposes. The report and all associated data shall also be made available in electronic format as specified by the DEQ. The report shall be submitted electronically or mailed no later than twenty-one (21) calendar days from the study closing date.~~

252:300-15-14. PT report deadline [REVOKED]

~~Laboratories shall ensure that the PT provider has submitted all pertinent PT reports to the DEQ by 4:30 p.m. on or before July 15 of each year. Laboratories whose reports are postmarked or received after July 15 will not be considered for accreditation renewal on September 1.~~

252:300-15-15. PT criteria for laboratory accreditation [REVOKED]

~~The following criteria apply individually to each analyte in each class of accreditation as defined by the laboratory seeking accreditation in its application:~~

~~(1) Results of the PT study shall be considered successfully analyzed when the results are "acceptable" and are within the acceptable limits established and published by the PT Provider.~~

~~(2) Successfully analyzed shall also mean an aggregate passing score of ninety percent (90%) for microbiological PT testing studies. No partial credit will be given;~~

~~(3) The DEQ shall consider PT results along with the other elements of these rules when determining a laboratory's accreditation status;~~

~~(4) For initial accreditation or supplemental testing, the studies must be at least thirty (30) calendar days apart.~~

252:300-15-16. Failure to perform [REVOKED]

~~The DEQ shall not renew accreditation for a failed or omitted analyte or category of analytes for a laboratory which does not meet the requirements of this subchapter. Once accreditation for an analyte or a category of analytes has been lost, the procedures for initial or interim accreditation shall apply.~~

252:300-15-17. Analyte absence [REVOKED]

~~(a) **Generally.** If a PT sample is not given for a particular analyte for which a laboratory is requesting accreditation, accreditation for the analyte may be obtained by qualifying for accreditation for the entire category in which the analyte is found. To be eligible for accreditation in the entire category, the laboratory shall pass seventy-five percent (75%) of all PT available analytes within the category. If a laboratory completely fails an individual analyte and still receives a 75% passing rate, the laboratory will not be granted accreditation for that particular analyte but will be accredited for the rest of the category.~~

~~(b) **Exception.** Laboratories which have or are pursuing accreditation for the Basic Environmental Category are not subject to subsection (a) of this section.~~

252:300-15-18. Supplemental studies [REVOKED]

~~A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. Additional studies are not distinguished from the routinely scheduled studies. They are counted and scored the same way and must be at least thirty (30) calendar days apart.~~

252:300-15-19. Corrective action [REVOKED]

~~When a laboratory fails a study, in part or in whole, it shall determine the cause for the failure and take any necessary corrective action. The laboratory shall then document both the investigation and the action(s) in a corrective action report (CAP). The CAP shall be submitted to the DEQ within forty-five (45) days of PT study report issuance.~~

SUBCHAPTER 17. QUALITY ASSURANCE/QUALITY CONTROL [REVOKED]

PART 1. QUALITY ASSURANCE/QUALITY CONTROL GENERAL CRITERIA [REVOKED]

252:300-17-1. Quality Assurance/Quality Control (QA/QC) Plan [REVOKED]

~~(a) Every accredited laboratory shall maintain a written QA plan and implement it into a QA/QC program to ensure that all routinely generated analytical data are scientifically valid and defensible and are of known and acceptable precision and accuracy.~~

~~(b) The QA plan shall include or make reference to the supporting procedures including technical procedures, and shall~~

~~outline the structure of the documentation used in the quality system.~~

~~(c) The QA plan and related quality documentation shall state the laboratory's policies and operational procedures established in order to meet the requirements of this rule.~~

~~(d) The QA plan shall list the following on the title page:~~

~~(1) a document title;~~

~~(2) the laboratory's full name and address;~~

~~(3) the names, addresses (if different from paragraph 2), and telephone numbers of all individuals responsible for the laboratory;~~

~~(4) the name of the quality manager (however titled);~~

~~(5) the identification of all major organizational units which are to be covered by this QA plan; and~~

~~(6) the effective date of the version.~~

~~(e) The QA plan and related quality documentation shall also contain:~~

~~(1) a quality policy statement, including objectives and commitments, by top management;~~

~~(2) the organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;~~

~~(3) the relationship between management, technical operations, support services and the quality system;~~

~~(4) procedures to ensure that all records required are retained, as well as~~

~~(5) procedures for control and maintenance of documentation through a document control system which ensures that all standard operating procedures (SOPs), manuals, or documents clearly indicate the time period during which the procedure or document was in force;~~

~~(6) job descriptions of key staff and reference to the job descriptions of other staff;~~

~~(7) identification of the laboratory's approved signatories; at a minimum, the title page of the QA plan must have the signed and dated concurrence, (with appropriate titles) of all responsible parties including the quality manager(s), technical director(s), and the agent who is in charge of all laboratory activities such as the laboratory director or laboratory manager;~~

~~(8) the laboratory's procedures for achieving traceability of measurements;~~

~~(9) a list of all test methods under which the laboratory performs its accredited testing;~~

~~(10) mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work;~~

~~(11) reference to the calibration and/or verification test procedures used;~~

~~(12) procedures for handling submitted samples;~~

~~(13) reference to the major equipment and reference measurement standards used as well as the facilities and services used by the laboratory in conducting tests;~~

~~(14) reference to procedures for calibration, verification and maintenance of equipment;~~

~~(15) reference to verification practices which may include interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;~~

~~(16) procedures to be followed for feedback and corrective action whenever testing discrepancies are detected or departures from documented policies and procedures occur;~~

~~(17) the laboratory management arrangements for exceptional departures from documented policies and procedures or from standard specifications;~~

~~(18) procedures for dealing with complaints;~~

~~(19) procedures for protecting confidentiality (including national security concerns) and proprietary rights;~~

~~(20) procedures for audits and data review;~~

~~(21) processes/procedures for establishing that personnel are adequately experienced in the duties they are expected to carry out and are receiving any needed training;~~

~~(22) reference to procedures for reporting analytical results; and~~

~~(23) a Table of Contents, and applicable lists of references and glossaries, and appendices.~~

252:300-17-2. All accredited laboratories [REVOKED]

~~Each accredited laboratory shall maintain a QA/QC program to demonstrate the precision and accuracy of analyses. The program shall be in place before accreditation is granted. For a minimum of three (3) years, each laboratory shall maintain records of all analyte accredited analyses, including but not limited to those necessary for a QA/QC program. Laboratories shall perform individual quality control for every analyte for which the laboratory is accredited or is applying for accreditation.~~

252:300-17-3. Drinking water accredited laboratories [REVOKED]

~~A laboratory accredited in drinking water classifications shall conform to the requirements established by the EPA for laboratories which analyze drinking water. Refer to the Manual for the Certification of Laboratories Analyzing Drinking Water, 5th Edition, January 2005.~~

252:300-17-4. General water quality accredited laboratories [REVOKED]

~~QC requirements specified by approved methodologies shall be practiced in the general water quality laboratory. The laboratory shall establish control limits for all types of QC samples. If approved methodologies do not specify minimum laboratory QA/QC requirements, the following frequencies shall apply:~~

~~(1) **Inorganic/classic chemistry.** For inorganic/classic chemistry:~~

~~(A) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested. The lab should repeat all samples tested after the last acceptable continuing calibration check if the continuing calibration check standard is outside " 10%.~~

~~(B) One blank per twenty samples tested (or batch).~~

~~(C) If applicable, one spike per twenty samples tested (or at least once per month, whichever is the greater frequency,).~~

~~(D) One duplicate or spiked duplicate per twenty samples tested or at least once per month, whichever is the greater frequency.~~

~~(2) **Organics.** For organics (provided that where possible, surrogates shall be used for all samples):~~

~~(A) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested inside established control limits; if any are outside the limits, repeat all samples tested after the last acceptable continuing calibration check.~~

~~(B) One reagent blank (carried through preparation) per twenty samples tested (or per batch).~~

~~(C) One matrix spike per twenty samples tested (or per batch).~~

~~(D) One matrix spike duplicate per twenty samples tested (or per batch).~~

~~(3) **QA/QC documentation.** Documentation shall be kept to insure quality control has been maintained and that proper methodologies have been used for the preparation and analysis of samples. All documentation shall be maintained and be readily available for reference or inspection. The following QC documentation shall be maintained in each work area:~~

~~(A) **Bench records.** Data associated with analysis, date, time, analyst, method, amounts, calculations, sample matrix, sample identification.~~

~~(B) **Calibration data.** Calibration curve or coefficient of the linear equation which describes the calibration curve; concentration/response data (or relative response data) for standards; percent recovery of an initial calibration check standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with this curve.~~

~~(C) **Extraction/digestion records.** Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.~~

~~(D) **Surrogate records.** Amount of surrogate spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification.~~

~~(E) **Maintenance logs.** By instrument, dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting instrument performance.~~

~~(F) **QC charts.** Quality control procedures for monitoring the validity of the environmental testing. The resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have detailed written protocols in place for positive and negative controls, variability, repeatability, and accuracy of the methods.~~

~~(G) **Sample login.** Procedures plan for sample login, unique sample identification, date, time, source of sample (including name, location and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.~~

~~(H) **Spike/duplicate/spike duplicate data.** Date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and makeup and concentration in the spiking solution.~~

~~(I) **Temperature logs.** By oven, incubator, freezer, and or refrigerator, daily (during periods of use) temperature readings and any temperature excursions with corrective action, recorded in a bound logbook.~~

~~(J) **Weight logs.** By balance, checked with the appropriate range of class S weights weekly (during periods of use) before use and results recorded in a bound log book. Each balance serviced and calibrated at least once per year by an accredited technician.~~

PART 2. STANDARD OPERATING PROCEDURES AND METHODS MANUAL [REVOKED]

252:300-17-21. General [REVOKED]

~~(a) Laboratories must comply with the rules in this Part within two years from the effective date thereof unless a waiver is granted by the DEQ for good cause shown.~~

~~(b) The laboratory shall use appropriate methods and procedures for all environmental tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of samples, and, where appropriate, an estimation of the measurement uncertainty as well as statistical techniques for analysis of environmental test and/or calibration data.~~

~~(c) The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of samples where the absence of such instructions could jeopardize the results of environmental tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel. Deviation from environmental test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the client.~~

252:300-17-22. Standard Operating Procedures (SOPs) [REVOKED]

~~(a) Laboratories shall maintain Standard Operating Procedures (SOPs) that accurately reflect all phases of current laboratory activities such as assessing data integrity, corrective actions, handling customer complaints, and all test methods.~~

~~(b) SOPs may be equipment manuals provided by the manufacturer or internally written documents. Test methods may be copies of published methods as long as any changes or selected options in the methods are documented and included in the methods manual.~~

~~(c) Copies of all SOPs shall be accessible to all personnel.~~
~~(d) SOPs shall be well organized and shall clearly indicate the effective date of the document, the revision number and the signature(s) of the approving authority.~~

252:300-17-23. Laboratory Method Manual(s) [REVOKED]

~~(a) The laboratory shall have and maintain an in-house methods manual(s) for each accredited analyte or test method.~~
~~(b) This manual may consist of copies of published or referenced test methods or SOPs that have been written by the laboratory. In cases where modifications to the published method have been made by the laboratory or where the referenced test method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described. Each test method shall include or reference the following, where applicable:~~

~~(1) Identification of the test method;~~
~~(2) Applicable matrix or matrices;~~
~~(3) Detection limit;~~
~~(4) Scope and application, including components to be analyzed;~~
~~(5) Summary of the test method;~~
~~(6) Definitions;~~
~~(7) Interferences;~~
~~(8) Safety;~~
~~(9) Equipment and supplies;~~
~~(10) Reagents and standards;~~
~~(11) Sample collection, preservation, shipment and storage;~~
~~(12) Quality control;~~
~~(13) Calibration and standardization;~~
~~(14) Procedure;~~
~~(15) Calculations;~~
~~(16) Method performance;~~
~~(17) Pollution prevention;~~
~~(18) Data assessment and acceptance criteria for quality control measures;~~
~~(19) Corrective actions for out-of-control data;~~
~~(20) Contingencies for handling out-of-control or unacceptable data;~~
~~(21) Waste management;~~
~~(22) References; and~~
~~(23) Any tables, diagrams, flowcharts and validation data.~~

252:300-17-24. Selection of methods [REVOKED]

~~The laboratory shall use methods for environmental testing and/or calibration, including methods for sampling, which meet the needs of the client and which are appropriate for the environmental tests and/or calibrations it undertakes.~~

252:300-17-25. Sources of methods [REVOKED]

~~(a) Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.~~
~~(b) When the use of specified methods for a sample analysis are mandated or requested, only those methods shall be used.~~
~~(c) When the client does not specify the method to be used or where methods are employed that are not required, as in the Performance Based Measurement System approach, the methods shall be fully documented and validated and be available to the client and other recipients of the relevant reports. The laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The client shall be informed as to the method chosen.~~
~~(d) The laboratory shall inform the client when the method proposed by the client is considered to be inappropriate or out of date.~~

SUBCHAPTER 19. CLASSIFICATIONS [REVOKED]

252:300-19-1. Classifications [REVOKED]

~~(a) **Drinking water.** A drinking water quality accreditation is available to laboratories for the performance of compliance testing for public water supplies.~~
~~(b) **General water quality.** A general water quality accreditation is available to laboratories for the performance of analysis of water, wastewater, sludge, groundwater or petroleum hydrocarbons.~~

252:300-19-2. Accreditation requirements [REVOKED]

~~(a) **General.** Applicant laboratories shall demonstrate capability of meeting and maintaining compliance with the application requirements, the general operation requirements and accreditation requirements of this Chapter.~~
~~(b) **Specific.** To gain initial or interim accreditation, a laboratory shall successfully analyze two proficiency testing rounds. Proficiency testing rounds must have been performed within the last twelve (12) months and at least thirty (30) calendar days apart.~~

~~(1) **Drinking water laboratories.** Drinking water laboratories shall analyze water supply (WS) PT samples.~~
~~(2) **Water quality laboratories.** Water quality laboratories shall analyze water pollution (WP) PT samples. For each method used, petroleum hydrocarbon laboratories shall analyze BTEX and TPH in soil and or water matrices.~~

252:300-19-3. Methods [REVOKED]

~~(a) Laboratories accredited by the DEQ shall use EPA approved methodologies, or methods specifically approved by~~

~~the DEQ. As the EPA or the Board promulgates new rules, methodologies, or quality assurance/quality control requirements, accredited laboratories shall incorporate these procedures for all accredited analytes. Drinking water sampling and analytical requirements for inorganic chemicals are found at 40 CFR 141.23 and for organic chemicals at 40 CFR 141.24 (July, 2002), which are hereby incorporated by reference. Sampling and analytical requirements for sludge are found at 40 CFR Part 503 (2005), which are hereby incorporated by reference.~~

~~(b) Approved methodologies for general water quality laboratories are listed in the following:~~

~~(1) "Test Methods for Evaluating Solid Waste, November 1986, Laboratory Manual Physical/Chemical Methods," SW-846, 3rd edition, Volume 1A through 1C, as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996) and IIIA (April 1998), hereinafter referred to as SW-846.~~

~~(2) "Guidelines Establishing Test Procedures for the Analysis of Pollutants", 40 CFR Part 136 and Appendices A, B,and C thereof, Volume dated July 1, 2002.~~

~~(3) "Identification and Listing of Hazardous Waste" 40 CFR Part 261 and Appendices I through X thereof inclusive, Volume dated July 1, 2002.~~

~~(4) "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms," 5th Edition, EPA-821-R-02-012 (October 2002).~~

~~(5) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms," 4th Edition, EPA-821-R-02-013 (October 2002).~~

~~(6) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," 3rd Edition, EPA-821-R-02-014 (October 2002).~~

~~(7) "Standards Methods for the Examination of Water and Wastewater", (American Public Health Association [APHA] 1992), (APHA 1995), and (APHA 1998).~~

~~(8) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC_6 to nC_{35}).~~

~~(9) "Aromatic and Halogenated Volatiles by Gas Chromatography" EPA 8021B.~~

~~(10) Oklahoma GRO 8020/8015(Modified).~~

~~(11) Oklahoma DRO 8000/8100 (Modified).~~

~~(12) Testing Method ASTM E 1193-97 conducting Daphnia magna Life-Cycle Toxicity Test.~~

252:300-19-4. Additional methods [REVOKED]

~~Additional approved methodologies for general water quality laboratories are listed as follows:~~

~~(1) ASTM E 2455-06 Conducting Laboratory Toxicity Test with Freshwater Mussels;~~

~~(2) Determination of Perchlorate in Soils, Test Methods for Evaluating Solid Waste, Draft Update IV-B, Laboratory Manual Physical/Chemical Methods:~~

~~(A) Methods 9058, Ion Chromatography with Chemical Suppression;~~

~~(B) Method 6850, Ion Chromatography/Mass Spectrometry;~~

~~(C) Method 6860, Liquid Chromatography/Mass Spectrometry~~

~~(3) Determination of Perchlorate in Water:~~

~~(A) Method 314.0, by Ion Chromatography;~~

~~(B) Method 314.1, Using Inline Column Concentration/ Matrix Elimination Ion Chromatography with Suppressed Conductivity Detection;~~

~~(C) Method 331.0 Rev. 1.0, Determination of Perchlorate in Drinking Water by Liquid Chromatography Electrospray Ionization Mass Spectrometry;~~

~~(D) Method 332.0, Ion Chromatography with Suppressed Conductivity and Electrospray Ionization Mass Spectrometry.~~

SUBCHAPTER 21. CATEGORIES [REVOKED]

252:300-21-1. Drinking water certification [REVOKED]

~~A laboratory may be accredited in a drinking water classification for metals, general chemistry, microbiology, asbestos, non-volatile synthetic organic chemicals (SOCs), volatile organic compounds (VOCs) and/or radionuclides. Analytes for each category are specified in Appendix A.~~

252:300-21-2. General water quality certification [REVOKED]

~~(a) A laboratory may be accredited in a general water quality classification for metals, nutrients, demands, extractable organics, general chemistry I and/or II, microbiology, pesticides -herbicides- PCBs, purgeable organics, radiological, bioassay, hazardous waste characterization, and/or basic environmental laboratory. Analytes for each category are specified in Appendix B.~~

~~(b) A laboratory may also be accredited in a general water quality classification for perchlorate and/or toxicity testing in freshwater mussels as specified in Appendix B.~~

252:300-21-3. Basic environmental laboratory certification [REVOKED]

~~A laboratory seeking accreditation under the basic environmental laboratory category may choose any or all of the analytes listed in Appendix C, and in addition, one other major category of certification in Appendix B or D. If the laboratory desires to be accredited in more than one other major category, the laboratory is no longer considered a basic environmental laboratory and shall pursue the general water quality classification specifying the desired categories.~~

252:300-21-4. Petroleum hydrocarbons certification [REVOKED]

~~A laboratory seeking accreditation under the petroleum hydrocarbon certification category may choose any or all of the analytes listed in Appendix D.~~

APPENDIX A. ANALYTES FOR DRINKING WATER LABORATORY CATEGORIES [REVOKED]

Analytes considered for drinking water laboratory accreditation include the following:

Category I - Metals.

(A) Antimony
(B) Arsenic
(C) Barium
(D) Beryllium
(E) Cadmium
(F) Calcium
(G) Chromium
(H) Copper
(I) Lead
(J) Mercury
(K) Nickel
(L) Selenium
(M) Silica, filtered
(N) Sodium
(O) Thallium

Category II - General Chemistry.

(A) Alkalinity
(B) Conductivity
(C) Cyanide
(D) Fluoride
(E) pH
(F) Residual Disinfectant - Chlorine
(G) Residual Disinfectant - Ozone
(H) Residual Disinfectant - Chlorine Dioxide
(I) Temperature
(J) Turbidity
(K) Nitrate-N
(L) Nitrite-N
(M) O-Phosphate
(N) Total organic carbon (TOC)
(O) Bromate
(P) Clorite

Category III - Microbiology.

(A) Total coliform bacteria
(B) Fecal coliform bacteria

Category IV - Asbestos.

Category V - Non-Volatile Synthetic Organic Chemicals (SOCs).

(A) Adipates
(B) Alachlor
(C) Aldicarb
(D) Aldicarb Sulfoxide
(E) Aldicarb sulfone
(F) Atrazine
(G) Carbofuran
(H) Chlordane
(I) Dalapon
(J) Dibromochloropropane (DBCP)
(K) 2,4-D
(L) Dinoseb
(M) Diquat
(N) Endothall
(O) Endrin
(P) Ethylene dibromide (EDB)
(Q) Glyphosate
(R) Heptachlor
(S) Heptachlor epoxide
(T) Hexachlorobenzene
(U) Hexachlorocyclopentadiene
(V) Lindane
(W) Methoxychlor
(X) Oxamyl (Vydate)
(Y) PAHs
(Z) Pentachlorophenol
(AA) Phthalates
(BB) Picloram
(CC) Polychlorinated biphenyls (PCBs)- Screen
(DD) Simazine
(EE) 2,3,7,8 TCDD (Dioxin)
(FF) 2,4,5-TP (Silvex)
(GG) Total Trihalomethanes (TTHM)
(HH) Maximum Trihalomethane Potential (MTP)
(II) Haloacetic acids

Category VI - Volatile Organic Contaminants (VOC).

(A) Benzene
(B) Carbon Tetrachloride
(C) Chlorobenzene
(D) p-Dichlorobenzene
(E) o-Dichlorobenzene
(F) 1,2-Dichloroethane
(G) 1,1-Dichloroethylene
(H) c-1,2-Dichloroethylene
(I) t-1,2-Dichloroethylene
(J) Dichloromethane (Methylene chloride)
(K) 1,2-Dichloropropane

(L) Ethylbenzene
(M) Styrene
(N) Tetrachloroethylene
(O) Toluene
(P) 1,2,4-Trichlorobenzene
(Q) 1,1,1-Trichloroethane
(R) 1,1,2-Trichloroethane
(S) Trichloroethylene
(T) Vinyl chloride
(U) Xylene - Total

Category VII - Radionuclides

(A) Gross alpha
(B) Radium 226/228
(C) Uranium
(D) Gross beta
(E) Tritium
(F) Strontium 90

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [REVOKED]

NOTE TO READER: See "(F) salmonella" in Category VII - Microbiology.

Analytes considered for general water quality laboratory accreditation include the following:

Category I - Metals.

(A) Flame atomic absorption (AA)
(B) Furnace (AA)
(C) Inductively coupled plasma (ICP)
(D) Cold vapor
(E) Hydride
(F) Colorimetric

Category II - Nutrients.

(A) Ammonia-nitrogen
(B) Total Kjeldahl-nitrogen
(C) Nitrate-nitrogen
(D) Nitrate-nitrite-nitrogen
(E) Nitrite-nitrogen
(F) Organic-nitrogen
(G) Orthophosphate phosphorus
(H) Total phosphorus

Category III - Demands.

(A) Five day biochemical oxygen demand
(B) Five day carbonaceous biochemical oxygen demand
(C) Chemical oxygen demand
(D) Total organic carbon

Category IV - Extractable Organics.

(A) Methods by Gas Chromatography (GC) and Liquid Chromatography (LC) analysis include the following:
(i) EPA method 604 (phenols)
(ii) EPA method 605 (benzidines)
(iii) EPA method 606 (phthalic esters)
(iv) EPA method 607 (nitrosoamines)
(v) EPA method 609 (nitroaromatics and isophorone)
(vi) EPA method 610 - (polynuclear aromatic hydrocarbons)
(vii) GC or LC analysis)
(viii) EPA Method 611 (haloethers)
(ix) EPA method 612 (chlorinated hydrocarbons)
(B) Methods by Gas Chromatography-Mass Spectroscopy (GC-MS)

analysis include the following:
(i) EPA method 613 (dioxin)
(ii) EPA method 625 (base-neutrals and acids)
(iii) EPA method 1625 (semi-volatiles, revision B).

Category V - General Chemistry I.

(A) Acidity
(B) Alkalinity
(C) Bromine
(D) Bromide
(E) Bromates
(F) Calcium
(G) Chloride
(H) Color
(I) Copper
(J) Fluoride
(K) Hardness
(L) Hydrogen ion (pH)
(M) Iron
(N) Magnesium
(O) Manganese
(P) Total residue
(Q) Total dissolved solids (Filterable residue)
(R) Total suspended solids (Non-filterable residue)
(S) Settleable residue
(T) Volatile residue
(U) Sulfate
(V) Nitrate
(W) Turbidity
(X) Zinc

Category VI - General Chemistry II.

(A) Residual chlorine
(B) Total cyanide
(C) Cyanide amenable to chlorination
(D) Oil & grease
(E) Dissolved oxygen
(F) Total phenols
(G) Elemental phosphorus
(H) Dissolved silica
(I) Specific conductance
(J) Sulfide
(K) Sulfite
(L) Surfactants
(M) Total dissolved gases
(N) Hexavalent chromium
(O) Corrosivity-calcium carbonate stability

Category VII - Microbiology.

Specific methods are listed in 40 C.F.R. Part 136, Table 1A.

(A) Fecal coliform bacteria
(B) Fecal coliform bacteria in the presence of chlorine
(C) Total coliform bacteria
(D) Total coliform bacteria in the presence of chlorine
(E) Fecal streptococci
(F) Salmonella

Category VIII - Pesticides - Herbicides - PCB's.

(A) Methods by GC analysis.
(i) Methods 608, 608.1, 608.2, 509A - Organochlorine pesticides
(ii) methods 614, 614.1, 622, 622.1 - Organophosphorus pesticides
(iii) EPA method 617 - Organohalide pesticides and PCB's
(iv) EPA method 618 - Volatile pesticides
(v) EPA method 619 - Triazine
(vi) EPA method 627 - Dinitroaniline
(vii) EPA method 633 - Organonitrogen compounds
(viii) EPA method 645 - Amine and lethane
(ix) Methods 509B, 615 - Chlorinated herbicides
(B) Methods by GC-MS analysis.
(i) EPA method 625 - GC-MS
(ii) EPA method 1625 - GC-MS
(C) Methods by High Performance Liquid Chromatography (HPLC) analysis
(i) EPA method 629 - Cyanazine
(ii) EPA method 631 - Benomyl
(iii) EPA method 632, 632.1 - Carbamates
(iv) EPA method 612 - Biphenyl and o-Phenyl phenol
(v) EPA method 643 - Bentazon
(vi) EPA method 644 - Picloram

Category IX - Purgeable Organics.

(A) Methods by GC analysis
(i) EPA method 601 - Purgeable halocarbon
(ii) EPA method 602 - Purgeable aromatics
(iii) EPA method 603 - Acrolein and acrylonitrile
(B) Methods by GC-MS analysis
(i) EPA method 624 - Purgeable by GC-MS
(ii) EPA method 1624 Revision B - Volatile organics
(iii) EPA method 8260 Revision C - Volatile organics

Category X - Radiological.

(A) Total alpha, including alpha-counting error
(B) Total beta, including beta-counting error
(C) Total radium

(D) Radium-226

Category XI - Bioassay.

(A) Acute - Freshwater organisms
(B) Acute - Saltwater organisms
(C) Chronic - Freshwater organisms
(D) Chronic - Saltwater organisms

Category XII - Hazardous Waste Characterization.

(A) Waste ignitability
(B) Waste corrosivity
(C) Waste reactivity
(D) Toxicity Characteristic Leaching Procedure (TCLP)

APPENDIX B. ANALYTES FOR GENERAL WATER QUALITY LABORATORY CATEGORIES [REVOKED]

Analytes considered for general water quality laboratory accreditation include the following:

Category I - Metals.

(A) Flame atomic absorption (AA)
(B) Furnace (AA)
(C) Inductively coupled plasma (ICP)
(D) Cold vapor
(E) Hydride
(F) Colorimetric

Category II - Nutrients.

(A) Ammonia-nitrogen
(B) Total Kjeldahl-nitrogen
(C) Nitrate-nitrogen
(D) Nitrate-nitrite-nitrogen
(E) Nitrite-nitrogen
(F) Organic-nitrogen
(G) Orthophosphate phosphorus
(H) Total phosphorus

Category III - Demands.

(A) Five day biochemical oxygen demand
(B) Five day carbonaceous biochemical oxygen demand
(C) Chemical oxygen demand
(D) Total organic carbon

Category IV - Extractable Organics.

(A) Methods by Gas Chromatography (GC) and Liquid Chromatography (LC) analysis include the following:
(i) EPA method 604 (phenols)
(ii) EPA method 605 (benzidines)
(iii) EPA method 606 (phthalic esters)
(iv) EPA method 607 (nitrosoamines)
(v) EPA method 609 (nitroaromatics and isophorone)
(vi) EPA method 610 - (polynuclear aromatic hydrocarbons)
(vii) GC or LC analysis)
(viii) EPA Method 611 (haloethers)
(ix) EPA method 612 (chlorinated hydrocarbons)
(B) Methods by Gas Chromatography-Mass Spectroscopy (GC-MS) analysis include the following:
(i) EPA method 613 (dioxin)
(ii) EPA method 625 (base-neutrals and acids)

(iii) EPA method 1625 (semi-volatiles, revision B).

Category V - General Chemistry I.

(A) Acidity
(B) Alkalinity
(C) Bromine
(D) Bromide
(E) Bromates
(F) Calcium
(G) Chloride
(H) Color
(I) Copper
(J) Fluoride
(K) Hardness
(L) Hydrogen ion (pH)
(M) Iron
(N) Magnesium
(O) Manganese
(P) Total residue
(Q) Total dissolved solids (Filterable residue)
(R) Total suspended solids (Non-filterable residue)
(S) Settleable residue
(T) Volatile residue
(U) Sulfate
(V) Nitrate
(W) Turbidity
(X) Zinc

Category VI - General Chemistry II.

(A) Residual chlorine
(B) Total cyanide
(C) Cyanide amenable to chlorination
(D) Oil & grease
(E) Dissolved oxygen
(F) Total phenols
(G) Elemental phosphorus
(H) Dissolved silica
(I) Specific conductance
(J) Sulfide
(K) Sulfite
(L) Surfactants
(M) Total dissolved gases
(N) Hexavalent chromium
(O) Corrosivity-calcium carbonate stability

Category VII - Microbiology.

Specific methods are listed in 40 C.F.R. Part 136, Table 1A.

(A) Fecal coliform bacteria
(B) Fecal coliform bacteria in the presence of chlorine
(C) Total coliform bacteria
(D) Total coliform bacteria in the presence of chlorine
(E) Fecal streptococci
(F) Salmonella

Category VIII - Pesticides - Herbicides - PCB's.

(A) Methods by GC analysis.
(i) Methods 608, 608.1, 608.2, 509A - Organochlorine pesticides
(ii) methods 614, 614.1, 622, 622.1 - Organophosphorus pesticides
(iii) EPA method 617 - Organohalide pesticides and PCB's
(iv) EPA method 618 - Volatile pesticides
(v) EPA method 619 - Triazine
(vi) EPA method 627 - Dinitroaniline
(vii) EPA method 633 - Organonitrogen compounds
(viii) EPA method 645 - Amine and lethane
(ix) Methods 509B, 615 - Chlorinated herbicides
(B) Methods by GC-MS analysis.
(i) EPA method 625 - GC-MS
(ii) EPA method 1625 - GC-MS
(C) Methods by High Performance Liquid Chromatography (HPLC) analysis
(i) EPA method 629 - Cyanazine
(ii) EPA method 631 - Benomyl
(iii) EPA method 632, 632.1 - Carbamates
(iv) EPA method 612 - Biphenyl and o-Phenyl phenol
(v) EPA method 643 - Bentazon
(vi) EPA method 644 - Picloram

Category IX - Purgeable Organics.

(A) Methods by GC analysis
(i) EPA method 601 - Purgeable halocarbon
(ii) EPA method 602 - Purgeable aromatics
(iii) EPA method 603 - Acrolein and acrylonitrile
(B) Methods by GC-MS analysis
(i) EPA method 624 - Purgeable by GC-MS
(ii) EPA method 1624 Revision B - Volatile organics
(iii) EPA method 8260 Revision C - Volatile organics

Category X - Radiological.

(A) Total alpha, including alpha-counting error
(B) Total beta, including beta-counting error
(C) Total radium
(D) Radium-226

Category XI - Bioassay.

(A) Acute - Freshwater organisms
(B) Acute - Saltwater organisms
(C) Chronic - Freshwater organisms
(D) Chronic - Saltwater organisms
(E) Toxicity Testing - Freshwater Mussels

Category XII - Hazardous Waste Characterization.

(A) Waste ignitability
(B) Waste corrosivity
(C) Waste reactivity
(D) Toxicity Characteristic Leaching Procedure (TCLP)

Category XIII - Perchlorate.

Perchlorate

APPENDIX C. ANALYTES FOR BASIC ENVIRONMENTAL LABORATORY CATEGORY [REVOKED]

Analytes considered for basic environmental laboratory accreditation include the following:

(A) Five day biochemical oxygen demand
(B) Carbonaceous biochemical oxygen demand
(C) Chemical oxygen demand
(D) Total organic carbon (TOC)
(E) Total Kjeldahl nitrogen (TKN)
(F) Nitrate - Nitrite Nitrogen
(G) Organic Nitrogen
(H) Ammonia Nitrogen
(I) Total dissolved solids (Filterable Residue)
(J) Total suspended solids (Non-filterable Residue)
(K) Volatile residue
(L) Total phosphorus
(M) Orthophosphate phosphorus (Reactive phosphorus)
(N) Chloride
(O) Fluoride
(P) Oil and grease
(Q) Sulfate
(R) pH
(S) Specific conductance
(T) Dissolved oxygen
(U) Turbidity
(V) Total residual chlorine
(W) Hardness
(X) Alkalinity
(Y) Color
(Z) Fecal coliform
(AA) Total coliform
(BB) Cyanide
(CC) Phenolics
(DD) Copper
(EE) Zinc
(FF) Iron
(GG) Sulfide
(HH) Chromium
(II) Hexavalent chromium

APPENDIX D. ANALYTES FOR PETROLEUM HYDROCARBON LABORATORY CATEGORY [REVOKED]

Analytes considered for petroleum hydrocarbon laboratory accreditation include the following:

(A) Total Petroleum Hydrocarbons
  (1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC_6 to nC_{35})
  (2) Oklahoma GRO 8020/8015 (Modified)
  (3) Oklahoma DRO 8000/8100 (Modified)
(B) BTEX
  (1) EPA 8021B Aromatic and Halogenated Volatiles by Gas Chromatography; or
  (2) Oklahoma GRO 8020/8015 (Modified)
(C) Flash Point
  (1) Appendix B, Category 7, Hazardous Waste Characteristics
(D) MTBE
  (1) Gas Chromatography/mass spectrometry (624/8260)

[OAR Docket #08-1085; filed 5-30-08]

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

[OAR Docket #08-1086]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
252:301. Laboratory Accreditation [NEW]
AUTHORITY:
Environmental Quality Board and Laboratory Services Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-4-101 *et seq.*
DATES:
Comment period:
December 17, 2007, through January 23, 2008
Public hearing:
January 30, 2008, Laboratory Services Advisory Council
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Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
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March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act: National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations : Analysis and Sampling Procedures", also known as the "methods update rule", 72 Federal Register 47, March 12, 2007, 40 CFR 136 and 40 CFR 141 bound-volumes dated July 2007;
(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual; and
(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants, Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge", 72 Federal Register 57, March 26, 2007, 40 CFR Part 136 and 40 CFR Part 503 bound-volumes dated July 2007.
Incorporating rule:
252:301-9-37
Availability:
The federal rules incorporated above are readily available to the public for examination online at www.epa.gov/lawsregs/index.html or www.access.gpo.gov/nara/cfr/waisidx and from the contact person, David Caldwell, at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday B Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.
ANALYSIS:
This proposed new chapter is a total rewrite of Title 252, Chapter 300 which was originally promulgated in 2002. This process will streamline a new, more readable chapter. Subchapter 3 had contained definitions and related rules. The rules in this subchapter were moved to General Provisions in Subchapter 1. Subchapter 5 contained rules re: the accreditation process, how to file an application, enforcement and inspection, etc., and was not well

organized due to having been amended several times over the years. This subchapter was renumbered to Subchapter 3, split into parts, and substantially reorganized. Subchapter 7 became Subchapter 5 with only minor changes. Subchapter 15 became Subchapter 7, with minor changes. Subchapter 17 became Subchapter 9 with minor changes. Appendices containing analytes were revoked and not replaced.

AGuidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act: National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations : Analysis and Sampling Procedures@, also known as the Amethods update rule@, 72 Federal Register 47, March 12, 2007, 40 CFR 136 and 40 CFR 141 bound-volumes dated July 2007 are proposed for incorporation by reference. In the predecessor Chapter 300, "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical /Chemical Methods," SW-846 Manual and "Guidelines Establishing Test Procedures for the Analysis of Pollutants, Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge", 72 Federal Register 57, March 26, 2007, 40 CFR Part 136 and 40 CFR Part 503 bound-volumes dated July 2007 were incorporated by reference and are again proposed for incorporation by reference into the new Chapter 301.

The laboratory accreditation program is supported solely by fees, which have not been adjusted since 1994. Program revenues no longer support the number of staff needed to properly administer the program and provide services to accredited laboratories. This proposal would increase fees by 34.2 % based upon increases in the consumer price index (CPI) over that time period and establish a process for annual adjustment of the fees based upon changes in the CPI.

The DEQ has functioned the last few years with only one laboratory accreditation inspector but we are unable to provide timely and effective inspections at this staff level. The program is also extremely vulnerable to failure should that one individual leave for any reason. A second staff member will allow us to provide better service and also provide greater stability to the program in the future.

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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:301-1-1. Purpose, basis, authority, applicability

The rules in this Chapter provide standards for accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater. This Chapter was promulgated and adopted pursuant to the Oklahoma Environmental Quality Code (Code), 27A O.S. § 2-4-101 *et seq.*, and shall apply to all laboratories certified or applying to be accredited by the Department of Environmental Quality.

252:301-1-2. Accreditation exception

Operational testing analyses for municipal wastewater treatment systems and water supply systems may be submitted to the DEQ by an unaccredited laboratory if, at the time of the analyses, the laboratory was operated by an individual certified by the DEQ as a laboratory operator and the certified laboratory operator approves and signs the analyses report. For further explanation, refer to and comply with the following rules:

(1) Oklahoma Pollutant Discharge Elimination System Standards (OPDES), OAC 252:606-11-2;

(2) Public Water Supply Operations, OAC 252:631-3-2; and

(3) Waterworks and Wastewater Works Operator Certification OAC 252:710-5-53.

252:301-1-3. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*) and OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure), the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Acceptable results", as defined in 27A O.S. § 2-4-101, means *a result within limits determined on the basis of statistical procedures as prescribed by the Department*.

"Accreditation" means the process by which the DEQ recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory.

"Analyte" means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure and is synonymous with "parameter". For purposes of this Chapter, "analyte" also means one of a set of inorganic or organic chemical, physical, radiochemical or microbiological properties whose value determines the characteristics of a water or wastewater sample.

"Applicant" means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.

"Applicant laboratory" means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.

"Approved method" means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.

"Blind audit" means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.

"Certificate" is defined in 27A O.S. § 2-4-101 and means the same as laboratory accreditation and includes primary accreditation and reciprocity accreditation.

"Corrective Action Plan" is a written plan of action, including a schedule for implementation, to correct deficiencies identified in the DEQ or DEQ-approved agent's inspection report, including a timeline for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.

"DEQ" means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.

"Evaluation", as defined in 27A O.S. § 2-4-101, *means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal*

qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters.

"Initial accreditation" means a first-time accreditation granted to a laboratory not previously accredited by the DEQ.

"Interim accreditation" means an out-of-time accreditation issued to a DEQ accredited laboratory in analytes for which the laboratory is not currently accredited by the DEQ.

"Laboratory", as defined in 27A O.S. § 2-4-101, means *a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.

"Laboratory waste" means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.

"Mobile laboratory" means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site (conductivity, residual chlorine, pH, dissolved oxygen, temperature).

"Owner" means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.

"Parameter" is defined in 27A O.S. § 2-4-101 and is synonymous with "analyte".

"Proficiency testing (PT) sample" means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.

"Program" means the DEQ laboratory accreditation program.

"QA Plan" or "Quality Assurance Plan" means a written description of quality assurance activities (quality control) that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

"SOP manual" or **"Standard Operating Procedure manual"** means a document approved by a laboratory director that includes approved methods, equipment and instruments used by the laboratory for analyses.

252:301-1-4. Terms

Terms used in this Chapter shall have the meanings given to them in OAC 252:320 -1-2 or the Oklahoma Environmental Quality Code. Any technical term not defined thereby shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.

252:301-1-5. Accreditation matrices and types

(a) **Matrices.** Laboratories may be accredited in Drinking Water, General Water Quality, and/or Petroleum Hydrocarbons.

(b) **Types of accreditation.** An applicant laboratory may apply at any time for initial, interim or renewal accreditation. A laboratory applying for interim accreditation shall meet the same requirements as a laboratory applying for initial accreditation.

252:301-1-6. Drinking water laboratory

A drinking water laboratory may be accredited in the following category groups: metals, general chemistry, microbiology, asbestos, non-volatile synthetic organic chemicals (SOCs), volatile organic compounds (VOCs) and/or radionuclides.

252:301-1-7. General water quality laboratory

(a) **Category groups.** A general water quality laboratory may be accredited in the following category groups: metals, nutrients, demands, extractable organics, general chemistry I and/or II, microbiology, pesticides - herbicides - PCBs, purgeable organics, radiological, bioassay, hazardous waste characterization, petroleum hydrocarbons, perchlorate, and/or basic environmental laboratory.

(b) **Basic environmental laboratory analytes.** Basic environmental laboratory analytes include five day biochemical oxygen demand, carbonaceous biochemical oxygen demand, chemical oxygen demand, total organic carbon (TOC), total Kjeldahl nitrogen (TKN) , nitrate-nitrite nitrogen, organic nitrogen, ammonia nitrogen, total dissolved solids (filterable residue), total suspended solids (non-filterable residue), volatile residue, total phosphorous, orthophosphate phosphorus (reactive phosphorus), chloride, fluoride, oil and grease, sulfate, pH, specific conductance, dissolved oxygen, turbidity, total residual chlorine, hardness, alkalinity, color, fecal coliform, total coliform, cyanide, phenolics, copper, zinc, iron, sulfide, chromium, and hexavalent chromium.

252:301-1-8. Petroleum hydrocarbon laboratory

A petroleum hydrocarbon laboratory may be accredited in the following category groups: Total Petroleum Hydrocarbons (TPH), Benzene, Toluene, Ethylbenzene, and Xylene (BTEX), Flash Point, and MTBE

252:301-1-9. Fees

(a) **Applicable fees.** The following fees apply:

(1) Initial accreditation $1,140.00
(2) Interim accreditation 671.00
(3) Renewal fee 34.00
(4) Renewal late fee 335.00
(5) Accreditation amendment 67.00
(6) Fee for 1 category 470.00
(7) Fee for 2 categories 940.00
(8) Fee for 3 categories 1,410.00
(9) Fee for 4 categories 1,880.00
(10) Fee for 5 or more categories 2,350.00
(11) Inspections -0-

(b) **Renewal.** Fees to renew accreditation consist of the renewal application fee and the applicable category fee.

(c) **Public water supply system fee exemption.** There is no laboratory accreditation fee for public water supply systems that pay the minimum annual public water supply regulatory service rate fee in accordance with 27A O.S. § 2-6-306.

(d) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory accreditation program, the fees set out in this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

SUBCHAPTER 3. LABORATORY ACCREDITATION PROCESS

PART 1. APPLICATION

252:301-3-1. Application required

(a) **General.** A laboratory shall submit one copy of an application for accreditation to the DEQ along with relevant fees. The application shall be typed on forms provided by the DEQ and shall follow the general format designated by the DEQ.

(b) **Signature and verification.** An application shall be signed by the sole proprietor of an individually owned laboratory, the controlling or managing partner or partners of a laboratory held by a partnership, the authorized agent of a corporate owned laboratory, or the principal executive officer or ranking elected official of a municipality or other local government entity which owns or operates the applicant laboratory. The signer shall verify in the application that it was prepared under his direction or supervision and that the information it contains is, to the best of his knowledge, true, accurate and complete.

252:301-3-2. Contact information

In addition to other information required by this Chapter, an application shall contain the following information:

(1) The name, mailing address, street address, telephone number, e-mail address and telefax number (if any) of the applicant.

(2) The signature, typewritten name, address, telephone number and telefax number (if any) of the authorized representative of the owner.

(3) The name, mailing address, street address, telephone and telefax number (if any) of the applicant laboratory's authorized technical representative.

(4) The location(s) (address or legal description) of the laboratory, including county and driving directions and latitude/longitude.

(5) Identification of the accreditation type and categories, analytes and/or methods sought.

(6) The name and address of any owner, stockholder, or officer of the applicant laboratory or any person who receives compensation from the applicant laboratory, who has been or currently is an owner, stockholder, or officer of, or who has received compensation from, any laboratory whose accreditation application has been previously denied or whose accreditation has been previously suspended or revoked in part or in whole by the DEQ.

252:301-3-3. Operational information

The application shall address the following operational issues:

(1) A listing of equipment to be used for sample analysis, storage and reporting.

(2) A description of the methods, equipment and instruments used by the applicant laboratory for specific analytes which may be in the form of an SOP manual when required.

(3) A written laboratory QA plan which includes but is not limited to:

(A) A listing of laboratory personnel, including the laboratory director, which gives the academic training, experience and analytical and supervisory responsibilities of each; and

(B) A narrative description of the methods used for sample receipt, storage and disposal.

(4) Results of laboratory's two most recent proficiency testing rounds, at least 15 calendar days apart.

(5) A report of a laboratory inspection conducted by the DEQ or a DEQ approved agent within the twelve (12) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site inspection. The inspection report shall verify data submitted in an application, list any deficiencies and be signed by the DEQ or DEQ approved agent.

(6) If deficiencies are listed in an inspection report, the applicant shall submit a corrective action plan which specifies deadlines for implementation and completion of the plan. The DEQ may establish conditions, including compliance schedules, for the applicant's corrective action plan.

(7) Hours of operation.

252:301-3-4. Renewals

(a) **Annual renewal required.** A laboratory must apply to renew accreditation annually.

(b) **Laboratory responsibility.** Each laboratory is responsible for renewing its accreditation by the annual renewal date. Failure to receive a renewal form and invoice does not exempt laboratories from meeting the renewal deadline.

(c) **DEQ invoice date.** By April 15 of each year, the DEQ shall mail the renewal forms and invoices to each accredited laboratory.

(d) **Renewal deadline.** The renewal application shall be accurately completed, signed and submitted to the DEQ with the renewal invoice and all applicable fees by 4:30 p.m. or postmarked on or before June 15. Any renewal application which is not accurately completed and is returned to the applicant or which is postmarked after June 15 but received on or before July 15 shall be considered only if accompanied by the renewal fee and a late fee. Any renewal application and fees received or postmarked after July 15 will be returned and accreditation shall not be renewed.

(e) **Specified dates.** If any date specified in this section falls on a weekend or holiday, the date of the following working day shall be the effective date.

(f) **Failure to renew.** To become accredited again, a laboratory that failed to renew its accreditation in a timely manner must apply for initial accreditation as a new laboratory.

PART 3. CONDITIONS OF ACCREDITATION

252:301-3-31. Conditions applicable to all accreditations

The following conditions shall apply to all existing accreditations and shall be incorporated expressly or by reference into all accreditations issued or renewed after the effective date of this Chapter.

(1) **Proper operation and maintenance.** The Laboratory shall at all times properly operate and maintain all facilities and equipment installed or used by the Laboratory to achieve compliance with the laboratory accreditation requirements of the Code, rules of the Board as they relate to laboratory accreditation, and the provisions and conditions of this Accreditation. Proper operation and maintenance includes effective performance of operations and adequate funding, operator staffing and training, and the provision of appropriate sample-handling equipment. All operational practices and procedures used at this site shall conform to the best possible public health and safety practices.

(2) **Duty to mitigate.** The Laboratory shall take all reasonable steps to minimize or correct any adverse impact on the environment and the public health resulting from noncompliance with this Accreditation and to minimize or correct any adverse impact on the environment arising from its analytical activities.

(3) **Duty to provide information.** The Laboratory shall furnish to the DEQ, within a time specified, any information which the DEQ may request to determine:

(A) whether cause exists for amending, suspending, or revoking this Accreditation;

(B) compliance with this Accreditation; or

(C) whether an accreditation should be issued or renewed.

(4) **Records.** The Laboratory shall keep its Accreditation, the application on which it is based, copies of all records required to be kept by OAC 252:320 and the provisions of its Accreditation on file at the accredited facility.

(5) **Reporting requirements.** The Laboratory shall give advance notice to the DEQ as soon as possible of any planned physical alterations, additions to the accredited facility or planned changes in the accredited facility which may result in noncompliance with accreditation requirements.

(6) **Signatory requirement.** All applications, reports, or information submitted to the DEQ shall be signed by the applicant.

(7) **Consent to conditions.** Commencing analytical activities as an accredited laboratory under DEQ Accreditation shall constitute consent to all conditions of Accreditation.

(8) **Transfer of accreditation.** Accreditation is not transferable. An accredited laboratory may apply to amend ownership or change names, provided that facilities, equipment, personnel and all other conditions of accreditation remain unchanged.

(9) **Duty to apply.** To maintain its accredited status, the Laboratory shall make timely application for annual renewal of Accreditation.

(10) **Severability.** The provisions of Accreditation are severable, and if any of its provisions or the application of its provisions are held invalid, the application of such provisions to other circumstances and the remaining provisions of the Accreditation shall not be affected thereby.

252:301-3-32. Amendments to accreditations

(a) **Changes to be reported.** Changes in laboratory name, ownership, form of ownership, location, and other changes, including personnel and/or equipment, which may significantly affect the performance of analyses for which the laboratory was originally accredited shall be reported in writing to the DEQ within 30 days of occurrence. If requested by owner, the DEQ may amend the accreditation to reflect reported changes.

(b) **Amendment fee.** An amendment fee shall be assessed in accordance with OAC 252:301-1-9.

(c) **Cause.** The DEQ may amend an accreditation for cause, with notice to the affected accredited laboratory and opportunity for hearing.

252:301-3-33. Self-reporting

An accredited laboratory shall promptly submit correct facts or information to the DEQ and/or to the client when:

(1) it becomes aware that it failed to submit a material fact or submitted incorrect information in an application or a report to the DEQ or to a client for submission to the DEQ; or

(2) the DEQ becomes aware of same and notifies the laboratory. Failure to make a prompt submission may result in an enforcement action.

PART 5. GROUNDS TO REVOKE

252:301-3-51. Grounds to take enforcement action

In addition to the grounds listed in 27A O.S. §2-3-501 *et seq.*, § 2-4-305(A) and OAC 252:4-7-15, the DEQ may suspend, revoke or refuse to renew in part or in whole the accreditation of any laboratory for the following grounds:

(1) consistent and significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;

(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the reliance of others on such misrepresentation;

(3) failure to perform any of the following:

(A) to correct deficiencies, comply with a corrective action plan, or take other action required by the DEQ pursuant to these rules;

(B) to participate or produce acceptable results in required proficiency testing;

(C) to cooperate with or allow on-site laboratory evaluations, inspections, or access to records; or

(D) failure to notify or submit reports to the DEQ as required by this Chapter

(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;

(5) collaboration with other laboratories on results before proficiency testing sample results are submitted to the required agency;

(6) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes; or

(7) any other violation, action or inaction presenting good cause for such action.

252:301-3-52. Notice

The DEQ may require an accredited laboratory to give written notice to its clients of the suspension or revocation of any part of its accreditation.

252:301-3-53. Individual proceedings

Proceedings for accreditation revocation, suspension or reinstatement shall be conducted in accordance with 27A O.S. § 2-3-501 *et seq.*, and OAC 252:4, DEQ Rules of Practice and Procedure.

SUBCHAPTER 5. GENERAL OPERATIONS

252:301-5-1. Posting of accreditation

Each accredited participant in the program shall maintain on file a list of the analytes for which it is accredited and shall provide a copy of the list upon request.

252:301-5-2. Personnel and subcontractors

(a) **All accredited laboratories.** All accredited laboratories shall have at least one full-time on-site employee who has laboratory experience in his area of analysis or works under the direct supervision of an individual who has laboratory experience.

(b) **Drinking water accredited laboratories.** In addition, personnel of drinking water accredited laboratories shall conform with the requirements established by the EPA for laboratories which analyze drinking water. Refer to the Manual for the Certification of Laboratories Analyzing Drinking Water, 5th Edition, January 2005.

(c) **Water quality accredited laboratories.** A general water quality accredited laboratory shall have an employee or supervisor qualified as follows:

(1) **Commercial laboratory.** At least one employee or supervisor in a commercial laboratory shall have an earned bachelor's degree in chemistry or a closely related field from an accredited institution of higher education, plus two years of analytical experience in an environmental laboratory.

(2) **Industrial laboratory, including a branch office or substation of a company's laboratory.** An employee or supervisor of an industrial laboratory, including a branch office or substation of a company's laboratory, must meet the educational requirements for a commercial laboratory unless the employee or supervisor is and has been performing environmental testing for not less than two (2) consecutive years and demonstrates satisfactory participation on performance evaluation samples.

(d) **Subcontractors.** A laboratory may subcontract with another laboratory (subcontractor) for analysis of analytes. Such subcontracting shall be only for those analytes for which the subcontractor is DEQ-accredited.

252:301-5-3. Facilities, equipment and supplies

(a) **All accredited laboratories.** All equipment, reagents, glassware and supplies necessary for the proper performance of laboratory analyses shall be on hand or readily available on the premises for analytes certified or analytes listed in an application for accreditation. Equipment shall be in good working

order and properly maintained and shall consist of, at a minimum, the apparatus and supplies for which the laboratory is accredited. Facilities shall have a sink with hot and cold running water, electricity, a source of distilled and/or deionized water, proper laboratory waste disposal procedures, and other features/equipment necessary to properly perform approved EPA analytical methodologies. Facilities may be physically located apart in separate buildings if the sites are within one (1) mile of each other and under the same direct management.

(b) **Drinking water accredited laboratories.** In addition to the general facilities, equipment and supply requirements, equipment required of a drinking water accredited laboratory shall include the apparatus and supplies listed by EPA or the DEQ or identified by the EPA for laboratories which analyze drinking water.

252:301-5-4. On-site inspections

(a) **Inspections.** Inspections may be unannounced.

(b) **On-site requirements.** During an inspection the DEQ may require on-site analyses of proficiency test samples by laboratory personnel.

(c) **Corrective action plan.** Following the inspection the DEQ will provide the laboratory with a copy of the inspection report. The laboratory will be afforded a designated time period in which to correct any listed deficiencies. The DEQ may require a laboratory to develop and implement a Corrective Action Plan (CAP).

(d) **Out-of-state laboratories.** Out-of-state laboratories already in the program may be required to have an on-site inspection performed by a DEQ approved agent. The laboratory shall be solely responsible for costs associated with the inspection, if any. The inspection report shall be submitted to the DEQ along with a Corrective Action Plan (CAP) if needed.

252:301-5-5. Recordkeeping and reporting

(a) The laboratory shall keep the following records on file in its accredited facility:

(1) Accreditation and the application on which it is based;

(2) copies of all records and documentation required to be kept by this Chapter;

(3) repair and maintenance records;

(4) reports filed with the DEQ or submitted to clients for filing with the DEQ;

(5) equipment changes, additions or malfunctions; and

(6) QA/QC plans and reports.

(b) Any data report given to a customer by an accredited laboratory shall identify:

(1) the parameters for which the laboratory is DEQ-accredited;

(2) the class of DEQ-issued accreditation of each analyte; and

(3) which analytes were subcontracted out for analysis and the subcontracting laboratory's DEQ-issued accreditation number for each of the subcontracted analytes.

SUBCHAPTER 7. PROFICIENCY TESTING

252:301-7-1. Applicability

The requirements of this subchapter shall apply to proficiency testing for drinking water accredited laboratories and general water quality accredited laboratories.

252:301-7-2. Participation required

A laboratory must participate in two single-blind, single-concentration, regularly scheduled Proficiency Testing (PT) studies per calendar year for each analyte in each class of accreditation for which it seeks accreditation or renewal of accreditation. PT samples must be provided by a National Environmental Laboratory Accreditation Program (NELAP) Approved PT Provider and shall conform to all applicable National Environmental Laboratory Accreditation Conference (NELAC) standards.

252:301-7-3. PT sample treatment

Samples shall be analyzed and the results returned to the PT study provider no later than 45 calendar days from the scheduled study shipment date. The laboratory shall ensure that all PT samples are handled, *i.e.*, managed, analyzed and reported, in the same manner as actual

environmental samples utilizing the same staff, methods as used for routine analysis of that analyte, procedures, equipment, facilities, and frequency of analysis.

252:301-7-4. Initial accreditation

To gain initial or interim accreditation, a laboratory shall successfully analyze two consecutive proficiency testing (PT) rounds. Proficiency testing (PT) rounds must have been performed within the last twelve (12) months and at least fifteen (15) calendar days apart.

252:301-7-5. General requirements

(a) Laboratories seeking to renew accreditation must successfully analyze vendor supplied, regularly scheduled proficiency testing samples approximately six (6) months apart in each calendar year. Failure to meet the semiannual schedule shall be regarded as a failed study on the last day of the seventh (7th) month.

(b) Laboratories shall successfully analyze at least two (2) PT studies within the most recent three rounds attempted (2 of 3) prior to renewal. Laboratories may analyze additional or supplemental studies; however, such studies must be reported to the DEQ.

(c) General water quality proficiency testing samples must be Water Pollution (WP) type testing samples.

(d) Drinking water proficiency testing samples must be Water Supply (WS) type testing samples.

(e) Petroleum hydrocarbon proficiency testing samples must include benzene, toluene, methylbenzene and xylene (BTEX) and Total Petroleum Hydrocarbons (TPH). Both soil and water

matrices must be analyzed if both soil and water samples are to be accepted by the laboratory.

252:301-7-6. Cost responsibility

Laboratories shall bear the cost of any subscription to a proficiency testing program required by the DEQ. The DEQ shall not be charged a fee for the analysis of any proficiency testing samples.

252:301-7-7. Alternate program

The DEQ may designate an alternate proficiency testing program if it determines such designation is appropriate.

252:301-7-8. DEQ PT samples

As part of a laboratory's proficiency testing, the DEQ may also submit blind audit samples to an accredited laboratory.

252:301-7-9. Restrictions on exchanging information

A laboratory shall not attempt to obtain the prepared value of any PT sample from its PT Provider prior to the conclusion of the PT study.

252:301-7-10. Maintenance of PT records

The laboratory shall maintain copies of all written, printed and electronic records, including but not limited to bench sheets, raw data, instrument strip charts or printouts, data calculations, and data reports, resulting from the analysis of any PT sample for a minimum of five (5) years. The records shall include a copy of the PT study report forms used by the laboratory to record PT results. All of these laboratory records shall be made readily available during on-site inspections of the laboratory.

252:301-7-11. Evaluation of PT results

PT study providers shall evaluate results from all PT studies using NELAP-mandated acceptance criteria. Each result shall be scored on an acceptable/not acceptable basis.

252:301-7-12. PT report

The PT study provider shall provide the participant laboratories and the DEQ a report showing the laboratory's DEQ identification number and EPA identification number, prepared value, the acceptance range, and the acceptable/not acceptable status for each analyte reported by the laboratory and any other information the DEQ deems necessary for accreditation purposes. The report and all associated data shall also be made available in electronic format as specified by the DEQ. The report shall be submitted electronically or mailed no later than twenty-one (21) calendar days from the study closing date.

252:301-7-13. PT report deadline

Laboratories shall ensure that the PT provider has submitted all pertinent PT reports to the DEQ by 4:30 p.m. on or before July 15 of each year. Laboratories whose reports are postmarked or received after July 15 will not be considered for accreditation renewal on September 1.

252:301-7-14. PT criteria for laboratory accreditation

The following criteria apply individually to each analyte in each class of accreditation as defined by the laboratory seeking accreditation in its application:

(1) Results of the PT study shall be considered successfully analyzed when the results are "acceptable" and are within the acceptable limits established and published by the PT Provider.

(2) Successfully analyzed shall also mean an aggregate passing score of ninety percent (90%) for microbiological PT testing studies. No partial credit will be given;

(3) The DEQ shall consider PT results along with the other elements of these rules when determining a laboratory's accreditation status;

(4) For initial accreditation or supplemental testing, the studies must be at least fifteen (15) calendar days apart.

252:301-7-15. Failure to perform

The DEQ shall not renew accreditation for a failed or omitted analyte or category of analytes for a laboratory which does not meet the requirements of this subchapter. Once accreditation for an analyte or a category of analytes has been lost, the procedures for initial or interim accreditation shall apply.

252:301-7-16. Analyte absence

(a) **Generally.** If a PT sample is not given for a particular analyte for which a laboratory is requesting accreditation, accreditation for the analyte may be obtained by qualifying for accreditation for the entire category in which the analyte is found. To be eligible for accreditation in the entire category, the laboratory shall pass seventy-five percent (75%) of all PT available analytes within the category. If a laboratory completely fails an individual analyte and still receives a 75% passing rate, the laboratory will not be granted accreditation for that particular analyte but will be accredited for the rest of the category.

(b) **Exception.** Laboratories which have or are pursuing accreditation for the Basic Environmental Category are not subject to subsection (a) of this section.

252:301-7-17. Supplemental studies

A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. Additional studies are not distinguished from the routinely scheduled studies. They are counted and scored the same way and must be at least fifteen (15) calendar days apart.

252:301-7-18. Corrective action

When a laboratory fails a study, in part or in whole, it shall determine the cause for the failure and take any necessary corrective action. The laboratory shall then document both the investigation and the action(s) in a corrective action report

(CAP). The CAP shall be submitted to the DEQ within forty-five (45) days of PT study report issuance.

SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

PART 1. QUALITY ASSURANCE/QUALITY CONTROL GENERAL CRITERIA

252:301-9-1. Quality Assurance/Quality Control (QA/QC) Plan Required

Every accredited laboratory shall maintain a written QA plan and implement it into a QA/QC program to ensure that all routinely generated analytical data are scientifically valid and defensible and are of known and acceptable precision and accuracy.

252:301-9-2. Format

(a) The QA plan shall list the following on the title page:

(1) a document title;

(2) the laboratory's full name and address;

(3) the names, addresses and telephone numbers of all individuals responsible for the laboratory;

(4) the name of the quality manager (however titled);

(5) the identification of all major organizational units which are to be covered by this QA plan; and

(6) the effective date of the version.

(b) The QA plan shall also contain a Table of Contents, applicable lists of references and glossaries, and appendices.

252:301-9-3. Management information required in QA plan

The QA plan and related quality documentation shall state the laboratory's policies established in order to meet the requirements of this rule. The QA plan and related quality documentation shall also contain:

(1) a quality policy statement, including objectives and commitments, by top management;

(2) the organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(3) the relationship between management, technical operations, support services and the quality system;

(4) job descriptions of key staff and reference to the job descriptions of other staff;

(5) identification of the laboratory's approved signatories; at a minimum, the title page of the QA plan must have the signed and dated concurrence, (with appropriate titles) of all responsible parties including the quality manager(s), technical director(s), and the agent who is in charge of all laboratory activities such as the laboratory director or laboratory manager; and

(6) the laboratory management arrangements for exceptional departures from documented policies and procedures or from standard specifications.

252:301-9-4. Procedures required for QA Plan

The QA plan shall address supporting procedures including technical procedures and shall outline the structure of the documentation used in the quality system, including but not limited to the following:

(1) ensuring that all records required are retained

(2) control and maintenance of documentation through a document control system which ensures that all standard operating procedures (SOPs), manuals, or documents clearly indicate the time period during which the procedure or document was in force;

(3) achieving traceability of measurements;

(4) handling submitted samples;

(5) feedback and corrective action whenever testing discrepancies are detected or departures from documented policies and procedures occur;

(6) dealing with complaints;

(7) protecting confidentiality (including national security concerns) and proprietary rights;

(8) audits and data review; and

(9) establishing that personnel are adequately experienced in the duties they are expected to carry out and are receiving any needed training.

252:301-9-5. References included in QA Plan

The QA plan shall make reference to the following:

(1) the calibration and/or verification test procedures used;

(2) the major equipment and reference measurement standards used as well as the facilities and services used by the laboratory in conducting tests;

(3) procedures for calibration, verification and maintenance of equipment;

(4) verification practices which may include inter-laboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes; and

(5) procedures for reporting analytical results.

252:301-9-6. Additional items included in QA Plan

The QA plan shall also include the following:

(1) a list of all test methods under which the laboratory performs its accredited testing;

(2) mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work.

PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

252:301-9-31. General

(a) The laboratory shall use appropriate methods and procedures for all environmental tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of samples, and, where appropriate, an estimation of the measurement uncertainty as well as statistical

techniques for analysis of environmental test and/or calibration data.

(b) The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of samples where the absence of such instructions could jeopardize the results of environmental tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel. Deviation from environmental test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the client.

252:301-9-32. Standard Operating Procedures (SOPs)

(a) Laboratories shall maintain Standard Operating Procedures (SOPs) that accurately reflect all phases of current laboratory activities such as assessing data integrity, corrective actions, handling customer complaints, and all test methods.

(b) SOPs may be equipment manuals provided by the manufacturer or internally written documents. Test methods may be copies of published methods as long as any changes or selected options in the methods are documented and included in the methods manual.

(c) Copies of all SOPs shall be accessible to all personnel.

(d) SOPs shall be well organized and shall clearly indicate the effective date of the document, the revision number and the signature(s) of the approving authority.

252:301-9-33. Laboratory method manual(s)

(a) The laboratory shall have and maintain an in-house methods manual(s) for each accredited analyte or test method.

(b) This manual may consist of copies of published or referenced test methods or SOPs that have been written by the laboratory. In cases where modifications to the published method have been made by the laboratory or where the referenced test method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described.

252:301-9-34. Test method(s)

Each test method shall include or reference the following, where applicable:

(1) Identification of the test method;
(2) Applicable matrix or matrices;
(3) Detection limit;
(4) Scope and application, including components to be analyzed;
(5) Summary of the test method;
(6) Definitions;
(7) Interferences;
(8) Safety;
(9) Equipment and supplies;
(10) Reagents and standards;
(11) Sample collection, preservation, shipment and storage;
(12) Quality control;
(13) Calibration and standardization;
(14) Procedure;
(15) Calculations;
(16) Method performance;
(17) Pollution prevention;
(18) Data assessment and acceptance criteria for quality control measures;
(19) Corrective actions for out-of-control data;
(20) Contingencies for handling out-of-control or unacceptable data;
(21) Waste management;
(22) References; and
(23) Any tables, diagrams, flowcharts and validation data.

252:301-9-35. Selection of methods

The laboratory shall use methods for environmental testing and/or calibration, including methods for sampling, which meet the needs of the client and which are appropriate for the environmental tests and/or calibrations it undertakes.

252:301-9-36. Sources of methods

(a) Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.

(b) When the use of specified methods for a sample analysis are mandated or requested, only those methods shall be used.

(c) When the client does not specify the method to be used or where methods are employed that are not required, as in the Performance Based Measurement System approach, the methods shall be fully documented and validated and be available to the client and other recipients of the relevant reports. The laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory-developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The client shall be informed as to the method chosen.

(d) The laboratory shall inform the client when the method proposed by the client is considered to be inappropriate or out of date.

252:301-9-37. Methodology incorporated by reference

The following EPA methods are hereby incorporated by reference:

(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act: National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations : Analysis and Sampling Procedures", also known as the "methods update rule", 72 Federal Register 47, March 12, 2007, 40 CFR 136 and 40 CFR 141 bound-volumes dated July 2007.

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual. See further SW-846-ON-LINE.; and

(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants, Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge", 72 Federal Register 57, March 26, 2007, 40 CFR Part 136 and 40 CFR Part 503 bound-volumes dated July 2007.

252:301-9-38. DEQ approved methodologies

The following methods are specifically approved by the DEQ:

(1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC6 to nC35)

(2) Oklahoma GRO 8020/8015(Modified)

(3) Oklahoma DRO 8000/8100(Modified)

(4) ASTM mussels

(5) On a case by case basis as approved by DEQ

252:301-9-39. New rules apply

As the Board promulgates new rules, accredited laboratories shall incorporate those procedures for all accredited analytes upon the effective date of the rule, July 1 of each year.

PART 5. QA/QC PROGRAM REQUIREMENTS

252:301-9-51. QA/QC program required

Each accredited laboratory shall maintain a QA/QC program to demonstrate the precision and accuracy of analyses. The program shall be in place before accreditation is granted. For a minimum of three (3) years, each laboratory shall maintain records of all analyte accredited analyses, including but not limited to those necessary for a QA/QC program. Laboratories shall perform individual quality control for every analyte for which the laboratory is accredited or is applying for accreditation.

252:301-9-52. Drinking water accredited laboratories

A laboratory accredited in drinking water classifications shall conform to the requirements established by the EPA for laboratories which analyze drinking water.

252:301-9-53. General water quality accredited laboratories

QC requirements specified by approved methodologies shall be practiced in the general water quality laboratory. The laboratory shall establish control limits for all types of QC samples.

252:301-9-54. Inorganic/classic chemistry

If approved methodologies do not specify minimum laboratory QA/QC requirements for inorganic/classic chemistry, the following frequencies shall apply:

(1) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested. The lab should repeat all samples tested after the last acceptable continuing calibration check if the continuing calibration check standard is outside " 10%.

(2) One blank per twenty samples tested (or batch).

(3) If applicable, one spike per twenty samples tested (or at least once per month, whichever is the greater frequency).

(4) One duplicate or spiked duplicate per twenty samples tested or at least once per month, whichever is the greater frequency.

252:301-9-55. Organics

If approved methodologies do not specify minimum laboratory QA/QC requirements for organic chemistry, the following frequencies shall apply, provided that where possible, surrogates shall be used for all samples:

(1) A minimum of three concentrations of standards for daily calibration plus one continuing calibration check standard after each ten samples tested inside established control limits; if any analytes are outside the limits, repeat all samples tested after the last acceptable continuing calibration check.

(2) One reagent blank (carried through preparation) per twenty samples tested (or per batch).

(3) One matrix spike per twenty samples tested (or per batch).

(4) One matrix spike duplicate per twenty samples tested (or per batch).

252:301-9-56. QA/QC documentation

(a) Documentation shall be kept to insure quality control has been maintained and that proper methodologies have been used for the preparation and analysis of samples. All documentation shall be maintained and be readily available for reference or inspection.

(b) The following QC documentation shall be maintained in each laboratory.

(1) **Bench records.** Data associated with analysis, date, time, analyst, method, amounts, calculations, sample matrix, sample identification.

(2) **Calibration data.** Calibration curve or coefficient of the linear equation which describes the calibration curve; concentration/response data (or relative response data) for standards; percent recovery of an initial calibration check standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with this curve.

(3) **Extraction/digestion records.** Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.

(4) **Surrogate records.** Amount of surrogate spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification.

(5) **Maintenance logs.** By instrument, dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting instrument performance.

(6) **QC charts.** Quality control procedures for monitoring the validity of the environmental testing. The resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have detailed written protocols in place for positive and negative controls, variability, repeatability, and accuracy of the methods.

(7) **Sample login.** Procedures plan for sample login, unique sample identification, date, time, source of sample (including name, location and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.

(8) **Spike/duplicate/spike-duplicate data.** Date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and makeup and concentration in the spiking solution.

(9) **Temperature logs.** By oven, incubator, freezer, and or refrigerator, daily (during periods of use) temperature readings and any temperature excursions with corrective action, recorded in a bound logbook.

(10) **Weight logs.** By balance, checked with the appropriate range of class S weights weekly (during periods of use) before use and results recorded in a bound log book. Each balance serviced and calibrated at least once per year by an accredited technician.

[OAR Docket #08-1086; filed 5-30-08]

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

[OAR Docket #08-1087]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Environmental Quality Board and Laboratory Services Advisory Council powers and duties: 27A O.S., §§ 2-2-101, 2-2-201, and 2-4-101 *et seq.*
DATES:
Comment period:
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The Laboratory Services rules establish the fees charged by the Department of Environmental Quality (DEQ) for work done in the Customer Services Division's State Environmental Laboratory. Laboratory services are provided to public water supply systems, subdivisions of the DEQ, other state and federal environmental agencies, Indian tribes and private citizens. These fees were last reviewed in 2005 and adjusted in 2006.

This proposal would increase fees by 6%, based upon increases in the Consumer Price Index (CPI) for 2006 and 2007. An annual adjustment of the fees would be made based upon the CPI on July 1 every year, although the DEQ could waive the collection of the automatic increase if other revenues have increased sufficiently to make the funds generated by the automatic adjustment unnecessary that year.

There are over 250 individual fees in this rule, ranging in amount from $8 to $450. Each individual fee will be increased by 6 %. Increased fees will range from $8 to $477. The fee increase is projected to generate $120,000 in new income for a total of $2,136,000.

Appendix A, Samples Submitted by Governmental Entities, has been revoked and replaced with Appendix A, Samples Submitted by Government Entities. Appendix B, Samples Submitted by Private Citizens, has been revoked and replaced with Appendix B, Samples Submitted by Private Citizens.
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 11, 2008:

252:305-1-11. Required fees and other pricing

(a) **Fees.** Fees established for samples submitted by governmental entities are listed in Appendix A. Fees established for samples submitted by private citizens are listed in Appendix B.

(b) **Discount.** The State Environmental Lab may discount certain analytical work for customers who provide a large volume of prescheduled samples. Discounts will be determined by the Director of Customer Services taking into account cost savings to the agency.

(c) **Other analysis.** The State Environmental lab will consider performing other types of analyses upon special request. The fees for these tests will be based upon method development costs, actual analytical costs and a $2.00 per sample charge for processing of invoices and payments.

(d) **Supply and consumables charges.** Unless otherwise specified by the Director of Customer Services, the analytical fees reflected in these rules include sample containers, sample

digestion/extraction and any other consumables necessary to perform the requested analytical work.

(e) **Other charges.** The State Environmental Lab will consider accommodating extraordinary requests with respect to data handling, quality assurance, sample handling or reporting. The fees for these extraordinary requests will be based upon administrative costs, actual personnel costs and any associated development costs.

(f) **Annual Fee Adjustment.** To assist in meeting rising costs to the DEQ of the environmental services associated with the laboratory services program, the fees set out in this Section and Appendices A and B shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

APPENDIX A. SAMPLES SUBMITTED BY GOVERNMENTAL ENTITIES [REVOKED]

APPENDIX A. SAMPLES SUBMITTED BY GOVERNMENT ENTITIES [NEW]

METHOD	*ANALYTE*	*MATRIX*	*FEE*
GAS CHROMATOGRAPHY/MASS SPECTRA			
EPA 524.2	VOLATILE ORGANICS IN DRINKING WATER-VOC	LIQUID	$159.00
EPA 524.2	VOLATILE ORGANICS IN DRINKING WATER-THM	LIQUID	$127.00
EPA 8260M	VOLATILE ORGANICS	SOLID	$318.00
EPA 8260M	VOLATILE ORGANICS	LIQUID	$318.00
EPA 8270M	SEMIVOLATILE ORGANICS	SOLID	$477.00
EPA 8270M	SEMIVOLATILE ORGANICS	LIQUID	$477.00
GENERAL CHEMISTRY			
SM 2320	ALKALINITY, BICARBONATE	LIQUID	$16.00
SM 2320	ALKALINITY, CARBONATE	LIQUID	$16.00
EPA 310.2	ALKALINITY, TOTAL	LIQUID	$16.00
EPA 300.1	BROMATE	LIQUID	$64.00
EPA 300.1	BROMIDE	LIQUID	$32.00
SM 5310 C	CARBON, TOTAL DISSOLVED	LIQUID	$48.00
SM 5910 B	CARBON, TOTAL DISSOLVED W/UV-254 (SUVA)	LIQUID	$69.00
SM 5310 C	CARBON, TOTAL ORGANIC	LIQUID	$42.00
SM 10200 H2	CHLOROPHYLL A / PHEOPHYTIN	EXTRACT	$10.00
SM 10200 H2	CHLOROPHYLL A / PHEOPHYTIN, (FILTER & EXTRACTION ONLY)	LIQUID	$23.00
SM 10200 HM	CHLOROPHYLL A IN PERIPHYTIN (ETHANOL)	EXTRACT	$13.00
EPA 300.1	CHLORATE	LIQUID	$64.00
EPA 325.2	CHLORIDE	LIQUID	$21.00
EPA 325.2 M	CHLORIDE	SOLID	$30.00
SM 4500 Cl	CHLORINE, TOTAL	LIQUID	$8.00
SM 4500 Cl	CHLORINE, TOTAL RESIDUAL	LIQUID	$8.00
EPA 300.1	CHLORITE	LIQUID	$64.00
EPA 110.2	COLOR, APPARENT	LIQUID	$11.00
EPA 110.2	COLOR, TRUE	LIQUID	$14.00
EPA 335.4	CYANIDE	LIQUID	$64.00
EPA 335.2 M	CYANIDE	SOLID	$64.00
SM 5210 B	DEMAND, BIOCHEMICAL OXYGEN-5 DAY	LIQUID	$42.00
SM 5210 B	DEMAND, BIOCHEMICAL OXYGEN-20 DAY	LIQUID	$60.00
EPA 405.1	DEMAND, CARBONACEOUS BIOCHEMICAL OXYGEN-5 DAY	LIQUID	$42.00
EPA 405.1	DEMAND, CARBONACEOUS BIOCHEMICAL OXYGEN-20 DAY	LIQUID	$60.00
EPA 410.2	DEMAND, OXYGEN CHEMICAL	LIQUID	$33.00
EPA 410.2 M	DEMAND, OXYGEN CHEMICAL	SOLID	$38.00
	FILTRATION CENTRIFICATION (SAMPLE PREPARATION)	LIQUID	$8.00
EPA 300.0	FLUORIDE	LIQUID	$24.00
SM 4500 FC	FLUORIDE by ISE/FIA	LIQUID	$23.00
EPA 215.2	HARDNESS, CALCIUM	LIQUID	$16.00
EPA 130.1	HARDNESS, TOTAL	LIQUID	$16.00

EPA 350.1	NITROGEN, AMMONIA	LIQUID	$24.00
EPA 350.1	NITROGEN, AMMONIA	SOLID	$27.00
EPA 351.2	NITROGEN, KJELDAHL	LIQUID	$27.00
EPA 351.3	NITROGEN, KJELDAHL	SOLID	$32.00
EPA 353.2	NITROGEN, NITRATE	LIQUID	$24.00
EPA 353.2	NITROGEN, NITRATE/NITRITE	LIQUID	$24.00
EPA 353.2	NITROGEN, NITRITE	LIQUID	$24.00
CALCULATE D	NITROGEN, ORGANIC	LIQUID	$5.00
CALCULATE D	NITROGEN, TOTAL	LIQUID	$5.00
EPA 1664	OIL & GREASE	LIQUID	$64.00
EPA 1664 M	OIL & GREASE	SOLID	$80.00
SM4500 O	OXYGEN, DISSOLVED	LIQUID	$8.00
EPA 150.1	pH	LIQUID	$11.00
EPA 9045	pH	SOLID	$11.00
EPA 365.1	PHOSPHORUS, ORTHO	LIQUID	$16.00
EPA 365.3	PHOSPHORUS, TOTAL	LIQUID	$31.00
MEHLICH 3	PHOSPHORUS, TOTAL EXTRACTABLE	SOLID	$46.00
SM 2540 F	SOLIDS, SETTLEABLE	LIQUID	$13.00
SM 2540 D	SOLIDS, TOTAL SUSPENDED	LIQUID	$31.00
EPA 160.3	SOLIDS, TOTAL	LIQUID	$25.00
SM 2540 C	SOLIDS, TOTAL DISSOLVED	LIQUID	$31.00
EPA 160.4	SOLIDS, TOTAL VOLATILE	LIQUID	$32.00
EPA 160.4	SOLIDS, VOLATILE SUSPENDED	LIQUID	$32.00
EPA 120.1	SPECIFIC CONDUCTANCE	LIQUID	$11.00
EPA 375.4	SULFATE	LIQUID	$16.00
EPA 180.1	TURBIDITY	LIQUID	$16.00
METALS			
EPA 200.7	ALUMINUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	ALUMINUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	ALUMINUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	ALUMINUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 200.7	ANTIMONY, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	ANTIMONY, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	ANTIMONY, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	ANTIMONY, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$21.00
EPA 6200	ANTIMONY, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	ARSENIC, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	ARSENIC, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	ARSENIC, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	ARSENIC, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6020	ARSENIC, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	ARSENIC, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	ARSENIC, TOTAL BY XRF	SOLID	$12.00
EPA 200.3	ARSENIC, TOTAL BY ICP-MS	FISH	$80.00
EPA 200.7	BARIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	BARIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	BARIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	BARIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6010	BARIUM, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6020	BARIUM, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00

EPA 6200	BARIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	BERYLLIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	BERYLLIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	BERYLLIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	BERYLLIUM, TOTAL BY ICP	SOLID	$21.00
EPA 6010	BORON, TOTAL (Digestion: EPA 3051)	LIQUID	$27.00
EPA 6010	BORON, TOTAL (Digestion: EPA 3051)	SOLID	$27.00
EPA 200.7	CADMIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	CADMIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	CADMIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	CADMIUM, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	CADMIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	CADMIUM, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	CADMIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.3	CADMIUM, TOTAL BY ICP-MS	FISH	$80.00
EPA 200.7	CALCIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	CALCIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 6010	CALCIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$21.00
EPA 6200	CALCIUM, TOTAL BY XRF	SOLID	$21.00
EPA 200.7	CHROMIUM, TOTAL BY ICP (Digestion: EPA 3050)	LIQUID	$21.00
EPA 6010	CHROMIUM, TOATAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	CHROMIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	CHROMIUM, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	CHROMIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	CHROMIUM, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	CHROMIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	COLBALT, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	COBALT, TOTAL BY ICP	LIQUID	$27.00
EPA 200.8	COBALT, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	COBALT, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	COBALT, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	COPPER, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	COPPER, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	COPPER, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	COPPER, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	COPPER, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	COPPER, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	IRON, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	IRON, TOTAL BY ICP	SOLID	$21.00
EPA 6200	IRON, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	LEAD, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	LEAD, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	LEAD, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	LEAD, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	LEAD, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	LEAD, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	LEAD, TOTAL BY XRF	SOLID	$12.00
EPA 200.3	LEAD, TOTAL BY ICP-MS	FISH	$80.00
EPA 200.7	MAGNESIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	MAGNESIUM, TOATL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 6010	MAGNESIUM, TOTAL BY ICP	SOLID	$21.00

EPA 200.7	MANGANESE, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	MANGANESE, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	MANGANESE, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	MANGANESE, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	MANGANESE, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	MANGANESE, TOTAL BY XRF	SOLID	$12.00
EPA 245.1/7470	MERCURY, TOTAL	LIQUID	$69.00
EPA 7470/7471	MERCURY, TOTAL	SOLID	$84.00
EPA 6200	MERCURY BY XRF	SOLID	$12.00
EPA 245.6	MERCURY, TOTAL	FISH	$84.00
EPA 7473	MERCURY, TOTAL (DIRECT ANALYSIS)	FISH	$42.00
EPA 200.7	MOLYBDENUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	MOLYBDNUM BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	MOLYBDENUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	MOLYBDENUM, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	MOLYBDENUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	MOLYDNENUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	NICKEL, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	NICKEL, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	NICKEL, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	NICKEL, TOTAL BY ICP (Digestion: EPA 3050)	SOLID	$21.00
EPA 6010	NICKEL, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	NICKEL, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	POTASSIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	POTASSIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 6010	POTASSIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	POTASSIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	SELENIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	SELENIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	SELENIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	SELENIUM, TOTAL BY ICP	SOLID	$21.00
EPA 6010	SELENIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	SELENIUM, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	SELENIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	SILVER, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	SILVER, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	SILVER, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	SILVER, TOTAL BY ICP	SOLID	$21.00
EPA 6010	SILVER, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	SILVER, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	SILVER, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	SODIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	SODIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 6010	SODIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 200.7	THALLIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	THALLIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	THALLIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	THALLIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	THALLIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	TIN, TOTAL BY ICP	LIQUID	$21.00

EPA 6010	TIN, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	TIN, TOTAL BY XRF	SOLID	$12.00
EPA 1311	TOXIC CHARACTERISTIC LEACHING PROCEDURE (TCLP) (METALS ONLY)		$446.00
EPA 200.8	URANIUM, TOTAL BY ICP-MS	LIQUID	$27.00
EPA 6200	URANIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	VANADIUM, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	VANADIUM, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	VANADIUM, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	VANADIUM, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6200	VANADIUM, TOTAL BY XRF	SOLID	$12.00
EPA 200.7	ZINC, TOTAL BY ICP	LIQUID	$21.00
EPA 6010	ZINC, TOTAL BY ICP (Digestion: EPA 3051)	LIQUID	$27.00
EPA 200.8	ZINC, TOTAL BY ICP-MS	LIQUID	$21.00
EPA 6010	ZINC, TOTAL BY ICP	SOLID	$21.00
EPA 6010	ZINC, TOTAL BY ICP (Digestion: EPA 3051)	SOLID	$27.00
EPA 6020	ZINC, TOTAL BY ICP-MS (Digestion: EPA 3050)	SOLID	$21.00
EPA 6200	ZINC, TOTAL BY XRF	SOLID	$12.00
EPA 200.3	ZINC, TOTAL BY ICP-MS	FISH	$80.00
CLP 05.3	SOLIDS, PERCENT	SOLID	$21.00
MICROBIOLOGY			
SM 9223	COLIFORM, TOTAL & E. COLI, MOST PROBABLE NUMBER (MPN)/QUANTI-TRAY	LIQUID	$21.00
SM 9223	COLIFORM, TOTAL AND E. COLI, PRESENCE/ABSENCE (PA)	LIQUID	$21.00
SM 9222B	TOTAL & FECAL COLIFORMS (MF) (W/ECHERCHIA COLI BROTH CONFIMRATION)	LIQUID	$25.00
SM 9260	ENTERIC PATHOGEN (SALMONELLA, SHIGELLA, ETC.) (QUALITATIVE)	LIQUID	$80.00
SM 9230C	FECAL STREPTOCOCCI-MF	LIQUID	$21.00
SM 9222D	FECAL COLIFORM-MF	LIQUID	$21.00
EPA 1600	ENTEROCOCCI SCREEN (BY SPECIAL REQUEST)	LIQUID	$28.00
EPA 1600	ENTEROCOCCI CONFIRM (BY SPECIAL REQUEST)	LIQUID	$69.00
ASTM D6503	ENTEROCOCCI SCREEN	LIQUID	$27.00
HACH	IRON AND SULFUR BACTRIA (P/A)	LIQUID	$37.00
SM 9215B	STANDARD PLATE COUNT (HETEROTROHIC PLATE COUNT)	LIQUID	$32.00
SWTR	SIM PLATE COUNT (HPC)	LIQUID	$27.00
SM 8050B	MICROTOX	LIQUID	$106.00
ORGANIC CHEMISTRY			
EPA 504.1	ETHYLENE DIBROMIDE (EDB) IN DRINKING WATER	LIQUID	$133.00
EPA 547	GLYPHOSATE IN DRINKING WATER	LIQUID	$162.00
EPA 552.2	HALOACETIC ACIDS/DALAPON IN WATER	LIQUID	$233.00
EPA 608	PCB IN WASTEWATER	LIQUID	$143.00
EPA 8082	PCB IN SEDIMENT	SOLID	$186.00
EPA 507	NITROGEN-PHOSPHOROUS PESTICIDES IN DRINKING WATER	LIQUID	$318.00
EPA 614	NITROGEN-PHOSPHOROUS PESTICIDES IN WASTEWATERS	LIQUID	$318.00
EPA 8141	NITROGEN-PHOSPHORUS PESTICIDES IN SOLIDS & WASTES	SOLIDS	$318.00
EPA 508	CHLORINATED PESTICIDES IN DRINKING WATER	LIQUID	$212.00
EPA 608	ORGANOCHLORINATED PESTICIDES IN WASTEWATER	LIQUID	$159.00
EPA 8081	CHLORINATED PESTICIDES IN SEDIMENT	SOLID	$159.00

EPA 515.3	HERBICIDES IN DRINKING WATER & WASTEWATER	LIQUID	$318.00
EPA 8151	HERBICIDES IN WATER, WASTE	LIQUID SOLID	$371.00
SEL SOP 125	PERCENT MOISTURE IN SEDIMENT	SOLID	$21.00
FDA 303E4C1	FISH TISSUE SAMPLE (FILET) PREPARATION ONLY	FISH	$307.00
FDA 303E4C1	FISH TISSUE SAMPLE (WHOLE EVISCERATED) PREPARATION ONLY	FISH	$329.00
FDA 303E4C1	FISH TISSUE SAMPLE (WHOLE UNEVISCERATED) PREPARATION ONLY	FISH	$355.00
DEQ	PESTICIDE SCAN IN FISH	FISH	$159.00
EPA 1020	FLASH POINT	LIQUID	$27.00
TX 1005 M	TOTAL PETROLEUM HYDROCARBONS (TPH)	LIQUID SOLID	$74.00
OK 8020/8015	GASOLINE RANGE ORGANIC CONSTITUENTS INCLUDING BTEX (OKLA-GRO)	LIQUID	$74.00
DEQ	POLYCHLORINATE BIPHENYL (PCB) IN OIL	LIQUID	$148.00
RADIOCHEMISTRY			
EPA 900.0	GROSS ALPHA/BETA	LIQUID	$90.00
EPA 900.0	GROSS ALPHA	LIQUID	$80.00
EPA 900.0	GROSS BETA	LIQUID	$80.00
DEQ1	GROSS ALPHA/BETA IN SWIPE		$53.00
EPA 903.0	RADIUM 226	LIQUID	$69.00
EPA 904.0	RADIUM 228	LIQUID	$106.00
EPA 200.8	URANIUM	LIQUID	$27.00
EPA 520/5-87-005	RADON AIR	AIR	$27.00

APPENDIX B. SAMPLES SUBMITTED BY PRIVATE CITIZENS [REVOKED]

APPENDIX B. SAMPLES SUBMITTED BY PRIVATE CITIZENS [NEW]

METHOD	*ANALYTE*	*MATRIX*	*FEE*
PRIVATE CITIZEN SAMPLES			
SM 9223	COLIFORM, TOTAL AND E COLI, PRESENCE/ABSENCE (PA)	LIQUID	$21.00
	ROUTINE CHEMICAL (INCLUDES ALKALINITY, CHLORIDE, NITRATE/NITRITE, SPECIFIC CONDUCTANCE, pH, SULFATE, TOTAL DISSOLVED SOLIDS, TOTAL HARNDESS	LIQUID	$145.00
EPA 200.8	LEAD	LIQUID	$21.00
EPA 300.1	FLUORIDE	LIQUID	$24.00
EPA 353.2	NITRATE/NITRITE	LIQUID	$24.00
EPA 325.2	CHLORIDE	LIQUID	$21.00
EPA 507	NITROGEN-PHOSPHORUS PESTICIDE IN DRINKING WATER	LIQUID	$318.00
EPA 508	CHLORINATED PESTICIDE IN DRINKING WATER	LIQUID	$212.00
EPA 520/5-87-005	RADON CANISTERS	AIR	$27.00

[OAR Docket #08-1087; filed 5-30-08]

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

[OAR Docket #08-1088]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix A. Application and Annual Fee Schedule for Radiation Machines [REVOKED]
Appendix A. Application and Annual Fee Schedule for Radiation Machines [NEW]
AUTHORITY:
Environmental Quality Board and Radiation Advisory Council powers and duties, 27A O.S., §§ 2-2-101, 2-2-104, 2-2-201, 2-9-104, and 2-9-105.
DATES:
Comment Period:
November 1, 2007, through December 6, 2007, and February 29, 2008
Public Hearing:
December 6, 2007, and February 29, 2008
Adoption:
February 29, 2008
Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
Submitted to Senate:
March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rule is to clarify the appropriate fee category for various machines. The proposed rule changes the description of radiation machines in some fee categories to align the terminology of Appendix A with the rules. Specifically, the term 'particle accelerator' is substituted for 'cyclotron' in Group A, for 'therapeutic accelerator' in Group B-1, and for 'linear accelerator' in Group C-1. The term 'x-ray systems and particle accelerators' is substituted for 'other therapy machines' in Group B-2, and the term 'analytical or industrial x-ray machines' is substituted for 'cabinet x-ray machines' in Group D-2. The current Appendix A does not include a fee category for particle accelerators with beam energies exactly equal to 1 MeV. The proposed rule places these radiation machines in Group B-1. The description of radiation machines included in Group C-1 is further clarified by specifying that the fee category excludes particle accelerators described in Group A. To assist applicants in determining the correct total fee, an example is provided that demonstrates how to calculate fees when registering a combination of two or more machines from different fee groups. No changes to fees will result from this rulemaking.
CONTACT PERSON:
Mike Broderick, Environmental Programs Manager, Radiation Management Section, Land Protection Division, Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma or at P. O. Box 1677, 73101-1677, phone 405-702-5100, FAX 405-702-5101, e-mail mike.broderick@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

APPENDIX A. APPLICATION AND ANNUAL FEE SCHEDULE FOR RADIATION MACHINES [REVOKED]

APPENDIX A. APPLICATION AND ANNUAL FEE SCHEDULE FOR RADIATION MACHINES [NEW]

	DESCRIPTION	FIRST MACHINE	ADDITIONAL MACHINES
*Group A.	Particle accelerators used for the production of radionuclides - OAC 252:410-17	$2000.00	$400.00
*Group B-1.	Particle accelerators used for therapeutic purposes with beam energies of 1 MeV and above - OAC 252:410-11, Part 5	$1000.00	$200.00
*Group B-2.	X-ray systems and particle accelerators used for therapeutic purposes with beam energies less than 1 MeV - OAC 252:410-11, Part 3; and simulators used for therapy treatment planning - OAC 252:410-11-75	$300.00	$75.00
*Group C-1.	Particle accelerators for non-therapeutic uses not covered in Group A or Group C-2 - OAC 252:410-17	$1000.00	$200.00
*Group C-2.	Industrial electron beam systems - OAC 252:410-17-8	$500.00	$100.00
*Group D-1.	Open beam x-ray machines - OAC 252:410-13, Part 5; and x-ray machines used for industrial radiography - OAC 252:410-15	$300.00	$75.00
*Group D-2.	Analytical or industrial x-ray machines not included in Group D-1 with energies greater than 10 kVp and 1 mA - OAC 252:410-13	$200.00	$50.00

* Maximum Fee for Group A - $3000.00
Maximum Fee for Group B - $2000.00
Maximum Fee for Group C - $1200.00
Maximum Fee for Group D - $ 750.00

For applicants with multiple types of machines:

Use the highest "First Machine" fee, and add the "Additional Machines" fee based on the actual Group of the additional machine (not necessarily the same group as the first machine). For example, the fee for a facility with a particle accelerator used for industrial purposes (Group C-1) and an industrial electron beam system (Group C-2) would be $1000.00 + $100.00 = $1100.00.

[OAR Docket #08-1088; filed 5-30-08]

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

[OAR Docket #08-1089]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S., §§ 2-2-201 and 2-10-201, and the Oklahoma Waste Tire Recycling Act, 27A O.S., §§ 2-11-401 *et seq.*
DATES:
Comment period:
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Submitted to House:
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Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
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SUPERSEDED EMERGENCY ACTIONS:
Superseded 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:
March 4, 2008
Register publication:
25 Ok Reg 797
Docket number:
08-370
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed new and amended language to 252:515, Subchapter 21, arises from Senate Bill 747. These rules implement statutory changes effective July 2007. The statutory changes require waste tire facilities, tire derived fuel facilities and entities involved in erosion control projects (hereinafter referred to as "qualified applicants") to submit requests for reimbursement to the Oklahoma Department of Environmental Quality (DEQ). Proposed rule changes will require qualified applicants to demonstrate that at least two percent (2%) of the waste tires are collected from illegal dumps or landfills on the priority cleanup list (PCL) or community-wide cleanup events as opposed to the previous requirement of five percent (5%). Amendments to 252:515, Subchapter 21, require qualified applicants to receive DEQ approval upon completion of collection efforts from illegal tire dumps and community-wide cleanup events. The proposed new rules and amendments also clarify DEQ's authority with respect to manifest requirements, tire dealer inspections, and motor license agent inspections. Recently, language was proposed to further clarify how the DEQ shall apportion the Waste Tire Recycling Indemnity Fund (Fund) to qualified applicants.
CONTACT PERSON:
Ferrella March, Land Protection Division, Solid Waste Management Section, PO Box 1677, Oklahoma City, OK 73101-1677, e-mail at **ferrella.march@deq.state.ok.us,** phone 405-702-5175, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 21. WASTE TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION

PART 1. GENERAL PROVISIONS

252:515-21-1. Applicability

This Subchapter applies to waste tire facilities, waste tire generators, waste tire transporters, tire dealers, motor license agents, and persons engaged in the processing or recycling of waste tires.

252:515-21-3. Priority cleanup list

(a) **Investigation and prioritization.** When the DEQ receives notification of or information about the existence of an unauthorized waste tire dump, a dump survey shall be conducted to determine landowner information, cleanup feasibility, and an estimate of the number of tires present. The resulting data shall be used to prioritize tire dumps on the priority cleanup list (PCL).

(b) **Priority listing.** Tire dumps will be placed on the PCL when the landowner was the victim of illegal dumping or the DEQ has exhausted the administrative enforcement process.

~~(c) **Submittal.** The DEQ shall submit the PCL monthly to the Oklahoma Tax Commission (OTC).~~

(~~d~~c) **Number authorized for compensation.** The PCL shall include the name and number assigned to each tire dump on the list and the estimated total number of tires contained therein. For each waste tire dump on the PCL, the total number of waste tires authorized for compensation from the fund shall not exceed the number of waste tires identified.

(~~e~~d) **PCL updates.** For each waste tire dump on the PCL, if the total number of waste tires identified on the PCL is removed from that dump and there are waste tires remaining, the DEQ may update the PCL to reflect the remaining number of waste tires.

252:515-21-5. Special collection efforts

(a) **Waste tire facility selection.** For special collection efforts identified in OAC 252:515-21-4, the DEQ will contact waste tire facilities, tire derived fuel facilities (TDF) and entities that install erosion control projects, [hereinafter referred to as "qualified applicants for collection and transportation", (QACT)] on a rotating basis and identify the location of the waste tires, the number of tires present, and a contact name and phone number.

(b) **Timeline for collection.** The QACT shall provide the DEQ with documentation to demonstrate whether or not the county in which the tires are located has physically been serviced in that quarter. The QACT shall collect the tires at the location identified and otherwise service that county, as follows:

(1) prior to the end of the quarter, if the county has not been physically serviced during that calendar quarter; or

(2) prior to the end of the next calendar quarter, if the previous quarter's service is current.

(c) **Special pickup.** Upon the request of the Executive Director, the DEQ may notify the QACT to collect certain tires within seven (7) days or report the status of the special pickup back to the DEQ.

(d) **Collection efforts from tire dumps or landfills and community-wide clean up events.** The DEQ may require a QACT to collect from tire dumps or landfills on the PCL or from community-wide clean up events approved by the Department.

(1) The DEQ may assign collection events to a QACT, which shall collect the tires within the time period specified.

(2) The QACT shall certify to DEQ the number of tires cleaned up from the collection event.

PART 3. WASTE TIRE FACILITIES

252:515-21-32. Facility operation requirements

(a) **General.** Waste tire facilities are subject to the requirements of Part 3 of OAC 252:515-19, except 19-33.

(b) **Acceptable wastes.** Only waste tires shall be accepted at a waste tire facility.

(c) **Maximum storage.**

(1) **Waste tires.** The number of waste tires stored at any time shall not exceed 250,000 or the maximum number authorized by the permit, whichever is less.

(2) **Processed tires.** The amount of processed tire material stored at any time shall not exceed the amount accumulated from three years of operation or the amount for which financial assurance has been provided, whichever is less.

(d) **Tires awaiting processing.** Waste tires stored on the ground while awaiting processing shall be placed in orderly piles, as follows:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed seven feet and

(3) side slopes shall not be greater than two horizontal to one vertical slope.

(e) **Processed material storage.** If processed tire material is stored in piles, the piles shall meet the following:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed 20 feet; and

(3) stable side slopes shall be maintained.

(f) **Tire dumps.** Annually, at least ~~5%~~2% of the waste tires processed must be collected from tire dumps identified on the PCL or through DEQ approved community-wide clean-up events in the State of Oklahoma.

(g) **Restricted areas.**

(1) **Fire lane.** An unobstructed fire lane at least 50 feet in width shall be maintained around the perimeter of each tire pile and each processed tire material pile located outdoors.

(2) **Buffer zone.** A clean buffer zone of at least 75 feet shall be maintained between tire piles or processed tire materials and adjacent properties.

(h) **Weighing processed materials.** Each load of processed tire material shall be weighed on scales tested and certified in accordance with the requirements of the ~~state Board~~ Oklahoma Department of Agriculture, Food and Forestry.

(1) Each truck and/or trailer shall be weighed full and empty.

(2) Gross and tare weights shall be imprinted on the same weight ticket.

(3) Stored tare weights shall not be used.

(i) **Daily log.** A daily log shall be maintained for each load of waste tires received. The daily log shall accurately reflect:

(1) the name and address of the hauler;

(2) the counted number of tires from each waste tire source;

(3) the name and address of each waste tire source;

(4) the number of tires processed each day; and

(5) the use and destination of each daily outbound load of processed tire material.

PART 5. WASTE TIRE TRANSPORTATION

252:515-21-51. Waste tire manifests

(a) **Manifest required.** Any person who transports more than 10 used or waste tires over Oklahoma roads to or from destinations within the state must have a manifest documenting the proper disposition of the tires. All parties must fully complete and sign the manifest. Designated copies must be given to each waste tire generator, transporter, and receiving facility reflected on the manifest.

(1) **Waste tire compensation manifest.** A Waste Tire Compensation Manifest must be used for transportation of waste tires to a waste tire facility entitled to receive compensation from the fund. A four-part carbonless paper manifest form, numbered in sequence so that each manifest has a unique identifying number, shall be provided by the waste tire facility.

(2) **Waste tire tracking manifest.** A Waste Tire Tracking Manifest must be used for transportation of waste tires to any location other than a waste tire facility. A three-part, carbonless paper manifest form, numbered in sequence so that each manifest has a unique identifying number, shall be provided by the waste tire generator or transporter.

(b) **Accuracy of manifests and tire weights.** Manifests shall be complete and accurate in all details and accompanied by weight tickets from certified scales which show the weight of the load collected and transported or accepted for processing by the QACT.

(c) **Inaccurate, incomplete, or insufficient manifest.** The DEQ may not certify QACTs for tires which are processed if the manifests for those tires are incomplete, unreadable, not dated and signed by all parties, 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 Act.

(~~b~~d) **Signatory.**

(1) **Generator.** The waste tire manifest shall be signed by the generator of the waste tires, all transporters, and the receiving facility.

(2) **Waste tire dump.** If the tires are from a tire dump, the landowner or authorized representative shall sign the manifest as the generator. If the landowner is unknown or unavailable or resides out of state, the DEQ may authorize another signatory prior to the removal of any waste tires.

(~~c~~e) **Recordkeeping.** Within 30 days of receipt of the waste tires, a completed copy of the manifest shall be returned to the waste tire generator. Copies of the manifest shall be maintained by the generator, transporter, and receiving facility for a period of five years.

PART 7. COMPENSATION FROM THE WASTE TIRE INDEMNITY FUND

252:515-21-71. Eligibility requirements

(a) **Eligible waste tires for Processing.** Waste tires eligible for compensation include motor vehicle tires pursuant to Section 1-134 of Title 47 of the Oklahoma Statutes for which a fee has been assessed by a tire dealer or motor license agent.

(~~a~~b) ~~**Processing**~~ **Qualified applicants.** The following are eligible to receive compensation from the fund only for the processing or recycling of those waste tires ~~listed~~ referred to ~~by the OTC in OAC 710:95-5~~ in (a) of this section:

(1) waste tire facilities;

(2) Erosion Control Installers who, as a landowner or on behalf of a landowner, have obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District for the use of waste tires for erosion control, river bank stabilization, or other conservation projects on the property of the landowner; and

(3) tire derived fuel facilities; and

(4) units of local or county governments who have a DEQ approved plan to bale waste tires for use in engineering projects.

(~~b~~c) **Collection and transportation.** ~~QACT~~ Qualified applicants are eligible to receive compensation from the fund only for the collection and transportation of the waste tires ~~listed~~ referred to ~~by the OTC in OAC 710:95-5~~ in (a) of this section.

(d) **PCL and community-wide cleanup event requirement.** At least 2% of the waste tires for which compensation will be requested must come from tire dumps or landfills identified on the PCL and from community-wide cleanup events in the state of Oklahoma. The QACT shall not receive credit toward the 2% requirement until the collection efforts are approved by DEQ.

(e) **Apportionment.** If the Waste Tire Recycling Idemnity Fund (Fund) contains insufficient funds in any month to satisfy the eligible reimbursements under the Act, the Department shall apportion the payments among the qualified applicants according to the following formula. Divide the total amount of the Fund available for disbursement by the total authorized reimbursements requested by the qualified applicants. The result is expressed as a percentage. Multiply this percentage by the amount requested and authorized for each qualified applicant, resulting in the apportionment for that qualified applicant.

252:515-21-73. Certification for compensation

(a) **Compliance.** An applicant requesting certification for compensation from the fund must be in substantial compliance with:

(1) the Act;

(2) the requirements of this Chapter;

(3) any permits issued by the DEQ, if applicable; and

(4) ~~applicable rules of the OTC; and~~

~~(5)~~ other applicable authorizations issued by the United States Army Corps of Engineers or local Conservation District.

(b) **Required forms.** Applicants eligible for compensation from the fund shall complete the required forms provided by the ~~OTC~~ DEQ and submit them to ~~OTC~~ DEQ ~~with a copy to the DEQ~~.

~~(c) OTC requirements. The OTC may have additional requirements at OAC 710:95-5.~~

PART 9. EROSION CONTROL, RIVER BANK STABILIZATION AND OTHER CONSERVATION PROJECTS

252:515-21-92. Eligibility requirements

(a) **Use of proper tires.** Annually, at least ~~5%~~2% of the waste tires for which compensation will be requested must come from tire dumps identified on the PCL or from community-wide cleanup events in the state of Oklahoma and installed in accordance with this Part and the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District.

(b) **Waste tire collection.** The Erosion Control Installer (ECI) shall comply with 27A O.S. § 2-11-401.4(C)(3)(b).

(c) **Project completion report.** Upon completion of the project, the ECI shall submit a project completion report to the DEQ, certifying the project was completed in accordance with the approved design plans. The report shall include the following:

(1) the name, address and telephone number of the applicant;

(2) the tire dump from which tires came, if any, and DEQ identification number;

(3) identification of the community-wide cleanup event from which tires came, if any;

(4) quantity of tires removed from the tire dump or community-wide cleanup event, by tire type;

(5) name and location of the approved project;

(6) quantity and type of tires delivered to and installed at the project;

(7) a copy of the permit or other authorization issued by the United States Army Corps of Engineers or local Conservation District;

(8) a copy of the planting plan developed in conjunction with and approved by the Division of Forestry of the Oklahoma Department of Agriculture, Food, and Forestry;

(9) verification the landowner agrees to complete the planting plan described in (8) of this Subsection;

(10) documentation to verify compliance with (d) of this Section, if applicable; and

(11) other information required by the DEQ.

(d) **Proper disposal.** The ECI shall dispose of any waste tires not needed for the project at a permitted waste tire processing or other waste tire recycling facility, or a permitted solid waste disposal facility.

(e) **DEQ inspection.** After submittal of the project completion report, the DEQ shall inspect the project and the project file to determine compliance with the Act, the rules in this Subchapter, and project plans.

(f) **Project complete.** If the project is complete, the DEQ shall notify the ECI in writing, with copies to the OTC, the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Army Corps of Engineers or local Conservation District, as appropriate.

(g) **Project incomplete.** If any aspect of the project is not complete, the DEQ shall give written notification of the deficiencies to the ECI, who shall respond accordingly. In such cases, partial compensation may be authorized in accordance with OAC 252:515-21-74.

(h) **Recordkeeping.** Records required by this Part shall be maintained by the ECI for a period of five years after completion of the project.

PART 13. TIRE DEALER AND MOTOR LICENSE AGENT AUDITS

252:515-21-131. Tire dealer and motor license agents audits

Tire dealers and motor license agents shall provide records, reports and other documentation relative to the Act to any authorized representative of the DEQ upon request.

[OAR Docket #08-1089; filed 5-30-08]

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

[OAR Docket #08-1090]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Introduction
252:606-1-4. Date of federal regulations incorporated [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]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

DATES:
Comment period:
December 3, 2007, through January 15, 2008
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Submitted to Senate:
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Gubernatorial approval:
April 23, 2008

Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
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May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Part 116 (Hazardous Substances List)
Part 117 (Reportable Quantities for Hazardous Substances)
The following from PART 122 (NPDES PERMIT REGULATIONS):
122.1 (b)-(scope of NPDES permit requirements)
122.2 - (definitions)
122.3 - (exclusions)
122.4 - (prohibitions)
122.5 - (effect of permit)
122.6 - (continuation of expiring permits)
122.7 (b) and (c) - (confidential information)
122.21 - (application for a permit)
122.22 - (signatories)
122.24 - (concentrated aquatic animal production facilities)
122.25 - (aquaculture projects)
122.26 - (stormwater discharges)
122.27 - (silviculture)
122.28 (a) and (b) - (general permits)
122.29 - (new sources and new dischargers)
122.30 - What are the objectives of the storm water regulations for small MS4s?
122.31 - As a tribe, what is my role under the NPDES storm water program?
122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?
122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
122.41 - (permit conditions)
122.42 - (conditions for specified categories of permits)
122.43 - (establishing permit conditions)
122.44 - (establishing permit limitations, standards and other conditions)
122.45 - (calculating permit conditions)
122.46 - (permit duration)
122.47 (a) - (schedules of compliance)
122.48 - (monitoring requirements)
122.50 - (disposal into wells)
122.61 - (permit transfer)
122.62 - (permit modification)
122.63 - (minor modifications of permits)
122.64 - (permit termination)
122 - Appendices A through I
The following from PART 124 (Procedures for Decision making):
124.1 - (introduction)
124.2 - (definitions)
124.3 (a), (c), and (d)- (application for a permit)
124.5 (a),(c),(d) and (f) - (modification of permits)
124.6 (a),(c),(d) and (e) - (draft permit)
124.7 - (statement of basis of conditions where no fact sheet is adopted)
124.8 - (fact sheet)
124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)
124.11 - (public comments and requests for hearings)
124.12 (a) and (c) - (public hearings)
124.13 - (obligation of protestors, etc., to raise all issues)
124.14 - (reopening)
124.15 - (issuance & effective dates of permits)
124.17 (a) and (c) - (response to comments)
124.51 (a) and (b) - (specific permitting procedures-purpose and scope)
124.52 - (permits required on a case-by-case basis)
124.56 - (fact sheets)
124.57 (a) - (public notice)
124.59 - (comments from government agencies)
124.62 - (decision on variances)
124.66 - (thermal variance procedures)
The following from PART 125 (criteria and standards for NPDES):
Subpart A (technology-based treatment),
Subpart B (criteria for aquaculture projects),
Subpart D (fundamentally different factors),
Subpart H (alternative effluent limitations),
Subpart I (new cooling water intakes), and
Subpart J (existing cooling water intakes).
40 CFR Part 129 (Toxic Pollutant Effluent Standards)
40 CFR Part 136 (testing and laboratory)
40 CFR §§ 401-471 (Effluent Guidelines and Standards)
40 CFR § 110.6 (notice of oil discharge) and
40 CFR Part 302 (Reportable Quantities and Notification).

The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:
The following Sections from Part 503, Subpart A (General Provisions):
503.1 (Purpose and applicability)
503.2 (Compliance period)
503.3 (Permits and direct enforceability)
503.4 (Relationship to other regulations)
503.5 (Additional or more stringent requirements)
503.6(a)-(e),(g)-(j) (Exclusions)
503.7 (Requirement for a person who prepares biosolids)
503.8 (Sampling and analysis)
503.9 (General definitions)
The following Sections from Part 503, Subpart B (Land Application):
503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
503.11 (Special definitions)
503.12 (General requirements)
503.13 (Pollutant limits)
503.14 (Management practices)
503.15 (Operational standards - pathogens and vector attraction reduction)
503.16(a) (Frequency of monitoring)
503.17(a) (Recordkeeping)
503.18 (Reporting)
The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
503.30 (Scope)
503.31 (Special definitions)
503.32(a), (b) (Pathogens)
503.33(a), (b)(1)-(11) (Vector attraction reduction)
The following Sections from Part 503 Subpart E (Incineration)
503.40 (Applicability)
503.41 (Special definitions)
503.42 (General requirements)
503.43 (Pollutant (Metal) limits)
503.44 (Operational standard - total hydrocarbons)
503.45 (Management practices)
503.46 (Frequency of monitoring)
503.47 (Recordkeeping)
503.48 (Reporting)
The following Appendices from Part 503:
Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
Appendix B (Pathogen treatment processes)
Incorporating rules:
OAC 252:606-1-4
Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

ANALYSIS:

The Department proposes to increase OPDES permit and annual fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1999, through 2007. Additionally, the Department proposes to have fees automatically increase annually thereafter pursuant to any increase in the consumer price index from the previous year. Finally, the Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2006, to July 1, 2007.

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. INTRODUCTION

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2006~~ 2007.

APPENDIX B. FEES FOR NON-INDUSTRIAL DISCHARGE PERMITS [REVOKED]

APPENDIX B. FEES FOR NON-INDUSTRIAL DISCHARGE PERMITS [NEW]

Annual Fee Rating System - Beginning July 1, 2008, fees for non-industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Discharge complexity level designation

(b) Major/minor facility designation

(c) Actual wastewater flow rate over the previous twelve (12) months

(d) Outfalls

(e) Pretreatment Program.

(2) Points will be calculated for each of the complexity factors listed in paragraph (1) according to the Instructions for completing the annual permit fee rating sheet (Table G-1) and the annual fee rating work sheet (Table G-2).

(3) The total annual fee is calculated by adding the annual discharge fee and the annual pretreatment fee. The annual discharge fee will be calculated by multiplying the total number of points generated using **Table B-2 items 1-4** by $33.51. The annual pretreatment fee will be calculated by multiplying the total number of points generated using **Table B-2 item 5** by $32.71.

(4) Fees for other disposal methods will be in addition to the fees for discharge and will be in accordance with other applicable rules of the Department.

(5) The annual fee will be paid in advance by all facilities which have a permit in effect as of June 30 of each year. Fees in excess of $1,000 may be paid quarterly upon the request of the permittee.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities will be prorated and will cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant with the permit and will be due within 20 days of receipt.

(7) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(8) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(9) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(10) Fee payment must be made by check, draft, money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(11) State appropriations and federal grants will be used to offset the annual fee where possible.

(12) To assist in meeting rising costs to the Department of the OPDES program associated with permitting and enforcement for non-industrial discharge permits, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(a) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(b) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(c) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(13) The fees listed in this Appendix shall only be raised in the manner stated in paragraph (12) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

TABLE B-1 INSTRUCTIONS FOR COMPLETING NON-INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET (For Staff Use)

1. **DISCHARGE COMPLEXITY LEVEL DESIGNATION**

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the facility for sewage treatment plants (SIC 4952), check complexity designation level 1. For other non-industrial discharges, use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable subcategory and the related complexity designation. When more than one category applies to effluent from a single discharge point, select the category with the highest complexity level designation. Level 1 is the lowest complexity level designation and Level 5 is the highest.

2. **MAJOR/MINOR NPDES FACILITY DESIGNATION**

Determine if the facility is rated as a major facility according to the latest EPA NPDES Permit Rating System. Check the appropriate answer and record the applicable point amount.

3. **WASTEWATER FLOW**

On the work sheet under the wastewater flow, indicate the appropriate flow range, based on actual flow rate from the previous twelve (12) months.

4. **OUTFALLS**

On the work sheet under outfalls, indicate the number of outfalls.

5. **PRETREATMENT**

On the work sheet under pretreatment, indicate whether the applicant implements a DEQ-required/approved pretreatment program.

6. **RATING POINTS FOR DISCHARGE**

Sum the rating points assigned to each of the four sections and record the total in the discharge rating points blank.

7. **DISCHARGE FEE**

Multiply the points for discharge by the appropriate $/point as found in section (3) above.

8. **RATING POINTS FOR PRETREATMENT**

Sum the rating points assigned to the two pretreatment sections and record the total in the pretreatment rating points blank.

9. **PRETREATMENT FEE**

Multiply the points for pretreatment by the appropriate $/point as found in section (3) above.

10. **ANNUAL PERMIT FEE**

The annual permit fee will be computed by adding the fee for discharge and the fee for pretreatment.

TABLE B-2. DISCHARGE PERMIT ANNUAL FEE RATING WORK SHEET

PERMIT NO._____

PERMITTEE_____DATE___/___/___

DISCHARGE FEE CALCULATION

1. **DISCHARGE COMPLEXITY DESIGNATION**

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =
_____ 1 (20 points)
_____ 2 (25 points)
_____ 3 (30 points)
_____ 4 (35 points)
_____ 5 (40 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

2. **MAJOR/MINOR NPDES FACILITY DESIGNATION**

Is the facility rated as a major facility according to the latest version of the EPA NPDES Permit Rating System?

_____Yes, then points = 120
_____No, then points = 12

MAJOR/MINOR FACILITY DESIGNATION POINTS_____

3. **WASTEWATER FLOW**

FLOW VOLUME_____ (4 point per mgd)

Total points _____

4. **OUTFALLS**

Number of Outfalls _____ (8 points per outfall over 1, up to 10 outfalls)

Total points _____

5. **PRETREATMENT**

Does the facility implement a pretreatment program (charged one per city/authority)?

_____Yes, then points = 80 points + 20 points per mgd X 1/3 (Flow volume (sum of flow rates of all facilities operated by the city/authority) _____
+ 20 points per categorical user (with a cap of 10) x 2/3

_____No, then points = 0 points

Totals points _____
==========

(A) TOTAL RATING POINTS FROM DISCHARGE CALCULATIONS

(B) $/POINT FROM SECTION (3) ABOVE

(C) **DISCHARGE FEE** = ((A) x (B))

(D) TOTAL RATING POINTS FROM PRETREATMENT CALCULATIONS

(E) $/POINT FROM SECTION (3) ABOVE

(F) **PRETREATMENT FEE** = ((D) X (E))

(G) **TOTAL FEE** = ((C) + (F))

APPENDIX C. ANIMAL INDUSTRIAL DISCHARGE PERMIT FEES [REVOKED]

APPENDIX C. ANNUAL INDUSTRIAL DISCHARGE PERMIT FEES [NEW]

Annual Fee Rating System - Beginning July 1, 2008, fees for industrial discharge permits will be calculated according to an Annual Fee Rating System as follows:

(1) The system will contain the following factors to evaluate the complexity of the permit:

(a) Major/minor facility designation

(b) Discharge complexity level designation

(c) Receiving stream beneficial use designation

(d) Toxic pollutant potential

(e) Traditional pollutant loading

(f) Additional factors

(2) Points will be calculated for each of the complexity factors listed in paragraph (1) according to the instructions for completing annual permit fee rating sheet in Table C-1 and the annual fee rating worksheet (in substantially same form as Table C-2).

(3) The annual fee will be calculated by multiplying the number of points by $51.00, provided that the minimum fee will be no less than $100.00 per year.

(4) Fees for other disposal methods will be in addition to the fees for discharge and will be in accordance with other applicable rules of the Department.

(5) The annual fee will be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(6) The first year fee for new facilities will be calculated according to the Annual Fee Rating System. Complexity factors based on operational levels at the facility will be calculated using levels proposed in the application. The first year fee for new facilities will be prorated and covers the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(7) A statement of fees due will be mailed to the permittee on or as soon as practical after July 1 of each year.

(8) State appropriations and federal grants will be used to offset the annual fee where possible.

(9) The dollar value per point in paragraph (3) above will continue in effect unless a workload and budget analysis is performed in the previous fiscal year justifying that a fee increase is necessary. This analysis must be reviewed and approved by the Environmental Quality Board.

(10) To assist in meeting rising costs to the Department of the OPDES program associated with permitting and enforcement for industrial discharge permits, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(a) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(b) If the United States Department of Labor ceases to publish the CPI or

revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(c) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(11)The fees listed in this Appendix shall only be raised in the manner stated in paragraph (10) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

TABLE C-1 INSTRUCTIONS FOR COMPLETING INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET (For Staff Use)

1. MAJOR/MINOR FACILITY DESIGNATION

Determine if the facility is rated as a major facility according to the latest EPA NPDES Non-Municipal Permit Rating System. Check the appropriate answer and record $300 for a minor and $3000 for a major in the base fee blank.

2. DISCHARGE COMPLEXITY LEVEL DESIGNATION

From the permit application and permit, determine the appropriate Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the latest available edition of Table 1 or 2 from the U.S. Environmental Protection Agency NPDES Permit Rating Worksheet "Complexity Groups for SIC Codes" to determine the applicable Industrial Subcategory and the related complexity designation. When more than one category applies to effluents from a single discharge point, select the category with the highest complexity level designation. Level I is the lowest complexity level designation and Level VI is the highest. If a facility is covered by SIC code 9999 (unclassifiable establishments), a Complexity Designation Level will be assigned as follows:

A. If the facility is designated as major by the Environmental Protection Agency, check Category V.

B. If the facility is designated as minor by the Environmental Protection Agency, check Category II.

Record the applicable SIC code on the worksheet, then enter the highest complexity designation among all discharge points.

3. RECEIVING STREAM BENEFICIAL USE DESIGNATION

Review the permit application to determine the name of the receiving stream for each discharge point. Review the current Oklahoma Water Quality Standards and determine the beneficial use designations for the stream. Mark the beneficial use(s) on the Worksheet and add the corresponding point amounts. If there is more than one receiving stream, calculate the beneficial use points for each and record the highest total.

4. TOXIC POLLUTANT POTENTIAL

From the permit application and permit, determine the Standard Industrial Classification (SIC) codes for each discharge point by determining the processes and products reported for the industry. Use the primary SIC to determine if there are industrial subcategories for that SIC code. Use the latest edition of the U.S. Environmental Protection Agency NPDES Permit Rating Work Sheet to determine the applicable toxicity group. Use the Code of Federal Regulations (CFR) part and sub-part numbers to help identify the appropriate subcategory. If there is more than one applicable subcategory, select the subcategory that has the highest toxicity group. Enter the industrial subcategory number on the work sheet and check the appropriate Total toxicity potential number. Note that regardless of the facility's SIC code, if the facility discharges no process waste stream to a receiving water, the points scored are 0. Enter and record the applicable point amount.

5. TRADITIONAL POLLUTANT LOADING

Determine if the permit contains discharge limitations for biochemical oxygen demand (BOD), chemical oxygen demand (COD), total suspended solids (TSS) and/or ammonia (or nitrogen). Points should be assigned for the parameters limited in the permit. For the purposes of determining permit fees, the daily average load for each parameter will be calculated, based upon the reported values for the parameter and flow rates submitted on self monitoring report (SMR) and/or discharge monitoring report (DMR) forms for the past

twelve (12) months.

Calculate the BOD and/or COD daily average loads and record the applicable points for each. In some cases, oxygen demand may be limited by some parameter other then BOD or COD [i.e., ultimate oxygen demand (UOD), total organic carbon (TOC), or total oxygen demand (TOD)]. In such cases, record the alternate parameter in the applicable space and calculate the average load and report the applicable point amount.

Sum the points for each parameter and record the total traditional pollutant points in the space provided.

7. ADDITIONAL FACTORS

Determine if the permitted effluent limitations were assigned based on dissolved oxygen (DO) wasteload allocation modeling, including but not limited to the DO Desktop Model, for the receiving perennial stream. Check the appropriate answer and record the points required.

Determine if any permitted effluent limitations were assigned based on a wasteload allocation modeling for conservative parameters. Check the appropriate answer and record the points required.

Determine if biomonitoring is required for any discharge point listed on the permit. Check the appropriate answer and record the points required.

Determine if the facility has had whole effluent toxicity studies performed within the last two years. If so, determine if the results of any of those tests indicated that the effluent from this facility is/was toxic at the critical low-flow dilution. Check the appropriate answer and record the points required.

Determine if the facility is currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or Toxicity Reduction Evaluation (TRE). Check the appropriate answer and record the points required.

8. TOTAL RATING POINTS

Sum the rating points assigned to each of the five sections and record the total in the total rating points blank.

9. ANNUAL PERMIT FEE

The annual permit fee will be computed by multiplying the rating factor (in $ per point) by the calculated total rating points plus the base fee rate.

TABLE C-2 INDUSTRIAL DISCHARGE PERMIT ANNUAL FEE RATING WORKSHEET

PERMIT NO._____

PERMITTEE_____DATE___/___/___

1. **MAJOR/MINOR DETERMINATION**

Is the facility rated as a major facility according to the latest version of the EPA NPDES Non-Municipal Permit Rating System?

_____Yes, then $3000 is the base fee
_____No, then $300 is the base fee

2. **DISCHARGE COMPLEXITY DESIGNATION**

SELECTED OUTFALL POINT #_____ (with the highest complexity)

SELECTED SIC CODE _____

Complexity Designation Level =
_____ I (0 points)
_____ II (10 points)
_____ III (20 points)
_____ IV (30 points)
_____ V (40 points)
_____ VI (20 points)

DISCHARGE COMPLEXITY DESIGNATION POINTS_____

3. **RECEIVING STREAM BENEFICIAL USE DESIGNATION**

Selected Discharge Point #_____ (with the highest points)

Beneficial Use Designations and their assigned points for the selected Receiving Stream:

_____(5 points) Public and Private Water Supply
_____(3 points) Emergency Public and Private Water Supply
_____(5 points) Fish and Wildlife Propagation/Warm Water Aquatic Community
_____(1 point) Fish and Wildlife Propagation/Habitat Limited Aquatic Community
_____(10 points) Fish and Wildlife Propagation/Cool Water Aquatic Community
_____(10 points) Fish and Wildlife Propagation/Trout Fisheries (put and take)
_____(1 point) Agriculture
_____(3 points) Agriculture/Class I Irrigation
_____(2 points) Agriculture/Class II Irrigation
_____(1 point) Agriculture/Class III Irrigation
_____(0 points) Hydroelectric Power
_____(1 point) Industrial and Municipal Process and Cooling Water
_____(5 points) Primary Body Contact Recreation
_____(1 point) Secondary Body Contact Recreation
_____(0 points) Navigation
_____(1 point) Aesthetics
_____(10 points) Limitation for Additional Protection

RECEIVING STREAM POINTS_____

4. **TOXIC POLLUTANT POTENTIAL**

Selected Outfall Point #_____ (with highest Total toxicity number)
Selected SIC Code _____
Selected Industrial Subcategory Code _____

Toxicity Groups	**Points**
No Process Waste Stream	0
_____ 1.	5
_____ 2.	10
_____ 3.	15
_____ 4.	20
_____ 5.	25
_____ 6.	30
_____ 7.	35
_____ 8.	40
_____ 9.	45
_____ 10.	50

TOXIC POLLUTANT POTENTIAL POINTS_____

5. **TRADITIONAL POLLUTANTS**

A. BOD or _____
Daily Average Load =

_____	< 50 lb/day	(0 points)
_____	50 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	>1000 - 3000	(20 points)
_____	>3000 - 5000	(30 points)
_____	>5000 lb/day	(40 points)

BOD Points _____

B. COD or _____
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	> 1000 - 5000	(20 points)
_____	> 5000 - 10000	(30 points)
_____	>10000 - lb/day	(40 points)

COD Points _____

C. TSS
Daily Average Load =

_____	< 100 lb/day	(0 points)
_____	100 - 500	(5 points)
_____	> 500 - 1000	(10 points)
_____	> 1000 - 5000	(20 points)
_____	> 5000 - 10000	(30 points)
_____	>10000 lb/day	(40 points)

TSS Points _____

D. AMMONIA or _____
Daily Average Load =
_____ < 200 lb/day (0 points)
_____ 200 - 500 (5 points)
_____ > 500 - 1000 (10 points)
_____ >1000 - 5000 (20 points)
_____ >5000 - 10000 (30 points)
_____ >10000 lb/day (40 points)

AMMONIA (or nitrogen) Points _____

TOTAL POLLUTANT POINTS _____

6. ADDITIONAL FACTORS

Were any of the effluent limitations assigned to the discharge based on DO related wasteload allocation modeling for the receiving perennial stream?
_____ Yes, then points = 5
_____ No, then points = 0

Were any of the effluent limitations assigned to the discharge based on a wasteload allocation modeling for conservative parameters?
_____ Yes, then points = 5
_____ No, then points = 0

Is biomonitoring required for any discharge point listed on the permits?
_____Yes, then points = 10
_____No, then points = 0

Has any effluent from the facility shown toxicity at the critical low flow dilution on a whole effluent toxicity study within the last two calendar years?
_____Yes, then points = 25
_____No, then points = 0

Is the facility currently required by the U.S. Environmental Protection Agency or the Board to implement a Toxicity Identification Evaluation (TIE) or a Toxicity Reduction Evaluation (TRE).
_____Yes, then points = 100
_____No, then points = 0

ADDITIONAL FACTORS POINTS_____

==========

(A) BASE FEE $

(B) RATING FACTOR ($_____/point)

(C) TOTAL RATING POINTS_____

(D) TOTAL AMOUNT DUE (A) + ((B) X (C)) $

APPENDIX D. FEES FOR STORMWATER PERMITS AND OTHER GENERAL PERMITS [REVOKED]

APPENDIX D. FEES FOR STORMWATER PERMITS AND OTHER GENERAL PERMITS [NEW]

(A) Beginning July 1, 2008 the fee for MS4 stormwater permits is 683.00.

(B) Beginning July 1, 2008, the fee for all general permits, including Authorizations under general stormwater is $316.00.

(C) The annual fee must be paid in advance by all facilities which have been authorized to discharge under a permit as of June 30 of each year.

(D) Fee payment must be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(E) The first year fee for facilities will be prorated and will cover the period beginning the issuance date of the authorization and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(F) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(G) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(H) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, authorization to discharge under the permit will be subject to revocation after notice and opportunity for hearing.

(I) State appropriations and federal grants will be used to offset the annual fee where possible.

(J) To assist in meeting rising costs to the Department of the OPDES program associated with permitting and enforcement for stormwater and other general discharge permits, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(K) The fees listed in this Appendix shall only be raised in the manner stated in paragraph (J) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

APPENDIX E. FEES FOR INDIVIDUAL DISCHARGE PERMITS FOR CATEGORICAL INDUSTRIES [REVOKED]

APPENDIX E. FEES FOR INDIVIDUAL DISCHARGE PERMITS FOR CATEGORICAL INDUSTRIES [NEW]

(A) Beginning July 1, 2008, the fee for individual discharge permits for Categorical industries will be $906.00.

(B) Fee payment must be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(C) The annual fee must be paid in advance by all facilities which have a permit in effect as of June 30 of each year.

(D) The first year fee for facilities will be prorated and will cover the period beginning the issuance date of the permit and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(E) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(F) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(G) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, the permit will be subject to revocation after notice and opportunity for hearing.

(H) State appropriations and federal grants will be used to offset the annual fee where possible.

(I) To assist in meeting rising costs to the Department of the OPDES program associated with permitting and enforcement for industrial discharge permits for Categorical industries, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(J) The fees listed in this Appendix shall only be raised in the manner stated in paragraph (I) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

APPENDIX F. FEES FOR LAND APPLICATION OF BIOSOLIDS [REVOKED]

APPENDIX F. FEES FOR LAND APPLICATION OF BIOSOLIDS [NEW]

(a) Beginning July 1, 2008, the annual permit fee is:
(1) Population Range 0-100 - $261.00
(2) Population Range 101-500 - $292.00
(3) Population Range 501-1,000 - $509.00
(4) Population Range 1,001-5,000 - $881.00
(5) Population Range 5,001+ - $1,005.00

(b) Fees are due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the permit will continue in effect for one year but in no case past its expiration. Failure to pay the fee may result in the suspension or termination of the permit.

(c) Financial assurance
(1) If the applicant is not a city, town or other public entity, the applicant must submit the following information to the DEQ:
(A) Expected costs for operation and maintenance, replacement and closure;
(B) Continued existence and financial accountability; and that
(C) Assurance that provisions have been made for continued existence of the operating entity for the expected life of the facility.
(2) Continued existence may be demonstrated in one of the following fashions:
(A) The applicant may be a property owners association or a nonprofit corporation established under the laws of the State of Oklahoma. The association must have the legal authority to own and manage the land application system including the authority to set and collect fees from users for operation and maintenance of the system. The bylaws of the entity must contain a provision that dissolution cannot occur until the system is either closed in accordance with applicable DEQ rules or transferred to another viable operating entity. The instrument creating the association must be filed in the office of the county clerk where the property is located; or
(B) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater system for the expected life of the facility; or
(C) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater system for the life of the system may be submitted to DEQ for approval; and
(3) Costs for closure of the wastewater system as required by law must be included in any funding plan.
(4) If the information fails to demonstrate the on-going viability of the operation, the application will be denied.

(d) To assist in meeting rising costs to the Department of the OPDES program associated with the land application of biosolids, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic

adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(e) The fees listed in this Appendix shall only be raised in the manner stated in paragraph (d) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

[OAR Docket #08-1090; filed 5-30-08]

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

[OAR Docket #08-1091]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:611-1-3. Adoption and incorporation by reference [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*
DATES:
Comment period:
December 3, 2007, through January 15, 2008
Public hearing:
January 15, 2008, and February 29, 2008
Adoption:
February 29, 2008
Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
Submitted to Senate:
March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR, Part 130, as published on July 1, 2007
Incorporating rules:
OAC 252:611-1-3
Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.
ANALYSIS:
The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations (40 CFR, Part 130). The change updates the publication date of the federal rules from July 1, 2006, to July 1, 2007.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:611-1-3. Adoption and incorporation by reference

40 CFR Part 130 is adopted and incorporated by reference, as published on July 1, ~~2006~~ 2007, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #08-1091; filed 5-30-08]

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

[OAR Docket #08-1092]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Procedures
252:616-3-3. Annual fees [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*
DATES:
Comment period:
December 3, 2007, through January 15, 2008
Public hearing:
January 15, 2008, and February 29, 2008
Adoption:
February 29, 2008
Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
Submitted to Senate:
March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Department proposes to increase its industrial wastewater annual fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1997, through 2007. Additionally, the Department proposes to have fees automatically increase annually thereafter pursuant to any increase in the consumer price index over the previous year.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. PERMIT PROCEDURES

252:616-3-3. Annual fees

(a) ~~The~~ Beginning July 1, 2008, the annual fees for industrial tank systems are ~~$700~~ $902.00.

(b) ~~The~~ Beginning July 1, 2008, the annual fees for surface impoundments are:

(1) Class I - ~~$1,210~~ $1,559.00;

(2) Class II - ~~$830~~ $1,043.00;

(3) Class III - ~~$240~~ $309.00;

(4) Class IV - None (only a permit fee under OAC 252:641 or 252:656);

(5) Class V - ~~$330~~ $425.00.

(c) ~~The~~ Beginning July 1, 2008, the annual fees for industrial land application systems are ~~$500~~ $644.00.

(d) Fees are due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the permit shall continue in effect for one year but in no case past its expiration. Failure to pay the fee may result in suspension or termination of the permit.

(e) To assist in meeting rising costs to the Department of the non-discharging industrial wastewater program associated with permitting and enforcement of non-discharging industrial wastewater systems, the fees set out in paragraph (a), (b) and (c) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

[OAR Docket #08-1092; filed 5-30-08]

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

[OAR Docket #08-1093]

RULEMAKING ACTION:
PERMANENT final adoption

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

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

DATES:
Comment period:
December 3, 2007, through January 15, 2008
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Final adoption:
May 2, 2008
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July 11, 2008

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The Department proposes to increase its non-industrial flow-through and public water supply impoundment annual fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1999, through 2007. Additionally, the Department proposes to have fees automatically increase every year thereafter pursuant to any increase in the consumer price index over the previous year.

CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. PERMIT PROCEDURES

252:621-3-3. Annual permit fees for non-industrial surface impoundments

(a) ~~The~~ Beginning July 1, 2008, the annual fee shall be in accordance with the following:

(1) Population Range 0-100 - ~~$210~~ $261.00
(2) Population Range 101-500 - ~~$235~~ $292.00
(3) Population Range 501-1,000 - ~~$410~~ $509.00
(4) Population Range 1,001 - 5,000 - ~~$710~~ $881.00
(5) Population Range 5,001+ - ~~$810~~ $1,005.00

(b) Fees are due upon receipt of an invoice mailed by the DEQ annually. Upon payment of the annual fee, the permit shall continue in effect for one year but in no case past its expiration. Failure to pay the fee may result in the suspension or termination of the permit.

(c) To assist in meeting rising costs to the Department of the non-industrial flow-through and public water supply impoundment program associated with permitting and enforcement of said impoundments, the fees set out in paragraph (a) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

[OAR Docket #08-1093; filed 5-30-08]

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

[OAR Docket #08-1094]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:623-1-7. Incorporation by reference [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*
DATES:
Comment period:
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N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following federal regulations for 40 CFR, as published on July 1, 2007:
40 CFR § 403.5
40 CFR § 403.6
40 CFR § 403.7
40 CFR § 403.8(f)(2)(viii)
40 CFR § 403.12(b), (c), (d) and (p)
40 CFR § 403.13
40 CFR § 403.15
40 CFR § 403.16
40 CFR § 403.17
Incorporating rules:
OAC 252:623-1-7
Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.
ANALYSIS:
The Department proposes to amend its rules concerning Central Treatment Trusts [Oklahoma Ordnance Works Authority (OOWA)] to update the incorporation by reference date to July 1, 2007.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:623-1-7. Incorporation by reference

The following sections and subsections of Title 40 Chapter I, Subchapter N, Part 403 of the CFR as published on July 1, ~~2006~~ 2007 are adopted and incorporated by reference:

(1) § 403.5
(2) § 403.6
(3) § 403.7
(4) § 403.8(f)(2)(viii)
(5) § 403.12(b), (c), (d) and (p)
(6) § 403.13
(7) § 403.15
(8) § 403.16
(9) § 403.17

[OAR Docket #08-1094; filed 5-30-08]

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

[OAR Docket #08-1095]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
252:624-1-1. Purpose, authority and applicability [NEW]
252:624-1-2. Definitions [NEW]
252:624-1-3. Authorizations and permits [NEW]
252:624-1-4. General requirements [NEW]
Subchapter 3. Design and Construction Standards [NEW]
252:624-3-1. Design and construction of minor public water supply system wells [NEW]
252:624-3-2. Design and construction of distribution systems [NEW]
Subchapter 5. Pre-operational Disinfection and Testing [NEW]
252:624-5-1. Disinfection and flushing required prior to placing minor public water supply systems into operation [NEW]
252:624-5-2. Testing prior to placing minor public water supply systems into operation [NEW]
Subchapter 7. Operation and Maintenance [NEW]
252:624-7-1. General operation and maintenance provisions [NEW]
252:624-7-2. Additional maintenance requirements for slow sand filtration systems [NEW]
Subchapter 9. Closure [NEW]
252:624-9-1. Minor public water supply system well abandonment [NEW]
Appendix A. Generic Plans for Minor Public Water Supply System [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201, 2-6-303 and 2-6-304
DATES:
Comment period:
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The main reason for this proposed rulemaking is to clarify and consolidate all construction and operation and maintenance rules applying to minor public water supply systems into one set of rules separate from the more complex rules that apply to public water supply systems. Currently, the rules dealing with minor water supply systems are located in two separate Chapters of Title 252 of the Oklahoma Administrative Code.

The proposed rulemaking will also: require an individual permit for slow sand filters; make the pre-testing requirements less stringent; include ownership criteria that ensures minor public water supply systems are located on property that is owned by or dedicated in an easement to the users of the system or on property where all service connections are owned by or dedicated in an easement to the owner of the wellhead; reduce the frequency of VOC testing for wells within 300' of gasoline underground storage tanks; provide DEQ the option to require additional testing based on the proximity of the well to known potential pollution sources; and include closure requirements.
CONTACT PERSON:
The contact person is Robert Huber. He can be reached at Robert.Huber@deq.state.ok.us (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:624-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to assure that minor public water supply systems are designed, constructed and operated to provide protection for the public health and environment.

(b) **Authority.** This Chapter is authorized by 27A O.S. §§ 2-2-101, 2-2-201, 2-6-303 and 2-6-304.

(c) **Applicability.** The rules in this Chapter apply to any person or entity, including any federal facility, that constructs, modifies or operates a minor public water supply system.

252:624-1-2. Definitions

The following words, terms and acronyms, when used in the 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.

"AWWA" means the American Water Works Association.

"DEQ" means the Department of Environmental Quality.

"Disinfection" means a process that inactivates pathogenic organisms in water using chlorination.

"Drinking water standards" means the list of maximum contaminant levels for drinking water for public water systems as determined by EPA.

"EPA" means the Environmental Protection Agency.

"Licensed well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation licensed by the OWRB to engage in the business of the commercial drilling, plugging, reconstruction and/or test drilling of water wells in the State of Oklahoma.

"Minor public water supply system" means a system, whether publicly or privately owned, that supplies water under pressure to the public (for compensation or not) through pipes or other constructed conveyances and is not classified as a community system, non-community system, or non-transient non-community system in OAC 252:626. Excluded from this definition are water supply systems that:

(A) are constructed, inspected, and maintained under the Construction Industries Board plumbing code;

(B) purchase water from a permitted water system;

(C) do not provide treatment; and

(D) do not resell water.

"NSF" means the National Sanitation Foundation.

"NTU" means Nephelometric Turbidity Unit.

"OWRB" means the Oklahoma Water Resources Board.

"PPM" means parts per million.

"PSI" means pounds per square inch.

"PVC" means polyvinylchloride.

"Service line" means the water supply line that runs between the water main and a residential structure, commercial structure or a water hydrant.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/ft^2/day) resulting in substantial particulate removal by physical and biological mechanisms.

"Turbidity" means the amount of suspended material in water measured using a nephelometer and expressed in NTU's.

"UL" means Underwriter Laboratories.

"VOC" means volatile organic compound.

"Water main" means a public water supply line that carries potable water to more than one service line.

"Water source" means any lake, stream, spring or groundwater supply that is used as treated or untreated water for a minor public water supply system.

252:624-1-3. Authorizations and permits

(a) **Requirement for authorizations and permits.** This Chapter implements the Uniform Permitting Act, 27A O.S. § 2-14-101 *et seq.* and the rules promulgated thereunder. No one may construct a new minor public water supply system, modify an existing minor public water supply system or put an existing water well into use as a minor public water supply system until DEQ has issued either:

(1) an authorization to construct or modify a minor public water supply system under the general permit, the terms of which are the rules of this Chapter; or

(2) an individual permit from DEQ's Water Quality Division issued pursuant to OAC 252:626. An individual permit will be required when the proposed minor public water supply system cannot be constructed or modified according to the design standards in this Chapter.

(b) **Applying for authorizations.** An applicant seeking an authorization to construct a new or modify a minor public water supply system shall submit the following to DEQ:

(1) **Application form.** A completed and signed DEQ Form 624-001, "Application for Authorization to Construct or Modify a Minor Public Water Supply System."

(2) **Site Drawing.** A site drawing that includes:

(A) the property lines;

(B) the location of the proposed or existing well;

(C) the location of any one-hundred-year flood plains within one quarter (1/4) of a mile of the proposed or existing water well; and

(D) all potential sources of pollution within three hundred feet (300') of the proposed or existing water well.

(3) **Affidavit.** A completed and signed affidavit certifying that:

(A) the minor water system will be constructed or modified in accordance with the generic plans set for in Appendix A; and

(B) the applicant:

(i) owns the property where the minor public water supply system will be located; or

(ii) has a current lease or easement for the purpose of constructing and operating the minor public water supply system.

(4) **Wellhead Protection Checklist.** A completed and signed DEQ Form 624-002, "Wellhead Protection Checklist."

252:624-1-4. General requirements

(a) **Ownership.** Minor public water supply systems shall be located only where one of the following can be met:

(1) All parts of the minor public water supply system, including the wellhead, water mains and service lines, are or will be located on property that is:

(A) owned by the owner(s) of the minor public water supply system; and/or

(B) dedicated in a recorded easement (for the installation and operation of the minor public water supply system) to the owner of the minor public water supply system;

(2) All of the users of the minor public water supply system:

(A) own the property where the wellhead is or will be located; and

(B) own or have a dedicated recorded easement to the property where the mains are or will be located;

(3) The wellhead and water mains are or will be located on property that is owned by or dedicated to a home owners association:

(A) for which all of the users are members;

(B) that was established under the laws of the State of Oklahoma;

(C) that has the legal authority to own, maintain, repair and operate the minor public water supply system;

(D) that has by-laws providing that dissolution of the association cannot occur until the system is either abandoned or transferred to another viable operating entity; and

(E) that has the instrument creating the association on file in the office of the county clerk where the property is located; or

(4) All components of the minor public water supply system, excluding service lines, are or will be located on property that is:

(A) owned by a municipality, rural water district, rural sewer district or federally recognized tribe; and/or

(B) dedicated to a municipality, rural water district, rural sewer district or federally recognized tribe in a recorded easement.

(b) **Flood plain restrictions.** Wellheads shall be located above the 100-year flood plain, unless other protective measures are provided.

(c) **Laboratory.** All analyses required to be completed by a laboratory in this Chapter shall be performed by a laboratory accredited and certified by DEQ or EPA for the particular analyte.

(d) **Testing water source.** Water sources for proposed new minor public water supply systems shall be tested for applicable contaminants before completing construction of the minor public water supply system as follows:

(1) **Nitrates.** A representative sample of the water from all proposed water source shall be tested by a laboratory for nitrates. Water sources containing nitrates higher than ten (10) ppm shall not be used as a water source for minor public water supply systems.

(2) **Wells near gasoline underground storage tanks.** Proposed minor public water supply system wells located within three-hundred feet (300') of a gasoline underground storage tank shall have water samples analyzed for VOC's by a laboratory once a year. A water source containing VOC's higher than the applicable drinking water standards shall not be used as a water source for a minor public water supply system.

(3) **Other contaminants.** Based on the location of the water source, DEQ shall have the authority to request testing for other contaminants.

(e) **Construction.** All minor public water supply systems shall be constructed in accordance with the rules in this Chapter or the terms of their individual permit.

(f) **Disinfection prior to final inspection.** All parts of a minor public water supply system that will come in contact with potable water shall be disinfected prior to requesting a final inspection.

(g) **Bacteriological testing prior to final inspection.** The applicant shall have test results from a laboratory that are negative for total coliform bacteria on two (2) consecutive days before requesting a final inspection. [See 252:624-5-2 (relating to pre-operational disinfection and testing of finished water).]

(h) **Final inspection and approval required.** Water from a minor public water supply system shall not be offered to the public for consumption until DEQ conducts a final inspection and approves the construction. The applicant shall request a final inspection by submitting to DEQ the following:

(1) a completed and signed DEQ Form 624-003, "Request for Final Inspection of Minor Public Water Supply System;"

(2) test results from a laboratory showing the results of nitrate analysis and any other analyses performed;

(3) test results from a laboratory showing two consecutive days of safe bacteriological testing following initial disinfection of a new well;

(4) a copy of the well driller's log; and

(5) a completed and signed copy of the Groundwater Well Completion Report (OWRB form).

(i) **Operational standards.** All minor public water supply systems shall be operated in compliance with the operational standards in this Chapter.

(j) **Closure.** All abandoned minor public water supply systems shall be properly closed according to the standards in this Chapter.

SUBCHAPTER 3. DESIGN AND CONSTRUCTION STANDARDS

252:624-3-1. Design and construction of minor public water supply system wells

(a) **Licensed well driller.** Minor public water supply system wells shall be drilled and completed:

(1) by a licensed well driller; and

(2) in compliance with OWRB rules.

(b) **Well design.** Minor public water supply system wells shall be designed and constructed in accordance with the generic plans for minor public water supply systems located in Appendix A.

(c) **System capacity.** The daily production capacity of the minor public water supply system shall be designed to equal or exceed the maximum daily demand.

(d) **Separation distances.** Minor public water supply system wells shall be located a sufficient distance from potential sources of pollution to assure that contaminants cannot reach the well. The following are the mandatory minimum separation distances:

(1) Fifty feet (50') from existing septic tanks and subsurface on-site sewage treatment systems. This separation distance shall be increased to one hundred feet (100') if

the septic tank and/or subsurface on-site sewage treatment system is located in soil identified as:

(A) being a group 1soil in the separation range as described in OAC 252:641-3; or

(B) having a percolation rate of less than five (5) minutes per inch as described in OAC 252:641-3;

(2) Fifty feet (50') from:

(A) buildings that have been treated for termites;

(B) property lines; and

(C) sewer lines. If the sewer line is Schedule 40 PVC, then the separation distance from the sewer line may be decreased to ten feet (10'); and

(3) One hundred feet (100') from gasoline underground storage tanks and all other pollution sources.

(e) **Approved materials.** All materials that will come in contact with potable water must be approved by the NSF, UL, or AWWA for use in public drinking water supplies and made of material that will not impart taste, odor, toxic substances or bacterial contamination to the water.

(f) **Well surface casing.** Every minor public water supply well must have a watertight surface casing extending at least twenty feet (20') below the surface. DEQ may require a greater depth when necessary to eliminate contamination from the surface or upper formations. The pipe used as surface casing must:

(1) meet ASTM, NSF or API specifications for water well construction; and

(2) be clean and sanitized.

(g) **Gravel pack.** If gravel pack is used, the gravel shall be disinfected by being immersed in a chlorine solution containing not less than two hundred (200) ppm of available chlorine.

(h) **Grouting requirements.** Minor public water supply system wells shall be made watertight around the outside of the surface casing by grouting to a depth necessary to exclude pollution, but in no case shall the depth of the grouting be less than twenty (20) continuous feet. The grout shall be made of cement that conforms to ASTM Standard C150 mixed with no more than six (6) gallons of water per ninety-four pound (94 lb.) sack of cement. When the opening between the surface casing and the side of the bore hole (annular opening) is:

(1) one and one-half inches (12") thick, then additives may not be used to increase the cement's fluidity without prior approval by DEQ.

(2) greater than one and one-half inches (12"), then sand may be added to the grout mix with a ratio of no more than one part sand to one part cement.

(3) greater than four inches (4"), then one-half inch (2") gravel or smaller may be added to the grout mix.

(i) **Well screens.** When well screens are used:

(1) the screens shall be constructed of materials resistant to damage by ground water or cleaning operations; and

(2) the openings shall be sized based on a sieve analysis of the surrounding formation and the gravel pack materials to permit the maximum flow of water without allowing the infiltration of clogging material.

(j) **Slab around well casing.** The slab around the well casing shall:

(1) be constructed with reinforced concrete not less than three and one-half inches (3 2") thick;

(2) extend at least twelve inches (12") from the well casing in all directions;

(3) extend at least three inches (3") above the surrounding ground; and

(4) slope at least one-eighth of an inch (1/8") per foot away from the well casing.

(k) **Pitless well adaptors and units.** Pitless well adaptors are prohibited from use in minor public water supply systems. A pitless well unit may be used if it meets the standards of PAS-97-CC(04) as developed by the Water Systems Council and:

(1) is shop-fabricated from the point of connection to the well casing to the unit cap or cover;

(2) is threaded or welded to the well casing;

(3) is made of materials equivalent in composition and weight to the well casing;

(4) connects to the lateral discharge with a threaded, flanged or mechanical joint connection; and

(5) is designed to provide access to disinfect the well.

(l) **Wellhead.** The wellhead shall be constructed as follows:

(1) The well casing shall extend at least:

(A) twelve inches (12") above the final ground surface; and

(B) two feet (2') above the 100-year flood plain or the highest known flood elevation, whichever is higher.

(2) The top of the casing shall be sealed with a well seal or a cap. The well seal or cap shall include a rubber gasket seal and be designed to exclude foreign matter.

(3) The discharge piping shall:

(A) be equipped with a:

(i) check valve;

(ii) shutoff valve;

(iii) pressure gauge; and

(iv) sampling tap located between the wellhead and the shutoff valve.

(B) have all exposed piping, valves and appurtenances protected against physical damage and freezing.

(C) be properly anchored to prevent movement.

(D) be protected against surge or water hammer.

(E) not be connected to any source of contamination or be configured to allow back siphonage from any source of pollution.

(4) There shall be access to disinfect the well.

(5) There shall be a properly constructed well casing vent that:

(A) vents to the atmosphere and prevents a vacuum in the well casing, unless designed for vacuum operation.

(B) is fitted into the well cap or pump base so as to form a water-tight connection.

(C) terminates in a full one hundred eighty degree (180°) bend above the top of the well casing.

(D) has a corrosion resistant screen covering the vent opening. The openings in the screen must not be larger than 24-mesh.

(m) **Full-time disinfection.** When disinfection is required [see 252:624-5-2 and 7-1(c) (relating to sampling and testing)], either a positive displacement hypochlorite chlorinator or an NSF approved tablet chlorinator shall be provided prior to distribution. The water supply piping for the chlorinator shall be designed to prevent back-siphonage or cross connections with non-potable water.

(n) **Electrical controls.** All electrical controls shall be protected from flooding.

(o) **Well security.** Minor public water supply systems shall be protected from vandalism, trespass and sabotage by either having:

(1) the wellhead located in a locked well house; or

(2) a locked cap on the wellhead.

252:624-3-2. Design and construction of distribution systems

(a) **Minimum pressure of 25 psi.** The distribution system shall be designed and constructed to maintain a minimum pressure of twenty-five (25) psi throughout the distribution system under normal operating conditions including peak demand.

(b) **Material specifications.** All materials used in the construction of the distribution system, including piping, fittings, valves, gaskets, packing and other joint materials, shall meet the latest specifications issued by AWWA, ASTM, NSF, or ANSI for use in public drinking water supply systems. When distribution lines are installed in soil or groundwater that is contaminated by organic compounds, the pipe and joint materials shall be made of materials that are not subject to permeation by organic compounds.

(c) **Sizing of water lines.** Water lines shall be sized to furnish water at the volume and pressure required by the applicable plumbing code. Water mains shall be a minimum of two inches (2") in diameter.

(d) **Separation of water lines from potential sources of pollution.** The following are the required horizontal and vertical separation distances between water lines and potential sources of pollution.

(1) **Horizontal separations.** Water lines shall be located a minimum of:

(A) five feet (5') from any existing or proposed storm sewers, septic tanks, aerobic treatment units, trash tanks, sewage pump tanks, raw water lines, petroleum product lines, natural gas lines and other buried utility lines.

(B) ten feet (10') from any existing or proposed sewer line.

(C) fifteen feet (15') from any on-site sewage dispersal field.

(D) ten feet (10') from any gasoline underground storage tank and/or line, when the water lines are made of cast iron.

(E) fifty feet (50') from any gasoline underground storage tank and/or line, when the water lines are made of PVC.

(2) **Vertical separations.** When a water line crosses a sewer line, there shall be a minimum vertical separation distance of twenty-four inches (24") between the water line and the sewer line. The piping shall be arranged so that the joints in the water line do not cross within ten feet (10') of any joints in the sewer line.

(3) **Special conditions.** When it is impossible to obtain the horizontal and vertical separation distances listed in this Subsection, the sewer shall be constructed equal to water line specifications.

(e) **Depth of water mains.** Water mains shall be installed at least thirty inches (30") deep or have sufficient insulation to prevent freezing.

(f) **Bedding for water lines.** Water lines shall be bedded in rock-free material to a depth of at least six inches (6") below the bottom of the pipe. The bedding material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe.

(g) **Blocking.** Reaction blocking, tie rods, or joints shall be provided to prevent movement of the water line at all tees, bends, plugs and hydrants.

(h) **Dead ends in water main.** An approved flushing hydrant or blow-off valve shall be installed at each dead end in the water main. Flushing devices shall not be connected directly to any sewer.

SUBCHAPTER 5. PRE-OPERATIONAL DISINFECTION AND TESTING

252:624-5-1. Disinfection and flushing required prior to placing minor public water supply systems into operation

(a) **Disinfection.** All parts of a minor public water supply system that may come in contact with potable water shall be disinfected prior to offering water from the system to the public for consumption.

(1) **Completed wells.** Completed wells shall be disinfected by mixing enough chlorine in the well water to maintain a chlorine residual of fifty (50) ppm for at least twelve (12) hours.

(2) **Clear wells.** Clear wells shall be disinfected by filling the clearwell with water and enough chlorine to maintain a chlorine residual of fifty (50) ppm for at least twelve (12) hours.

(3) **Piping, pumps and fixtures.** All piping, pumps and fixtures in the minor public water supply system shall be disinfected by:

(A) drawing the 50 ppm chlorine solution from the well or clearwell through all of the water mains, distribution lines and plumbing fixtures until a chlorine odor is detected; and

(B) allowing the chlorinated water to sit in the lines and fixtures for twelve (12) hours.

(b) **Flushing.** Once the disinfection procedure outlined in (a) of this Section has been completed, the system shall be flushed until a chlorine odor cannot be detected at any point in the system.

252:624-5-2. Testing prior to placing minor public water supply systems into operation

(a) **Water samples.** Following the disinfection and flushing procedure outlined in OAC 252:624-5-1, water samples shall be collected from the distribution system at the tap located the farthest distance from the wellhead on two (2) consecutive days and submitted to a laboratory for bacteriological analysis.

(b) **Testing results.**

(1) **Total coliform positive test results.** If either of the sample results required in (a) of this Section come back positive for coliform bacteria, then the disinfection and flushing procedure outlined in OAC 252:624-5-1 shall be repeated. When two (2) consecutive days of coliform negative samples cannot be obtained despite repeated disinfection efforts, then full-time disinfection will be mandatory.

(2) **Fecal coliform positive.** If any of the sample results required in (a) of this Section come back positive for fecal coliform, then a retake sample must be submitted for analysis at a laboratory. If the results of a retake sample come back positive for fecal coliform, then full-time disinfection will be mandatory.

(3) **Total coliform negative test results.** If the sample results required in (a) of this Section come back negative for coliform bacteria for two (2) consecutive days, then the minor public water supply system may be put into operation after receiving approval from DEQ following the required final inspection [see OAC 252:624-1-4(h) (relating to final inspections)].

SUBCHAPTER 7. OPERATION AND MAINTENANCE

252:624-7-1. General operation and maintenance provisions

(a) **Owner responsibilities.** The owner of a minor public water supply system shall be responsible for:

(1) operating and maintaining the minor public water supply system in accordance with the terms of the authorization or permit;

(2) operating and maintaining the minor public water supply system in compliance with this Chapter;

(3) repairing or replacing any broken or malfunctioning components of the minor public water supply system as soon as practicable;

(4) immediately notifying all consumers of the need to heat the water to a full rolling boil for one minute before consumption or to discontinue the use of the water when repeat water samples test positive for total or fecal coliform;

(5) immediately submitting to DEQ copies of any laboratory analysis results that exceed any drinking water standard(s); and

(6) immediately notifying all customers of the result of any analysis that exceeds drinking water standards and any precautionary measures necessary to protect the public health.

(b) **Minimum pressure.** The minor public water supply system shall be operated to maintain a minimum pressure of twenty-five (25) psi throughout the distribution system under normal operating conditions including peak demand periods.

(c) **Sampling.** The water from minor public water supply systems shall be sampled and analyzed by a laboratory once a year for coliform bacteria. Minor public water supply systems that operate intermittently or on seasonal basis shall, after periods of non-use, be flushed, disinfected and flushed according to OAC 252:624-5-1, and sampled for bacteriological analysis by a laboratory prior to placing the system into operation. If the sample results come back:

(1) positive for coliform bacteria, then the disinfection procedure outlined in OAC 252:624-5-1 shall be repeated and a follow-up sample shall be collected for laboratory analysis.

(A) If the follow-up bacteriological analysis comes back negative, then the bacteriological sampling shall be done on a monthly basis until a sample comes back coliform negative without disinfection.

(B) When a coliform negative sample cannot be obtained after three disinfection attempts, then full-time disinfection will be required.

(2) positive for fecal coliform, then a retake must be submitted for analysis at a laboratory. If the results of the retake sample come back positive for fecal coliform, then full-time disinfection will be mandatory.

(3) negative for coliform bacteria, then the minor public water supply system may continue or begin to serve water to the public.

(d) **Chlorine monitoring.** When disinfection is mandatory, a free chlorine residual of at least 0.2 ppm shall be maintained at the farthest point in the distribution system. The free chlorine residual at the farthest point in the distribution system shall be monitored daily. The free chlorine residual shall be analyzed in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater."

(e) **Wells near gasoline underground storage tanks.** Minor public water supply system wells located within three hundred feet (300') of gasoline underground storage tanks shall have water samples analyzed for VOC's by a laboratory once a year. A water source containing VOC's higher than the applicable drinking water standards shall not be used as a water source for minor public water supply system.

(f) **Additional testing.** Systems that treat for the removal of regulated contaminants shall have samples analyzed for those contaminants by a laboratory at a frequency specified by DEQ.

(g) **Records.** Records of all control tests and the results of all laboratory analyses shall be maintained at the facility for a period of ten (10) years.

(h) **Security.** All security measures, including locks on well houses and wellheads, shall be maintained to prevent vandalism, trespass and sabotage.

252:624-7-2. Additional maintenance requirements for slow sand filtration systems

(a) **Source water turbidity.** Slow sand filteration systems shall not receive source water with a turbidity of more than thirty (30) NTU.

(b) **Finished water turbidity.** The finished water turbidity of slow sand filtration systems shall be measured once per day while the minor public water supply system is in operation. The finished water turbidity must be below one (1.0) NTU.

(c) **Filter sand depth and specifications.** The depth of the filter sand in a slow sand filtration system shall be maintained at a depth of at least twenty-four inches (24"). Replacement filter media shall consist of clean silica with an effective size between 0.30 to 0.65 mm and a uniformity coefficient lower than 3.0.

(d) **Maximum filtration rate.** Slow sand filtration systems shall be operated so that the rate of filtration does not exceed fifty (50) gal/ft^2 of filter area per day.

(e) **Backwash.** Slow sand filtration shall not be backwashed.

SUBCHAPTER 9. CLOSURE

252:624-9-1. Minor public water supply system well abandonment

Any minor public water supply system well that is permanently removed from service shall be permanently plugged in accordance with OWRB rules. If the well was constructed to prevent undesirable exchange of water from one aquifer to another, the well may be sealed with a locked sanitary well seal instead of being plugged.

APPENDIX A. GENERIC PLANS FOR MINOR PUBLIC WATER SUPPLY SYSTEM [NEW]

Figure 1. Wellhead and slab

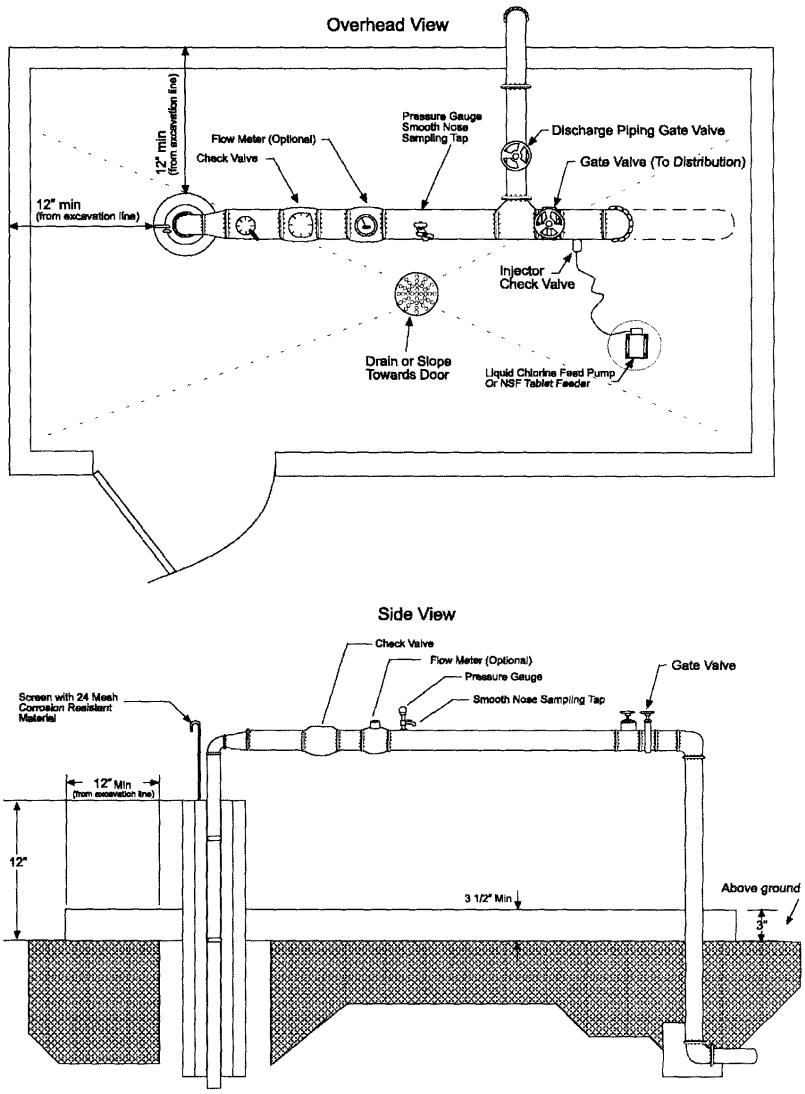


Figure 2. Well

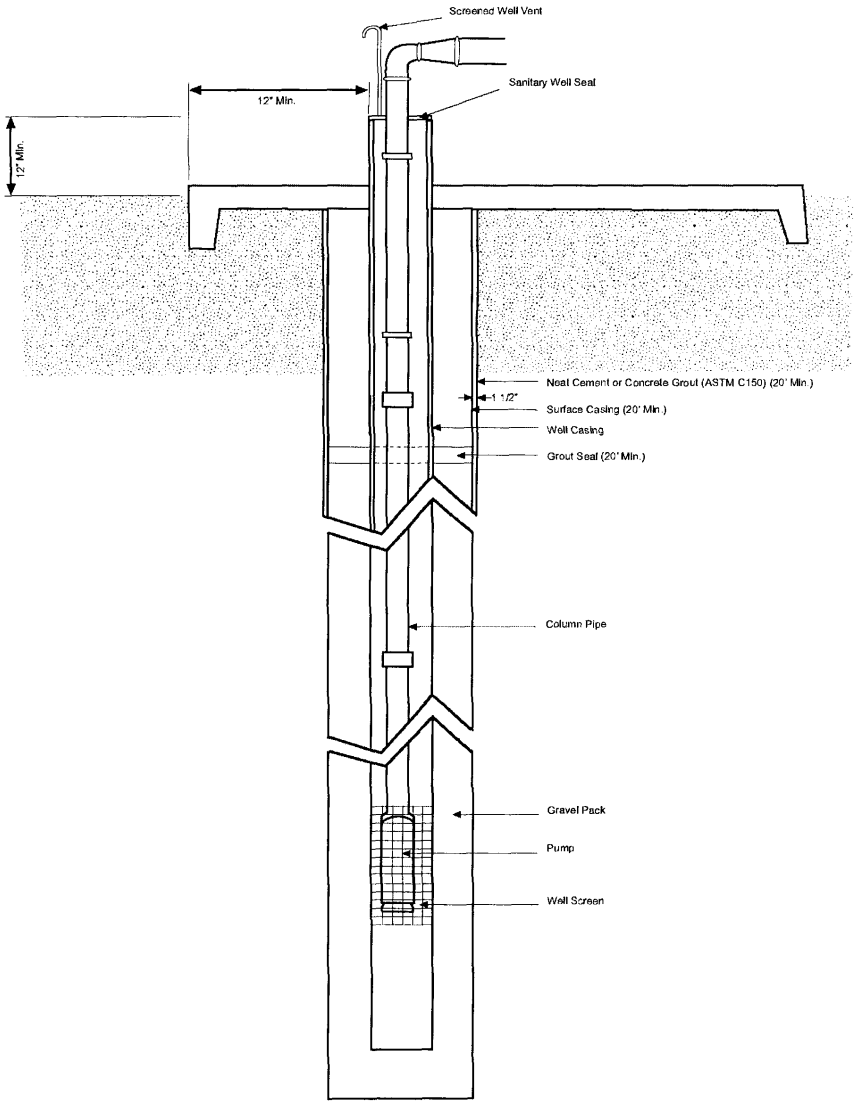
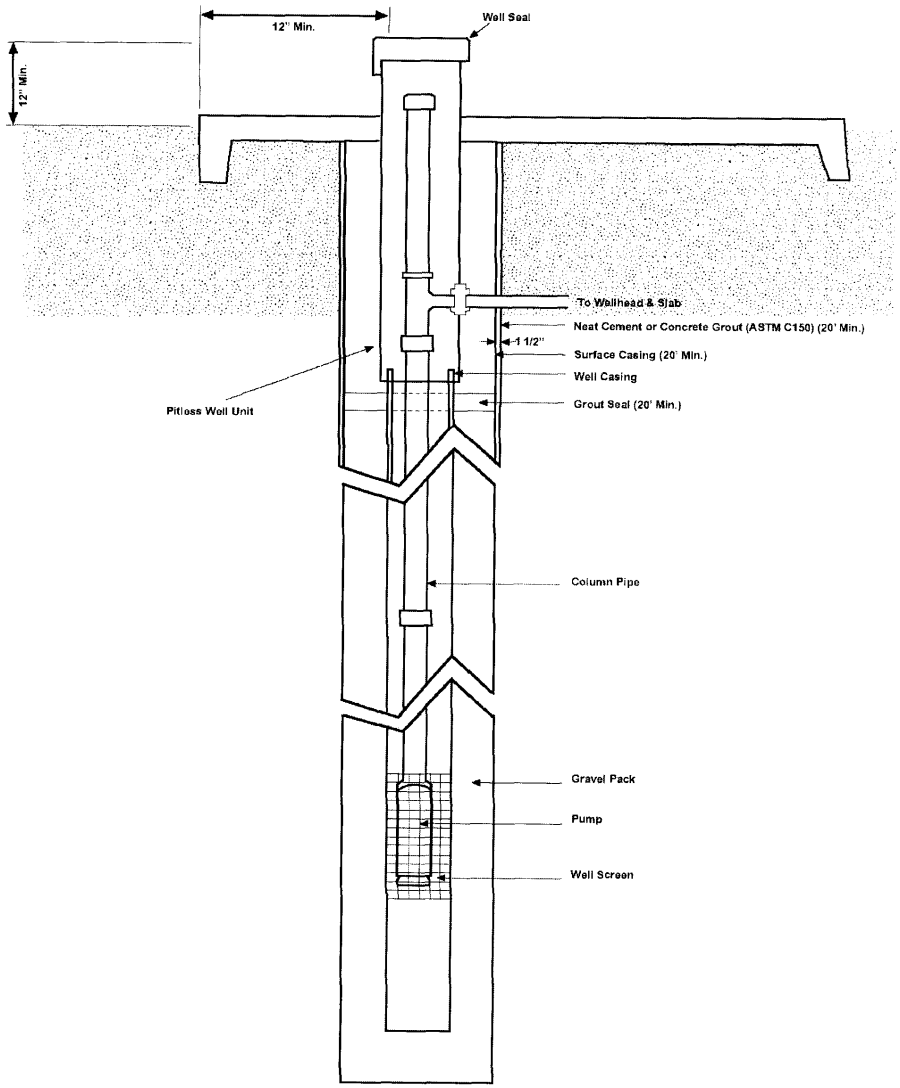


Figure 3. Pitless Well Unit



[OAR Docket #08-1095; filed 5-30-08]

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

[OAR Docket #08-1096]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S.,§ 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*
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Comment period:
December 3, 2007, through January 15, 2008
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Gubernatorial approval:
April 23, 2008
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Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
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July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
ASTM, standard D 4189-95, *Standard Test Method for Silt Density Index of Water.International Fire Code,* published by the International Code Council, Inc., 2003 Edition, *Distribution System Requirements for Fire Protection, M 31,* published by the AWWA, 3rd Edition. American Standards Association, *Recommended Practice for Backflow Prevention and Cross-Connection Control, Manual of Water Supply Practices,* _14, 3rd Edition, 2004.
40 CFR § 141.179
40 CFR § 141.72
"Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule," EPA 815-R-06-007, (2006).
Incorporating rules:
OAC 252:626-1-2
OAC 252:626-3-6
OAC 252:626-5-15
OAC 252:626-9-9
OAC 252:626-9-11
OAC 252:626-17-1
OAC 252:626-19-3
Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday-Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.
ANALYSIS:
The Department undertook a major re-write of this chapter. The proposed changes remove outdated language, add design and construction standards for new treatment techniques, delete a supplemental information section and integrate that section into the rules, revoke Subchapter 21 and Appendix G,

as those requirements are proposed to be moved to OAC 252:624, update construction requirements to meet new EPA disinfection and sampling requirements, and correct typographical errors and omissions of certain definitions.

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

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 DEPARTMENT OF ENVIRONMENTAL QUALITY, 707 N. ROBINSON, OKLAHOMA CITY, OKLAHOMA 73102, 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:

The Department undertook a major re-write of this chapter. The proposed changes remove outdated language, add design and construction standards for new treatment techniques, delete a supplemental information section and integrate that section into the rules, revoke Subchapter 21 and Appendix G, as those requirements are proposed to be moved to OAC 252:624, update construction requirements to meet new EPA disinfection and sampling requirements, and correct typographical errors and omissions of certain definitions. The full text of the rules with changes can be found at: http://www.deq.state.ok.us/mainlinks/eqbinfo/2007/proposeddrafts/208_626_Txt_2.pdf

[OAR Docket #08-1096; filed 5-30-08]

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

[OAR Docket #08-1097]

RULEMAKING ACTION:

PERMANENT final adoption

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]
252:631-3-21. Public water supply annual service fees [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]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

DATES:

Comment period:
December 3, 2007, through January 15, 2008
Public hearing:
January 15, 2008, and February 29, 2008
Adoption:
February 29, 2008
Submitted to Governor:
March 10, 2008
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March 10, 2008
Submitted to Senate:
March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:
40 CFR, Part 141 (July 1, 2007)
except, 40 CFR §§ 141.400 - 141.405;
40 CFR §§ 141.600 - 141.605;
40 CFR §§ 141.620 - 141.629; and
40 CFR §§ 141.700 - 141.723.
40 CFR, Part 143 (July 1, 2007)
Incorporating rules:
OAC 252:631-1-3
Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

ANALYSIS:

The Department proposes to increase public water supply annual fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1993, through 2007. Additionally, the Department proposes to have fees automatically increase every year thereafter pursuant to any increase in the consumer price index over the previous year. Additionally, the Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations, except for the new groundwater rule, which will not be adopted by reference. The change updates the publication date of the federal rules from July 1, 2006, to July 1, 2007. Other changes revoke Subchapter 5, as those requirements are proposed to be moved to OAC 252:624, update language to meet EPA requirements and rule reference changes by EPA, require 25 psi throughout the entire distribution system, and adopt new requirements for source water development. Finally, the remaining changes correct typographical errors, correct omissions of certain definitions and other construction requirements from the rules and recognize what kind of testing will be required for new disinfection treatment techniques.

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. INTRODUCTION

252:631-1-1. Purpose

(a) This chapter sets the operation standards for Public Water Supply systems so they may provide safe drinking water. This Chapter is analogous to the federal PWS program. Other rules may govern Public Water Supply system operations, such as the Discharge Regulations ~~(OAC 252:605)~~ (OAC 252:606), Laboratory Certification (OAC 252:300), Minor Public Water Supply Systems (OAC 252:624), Public Water Supply Construction Standards (OAC 252:626) and Operator Certification (OAC 252:710). This Chapter implements the "Oklahoma Water Supply Systems Act" at Title 27A, § 2-6-301 and following.

(b) This chapter applies to any person or entity, including any federal facility, that operates a Public Water Supply system in Oklahoma, except for minor public water supply systems, which are regulated in OAC 252:624.

252:631-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Approved laboratory" means a laboratory certified or approved by EPA, DEQ, or an EPA approved third party certification program (such as the National Sanitation Foundation, and Drinking Water Accreditation Program).

"AWWA" means the American Water Works Association.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"EPA" means the Environmental Protection Agency.

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia Lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions.

"Laboratory checks" means chemical, radiochemical, physical, bacteriological, and microbiological tests made in a laboratory approved by the DEQ, on water samples submitted to confirm the quality of the water.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in a Public Water Supply system that has been determined to be necessary to safeguard the public health as specified in these regulations. MCL are the same as primary drinking water standards.

"Maximum residual disinfectant level (MRDL)" means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. Compliance with the MRDL will be determined using the disinfectant concentration measured at the time Total Coliform Rule (TCR) samples are collected.

"OAC" means Oklahoma Administrative Code.

"Operating records and reports" means the daily record of data connected with the operation of the system compiled in a monthly report.

"OWRB" means the Oklahoma Water Resources Board.

"Point of entry (POE)" means the point at which a source or combination of sources enters the distribution system.

"Primary Drinking Water Standards" means the same as MCL.

"Protected groundwater free of sanitary defects" means a ground water source that is properly designed and permitted, practices full-time chlorination, and is properly operated and maintained as evidenced by no critical deficiencies on inspections.

"Public Water Supply (PWS) system" means a system, whether publicly or privately owned, which supplies water under pressure to the public through pipes or other constructed conveyances whether receiving payment for same or not. Multi-family dwellings, which are constructed, inspected, and maintained under State Health Department-approved plumbing code, purchase water from a permitted water system, do not provide treatment, and do not resell water, are not classified as a Public Water Supply system. The following are the categories of Public Water Supply systems:

(A) **"Community water system"** means any PWS system that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(B) **"Non-community water system"** means any PWS system that serves an average of at least twenty-five (25) individuals at least sixty (60) days per year but is neither a community water system nor a non-transient non-community water system.

(C) **"Non-transient non-community (NTNC) water system"** means any PWS system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six months per year.

(D) **"Minor water system"** means any other PWS system not included in (A), (B), or (C) of this definition. These water systems may be state licensed facilities or non-licensed facilities and is regulated in OAC 252:624.

"Residual disinfectant concentration" means the concentration of disinfectant measured in milligrams per liter (mg/l) in a representative sample of water.

"Secondary standard" means a non-mandatory guideline that has been determined to be desirable to provide acceptable drinking water.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/sq.ft./day) resulting in substantial particulate removal by physical and biological mechanisms.

"Source" means any lake, stream, spring or groundwater supply that is used as treated or untreated water for a PWS system.

"Total coliform positive sample" means a sample in which one or more coliform organisms are found.

"Treatment technique" means the practice of a PWS system to properly remove pathogens and total organic carbon.

"Turbidity" means the amount of suspended material in water as measured by Nephelometric Turbidity Units (NTU).

"Water Treatment" means the act of removing contaiminants from source water or adjusting water quality by the addition of chemicals, filtration, and other processes, ~~therby~~ thereby making the water safe for human consumption.

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2006~~ 2007, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference, except for the following:

(1) 40 CFR §§ 141.400 - 141.405;

(2) 40 CFR §§ 141.600 - 141.605;

(~~2~~3) 40 CFR §§ 141.620 - 141.629; and

(~~3~~4) 40 CFR §§ 141.700 - 141.723.

SUBCHAPTER 3. OPERATIONS

252:631-3-1. PWS criteria

(a) All systems must properly operate, in accordance with a Operations and Maintenance manual as required by OAC 252:626-3-7. ~~and~~ All systems must maintain each unit to provide treatment of the water in accordance with the DEQ approved plans and specifications, in accordance with the purpose for which the units were designed and according to the terms of their permits. Permits may contain more stringent provisions than contained in the rules to meet the requirements of the provisions of 40 CFR adopted by reference in this chapter. Employees must be trained in the proper operation and maintenance of the system.

(b) Public water supply systems must comply with all applicable Primary Drinking Water Standards in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Microbiological standards in 40 CFR Section 141.63;

(2) Inorganic chemicals standards in 40 CFR Section ~~141.11 and Section~~ 141.62;

(3) Organic chemical standards in 40 CFR Section 141.61;

(4) Disinfectant byproduct standards in 40 CFR Section ~~141.12 and Section~~ 141.64;

(5) Radiochemical standards in 40 CFR Section ~~141.15 and Section 141.16~~ 141.66;

(6) Turbidity standards in 40 CFR ~~Section 141.13~~ Sections 141.73, 141.173 and 141.550-553; and

(7) Residual disinfectant level standards in 40 CFR Section 141.65.

(c) Public water supply systems must comply with all applicable monitoring and analytical requirements in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Coliform requirements in 40 CFR Section 141.21;

(2) Turbidity requirements in 40 CFR Section 141.22;

(3) Inorganic chemicals requirements in 40 CFR Section 141.23;

(4) Organic chemical requirements in 40 CFR Section 141.24;

(5) Radiochemical requirements in 40 CFR Section 141.25 and Section 141.26;

~~(6) Total trihalomethane requirements in 40 CFR Section 141.30;~~

(~~7~~6) Lead and copper requirements in 40 CFR Section 141, Subpart I;

~~(8) Unregulated contaminant requirements in 40 CFR Section 141.40;~~

(~~9~~7) Sodium requirements in 40 CFR Section 141.41;

(~~10~~8) Corrosivity requirements in 40 CFR Section 141.42;

(~~11~~9) Filtration and disinfectant requirements in 40 CFR ~~Section~~ Sections 141.74, 141.174, and 141.560 - 141.562; and

(~~12~~10) Disinfectant residuals and disinfectant by-product requirements in 40 CFR, ~~Section 141.30 and 40 CFR Subpart~~ Part 141, Subparts C, H and L.

(d) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe.

252:631-3-2. Laboratory approval

Compliance analyses for coliform, inorganics, organics, radioactivity and corrosivity contaminants must be performed in a laboratory approved by the EPA or the DEQ. Laboratory certification must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed. Testing required for compliance with turbidity treatment technique, disinfectant residual, temperature and pH requirements may be performed by a laboratory operator certified by the DEQ. Process control tests may be performed by a laboratory operator certified by the DEQ. The DEQ may approve a laboratory for the purposes of testing for compliance with primary drinking water standards upon written submittal of a request for approval from the owner of the laboratory and upon proof satisfactory to the DEQ that the laboratory:

(1) possesses sufficient personnel, equipment, and facilities;

(2) implements an adequate quality control and quality assurance program;

(3) owns and will continue to own sufficient managerial and financial resources to continuously comply with and implement all requirements of "Standard Methods for

the Examination of Water and Wastewater" in accordance with the current "Manual for the Certification of Laboratories Analyzing Drinking Water;" and

(4) transmits the analyses to the DEQ in an electronic form acceptable to the DEQ, no later the tenth (10th) day of the following month.

252:631-3-3. Disinfection requirements

(a) **Mandatory disinfection.** Full-time disinfection is mandatory for:

(1) surface water, groundwater under the direct influence of surface water, and spring water supplies, unless an alternative has been approved by the DEQ. Each system must provide disinfection in accordance with 40 CFR Sections 141.72(b) and meet the monitoring requirement contained in 40 CFR Section 141.74(c);

(2) groundwater supplies or purchase water systems whenever the record of bacteriological tests show:

(A) a persistent presence of Total Coliform; or

(B) a verified Fecal Coliform, or E. Coli MCL exceedance

(3) any new well in a system where the initial bacteriological tests of the well do not show a safe record with the DEQ for two (2) consecutive days after completion and testing of the well.

(b) **Modification of disinfection methods.** When any change in the disinfection process is contemplated, contact the DEQ. Submittal of an application, including plans, specifications, engineering reports, disinfection profile and disinfection benchmark justifying such a change may be required in order to obtain approval from the DEQ.

(c) **Chlorine.**

(1) The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.

(2) Free chlorine residuals must be at least 1.0 milligram per liter at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(d) **Chloramines.**

(1) **Prior public notice.** Systems must notify all users of kidney dialysis machines at least one month before introducing chloramines into the distribution system or starting chloramination.

(2) **Chloramines engineering study.** Before changing to chloramines as the residual disinfectant in the distribution system, the system must conduct and submit to the DEQ for approval an engineering study and weekly analyses for at least six (6) weeks prior to and quarterly for one year following such a change of disinfectant. The engineering study and analysis must address the following:

(A) Select at least four (4) sample points for each treatment plant used by the system. At least twenty-five percent (25%) of the sample points must be at locations within the distribution system reflecting the maximum residence time of water in the system; and

(B) Collect samples from the selected points weekly for six (6) weeks and perform the following analyses before modification of treatment is initiated:

(i) Total coliform;

(ii) Fecal coliform;

(iii) ~~Fecal streptococci~~ Enterococcus subgroup of the fecal streptococcus group of bacteria; and

(iv) Standard plate counts at 35EC and 20EC.

(3) **Continuing testing.** After modification of the treatment process, perform the bacteriological tests for samples collected at each of the selected points at quarterly intervals for one year, and then annually, when samples are collected for total trihalomethane determination. Submit the results to the DEQ.

(4) **Primary Disinfection.** A disinfectant must be added to provide the required log inactivation of *Giardia Lamblia* cysts before ammonia is added.

(5) **Total chlorine.** The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l and at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(e) **Other disinfectants.** Iodine or bromine compounds must not be used as a disinfectant. Ozone or ultraviolet light may be used for in-plant treatment or disinfection provided an approved residual disinfectant is added prior to distribution and maintained according to this chapter. Chlorine dioxide may be used as long as the requirements in this chapter are met.

(f) **Process control tests for disinfectants.** Control tests must be performed by all systems that disinfect in accordance with procedures approved by the DEQ. Sampling points must be changed regularly so that the system is sampled completely at least once each week.

(1) **Chlorine.**

~~(A)~~ Systems that use chlorine must test for free chlorine and total chlorine residual twice a day in the distribution system.

~~(B) The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.~~

~~(C) Free chlorine residuals must be at least 1.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.~~

(2) **Chloramines.**

(A) Systems that use chloramines must test for total chlorine residual twice a day in the distribution system.

(B) Systems that use chloramines must submit yearly ~~Standard Plate Count~~ standard plate count and ~~Fecal Streptococci~~ enterococcus samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system.

(C) The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l.

(D) Total chlorine residuals must be at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(3) **Other disinfectants.**

(A) Systems that use chlorine dioxide, ozone or ultraviolet light must maintain a free chlorine residual, or total chlorine residual, where chloramines are used, in accordance with OAC 252:631-3-3(a) and (b).

(B) Systems that use ozone or chlorine dioxide must perform process control tests in accordance with 40 CFR Section 141.132.

252:631-3-6. Disinfection profiling and benchmarking

PWS Systems must develop disinfection profiles and benchmarks in accordance with 40 CFR ~~Part 141, Subpart P~~ Sections 141.172 and 141.530 - 141.544.

252:631-3-10. Process control tests

Control tests must be performed in accordance with procedures approved by the DEQ.

(1) **Surface water, groundwater under the direct influence of surface water, and springs.**

(A) Systems that use coagulation, settling, softening or filtration must do the following chemical control tests on the filtered water twice a day, record the results on a report form provided or approved by the DEQ, and submit the form to the DEQ Water Quality Division each month, with a copy to the local DEQ representative:

(i~~I~~) Alkalinity - Phenolphthalein (P);

(ii) Alkalinity - Total;

(iii) Hardness (where softening is used);

(iv) pH value; and

(v) Stability to calcium carbonate (once per day);

(B) Perform ~~Jar~~ jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

(C) Turbidity and residual disinfection samples must be collected and analyzed in accordance with 40 CFR Part 141, Subparts H and P.

(2) **Groundwater supplies.** The following tests are required for community and non-transient non-community water systems utilizing groundwater as a source. Test results must be listed as indicated on the appropriate forms and submitted to the DEQ:

(A) Static level and pumping level of each well must be determined quarterly;

(B) Alkalinity, pH, and stability must be determined at least monthly for community systems and at least quarterly for non-transient non-community water systems; ~~and~~

(C) Where chlorination is practiced, determine the chlorine residual twice daily in the distribution system and once daily at the POE~~.~~;

(D) Where ion-exchange softening is provided, determine the hardness of the finished water once a day; and

(E) Where nanofiltration, reverse osmosis or electrodialysis is provided, perform the following chemical control tests on the treated water once a day:

(i) Alkalinity B Phenolphthalein (P),

(ii) Alkalinity B Total,

(iii) Hardness,

(iv) pH value, and

(v) Stability to calcium carbonate.

(3) **Purchase water systems.** Purchase water community systems that provide supplemental chlorination must determine the chlorine residual twice daily in the distribution system and once daily at the POE.

(4) **Special tests.**

(A) Systems that remove iron or manganese must test the raw and finished water weekly for those metals.

(B) Systems that treat or blend for the ~~removal~~ reduction in concentration of regulated contaminants must monitor the raw and finished water for those contaminants daily in addition to collecting compliance samples.

(C) Threshold odor and other tests may be required by the DEQ based on local conditions.

(D) Systems that treat or blend for the reduction in concentration of nitrates must test the raw and finished water at least once a day for nitrates.

(E) Systems that apply phosphate chemicals in the treatment process must test the finished water at least once a day for phosphates.

(5) **Fluoridation.** Where fluoridation is practiced, the system must:

(A) analyze the water twice a day for fluoride content, both before and after fluoridation;

(B) forward a copy of the analytical report (DEQ form No. 631-001) to the DEQ monthly and keep a copy at the plant; and

(C) submit a sample of treated water to the DEQ State Environmental Laboratory, or to a ~~DEQ Approved~~ DEQ-accredited laboratory, for analysis of fluoride content every month.

252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Finished water turbidity exceeds one (1) NTU ~~for surface water systems serving a population greater than 10,000 and five (5) NTU for surface water systems serving a population of 10,000 or less. After January 1, 2005, all surface water systems must report if the finished water turbidity exceeds one (1) NTU~~;

(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within four (4) hours;

(4) Nitrate level exceeds 10 mg/l;

(5) Verification of a positive Fecal Coliform or E. Coli sample; and

(6) Exceedance of the Chlorine Dioxide MRDL.

(b) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks on the dates sampled. The records of all laboratory checks and control tests must indicate when, where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth (10th) day of the following month.

(c) **Water treatment systems.**

(1) Systems that provide water treatment must keep:

(A) a daily record of the operations performed in the treatment process;

(B) observations, cost and occurrences related to the operation of the plant; and

(C) the control tests and laboratory checks previously described in OAC 252:631-3-10.

(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:

(A) the number of filtered water turbidity samples taken during the month;

(B) the number and percentage of turbidity samples that are less than or equal to the standards; and

(C) the date and value of any turbidity measurements that exceed one (1) and five (5) NTU. Where continuous monitoring is used, measurements must be recorded every four (4) hours during plant operation.

(d) **Groundwater systems.** Operators of groundwater systems must keep a daily record of all well operations, in addition to the process control tests and laboratory checks required for ground water supplies. Community and NTNC systems must submit monthly operational reports to DEQ.

(e) **Purchase water systems.** Operators of community systems that purchase water as their sole source and provide supplemental chlorination must submit a monthly operational report to the DEQ of the operation of the system, in addition to required laboratory checks. Monthly reports are not required from purchase water systems that do not add a disinfectant.

(f) ~~**Reporting of additional monitoring.** Additional monitoring, listed in Appendix B, must be reported to DEQ in accordance with 40 CFR Part 141, Subpart C at the end of each monitoring period.~~

~~(g)~~ **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least ten (10) years unless otherwise specified.

252:631-3-12. Control of lead and copper [REVOKED]

~~PWS systems must collect and report the results of all lead and copper samples in accordance with 40 CFR Part 141, Subpart I within ten (10) days after the end of the monitoring period.~~

252:631-3-13. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors [REVOKED]

~~Systems must monitor and report disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors in accordance with 40 CFR Part 141 Subpart C and L.~~

252:631-3-17. Water system connections

(a) PWS systems must not allow the connection of a new customer without an approved sewage disposal system, as defined in OAC 252:641 (Individual and Small Public On-Site Sewage Disposal Systems) or OAC 252:656 (Water Pollution Control Construction).

(b) PWS systems shall:

(1) not allow a physical connection between a line carrying a public drinking water supply and a line carrying water of unknown or questionable quality.

(2) not allow connections from any PWS system to any device or system that poses a health threat unless it is equipped with an air gap of at least 6 inches or two pipe diameters, whichever is larger, above the overflow or drain pipe. The installation of a reduced pressure zone backflow prevention device will be considered in lieu of an air gap. To allow maintenance on the backflow prevention device, the design shall include a diversion line with equal backflow prevention. Do not locate backflow prevention devices in a pit or vault where they can become submerged. A fire suppression system is not considered a hazardous water supply.

(3) not allow a cross-connection between a public water system and any private water system.

(4) provide an air gap at all points where finished water is connected to a drain.

252:631-3-19. Wastewater

(a) **Sanitary waste.** All sanitary and laboratory chemical wastewater must be discharged to a sanitary sewer collection system or to an approved on-site wastewater disposal system.

(b) **Treatment plant wastewater and sludge.** Disposal of wastewater and residuals from treatment units (filter backwash water, clarifier blow-off, etc.) must be according to OAC ~~252:605~~ 252:606 (Discharge Standards), OAC 252:621 (Non-Industrial Flow-through and Public Water Supply Impoundments, Including Land Application) and OAC 252:626 (PWS Construction). Each lagoon shall be cleaned when the depth of the residuals is within two feet (2') of the maximum operating depth. For information about permits and requirements, contact the DEQ Water Quality Division.

252:631-3-20. Water pressure

All PWS systems must maintain a water pressure of at least twenty-five (25) psi ~~at all service connections~~ throughout the distribution system.

252:631-3-21. Public water supply annual service fees

(a) Each PWS system shall be charged an annual fee (see 27A O.S. § 2-6-306).

(b) ~~The~~ Beginning July 1, 2008, the annual fee shall be calculated using the actual costs of services as follows:

(1) Laboratory analysis fees, for parameters analyzed by the State Environmental Laboratory, shall be charged as specified in OAC 252:305, "Laboratory Services";

(2) Inspection service costs equal ~~$25~~ $36.00 for purchase systems, ~~$50~~ $72.00 for ground systems or ~~$100~~ $143.00 for surface systems and groundwater under the direct influence of surface water systems; and

(3) Federal program requirement costs for tracking, reporting, and enforcement and technical assistance costs (applicable to community systems and non-transient non-community systems) equal ~~$186~~ $266.00 for purchase systems, ~~$815~~ $1,167.00 for ground systems or ~~$3479~~ $4,980.00 for surface systems and groundwater under the direct influence of surface water systems.

(c) Each system shall be charged the actual cost for regulatory services as calculated according to OAC 252:631-3-21(b), except that:

(1) no system shall pay less than a minimum annual fee of $50 for purchase water systems, $75 for ground water systems and $150 for surface water system or less than four cents ($0.04) per service connection per month, whichever is greater, and

(2) no system shall pay an annual fee increase of more than thirty cents ($0.30) per service connection per month.

(d) The minimum annual fees listed in OAC 252:631-3-21(c) do not apply to state, federal, tribal, and non-transient non-community systems. These systems shall pay the actual costs of services.

(e) Each system will be notified by mail of the fee due from that system by August 1 of each year. The DEQ shall mail such notice to the most recent name and address provided to the DEQ by the PWS system, however, failure to receive such notice by the system shall not operate to waive any fees due to the DEQ.

(f) To assist in meeting rising costs to the Department of the public water supply program associated with implementation and enforcement of the federal primary drinking water standards, the fees set out in paragraph (b) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

252:631-3-23. Source water development

(a) **Continued protection for all sources.** A PWS system shall provide protection for all sources of water from potential sources of contamination through ownership, zoning, easements, leasing or other legal means.

(b) **Reservoir and lake protection.** PWS systems shall provide protection for a reservoir or lake used as a source of water. Control the marginal shoreline land by purchase or ordinance. If control is through the use of an ordinance, the ordinance must describe the water district boundaries and enforcement rules which shall include:

(1) regulating the public health aspects of the water supply, waste and sewage disposal and recreation activities;

(2) regulating the building of structures within the control area;

(3) regulating aquatic activities involving human body contact with the water, including restricting body contact with the water during recreational or other activities when the water quality or public health may be adversely affected; and

(4) regulating the removal of brush and trees to the high water elevation, regulating the protection from floods during construction within the control district, and regulating the plugging of wells which are inundated, in accordance with OWRB requirements.

(c) **Groundwater source protection.** To protect all groundwater wells from microbiological contamination:

(1) disinfect every new, modified or reconditioned groundwater well in accordance with AWWA standard specifications after completion of work on the well and the placement of the permanent pumping equipment;

(2) upon completion of the well, the PWS system shall submit a copy of the well driller's log to the DEQ;

(3) upon completion of the well, collect at least two (2) bacteriologically safe samples on consecutive days. Collect samples after chlorine used to disinfect the well has been completely dissipated and submit the sampling records to the DEQ;

(4) if any samples show the presence of coliform bacteria, additional samples shall be taken to determine the degree of contamination and the treatment required; and

(5) if any of the samples show the presence of fecal coliform, a study shall be conducted and a determination made whether the groundwater source is under the direct influence of surface water.

(6) provide sufficient distance from a well to possible sources of pollution to assure that a subsurface flow of contaminated water will not reach the well. Minimum separation distances are:

(A) one hundred feet from a property line,

(B) fifty feet from all septic tank and sewer lines, and

(C) fifty feet from lateral fields, unless the percolation rate is one inch in less than five minutes, then the separation distance shall be one hundred feet.

SUBCHAPTER 5. MINOR WATER SYSTEMS [REVOKED]

252:631-5-1. General [REVOKED]

~~(a) Minor water systems must submit a minimum of one (1) bacteriological sample per year. If the sample is coliform positive, then the system must continue to submit bacteriological samples until a coliform negative sample is obtained.~~

~~(b) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two (2) consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe and authorization to operate is given by the local DEQ office.~~

~~(c) Maintain a water pressure of at least twenty-five (25) psi at all service connections.~~

~~(d) Where chlorination is practiced, a chlorine residual of at least 1 mg/l must be maintained at the POE and at least 0.2 mg/l at the farthest point in the distribution system. The residual disinfectant concentration at the POE and at the farthest point in the distribution system must be monitored once per day.~~

~~(e) Keep records of all operational requirements at the facility.~~

252:631-5-2. Surface water, ground water under the direct influence of surface water, and springs [REVOKED]

~~(a) **Slow sand filtration.**~~

~~(1) Finished water turbidity must be measured once per day while the plant is in operation.~~

~~(2) The finished water turbidity must be below one (1.0) NTU in ninety-five percent (95%) of monthly samples.~~

~~(3) The finished water turbidity must never exceed five (5) NTU.~~

~~(b) **Conventional Filtration.** Conventional filtration systems that use coagulation, settling, softening and filtration must do the following while the plant is in operation:~~

~~(1) Finished water turbidity must be measured once per day.~~

~~(2) The finished water turbidity must be below 0.5 NTU in ninety-five percent (95%) of monthly samples.~~

~~(3) The finished water turbidity must never exceed five (5) NTU. If the turbidity exceeds five, the DEQ must be notified immediately.~~

~~(4) Perform the following process control tests on the filtered water once a day:~~

~~(A) Alkalinity - Phenolphthalein (P);~~

~~(B) Alkalinity - Total;~~

~~(C) Hardness (where softening is used); and~~

~~(D) pH value;~~

~~(5) Perform Jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.~~

252:631-5-3. Groundwater supplies [REVOKED]

~~The following tests are required.~~

~~(1) Alkalinity and pH must be determined at least quarterly; and~~

~~(2) Those systems located between 100 and 300 feet from gasoline storage tanks require quarterly VOC monitoring. If the facility has three (3) years of compliant samples, the monitoring may be reduced to annual monitoring.~~

252:631-5-4. Special tests [REVOKED]

~~Systems that treat for the removal of regulated contaminants must monitor for those contaminants weekly in addition to collecting compliance samples.~~

252:631-5-5. Security [REVOKED]

~~Minor water systems must provide:~~

~~(1) fencing with locking gates;~~

~~(2) locks on access manholes;~~

~~(3) locks on wellheads and well houses; and~~

~~(4) other necessary precautions to prevent vandalism, pilfering, trespass, and sabotage.~~

[OAR Docket #08-1097; filed 5-30-08]

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

[OAR Docket #08-1098]

RULEMAKING ACTION:

Permanent final adoption

RULES:

Appendix A. Funding Priority Formula [REVOKED]

Appendix A. Funding Priority Formula [NEW]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S.,§ 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*

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N/A
ANALYSIS:
The proposed changes to the DEQ's Drinking Water State Revolving Fund (DWSRF) rules implement changes to the Priority Project System and the Funding Priority Formula necessary to meet federal and state requirements.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

APPENDIX A. FUNDING PRIORITY FORMULA [REVOKED]

APPENDIX A. FUNDING PRIORITY FORMULA [NEW]

PART I: DWSRF PROJECT PRIORITY SYSTEM

A. **Projects included.** The comprehensive Project Priority List shall consist of all eligible projects requesting placement on the Project Priority List. Projects which meet all requirements for funding shall be placed on a Fundable List and included in the current Intended Use Plan (IUP). Projects which rank below the available funding level shall be considered the contingency section of the Fundable List. Projects in this part of the list may receive loans due to bypass provision or due to additional funds becoming available.

B. **Project ranking.** The ranking factors are based on the relative impact of the project in achieving the objectives of the Safe Drinking Water Act Amendments of 1996. The ranking factors are listed in Part II of this Appendix.

C. **Management of the Project Priority List.**

1. **Tie breaking procedure.** A tie breaking procedure shall be used when two or more projects have equal points under the Project Priority System and are in competition for funds. Tied projects will be ranked with the first project which has the greatest value for the ranking factor for Violations of Maximum Contaminant Levels (Primary Standards).
2. **Project bypass.** A project on the fundable portion of the Project Priority List may be bypassed for one year if it is not on schedule as indicated in the IUP or the project's specific consent/administrative order. The applicant whose project is affected shall be given a written notice that the project is to be bypassed. Bypassed projects may be reinstated on the funded portion of the list if sufficient funds are available, and the applicant completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be applied to the next ranked project on the project priority list.
3. **Project Priority List update.** The priority list shall be periodically reviewed by the DEQ Water Quality Division Director and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) will be made as necessary.

PART II: RANKING SYSTEM

A. **Formula.** The project priority points (P) are derived from the formula: **P = A + B + C + D + E + F + G + H + I** where the factors are defined as:

1. A = Violations of Maximum Contaminant Levels (Primary Standards).
2. B = Quantity Deficiencies.
3. C = Design Deficiencies.
4. D = Vulnerability to Potential Pollution.
5. E = Violation of Recommended Maximum Levels (Secondary Levels).
6. F = Consolidation.
7. G = Compliance Orders.
8. H = Source Water Protection.
9. I = Affordability.

   Ranking factors one through eight are to address the risks to human health and the compliance with the Safe Drinking Water Act Amendments of 1996 requirements. Ranking factor nine addresses the affordability requirements of the Safe Drinking Water Act Amendments of 1996.

B. **Factors Descriptions.**

1. **Violations of Maximum Contaminant Levels (Primary Standards) (A).**

   Maximum contaminant levels are established for those parameters which may be detrimental to public health. Severity point values will be the sum of points for the violations of a contaminant during a 24

month period from the date of the request. Contaminants reported quarterly, such as nitrate, may include up to eight violations during this 24 month period. Those contaminants reported monthly, such as fecal coliform, may include up to twenty-four violations during this 24 month period. Violations of standards of contaminants based on a running annual average, such as total trihalomethanes, will be based on a 12 month reporting period and will include only severity value. Violations of more than one contaminant are additive. These violations are documented by inclusion in the Safe Drinking Water Information System (SDWIS). These values may be increased quarterly in the event that there are repeated violations.

Contaminant	**Severity** (points per violation)
Antimony	10
Arsenic	10
Asbestos	10
Barium	2
Beryllium	10
Bromate	10
Cadmium	10
Chlorates	10
Chlorine Dioxide	10
Chromium	10
Copper >1.3	5
Fecal Coliform	20
Fluoride > 4	5
Gross Alpha Radioactivity	5
Gross Beta Radioactivity	5
Lead	30
Mercury	10
Nitrate	30
Pesticides and other SOCs	10
Radium	10
Selenium	5
Thallium	10
Total Coliform (Significant Non-complier)	10
Total Haloacetic Acids	30
Total Organic Carbon	10
Total Trihalomethanes	30
Turbidity (Significant Non-complier)	10
Uranium	10
Volatile Organic Contaminants	10

2. **Quantity Deficiencies (B).** Quantity deficiencies are shortages of water due to source, treatment, or distribution problems. Deficiencies of only one condition will be allowed. These conditions are documented by inspection records, a comprehensive performance evaluation, or another system evaluation.

Condition	Severity
Continual shortage	60
Shortage during high use (seasonal)	60

3. **Design Deficiencies (C).** Design deficiencies are those which could be corrected by enlargement, repair, or replacement of a portion of the system. Deficiencies of more than one condition are additive. These conditions are documented by inspection records, a comprehensive performance evaluation, or another system evaluation.

Condition	Severity
Demand exceeds design capacity	30
Groundwater under the influence of surface water	120
Improper well construction	30
Inadequate chemical feed	25
Inadequate disinfection	30
Inadequate distribution (area not served)	25
Inadequate distribution (deterioration)	25
Inadequate distribution (low pressure)	25
Inadequate filtration (surface)	30
Inadequate intake structure	25
Inadequate laboratory equipment	20
Inadequate mixing	25
Inadequate settling	25
Inadequate storage	25
Inadequate water treatment wastewater disposal	10
Lack of generator	120

4. **Vulnerability to Potential Pollution (D).** Vulnerability describes a condition in which the source of supply for a system could potentially be contaminated and for which the project will address. Vulnerabilities to more than one condition are additive. These conditions are documented by vulnerability assessments for monitoring waivers or source water protection area assessments.

Condition	Severity
Point source discharge in delineated area	10
Subject to agricultural chemicals	5
Subject to industrial spills	5
Subject to oil/gas/coal/mineral operations	5
Unprotected watershed	3

5. **Violation of Recommended Maximum Levels (Secondary Standards)(E).** Recommended maximum levels are set for parameters which are not harmful to health, but make the water undesirable for use. Deficiencies of more than one condition are additive. These conditions are documented in the State Environmental Laboratory data base.

Contaminant	Severity
Chloride	3
Color	3
Corrosivity	3
Foaming Agents	3
Iron	20

Manganese	20
Odor	3
pH	3
Sulfate	3
TDS	3
Zinc	3

6. **Consolidation (F).** Projects which result in the consolidation, interconnection, or improvement of services for two or more water systems shall add twenty (20) for consolidation, ten (10) for interconnection, and ten (10) for improvement of services such as back-up or emergency supply. Projects may meet more than one of these conditions. The points awarded for this category are documented in the engineering report.

7. **Compliance Orders (G).** Projects that will result in the compliance with a formal enforcement action will receive one hundred fifty (150) points.

8. **Source water protection (H).** Water supply systems which have implemented source water protection programs such as watershed protection programs or wellhead protection programs will add one hundred (100) points to their total.

9. **Affordability (I).** This element is to assist systems most in need, on a per household basis. The points awarded for this category are documented by the latest census information.

Median Household Income	**Severity**
less than $28,400	60
between $28,400 and $33,400	40
greater than 33,400	0

[OAR Docket #08-1098; filed 5-30-08]

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

[OAR Docket #08-1099]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 641. Individual and Small Public On-Site Sewage Treatment Systems [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-6-402; and 59 O.S., § 1158
DATES:
Comment period:
December 3, 2007, through January 2, 2008
Public hearing:
January 15, 2008, and February 29, 2008
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Submitted to Governor:
March 10, 2008
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March 10, 2008
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March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
There are eight (8) main reasons for this proposed rulemaking. The first is to increase fees to compensate for the increased cost of operating the program. This increase will help ensure that the on-site program can continue to operate at its current level without the need for increased appropriations.

The second is to add low pressure dosing fields and drip irrigation fields as new options for the treatment and dispersal of wastewater. Low pressure dosing fields are subsurface absorption fields that can be installed closer to limiting layers than conventional systems can be installed. Low pressure dosing fields can also be installed in areas with fractured soils without the need for advanced treatment such as that provided by an aerobic treatment unit, which requires a higher level of maintenance than a septic tank. Drip irrigation is being introduced as an alternative to spray irrigation following aerobic treatment units on small lots to prevent the misting of neighboring properties. The addition of low pressure dosing fields and drip irrigation fields also required the inclusion of these types of systems as categories for installer certification.

The third is to increase the separation distance from the spray irrigation pattern to property lines from five feet (5') to fifteen feet (15'). This change is in response to numerous complaints of spray irrigation encroaching on neighboring property.

The fourth is to require that installers maintain aerobic systems they install for two (2) years after the date of installation and delineate what maintenance installers shall perform. When wastewater is dispersed using spray irrigation, it is essential that the aerobic system be monitored and maintained on a regular basis to ensure that the wastewater is properly treated in order to protect the public health and environment. The proposed rules also provide that, at the expiration of the two-year maintenance period, the homeowner will be required to keep the aerobic system properly maintained.

The fifth is to require the use of soil profile descriptions instead of percolation tests when designing systems in Scenic River Corridors. Soil profile descriptions can identify potential causes of contamination from on-site sewage treatment systems, such as shallow rock or groundwater, to scenic rivers that would be missed by percolation tests.

The sixth is to establish property ownership criteria that ensures all on-site sewage treatment systems are located on property that is owned by or dedicated in easement to the users of the system or is located on the property where the wastewater is generated.

The seventh is to increase the number of lots where subsurface systems can be used by reducing the vertical separation distances from limiting layers for soils with high clay content.

The eighth is to include in the rules those systems that were previously categorized as standardized alternative systems.

In a continuing effort to update these rules, this rulemaking also: reorganizes the Chapter so that all dispersal fields are covered in Subchapter 12; requires all tanks to have manhole openings of twenty inches (20"); adds sizing for percolation rates between sixty (60) and (75) minutes per inch; and makes other clarifications, formatting changes and typographical corrections.
CONTACT PERSON:
The contact person is Robert Huber. He can be reached at Robert.Huber@deq.state.ok.us (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:641-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to ensure that sewage is properly treated in order to protect the waters of the State, the public health and the environment. This Chapter establishes requirements for the design, construction, installation and operation of individual and small public on-site sewage treatment systems. This Chapter also establishes requirements for persons seeking certification as installers of ~~individual~~ on-site sewage treatment systems and for persons seeking certification to perform soil profile descriptions to be used to design on-site sewage treatment systems.

(b) **Authority.** ~~252:641~~ This Chapter is authorized by 27A O.S. §§~~ 2-1-101~~ 2-2-101, 2-2-201, 2-6-402 and 403; and 59 O.S. § 1158.

(c) **Applicability.** The rules in this Chapter apply to:

(1) Any person who owns, designs, constructs, installs, modifies, repairs or operates an on-site sewage treatment system;

(2) Any person who seeks certification from the DEQ to construct, install, modify or repair ~~individual~~ on-site sewage treatment systems; and/or

(3) Any person who seeks certification from the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

(d) **Disclaimer.** The design standards contained in this Chapter are established as minimum criteria and do not guarantee a system's performance.

(e) **Appendices.** All references to appendices are appendices to this Chapter.

252:641-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*), the following words, ~~and~~ terms~~,~~ and acronyms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

~~**"Absorption field"** means a ten-thousand-square-foot (10,000 ft²) rectangular area that contains three acceptable soil test holes and does not contain any unacceptable soil test holes.~~

~~**"Aerobic system"** means a sewage treatment system that treats sewage in an aerobic treatment unit and then applies the treated sewage to the surface as described in Subchapter 13 of this Chapter.~~

~~**"Aerobic treatment"** means the digestion of organic matter and settleable solids in an oxygenated environment to produce a clarified liquid.~~

"Aerobic treatment unit" means a ~~watertight~~ covered receptacle designed to receive, store, and provide aerobic treatment, which is the digestion of organic matter using forced-air to produce a clarified liquid, to sewage prior to ~~surface application~~ dispersal .

"Alternative system" means an on-site sewage treatment system that varies from the requirements of on-site sewage treatment systems described in this Chapter.

"ANSI" means the American National Standards Institute.

"ASTM" means the American Society for Testing and Materials.

"Certified installer" means a person in the business of installing or constructing ~~individual~~ on-site sewage treatment systems who has been certified by the DEQ to inspect and approve his/her own installations.

"Certified soil profiler" means a person who has been certified by the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

"Chamber" means a molded rigid plastic, arch shaped, hollow structure with an ~~exposed~~ open bottom area ~~and louvered sidewall for infiltration of effluent into adjoining bottom and sidewall soil areas~~ and sidewalls that are designed to allow effluent to flow into the surrounding soil while preventing soil from migrating into the chamber.

"Conventional subsurface absorption field" means a gravity-fed subsurface dispersal field, which may be preceded by a lift station, that provides treatment through soil absorption in media-filled (e.g., gravel, polystyrene, chamber, etc.) trenches. This does not include ET/A or shallow extended dispersal fields.

"CSA" means the Canadian Standards Association.

"DEQ" means the Department of Environmental Quality.

"Designer" means the person who conducts the soil test and/or completes the DEQ Form 641-581P or 641-581SP for submission to the DEQ.

"Dispersal site" means the ten-thousand-square-foot (10,000 ft²) rectangular area that contains the test holes used to design the dispersal field.

"Distribution structure" means a watertight concrete or plastic compartment, box, or solid piping that allows the distribution of sewage at the same elevation throughout the subsurface treatment field.

~~**"Dosing Tank"** means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.~~

"Drip irrigation" means the use of pressure to distribute aerobically treated effluent to a subsurface dispersal field using small diameter tubing equipped with pressure compensating emitters.

"Evapotranspiration/absorption (ET/A) ~~**system**~~**"** means ~~an on-site sewage treatment system that utilizes a subsurface treatment field designed to distribute~~ the subsurface dispersal of sewage for treatment through evaporation, transpiration and absorption.

"Flow equalization tank" means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.

~~**"French Drain (Curtain Drain)"** means a subsurface installation of perforated pipe and filter material used to divert groundwater.~~

"IAPMO" means the International Association of Plumbing and Mechanical Officials.

"Individual on-site sewage treatment system" means ~~a~~ an on-site sewage ~~disposal~~ treatment system that treats sewage from one individual residence or duplex ~~and is not available for use by the general public~~.

"Installer" means ~~a~~ any person who installs an on-site sewage treatment system or who is in the business of contracting to install or furnishing labor to install on-site sewage treatment systems.

"Level" means within a four-inch range of the same elevation.

"Lift station" means a short-term storage reservoir, containing an automatically controlled pump, that pumps sewage to a higher elevation for treatment.

"Low pressure dosing" means the use of pressure to distribute effluent evenly throughout the dispersal field through small diameter perforated piping.

"Major earth fill area" means any area where soil has been added to change the elevation from the original ground level by more than one (1) foot.

"Modification" means the expansion or relocation of any part of an existing on-site sewage treatment system, which does not fall under the definition of new installation.

"New installation" means the installation of a new on-site sewage treatment system. This includes the replacement of an existing lagoon, ~~subsurface field or~~ aerobic treatment unit and/or dispersal field, even when the existing septic tank is not replaced.

"NSF" means the National Sanitation Foundation.

"On-site sewage treatment system" means an individual or small public on-site sewage treatment system as defined in this Chapter ~~or a small public sewage system as defined in 27A O.S. § 2-6-101(12)~~.

"Redoximorphic soil features" means soil that, due to wetness, contains features that exhibit a color of less than or equal to two (2) chroma and greater than or equal to four (4) value in concentrations greater than five percent (5%) in two (2) consecutive intervals.

"Repair" means the repair of any part of an existing on-site sewage treatment system or the replacement of any part of an existing on-site sewage treatment system as long as the replacement part is placed in the exact same location that the original part had been located.

"Retention structure" is a sealed concrete or plastic structure that retains sewage until it reaches a depth of ten inches (10") and then allows it to flow to another trench.

"Rock fragments" means unattached pieces of rock two millimeters (2 mm) in diameter or larger that are resistant to rupture (strongly cemented or extremely hard).

"Scenic river corridor" means the two-mile wide area surrounding each scenic river as designated in 82 O.S. § 1452, with the center of each scenic river being the center of the corridor.

"Sewage" means wastewater that generally originates as human waste from certain activities including using toilet facilities, washing, bathing, preparing foods and washing laundry, excluding industrial wastewater.

"Small public on-site sewage treatment system" means an on-site sewage treatment system, except one that serves an individual residence or duplex, that has an average daily flow of five thousand (5,000) gallons or less.

"Soil profile description" means the identification and characterization of soil at a specific site.

"Soil texture" means the percent by weight of sand, silt, and clay for particles smaller than two millimeters (2 mm) in diameter.

~~**"Standardized alternative"** means an alternative system for which DEQ has procedurally defined installation requirements so that DEQ can evaluate the system's performance.~~

~~**"Storage area"** means the bottom ten inches (10") of a trench in a subsurface field that has voids for storage of wastewater to be absorbed by the soil or transpired.~~

"Storage media" means ~~clean, screened rock, gravel or tire chips or any combination of the three, which is one-half to two and one-half inches (1/2"-2-1/2") in diameter with no more than 10% by weight passing through a one-half inch (1/2") screen~~ a natural or manufactured material that provides void spaces for storage and dispersal of effluent in the trenches of a subsurface treatment system.

~~**"Subsurface absorption system"** means an on-site sewage treatment system that utilizes a subsurface treatment field designed to distribute sewage into the native soil for treatment.~~

~~**"Subsurface treatment field"** means the network of trenches for subsurface absorption systems or ET/A systems.~~

"Water saturated soil" means soil characterized by either the presence of groundwater or redoximorphic soil features.

252:641-1-2.1. Authorizations and permits for on-site sewage treatment systems

(a) **Requirement for authorizations and permits.** ~~No one may install~~ Before installing a new or ~~modify~~ modifying an existing on-site sewage treatment system, ~~until the owner of the property where the system is or will be located has applied for and obtained~~ the installer shall first obtain either:

(1) DEQ authorization to construct an on-site sewage treatment system under ~~a~~ the general permit, the terms of which are the rules of this Chapter; or

(2) ~~a~~ an individual permit to construct an alternative on-site sewage treatment system.

(b) ~~**Authorizations under general permit**~~ **Applying for authorizations; necessity for permit.**

(1) An ~~applicant~~ installer seeking an authorization to construct a new or modify an existing on-site sewage treatment system shall submit a completed and signed:

(A) DEQ Form 641-575, "Request for Authorization/Permit to Construct an On-Site Sewage Treatment System" along with the appropriate fee(s) [see 252:641-23 (relating to fees)] to ~~DEQ~~ DEQ's Oklahoma City office; and

(B) DEQ Form ~~641-581~~641-581P or 641-581SP ~~"Report for On-Site Sewage Treatment"~~ to the local DEQ office. The detail needed varies with each system design; guidance will be provided by the local DEQ office.

(2) Any ~~change~~ construction or modification design that deviates from the rules in this Chapter ~~that would an on-site sewage treatment system to no longer qualify for authorization under a general permit~~ will require the ~~owner/operator~~ installer to apply for ~~a~~ an individual permit ~~for~~ to construct a new or modify an existing alternative system.

(c) ~~**Permits**~~ **Applying for permits for alternative systems.** ~~Applicants~~ Installers seeking ~~a~~ an individual permit to ~~install~~ construct a new or modify an existing alternative on-site sewage treatment system shall submit a completed and signed:

(1) DEQ Form 641-575, "Request for Authorization/Permit to Construct an On-Site Sewage Treatment System" along with the appropriate fee(s) [see 252:641-23 (relating to fees)] to DEQ;

(2) DEQ Form ~~641-581~~ 641-581P or 641-581SP ~~"Report for On-Site Sewage Treatment"~~ to the local DEQ office; and

(3) DEQ Form 641-581Sup., "Supplemental Application for an Alternative On-Site Sewage Treatment System" to the local DEQ office for DEQ's review and approval.

252:641-1-3. General requirements for on-site sewage treatment systems

(a) **Inspections.** All new installations of, modifications to and/or repairs to on-site sewage treatment systems shall be inspected and approved by the DEQ, or installed, self-inspected and approved by a certified installer before new installations, modifications or repairs can be backfilled and/or before the system may be placed into operation. The installer shall be responsible for requesting any required DEQ inspections.

(b) **Treatment.** On-site sewage treatment systems shall only be used for treatment of sewage, as defined in 252:641-1-2. All sewage must be treated and dispersed according to the rules in this Chapter.

(c) **Ownership.** An on-site sewage treatment system shall be located only where:

(1) all components of the on-site sewage treatment system, which includes tanks, pumps, dispersal fields and collection line(s), are or will be located on property that is:

(A) owned by the owner of the on-site sewage treatment system; and/or

(B) dedicated in a recorded easement for the installation and operation of the on-site sewage system to the owner of the on-site sewage treatment system;

(2) all components of the on-site sewage treatment system, excluding service lines, are or will be located on property that is owned by a home owners association and/or dedicated to the home owners association in a recorded easement for the installation and operation of the on-site sewage system. All users of the on-site sewage system must be members of the home owners association, which must:

(A) be established under the laws of the State of Oklahoma;

(B) have the legal authority to own, maintain, repair and operate the on-site sewage system;

(C) have by-laws providing that dissolution cannot occur until the system is either closed or transferred to another viable operating entity; and

(D) have the instrument creating the association on file in the office of the county clerk where the property is located; or

(3) all components of an on-site sewage treatment system, excluding service lines, are or will be located on property that is:

(A) owned by a municipality, rural water district, rural sewer district or federally recognized tribe; and/or

(B) dedicated to a municipality, rural water district, rural sewer district or federally recognized tribe in a recorded easement for the installation and operation of the on-site sewage system.

(~~c~~d) **Minimum lot size.** The~~ applicant~~ designer and installer shall comply with the minimum lot size requirements as set forth in Appendix A, Figure 3. Plats recorded before January 1, 1974, are not subject to minimum lot size requirements but systems built in those platted areas must meet the construction requirements of this Chapter.

(e) **Requirement for a dispersal field or lagoon.** All on-site sewage treatment systems shall utilize one of the dispersal fields described in Subchapter 12 or a lagoon described in Subchapter 15.

(f) **Average daily flow.**

(1) **Individual on-site sewage treatment systems.** The average daily flow for an individual on-site sewage treatment system shall be based on an average water usage of two hundred (200) gallons per day for a residence of two (2) bedrooms or less, with an additional sixty-six (66) gallons per day for each additional bedroom.

(2) **Small public on-site sewage treatment systems.** The average daily flow for small public on-site sewage treatment systems shall be calculated using the estimated average daily flows listed in Appendix F, unless actual flow data or a more accurate estimation method is available or there is seasonal flow variation. When there is seasonal flow variation, the average daily flow shall be calculated using the highest monthly flow in the previous twelve (12) months divided by the number of days in that month.

(~~d~~g) **Sizing.** All ~~on-site sewage treatment systems~~ dispersal fields and lagoons shall be sized based on average daily flow using the charts in Appendix H.

~~(1) **Determining flow for small public sewage system.** Small public sewage systems shall be designed using the information in F to estimate flow unless actual flow data or a more accurate estimation method is available.~~

~~(2) **Determining flow for individual sewage treatment systems.** The size charts in Figures 1, 3, 5, and 7 of Appendix H, for individual sewage treatment systems are based on an average water usage of six thousand (6,000) gallons per month for a residence of two (2) bedrooms or less, with an additional two thousand (2,000) gallons per month for each additional bedroom.~~ The size of ~~individual~~ on-site sewage treatment systems should be increased if the actual or anticipated water usage exceeds the above-stated average.

(~~e~~h) **Separation distances.** The ~~applicant must~~ designer and the installer shall comply with the required vertical separation distances in Appendix A, Figures 1 and 2, and the horizontal separation distances listed in ~~the table in~~ Appendix E.

~~(f) **Primary treatment.** All on-site sewage treatment systems in this Chapter must include a septic tank or a trash tank for primary treatment.~~

(~~g~~i) **Pipe specifications.** All pipe ~~and chambers~~ used in on-site sewage treatment systems shall meet or exceed the minimum specifications listed in Appendix C.

252:641-1-4. Operation, repairs and maintenance

(a) **Proper operation.** ~~On-site sewage treatment systems shall be~~ The owner of an on-site sewage treatment system shall ensure that the system is maintained and operated properly so that:

(1) sewage or effluent from the system is properly treated and does not surface, pool, flow across the ground or discharge to surface waters~~.~~;

(2) septic tanks, lift stations, low pressure dosing tanks, flow equalization tanks, aerobic treatment units and lagoons shall be maintained so that they do not leak or overflow; and

(3) the required security measures are intact (e.g., required fences are intact, septic tank lids are intact, manhole covers are properly secured).

(b) ~~**Failing**~~ **Malfunctioning systems.** ~~The~~ If an on-site sewage treatment system malfunctions, the person owning or otherwise responsible for ~~a~~ the system shall take prompt action

to repair ~~a failing~~ the malfunctioning system, prevent further violations and remediate the site.

252:641-1-5. Enforcement

Violations of this ~~chapter~~ Chapter are subject to enforcement actions and penalties set forth in 27A O.S. §§ 2-3-502, 2-3-504 and 2-6-206.

SUBCHAPTER 3. SOIL TESTS

252:641-3-1. General provisions.

(a) **Requirement for soil test.** A soil test, ~~either a soil profile description or a percolation test, shall be used to identify an absorption field for the installation or modification of subsurface absorption systems and to identify the proper location of ET/A systems~~ performed in accordance with this Subchapter, shall be used to identify the dispersal site for all modifications to on-site sewage treatment systems and/or to identify the dispersal site and size the dispersal field for new installations of on-site sewage treatment systems except for:

(1) lagoons; and

(2) aerobic treatment systems that utilize spray irrigation when sized for Group 5 soil in the corresponding net evaporation zone.

~~Modifications to subsurface systems do not have to meet the sizing requirements for new installations. Soil tests are not required to repair subsurface absorption systems or ET/A systems, or to design lagoons or aerobic systems. All soil tests shall be performed in accordance with this Subchapter.~~

(b) ~~**Credentials**~~ **Required credentials.** Soil tests may only be performed by Professional Engineers, Professional Land Surveyors, Professional Sanitarians or Professional Environmental Specialists registered to practice in Oklahoma or Soil Scientists as defined in 27A O.S. § 3-1-103(20). Additionally, an individual performing soil profile descriptions must also be either ~~be~~:

(1) an Environmental Specialist for the DEQ and authorized by DEQ to perform soil profile descriptions; or

(2) certified by the DEQ to perform soil profile descriptions.

~~(c) **Test hole placement.** Three test holes shall be placed in the proposed absorption field at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. The DEQ may approve or require alternative configurations.~~

~~(d) **Large absorption fields.** Additional soil testing will be required for absorption fields larger than ten thousand square feet (10,000 ft²). Contact the local DEQ office for guidance.~~

~~(e) **Placement of subsurface systems.**~~

~~(1) **Subsurface absorption systems.** Subsurface absorption systems must be located within an absorption field.~~

~~(2) **ET/A systems.** ET/A systems must be located so as to include within the subsurface treatment field three soil test holes that meet all of the requirements for acceptable test holes, except:~~

~~(A) the percolation rate must be greater than sixty (60) minutes per inch or the soil must be classified as a Group 5; and~~

~~(B) the test hole depth does not have to exceed thirty inches (30").~~

(~~f~~c) **Submission of soil test results to the DEQ.** When a soil test is required, the results shall be submitted to the local DEQ office on DEQ Form ~~641-581~~ 641-581P or 641-581SP ~~"Report for On-Site Sewage Treatment"~~ or in a format approved by the DEQ~~, prior to the construction of the on-site sewage treatment system~~.

(~~g~~d) **Verification of design.** If there is reason to believe ~~the original~~ soil test results submitted to DEQ are inaccurate or that there is water saturated soil or soil impervious to boring in any of the test holes at any depth up to thirty-six inches (36"), the system design may be verified by the DEQ ~~using a soil profile description~~. If the results of the verification contradict the proposed design of the system, the DEQ may perform a soil profile description to design the system. ~~The results of a soil profile description shall~~ Soil tests conducted by DEQ shall supercede the results of any ~~percolation test~~ prior soil test completed in the same proposed ~~absorption field~~ dispersal site.

(~~h~~e) **Fill areas and excavation.** If there has been a fill of more than six inches (6") of soil or any excavation over an identified ~~absorption field~~ dispersal site, the local DEQ office must be contacted to determine if an additional soil test is needed. ~~Under no circumstances, shall a soil test~~ Soil tests shall not be performed in major earth fill areas.

252:641-3-2. Percolation test method

(a) **Use of percolation tests.** A percolation test may only be used to identify dispersal sites for conventional subsurface absorption fields. Starting January 1, 2009, percolation tests, including pre-existing ones, may not be used to identify dispersal sites for on-site sewage systems in scenic river corridors, unless documentation that the site is not located within the scenic river watershed is provided to DEQ.

(~~a~~b) **Test hole requirements.** The following test hole requirements shall be met for percolation tests:

(1) **Configuration.** Three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft²), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft²). Additional test holes shall not be placed within fifty feet (50') of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations.

(~~1~~2) **Size.** Test holes shall be dug or bored, four to twelve inches (4"-12") in diameter with vertical sides to a depth of at least twenty-four inches (24") and no more than thirty-six inches (36"). All test holes in the proposed

dispersal site shall be the same depth. Test holes shallower than twenty-four inches (24") may be used to design conventional subsurface ~~systems~~ absorption fields under the alternative system approval process.

(~~2~~3) **Soil surfaces.** The bottoms and sides of the test holes shall be scratched with a sharp-pointed instrument to relieve any smeared soil surfaces. Loose material shall be removed from the hole prior to commencing the presoak.

(~~3~~4) **Prohibitions.** Test holes dug through animal burrows, root channels or soil that is cracked due to dry weather conditions shall not be used.

(~~b~~c) **Presoak period.** The presoak period shall commence no earlier than twenty-four (24) hours prior to the start of the percolation test procedure. Each test hole shall be presoaked by filling them with water and refilling them as necessary to maintain a water depth of at least twelve inches (12") for at least four (4) hours. When it is impossible to maintain a water depth of at least twelve inches (12") during the entire presoak period due to an excessive percolation rate, then the hole is deemed unacceptable and may not be:

(1) used to calculate the percolation rate for the dispersal site; and

(2) located in the dispersal site for a conventional subsurface absorption field.

(~~c~~d) **~~Percolation test procedure~~ Calculating the percolation rate for each hole.** At the completion of the presoak, the depth of the water shall be adjusted to ~~approximately~~ ten inches (10") above the bottom of ~~the~~ each test ~~holes~~ hole. A fixed reference point shall be established at or above the initial water level. Using the fixed reference point, the level of the water in each hole shall be measured and recorded. After seventy-five (75) minutes, the number of inches the water level has dropped in each hole shall be measured and recorded. ~~The water level shall be measured from a fixed reference point. The drop in the water level in sixty (60) minutes or the time it takes until four inches (4") of water has percolated into the soil shall be measured. This information shall be used to~~ To calculate the percolation rate for each individual hole, divide seventy-five (75) minutes by the number of inches the water level has dropped ~~in minutes per inch~~. Any hole that exhibits a percolation rate of greater than seventy-five (75) minutes per inch is deemed unacceptable and may not be:

(1) used to calculate the percolation rate for the dispersal site; and

(2) located in the dispersal site for a conventional subsurface absorption field.

~~(d) Identification of acceptable percolation test holes. A percolation test hole is deemed acceptable for the purpose of designing a conventional system if the test hole exhibits a percolation rate of less than or equal to sixty (60) minutes per inch and if groundwater was not encountered in the hole.~~

(e) **Calculating the percolation rate for the dispersal site.** If the rates of any two (2) test holes in the proposed ~~absorption field~~ dispersal site vary by more than fifteen (15) minutes, the percolation rate for the dispersal site shall be considered the rate of the slowest test hole. Otherwise, the percolation rate for the dispersal site shall be determined by averaging the percolation rates for the three (3) test holes and then rounding the result to the nearest whole number. If there are more than three (3) test holes in the proposed dispersal site, then the percolation rate must be calculated using the three (3) slowest percolation rates.

(f) **Sizing the dispersal field.** ~~New installations of subsurface absorption systems shall be sized based on the percolation rate using the charts in Appendix H, Figures 1(a) and 2(a).~~ The percolation rate for the dispersal site shall be used in conjunction with the charts in Appendix H, Figures 1 and 4 to size the conventional subsurface absorption field. The chart in Appendix H, Figure 2 may be used to size conventional subsurface absorption fields utilizing chambers when designed using a percolation test.

(g) **Information to be reported.** The following information must be reported to the DEQ on DEQ Form ~~641-581~~ 641-581P, "Report for On-Site Sewage Treatment" or in a format approved by the DEQ:

(1) Property owner's name(s);

(2) Address or finding directions for property;

(3) Legal description of property, including lot and block number when available;

(4) Lot size in square feet or acres;

(5) Whether the system will be an individual or small public on-site sewage treatment system;

(6) The estimated or actual average daily flow for the system;

(7) Whether the water supply for the property is public or private;

(~~1~~8) The location of each test hole (identified from two fixed reference points)~~,~~;

(~~2~~9) The depth and percolation rate, along with the depth to groundwater if encountered, for all test holes in the proposed dispersal field~~,~~;

(~~3~~10) ~~The results of the percolation test, with all results rounded to the nearest whole number,~~ The percolation rate for the dispersal site;

~~(4) The type and size of the proposed system(s),~~

(~~5~~11) ~~If a subsurface treatment field is proposed, the size~~ The size of the septic tank, the minimum length of the conventional subsurface absorption field, and the minimum and maximum depth of the ~~subsurface system, and~~ trenches;

(~~6~~12) The name and signature of the person performing the pre-soak~~.~~;

(13) The name, signature and registration number of the person conducting the percolation test; and

(14) The date the percolation test was conducted.

252:641-3-4. Soil profile ~~descriptions~~ description test method

(a) **Test hole requirements.** Test holes may be augered borings, continuous core borings, or excavated pits.

(1) **Borings.** If borings are used, three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft^2), then one additional test

hole shall be used for each additional five thousand square feet (5,000 ft^2). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Borings shall allow for the classification of the soil in six-inch intervals and shall be bored to a minimum depth of forty-eight inches (48") or until one of the following is encountered first:

(A) ~~A~~ a layer that is impervious to boring;

(B) a six-inch interval classified as a Group 5 soil; or

(~~B~~ C) ~~Water~~ water saturated soil.

(2) **Pits.** If excavated pits are used, three (3) pits shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft^2), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft^2). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. ~~they~~ Pits shall:

(A) ~~Have~~ have a depth of a minimum of forty-eight inches (48"), unless rock or water saturated soil is encountered ~~first~~ at a shallower depth;

(B) ~~Be~~ be a minimum of thirty-six inches (36") wide and sixty inches (60") long; and

(C) ~~Have~~ have one end sloped or stepped to allow for entry.

(b) **Identification of ~~acceptable soil profile description test holes~~ limiting layers.** The shallowest limiting layer encountered in the test holes shall be the limiting layer for the entire dispersal site. The following are considered limiting layers and shall be identified by depth on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment:"

~~(1) Acceptable test holes. Test holes are acceptable unless they contain a soil interval that:~~

~~(A) Is impervious to boring at any depth up to thirty-six inches (36");~~

~~(B) Contains water saturated soil at any depth up to thirty-six inches (36"); and/or~~

~~(C) Is classified as a Group 1 or 5 soil between twelve inches (12") and thirty-six inches (36").~~

(1) a layer that is impervious to boring;

(2) a six-inch interval classified as a Group 5 soil; and

(3) water saturated soil.

(~~2~~c) **Verifying limiting layers using pits.** ~~Any boring that is found to be unacceptable due to the presence of a layer that is impervious to boring or that contains redoximorphic soil features~~ Limiting layers may be ~~further~~ verified using an excavated pit. The results of the pit(s) shall override the results of borings completed in the same proposed ~~absorption field~~ dispersal site.

(~~c~~d) **Classifying soil ~~groups~~ intervals.** For each ~~acceptable~~ test hole, the ~~soil texture and~~ soil group for each six-inch interval between ~~a depth of twelve inches (12")~~ the surface and the bottom of the test hole shall be identified using the guidelines found in the "DEQ/OSU Soil Classification Manual" and classified as one of the soil groups in Appendix B.

(e) **Determining the soil group for the separation range.** The soil group for the separation range establishes the required vertical separation between the dispersed effluent and the limiting layer. The separation range consists of the three (3) six-inch intervals above the interval containing a limiting layer or, if no limiting layer was identified, the separation range shall be the three (3) six-inch intervals above the bottom of the test hole. To determine the soil group for the separation range:

(1) Select the test hole in the dispersal site with the lowest clay content in the separation range; and

(2) Identify and record the most prevalent soil group in the separation range for that test hole.

(f) **Identifying dispersal field options.** Based on the soil group identified in (e) of this Section, use Appendix A, Figure 1 to identify suitable dispersal fields along with their minimum separations distances from the limiting layer.

(~~d~~g) **Sizing the dispersal field(s).** ~~Of the three acceptable test holes, the one with the highest clay content shall be used to size the subsurface absorption system. In that test hole, the most prevalent soil group between twelve inches (12") and thirty-six inches (36") shall be identified. The system shall be sized using the charts in Appendix H, Figures 1(b) and 2(b) based on the identified soil group.~~ Each suitable dispersal field shall be sized as follows:

(1) **Determining sizing range.** Select the test hole in the dispersal site with the highest clay content in the sizing range for the chosen dispersal field. The applicable sizing range for each type of dispersal field is as follows:

(A) **Conventional subsurface absorption fields.** The sizing range for conventional subsurface absorption fields is the three (3) six-inch intervals between twelve (12") inches and thirty inches (30").

(B) **Low pressure dosing fields.** The sizing range for low pressure dosing fields is the three (3) six-inch intervals between twelve (12") inches and thirty inches (30").

(C) **ET/A fields.** The sizing range for ET/A fields is the three (3) six-inch intervals between twelve (12") inches and thirty inches (30").

(D) **Shallow extended subsurface absorption fields.** The sizing range for shallow extended subsurface absorption fields is the three (3) six-inch intervals between six inches (6") and twenty-four inches (24").

(E) **Drip irrigation fields.** The sizing range for drip irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").

(F) **Spray irrigation fields.** The sizing range for spray irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").

(2) **Identifying soil group in sizing range.** Determine the most prevalent soil group in the sizing range for the test hole selected in (1) of this subsection;

(3) **Sizing dispersal field.** Based on the soil group identified in (2) of this subsection, size the dispersal field using the charts in Appendix H, Figures 3 and 5-22; and

(4) **Sizing additional dispersal field options.** Repeat (1) through (3) of this subsection for each dispersal field option.

(~~e~~h) **Information to be reported.** The following information must be reported to DEQ on DEQ Form ~~641-581~~ 641-581SP, "Report for On-Site Sewage Treatment":

(1) Property owner's name(s);

(2) Address or finding directions for property;

(3) Legal description of property including block and lot number when available;

(4) Lot size in square feet or acres;

(5) Whether the system will be an individual or small public on-site sewage treatment system;

(6) The estimated or actual average daily flow for the system;

(7) Whether the water supply for the property is public or private;

(~~1~~8) The location of each test hole (identified from two fixed reference points);

(~~2~~9) The soil group for each six-inch interval between ~~a depth of twelve inches (12")~~ ground level and the bottom of ~~the~~ each test hole in the proposed dispersal field;

(~~3~~10) The depth and description of any ~~rock, rock fragments~~ soil impervious to boring or water saturated soil layer in each test hole located in the proposed dispersal field;

(11) Depth of limiting layer for entire dispersal field;

(12) The test hole number used to identify the separation range and the soil group of the separation range in the proposed dispersal field;

(~~4~~13) ~~The type and size of the proposed~~ For each suitable dispersal fields or system(s) identified provide the following:

(A) the test hole number used to determine the sizing range;

(B) the soil group of the sizing range; and

(C) the minimum sizing and installation criteria for the dispersal field or system; ~~and~~

~~(5) If an absorption field is proposed, the maximum depth of the subsurface absorption field.~~

(14) The name, signature and registration number of the person conducting the soil profile description; and

(15) The date the soil profile description was conducted.

SUBCHAPTER 5. BUILDING SEWER AND COLLECTION SYSTEMS

252:641-5-1. General provisions

(a) The ~~applicant~~ pipe used for building sewer and collection lines shall comply with the pipe specifications as set forth in Appendix C.

(b) The joints of all solid pipe shall be sealed to be watertight.

252:641-5-2. Installation

(a) **Minimum fall.** The following minimum fall requirements shall be met:

(1) **Three-inch and four-inch pipe.** Pipe having a diameter of three inches (3") or four inches (4") that delivers sewage to a septic tank or a trash tank shall be installed with a minimum fall of one-eighth inch (1/8") per foot.

(2) **Six-inch pipe.** Pipe having a diameter of six inches (6") that delivers sewage to a septic tank or a trash tank shall be installed with a minimum fall of one-sixteenth inch (1/16") per foot.

(b) **Cleanouts.** ~~The following are the minimum requirements for locating two-way sanitary cleanouts:~~

~~(1)~~ For all pipe located upstream of a septic tank, a two-way ~~sanitary tee~~ cleanout or two-way cleanout assembly shall be installed:

(~~A~~1) Within five feet (5') from where the plumbing stubs out of the building or appurtenance to the building;

(~~B~~2) Within five feet (5') after each change in direction of more than forty-five degrees (45E); ~~and~~

(~~C~~3) For each one-hundred-foot interval of straight pipe.

~~(2)~~ Nothing in this ~~subsection~~ paragraph shall require the installation of more than one (1) two-way ~~sanitary~~ cleanout or two-way cleanout assembly per one-hundred-foot (100') section of straight pipe. For purposes of this paragraph, straight pipe is pipe that does not have any change of direction of more than forty-five degrees (45E).

SUBCHAPTER 7. SEPTIC TANKS

252:641-7-1. General provisions

(a) Once installed, the tops of septic tanks shall ~~be level~~ have no more than one inch (1") variation in elevation from side to side and end to end.

(b) Septic tanks shall be ~~installed in accordance with Appendix I~~ constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank.

(c) Appendix I illustrates the requirements for a septic tank.

252:641-7-2. Types of tanks

(a) **Concrete tanks.** Concrete tanks shall be reinforced with rebar or fiber, and constructed of a mix which demonstrates a twenty-eight-day compressive strength of ~~three~~ four (4) thousand pounds per square inch (~~3,000~~ 4,000 psi). They may be poured in place or precast, but, in either case, shall be monolithically poured and mechanically vibrated.

(b) **Fiberglass and plastic tanks.** Fiberglass and plastic tanks shall meet either IAPMO or CSA standards for septic tanks and shall be installed according to the manufacturer's recommendations. If the tank does not bear the IAPMO or CSA mark, then DEQ will require the installer to submit documentation from IAPMO or CSA stating the tank meets the above standards.

252:641-7-3. Design

(a) **Compartments.** A septic tank may consist of one (1) or two (2) compartments. All septic tanks shall have a removable ~~lids~~ lid or a manhole opening of at least ~~twenty four inches (24")~~ twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length over each compartment. All lids and manholes shall be sealed to prevent leakage.

(b) **Two-compartment tanks.** The passage in the common wall of two-compartment tanks shall be located below the liquid level and between twenty percent (20%) to forty percent (40%) of the liquid depth. There shall be a vent through the common wall.

(c) **Inlets and outlets.** The outlet of the septic tank shall be two inches (2") lower than the inlet of the septic tank. ~~Inlets~~ Baffles for inlets and outlets shall be constructed and located as follows:

(1) **Construction.** Baffles shall be used on all inlet and outlet lines. Cleanout openings shall be located directly above the inlet and outlet baffles. Inlets and outlets shall have a watertight seal.

(2) **Location.** All baffles shall extend to within two inches (2") of the top of the septic tank.

(A) **Inlet.** Inlet baffles shall extend at least six inches (6") below the liquid depth of the septic tank.

(B) **Outlet.** Outlet baffles shall extend below the liquid level by twenty percent (20%) to forty percent (40%) of the liquid depth.

(d) **Precast concrete tanks.** Precast concrete tanks shall have a minimum:

(1) wall thickness of two and one-half inches (2-1/2");

(2) bottom thickness of three inches (3"); and

(3) cover thickness of three and one-half inches (3-1/2").

(e) **Poured-in-place concrete tanks.** ~~Poured in place~~ Poured-in-place concrete tanks shall have a minimum:

(1) wall thickness of six inches (6");

(2) bottom thickness of three inches (3"); and

(3) cover thickness of four inches (4").

252:641-7-4. Liquid capacity

(a) **Individual on-site sewage treatment system.** A septic tank used in an individual on-site sewage treatment system for a residential unit with four (4) or ~~less~~ fewer bedrooms shall have a liquid capacity of at least one thousand (1,000) gallons. An additional ~~Two~~ two hundred and fifty (250) gallons of capacity must be added for each additional bedroom.

(b) **Small public sewage system.** The liquid capacity for a septic tank used in a small public sewage system shall be equal to or greater than the average daily flow plus fifty percent (50%), ~~with a one thousand gallon minimum~~ but in no case shall it be less than one thousand (1,000) gallons.

(c) **Two-compartment tanks.** The capacity of the influent compartment of a two-compartment tank shall not be less than one-half (1/2) nor more than two-thirds (2/3) of the total required liquid capacity of the tank.

(d) **All septic tanks.** All septic tanks shall be designed to have:

(1) a liquid depth of at least three feet (3') but not more than six and one-half feet (6-1/2'); and

(2) an air space of eight inches (8") or more inside the tank.

SUBCHAPTER 9. ~~LIFT STATIONS AND DOSING~~ PUMP TANKS

252:641-9-1. General provisions

(a) ~~**Septic tank**~~ **Primary settling.** All sewage entering a pump tank (i.e., a lift station, a flow equalization tank or a low pressure dosing tank) must first pass through a septic tank or a trash tank for primary settling.

(b) ~~**Type of**~~ **Pump tank design and construction.** ~~The type of tank used must meet the requirements of 252:641-7-2.~~ Pump tanks shall:

(1) be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank;

(2) when made of concrete, meet the requirements of 252:641-7-2(a);

(3) have a manhole opening of at least twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length. The manhole cover shall have a lock, locking bolt, or some type of fastener that requires tools for removal. The manhole opening shall extend a minimum of two inches (2") above ground elevation;

(4) have a threaded union installed in the discharge line located within eighteen inches (18") of the manhole opening so that the pump can be removed without entering the pump tank; and

(5) have a check valve installed in the discharge line after the threaded union. The check valve shall be the same diameter as the discharge line.

(c) **Pump design.** Pumps shall be:

(1) designed to pump sewage or other liquid containing fine particles/suspended solids;

(2) rated to pump at least the average daily flow the required distance and elevation; and

(3) when used as a low pressure dosing pump, rated to pump at least fifty (50) gallons per minute with no more than eight feet (8') of head pressure.

(~~c~~d) ~~**Pump discharges**~~ **Prevention of back siphonage.** Pump discharges shall flow through a structure or device that ~~provides an air gap~~ prevents the back siphonage of wastewater to the pump tank.

(e) **Example.** Appendix J illustrates the requirements for a pump tank.

252:641-9-2. ~~Design~~ Sizing

~~Lift stations and dosing tanks shall be designed as follows:~~

~~(1) Pumps shall be designed to pump sewage or other liquid containing fine particles/suspended solids and be rated to pump at least the average daily flow the required distance and elevation.~~

~~(2) The pump compartment shall have a manhole opening of at least twenty-four inches (24"). The manhole cover shall have a lock, locking bolt, or some type of fastener that requires tools for removal.~~

~~(3) The float in the pump compartment shall be set so that the pump compartment is never more than half full.~~

~~(4) An alarm to alert the owner or operator of a system failure shall be installed. The alarm shall be set to activate if the pump compartment becomes more than one-half (1/2) full.~~

~~(5) The pump compartment shall have a minimum storage capacity of one thousand (1,000) gallons.~~

~~(A) For systems with daily flows over five hundred (500) gallons, the capacity of the pump compartment shall be at least twice the highest daily flow.~~

~~(B) For systems with an average daily flow over two thousand (2,000) gallons, the capacity of the pump compartment in lift stations may be reduced to one-half (1/2) of the average daily flow, if a backup pump is available on site.~~

Pump tanks shall be sized as follows:

(1) **Lift stations.** The lift station pump tank shall have a minimum storage capacity of one thousand (1,000) gallons.

(A) **Daily flow over 500 gallons.** For systems with average daily flows over five hundred (500) gallons, the capacity of the pump tank shall be at least twice the highest daily flow.

(B) **Daily flow over 2,000 gallons.** For systems with an average daily flow over two thousand (2,000) gallons, the capacity of the pump tank may be reduced to one-half (1/2) of the average daily flow, if a backup pump is available on site.

(2) **Flow equalization tanks.** The flow equalization pump tank shall have a minimum storage capacity of one thousand (1,000) gallons. If the daily flow is greater than five hundred (500) gallons, the capacity of the pump tank shall be at least twice the highest daily flow.

(3) **Low pressure dosing tanks.** The low pressure dosing pump tank shall be sized to have a minimum capacity of at least one and one-half (1-1/2) times the average daily flow.

252:641-9-3. ~~Installation~~ Pump controls

~~Lift stations shall be installed in accordance with Appendix J. The lift station or dosing tank shall be installed so that the pump can be removed without workmen entering the pump compartment.~~

~~(1) A threaded union shall be installed in the discharge line, located within eighteen inches (18") of the manhole entry to the wet well.~~

~~(2) A check valve shall be installed in the discharge line after the threaded union. The check valve shall be the same diameter as the discharge line.~~

~~(3) The manhole opening shall extend a minimum of two inches (2") above ground elevation.~~

The pump controls shall be set as follows:

(1) **Lift stations.** The following control settings apply to lift stations:

(A) **Never more than 1/2 full.** The pump controls shall be set so that the pump tank is never more than one-half (1/2) full.

(B) **Alarm.** There shall be an alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full.

(2) **Flow equalization tanks.** The following control setting apply to flow equalization tanks:

(A) **Never more than 1/2 full.** The pump controls shall be set so that the pump tank is never more than one-half (1/2) full.

(B) **Alarm.** There shall be an alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full.

(C) **Regulating pumping rate.** The pumping of wastewater to the treatment system shall be regulated by timers, float switches or by piping and valves that allow excess pumped effluent to be returned to the flow equalization tank. The pumping of wastewater to the treatment system shall not exceed:

(i) one-fourth (1/4) of the design capacity of the treatment system in a one-hour period; and

(ii) the daily treatment capacity of the treatment system in any given twenty-four-hour period.

(3) **Low pressure dosing tanks.** The following control settings apply to low pressure dosing tanks:

(A) **Alarm.** There shall be an alarm set to activate and alert the owner/operator if the reserve volume of the pump tank falls below one day's flow.

(B) **Regulating pumping rate.** The pumping of wastewater to the dispersal field shall be regulated by timers, float switches or by piping and valves that allow excess pumped effluent to be returned to the low pressure dosing pump tank. The pump controls shall be set so that the pumping of wastewater to the dispersal field shall:

(i) occur at least four (4) times per day; and

(ii) not exceed one-fourth (1/4) of the daily flow per dosing event.

252:641-9-4. Dosing requirements

~~Dosing shall be regulated by timers or by piping and valves that allow excess pumped effluent to be returned to the dosing tank. The daily dosing shall be at least the average daily flow not to exceed:~~

~~(1) one-fourth (1/4) of the design capacity of the treatment system in a one-hour period; and~~

~~(2) the daily treatment capacity of the treatment system in any given 24-hour period.~~

SUBCHAPTER 10. AEROBIC TREATMENT SYSTEMS

252:641-10-1. Residential sewage treatment only

Aerobic treatment systems shall only be used for treatment of sewage from residential units and cannot be used when the average daily flow is less than one hundred (100) gallons per day or greater than one thousand five hundred (1,500) gallons per day.

252:641-10-2. Design and installation

(a) **Fluctuating flows.** If the daily flow fluctuates so that the flow on any given day during the week exceeds the aerobic treatment unit's daily capacity, then an aerobic treatment system may not be used unless a flow equalization tank, which meets the requirements of 252:641-9, is installed between the trash tank and the aerobic treatment unit.

(b) **Components of aerobic treatment systems.** Aerobic treatment systems shall be comprised of the following components:

(1) **Trash tank.** There shall be a trash tank that meets the requirements of ANSI/NSF Standard 40 or 252:641-7-2. The trash tank shall:

(A) be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank;

(B) have a minimum capacity of three hundred (300) gallons or the average daily flow, whichever is greater;

(C) have a removable lid or a manhole opening of at least twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length. The lid or manhole shall be sealed to prevent leakage and extend a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal; and

(D) have baffles installed at its inlet and the outlet. The baffles shall extend to within two inches (2") of the top of the trash tank.

(i) **Inlet.** Inlet baffles shall extend at least six inches (6") below the liquid depth of the trash tank.

(ii) **Outlet.** Outlet baffles shall extend below the liquid level by twenty percent (20%) to forty percent (40%) of the liquid depth.

(2) **Aerobic treatment unit.** There shall be a aerobic treatment unit that:

(A) has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 40;

(B) is constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank

(C) is rated at or above the design daily flow;

(D) produces effluent clear enough that the bottom of the pump tank is visible when it is full; and

(E) has an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(3) **Method of disinfection.** If spray irrigation is used as the type of dispersal, then there shall be a method to disinfect the effluent, either a liquid chlorinator or a method that is ANSI/NSF Standard 46 approved, between the aerobic treatment unit and the pump tank (or in the pump tank). If chlorination is used as the disinfection method, a free chlorine residual of two tenths of a milligram per liter (0.2 mg/l) must be maintained in the pump tank. All other methods of disinfection shall effectively reduce the fecal coliform count to less than two hundred colonies per one hundred milliliters (200/100 ml).

(4) **Pump tank.** There shall be a pump tank, which shall:

(A) meet the requirements of ANSI/NSF Standard 40 or 252:641-7-2;

(B) have a minimum capacity of seven hundred (700) gallons or, for systems with an average flow over three hundred fifty (350) gallons per day, have a capacity of at least twice the average daily flow;

(C) have a sampling port in the pump tank at the discharge outlet or in the treated effluent line following the pump tank;

(D) have a float in the pump tank set so that the pump tank is never more than one-half (1/2) full;

(E) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full; and

(F) have an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(5) **Dispersal field.** Effluent treated by an aerobic treatment unit shall be dispersed using either a spray irrigation field or a drip irrigation field as described in Subchapter 12 of this Chapter.

(c) **Level.** Once installed, the top of each tank (i.e., trash tank, aerobic treatment unit and pump tank) shall have no more than one inch (1") variation in elevation from side to side and end to end.

(d) **Depth of aerobic treatment system components.** The top of all components of the aerobic treatment system, excluding the trash tank and dispersal field, shall be covered with no more than twenty-four inches (24") of soil.

(e) **Solid pipe.** The solid pipe used to connect the components of an aerobic treatment system must meet the minimum specifications listed in Appendix C.

(f) **Fall.** Unless a lift pump is utilized, there shall be fall between:

(1) the trash tank and the aerobic treatment unit; and

(2) the aerobic treatment unit and the pump tank.

(g) **Manufacture's specification.** All aerobic treatment systems shall be installed in accordance with the manufacturer's specifications.

252:641-10-3. Responsibility for maintenance

(a) **Mandatory two year maintenance period.** The installer of any aerobic treatment system shall maintain the

aerobic treatment system for a period of two years following the date the system was installed at no additional cost to the owner. During the two-year mandatory maintenance period, the installer shall be responsible for the following:

(1) repairing, adjusting or replacing any broken or malfunctioning parts;

(2) testing and recording the free chlorine residual of the effluent in the pump tank at least once every six (6) months;

(3) measuring and recording the depth of the sludge in the trash tank at least once every six (6) months;

(4) measuring and recording the volume of the sludge in the aerobic treatment unit at least once every six (6) months;

(5) conducting a clarity test and recording the results as passing or failing once every six (6) months. A passing clarity test is one where an eight-inch disk with alternating black and white quadrants is visible when placed on the bottom of the pump tank when the tank is at least one-third (1/3) full;

(6) notifying the owner of the system in writing of:

(A) the type and date of any repairs, adjustments or replacements performed on the system;

(B) the results of the free chlorine residual test and, when applicable, the need to add chlorine and how to do it;

(C) the depth of the accumulation of sludge in the trash tank and the need to have it pumped so that the depth of the sludge is never more than forty percent (40%) of the overall depth;

(D) the volume of the sludge in the aerobic treatment unit and the need to have it pumped so that the volume of the sludge in the aerobic treatment unit is never more than forty percent (40%); and

(E) the results of the clarity test and, if it fails the test, what the installer did or the homeowner has to do to correct it; and

(7) documenting all maintenance and testing performed on the system and maintaining those records at his/her business for a period of three (3) years following the date of service.

(b) **Exclusions from maintenance.** The installer shall not be responsible for repairing aerobic treatment systems when the owner/operator is the sole cause of the damage to the system or the system's malfunction (e.g., sprinkler heads that properly retract into the ground but are nevertheless damaged by careless actions of the homeowner, excessive water usage, introduction of harmful items into septic system, etc.).

(c) **Owner responsible after two year period ends.** After the expiration of the two-year mandatory maintenance period, the owner of the aerobic treatment system shall be solely responsible for maintaining or hiring someone to maintain the system so that it operates as designed.

SUBCHAPTER 11. SUBSURFACE SYSTEMS [REVOKED]

AGENCY NOTE: The revoked language in this subchapter has been relocated to new Subchapter 12.

252:641-11-1. General provisions [REVOKED]

~~(a) **Septic tank.** All sewage entering a subsurface treatment field must first pass through a septic tank or an aerobic treatment unit.~~

~~(b) **Delivery method.** All sewage shall be conveyed to the subsurface treatment field through solid pipe, which shall meet the specifications listed in Appendix C. No part of that solid pipe may rise above the outlet of the septic tank.~~

~~(c) **Fall.** Unless a lift pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:~~

~~(1) highest point of the storage media in the subsurface treatment field; or~~

~~(2) highest point of the louvers of a chamber in the subsurface treatment field.~~

~~(d) **Surface water.** Surface water shall be diverted around or away from the subsurface treatment field.~~

~~(e) **Layout examples.** Refer to Appendix K, Figures 1-5.~~

252:641-11-2. Subsurface treatment fields [REVOKED]

~~(a) **Location.** All subsurface treatment fields shall be:~~

~~(1) located as described in 252:641-3-1(e); and~~

~~(2) installed more than five feet (5') from the septic tank or aerobic treatment unit.~~

~~(b) **Minimum linear length.** If perforated pipe is used between distribution structures and installed in accordance with the trench requirements in this Subchapter, it may be counted as part of the overall required length of the subsurface treatment field. All subsurface treatment fields must meet the minimum length requirements set forth in the appendices as follows:~~

~~(1) **Subsurface absorption systems.** For subsurface absorption systems, the minimum length requirements are set forth in Appendix H, Figures 1 and 2.~~

~~(2) **ET/A systems.** For ET/A systems, the minimum length requirements are set forth in Appendix H, Figures 3 and 4.~~

~~(c) **Trench length limitation.** Systems shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.~~

~~(d) **Trench spacing.** The trenches shall be spaced at least eight feet (8') apart, center to center.~~

~~(e) **Trench width.** All trenches in a subsurface treatment field shall be twenty-four inches (24") wide.~~

~~(f) **Trench depth.** Each trench shall have a uniform depth of at least eighteen inches (18"), and no more than thirty inches (30"), except for ET/A systems, which cannot have a depth exceeding twenty-four inches (24"). The depth of the trenches in a subsurface treatment field shall be consistent and shall not vary more than four inches.~~

~~(g) **Vertical separation.**~~

~~(1) **Soil profiles.** If a soil profile description is used to define the absorption field, then there shall be a minimum of eighteen inches (18") of separation between the bottom of the trench and:~~

~~(A) a layer that is impervious to boring;~~

~~(B) water saturated soil; and~~

~~(C) a Group 1 or 5 soil.~~

~~(2) **Percolation test.** If a percolation test is used to define the absorption field, then the depth of the trenches shall be at least six inches (6") less than the depth of the percolation test holes.~~

~~(h) **Storage area.** The following requirements apply to the storage area in the trenches:~~

~~(1) **Perforated pipe.** When perforated pipe is used to distribute sewage throughout the storage area the following apply:~~

~~(A) The perforated pipe shall meet the specifications listed in Appendix C.~~

~~(B) The perforated pipe shall extend the entire length of the storage area.~~

~~(C) The trenches shall contain at least ten inches (10") of storage media.~~

~~(D) At least two inches (2") of storage media shall be installed above and below the perforated pipe.~~

~~(E) The top of the storage media must be level:~~

~~(i) in each trench; and~~

~~(ii) across the subsurface treatment field, unless installed in trenches of different elevations.~~

~~(F) A retention structure must be used between trenches of different elevations.~~

~~(G) Trench installation examples are located in Appendix M, Figure 1.~~

~~(2) **Chambers.** When chambers are used to distribute sewage throughout the storage area the following apply:~~

~~(A) The chambers shall meet the specifications listed in Appendix C.~~

~~(B) The chambers shall extend the entire length of the storage area.~~

~~(C) The chambers shall be at least twenty-two inches (22") wide with louvers at least ten inches (10") high.~~

~~(D) The trenches do not need to contain storage media.~~

~~(E) The top of the chambers must be level:~~

~~(i) in each trench; and~~

~~(ii) across the subsurface treatment field, unless installed in trenches of different elevations.~~

~~(F) A retention structure must be used between trenches of different elevations.~~

~~(G) The minimum design criteria for the installation of chamber systems in Appendix N shall be followed.~~

~~(i) **Retention structure.** When a retention structure is used:~~

~~(1) the top of the outlet pipe of a retention structure or the top of the outlet pipe of a chamber being used as a retention structure shall be fourteen inches (14") above the trench bottom;~~

~~(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with non-sandy soil; and~~

~~(3) Appendix L, Figure 1, may be referred to as an example of a retention structure; and Appendix K, Figures 3-5, and Appendix N, Figure 1, may be referred to as examples of layouts of retention systems.~~

~~(j) **Backfill.** The following are the backfill requirements for trenches in subsurface treatment fields (for examples, refer to Appendix M):~~

~~(1) **Subsurface absorption systems.** For subsurface absorption systems:~~

~~(A) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and~~

~~(B) the backfill shall consist of at least eight inches (8") of topsoil.~~

~~(2) **ET/A systems.** For ET/A systems:~~

~~(A) the trenches shall be backfilled with clean sand to within two inches (2") of the surface;~~

~~(B) the sand shall be separated from the storage media or chambers by material that allows the flow of water but prevents the flow of sand; and~~

~~(C) after a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench.~~

SUBCHAPTER 12. DISPERSAL FIELDS

252:641-12-1. General provisions

(a) **Primary settling.** Prior to being conveyed to a dispersal field, all sewage must first pass through a septic tank or trash tank for primary settling.

(b) **Delivery method.** All sewage shall be conveyed to the dispersal field through solid pipe, which shall meet the specifications listed in Appendix C.

(c) **Surface water.** Surface water shall be diverted around or away from the dispersal field.

(d) **Types of dispersal fields.** The following are the allowed types of dispersal fields:

(1) Conventional subsurface absorption fields;

(2) Shallow extended subsurface absorption fields;

(3) Evapotranspiration/absorption (ET/A) fields;

(4) Low pressure dosing fields;

(5) Drip irrigation fields; and

(6) Spray irrigation fields.

(e) **Specifications for storage media.** Storage media shall meet the following requirements:

(1) **Storage capacity.** All storage media shall provide a storage capacity of:

(A) at least five (5) gallons per linear foot in the bottom ten inches (10") of a twenty-four inch-wide trench in a conventional subsurface absorption field or ET/A field; or

(B) at least three and one-half (3-1/2) gallons per linear foot in the bottom six inches (6") of a twenty-

four-inch-wide trench in a low pressure dosing field or a shallow extended subsurface absorption field.

(2) **Media size.** Storage media shall be one-half to two and one-half inches (1/2" to 2-1/2") in diameter with no more than ten percent (10%) by weight passing through a one-half inch (1/2") screen.

(3) **Media with specific gravity of less than 1.0.** If the specific gravity of the storage media is less than 1.0, it shall be bundled with a netting sleeve.

(4) **Resistant to degradation.** The storage media shall be non-degradable by septic tank effluent.

(5) **Hardness of natural media.** Natural materials (e.g., rock, etc.) used as storage media shall have a Mohs hardness of at least 3.0.

(6) **Deflection rate for manufactured media.** Manufactured materials (e.g., glass, plastic, polystyrene, etc.) used as storage media shall have a deflection rate of ten percent (10%) or less when subjected to a minimum of ten (10) psi for ninety-six (96) hours (ASTM D2221-01).

252:641-12-2. Conventional subsurface absorption fields

(a) **Location.** All conventional subsurface absorption fields shall be:

(1) located in the identified dispersal site; and

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:

(1) highest point of the storage media in the conventional subsurface absorption field; or

(2) highest point of the sidewall openings of a chamber in the conventional subsurface absorption field.

(c) **Minimum linear length.** All conventional subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures 1-5. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the conventional subsurface absorption field.

(d) **Trench length limitation.** Conventional subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.

(e) **Trench spacing.** The trenches in a conventional subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in a conventional subsurface absorption field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a conventional subsurface absorption field shall have a uniform depth of at least eighteen inches (18"), and no more than thirty inches (30"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a conventional subsurface absorption field shall contain a zone for the dispersal and storage of effluent comprised of either perforated pipe and storage media, or chambers.

(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:

(A) **Perforated pipe.** The perforated pipe shall:

(i) meet the minimum specifications listed in Appendix C.

(ii) extend the entire length of the trenches.

(B) **Storage Media.** The storage media shall:

(i) be at least ten inches (10") deep and at least twenty-four inches (24") wide the entire length of the trench;

(ii) be installed with at least two inches (2") of storage media above and two inches (2") of storage media below the perforated pipe;

(iii) be level:

(I) in each trench; and

(II) across the dispersal field, unless installed in trenches of different elevations.

(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:

(A) have a minimum bottom width of twenty-two inches (22");

(B) have a minimum sidewall height of ten inches (10") with the sidewalls having evenly distributed open space. If the sidewall height is less than ten inches (10"), then the trench shall be backfilled with storage media to meet the ten-inch height requirement;

(C) meet the IAPMO PS 63-2005 standard;

(D) extend the entire length of the trenches;

(E) be level:

(i) in each trench; and

(ii) across the dispersal field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in conventional subsurface absorption fields. When a retention structure is used:

(1) the top of the outlet pipe of a retention structure or the top of the outlet pipe of a chamber being used as a retention structure shall be fourteen inches (14") above the trench bottom; and

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For conventional subsurface absorption fields:

(1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and

(2) the backfill shall consist of at least eight inches (8") of topsoil.

(k) **Layout examples.** There are examples of conventional subsurface system layouts in Appendix K, Figures 1, 2, and 4; examples of retention and distribution structures in Appendix L; examples of trench installation in Appendix M, Figures 1 and 2; and examples of chambers installed in trenches in Appendix N.

252:641-12-3. Shallow extended subsurface absorption fields

(a) **Location.** All shallow extended subsurface absorption fields shall be:

(1) located in the identified dispersal site; and

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:

(1) highest point of the storage media in the shallow extended subsurface absorption field; or

(2) highest point of the sidewall openings of a chamber in the shallow extended subsurface absorption field.

(c) **Minimum linear length.** All shallow extended subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures 6 and 7. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the shallow extended subsurface absorption field.

(d) **Trench length limitation.** Shallow extended subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or chambers in any given path.

(e) **Trench spacing.** The trenches in a shallow extended subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in a shallow extended subsurface absorption field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a shallow extended subsurface absorption field shall have a uniform depth of at least fourteen inches (14"), and no more than thirty inches (30"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a shallow extended subsurface absorption field shall contain a zone for the dispersal and storage of effluent comprised of either perforated pipe and storage media, or chambers.

(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:

(A) **Perforated pipe.** The perforated pipe shall:

(i) meet the minimum specifications listed in Appendix C.

(ii) extend the entire length of the trenches.

(B) **Storage Media.** The storage media shall:

(i) be at least six inches (6") deep and at least twenty-four inches (24") wide the entire length of the trench;

(ii) be installed with at least one inch (1") of storage media above and one inch (1") of storage media below the perforated pipe;

(iii) be level:

(I) in each trench; and

(II) across the dispersal field, unless installed in trenches of different elevations.

(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:

(A) have a minimum bottom width of twenty-two inches (22");

(B) have a minimum sidewall height of six inches (6") with the sidewalls having evenly distributed open space;

(C) meet the IAPMO PS 63-2005 standard;

(D) extend the entire length of the trenches;

(E) be level:

(i) in each trench; and

(ii) across the dispersal field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in shallow extended subsurface absorption fields. When a retention structure is used:

(1) the top of the outlet pipe of a retention structure or the top of the outlet pipe of a chamber being used as a retention structure shall be ten inches (10") above the trench bottom; and

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For shallow extended subsurface absorption fields:

(1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and

(2) the backfill shall consist of at least eight inches (8") of topsoil.

252:641-12-4. Low pressure dosing fields

(a) **Location.** All low pressure dosing fields shall be:

(1) located in the identified dispersal site;

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit; and

(3) preceded by a low pressure dosing tank.

(b) **Header line.** The header pipe (i.e., the pipe between the pump tank and the manifold) shall:

(1) have a diameter the same as the diameter of the outlet of the low pressure dosing pump; and

(2) be no longer than thirty feet (30').

(c) **Total linear length.** All low pressure dosing fields shall meet the total linear length requirements set forth in Appendix H, Figures 8 and 9.

(d) **Trench length.** Each trench in a low pressure dosing field shall be forty feet (40') long.

(e) **Trench spacing.** The trenches in a low pressure dosing field shall be spaced six feet (6') apart, center to center.

(f) **Trench width.** All trenches in a low pressure dosing field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a low pressure dosing field shall have a uniform depth of at least fourteen inches (14") and no more than thirty inches (30"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a low pressure dosing field shall contain a zone for the dispersal and storage of

effluent comprised of low pressuring dosing pipe and storage media.

(1) **Low pressure dosing pipe.** Low pressure dosing pipe shall:

(A) meet the minimum specifications listed in Appendix C;

(B) have one-fourth inch (1/4") diameter holes spaced five feet (5') apart the entire length of the pipe;

(C) extend the entire length of the trenches; and

(D) have all of the joints glued.

(2) **Storage media.** The storage media shall:

(A) be at least six inches (6") deep and at least twenty-four inches (24") wide the entire length of the trench;

(B) be installed with at least two inches (2") of the storage media above and two inches (2") of storage media below the low pressure dosing pipe; and

(C) be level:

(i) in each trench; and

(ii) across the low pressure dosing field.

(i) **Retention structures prohibited.** Retention structures may not be used in low pressure dosing fields.

(j) **Backfill.** For low pressure dosing fields:

(1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and

(2) the backfill shall consist of at least eight inches (8") of topsoil.

(k) **Layout examples.** There are layout examples located in Appendix K, Figure 3, and Appendix M, Figure 3.

252:641-12-5. Evapotranspiration/absorption (ET/A) fields

(a) **Location.** All ET/A fields shall be:

(1) located in the identified dispersal site; and

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the highest point of the storage media in the ET/A field.

(c) **Minimum linear length.** All ET/A fields must meet the minimum length requirements set forth in Appendix H, Figures 10 and 11. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the ET/A field.

(d) **Trench length limitation.** ET/A fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe in any given path.

(e) **Trench spacing.** The trenches in an ET/A field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in an ET/A field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in an ET/A field shall have a uniform depth not to exceed twenty-four inches (24"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in an ET/A field shall contain a zone for the dispersal and storage of effluent comprised of perforated pipe and storage media.

(1) **Perforated pipe.** The perforated pipe shall:

(A) meet the minimum specifications listed in Appendix C; and

(B) extend the entire length of the trenches.

(2) **Storage media.** The storage media used shall:

(A) be at least ten inches (10") deep and at least twenty-four inches (24") wide the entire length of the trench;

(B) be installed with at least two inches (2") of the storage media above and two inches (2") of storage media below the perforated pipe;

(C) be level:

(i) in each trench; and

(ii) across the ET/A field, unless installed in trenches of different elevations.

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in ET/A fields. When a retention structure is used:

(1) the top of the outlet pipe of a retention structure shall be fourteen inches (14") above the trench bottom; and

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For ET/A fields:

(1) the trenches shall be backfilled with clean sand to within two inches (2") of the ground level;

(2) the sand used to backfill the trenches shall be separated from the storage media by material that allows the flow of water but prevents the flow of sand; and

(3) after a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench.

(k) **Layout examples.** There are layout examples located in Appendix K, Figures 1, 2, and 4, Appendix L, and Appendix M, Figure 2.

252:641-12-6. Drip irrigation fields

(a) **Location.** All drip irrigation fields shall be:

(1) preceded by an aerobic treatment unit;

(2) preceded by a filter capable of filtering particles larger than one hundred (100) microns; and

(3) located in the identified dispersal site.

(b) **Components.** All components used in the drip irrigation field shall be designed and manufactured specifically for use in wastewater treatment systems.

(c) **Pump.** The pump shall:

(1) be set to distribute no more than one fourth (1/4) of the designed daily flow to the drip irrigation pipe during each pumping interval;

(2) when in operation, maintain a minimum pressure of ten (10) psi and a maximum pressure of forty-five (45) psi throughout the drip irrigation pipe; and

(3) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full.

(d) **Minimum linear length.** All drip irrigation fields shall meet the minimum length requirements set forth in Appendix H, Figure 12.

(e) **Drip irrigation pipe.** The pipe used in drip irrigation fields shall be designed and manufactured for the purpose of distributing wastewater and comply with the minimum specifications in Appendix C.

(f) **Installation of pipe.** The pipe used in drip irrigation fields shall be:

(1) installed eight to ten inches (8-10") deep;

(2) installed according to the manufacture's specifications; and

(3) equipped with emitters spaced:

(A) one foot (1') apart in soil groups 1, 4, and 5; and

(B) two feet (2') apart in soil groups 2, 2a, 3, and 3a.

(g) **Emitters.** The emitters shall be set to wet four square feet (4 ft^2) and be pressure compensating to deliver uniform distribution regardless of the pressure entering the drip line.

(h) **Prevent backflow.** To prevent backflow, at least one (1) vacuum relief valve, located in a valve box lined with gravel, shall be located at the highest point on both the supply manifold and the return manifold.

(i) **Back flush.** There shall be a method to flush the drip irrigation pipe. The flush water shall be returned to the trash tank, aerobic treatment unit or pump tank.

252:641-12-7. Spray irrigation fields

(a) **Location.** All spray irrigation fields shall:

(1) be preceded by an aerobic treatment unit;

(2) be located in the identified dispersal site, when a soil profile test is used to sized the irrigation field;

(3) utilize at least two sprinkler heads to disperse the treated effluent; and

(4) be vegetated and landscaped, and/or terraced to prevent runoff.

(b) **Sizing.** The spray irrigation field shall be sized according to Appendix H, Figures 13-22. When calculating the overall area of the spray irrigation field, areas of overlap may only be counted once.

(c) **Sprinklers.** The sprinklers shall be designed to:

(1) provide uniform distribution of treated effluent over the entire spray irrigation field without misting; and

(2) have a trajectory of no more than fifteen-degrees (15°) to keep the spray stream low to the ground surface.

(d) **Spray irrigation.** The spray irrigation shall be:

(1) adjusted and maintained at a rate to prevent runoff; and

(2) controlled by a timing device to take place daily between 1:00 a.m. and 6:00 a.m.

SUBCHAPTER 13. AEROBIC SYSTEMS [REVOKED]

AGENCY NOTE: The revoked language in this subchapter has been relocated to new Subchapters 10 and 12.

252:641-13-1. General provisions [REVOKED]

~~(a) **Fluctuating flows.** If the daily flow fluctuates so that the flow on any given day during the week exceeds the aerobic treatment unit's daily capacity, then an aerobic system may not be used unless a dosing tank, which meets the requirements of 252:641-9, is installed between the trash tank and the aerobic treatment unit.~~

~~(b) **Components of aerobic systems.** Aerobic systems shall be comprised of the following :~~

~~(1) **Trash tank.** There shall be a trash tank that meets the requirements of ANSI/NSF or 252:641-7-2, and has a minimum capacity of three hundred (300) gallons or the daily flow, whichever is greater. The trash tank shall have an opening of sufficient size to allow for maintenance. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.~~

~~(2) **Aerobic treatment unit.** There shall be an aerobic treatment unit that:~~

~~(A) has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 40; and~~

~~(B) is rated at or above the average daily flow.~~

~~(3) **Method of disinfection.** There shall be a method to disinfect the treated sewage between the aerobic unit and the pump tank. The disinfection method must effectively reduce the fecal coliform bacteria to less than (<) 200MPN/1000 ml. If chlorination is used as the disinfection method, a free chlorine residual of one milligram per liter (1 mg/l) must be maintained.~~

~~(4) **Pump tank.** There shall be a pump tank, which shall:~~

~~(A) meet the requirements of ANSI/NSF or 252:641-7-2;~~

~~(B) have a minimum capacity of seven hundred (700) gallons or, for systems with an average flow over three hundred fifty (350) gallons per day, have a capacity of at least twice the average daily flow;~~

~~(C) have a sampling port in the pump tank at the discharge outlet or in the treated sewage line following the pump tank;~~

~~(D) have a float in the pump tank set so that the pump tank is never more than one-half (1/2) full;~~

~~(E) have a high-water alarm set to activate if the pump tank becomes more than one-half (1/2) full; and~~

~~(F) have an opening of sufficient size to allow for maintenance. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.~~

~~(5) **Sprinkler system.** There shall be a sprinkler system to apply properly treated sewage onto the surface of the ground.~~

~~(6) **Alarm.** There shall be an alarm to alert the owner/operator of a system failure.~~

~~(c) **Solid pipe.** The solid pipe used to connect the components of an aerobic system must meet the specifications listed in Appendix C. Unless a lift pump is utilized, there shall be fall between:~~

~~(1) the trash tank and the aerobic treatment unit; and~~

~~(2) the aerobic treatment unit and the pump tank.~~

~~(d) **Other.** In addition, all aerobic systems shall be installed in accordance with the manufacturers' specifications and be covered by a maintenance contract for the first two years of operation.~~

252:641-13-4. Surface application [REVOKED]

~~(a) **Application area.** The application area must:~~

~~(1) meet the size requirements of Appendix H, Figures 5 and 6; and~~

~~(2) be vegetated and landscaped and/or terraced to prevent runoff.~~

~~(b) **Uniform application.** Sprinklers shall be designed to provide uniform distribution of treated effluent over the entire surface application area.~~

~~(1) **Sprinkler design.** The spray must cover the proper area without misting. Nozzles must have a thirteen-degree (13E) or less trajectory to keep the spray stream low to the ground surface.~~

~~(2) **Timing.** Surface application shall be controlled by a timing device and shall take place daily between 1:00 a.m. and 6:00 a.m.~~

~~(3) **Spray patterns.** Overlapped areas may only be counted once toward meeting the total application area requirement.~~

~~(c) **Testing and minimum standard requirements.** The owner of the aerobic system is responsible for meeting the testing requirements and minimum standards specified in Appendix D. The results shall be submitted to the local DEQ within thirty (30) days of sampling in a format approved by the DEQ.~~

~~(d) **Application rate.** The application rate shall be adjusted and maintained in a manner which will not allow runoff.~~

SUBCHAPTER 15. LAGOONS

252:641-15-1. General provisions

(a) ~~**Septic tank**~~ **Primary settling.** All sewage entering a lagoon must first pass through a septic tank for primary settling.

(b) **Total retention.** All lagoons shall be total retention.

(c) **Location.** ~~Applicants~~ Installers shall not locate lagoons where vegetation, timber, or terrain could interfere with prevailing wind action or shade the lagoon during daylight hours. ~~The applicant must comply with separation distance requirements in Appendix E.~~

~~(d) **Minimum lot size exception.** Minimum lot size requirements for the installation of a lagoon may be waived without going through the alternative system process for an existing residence having a failing subsurface treatment system on a lot smaller than two and one-half (2 1/2) acres when additional subsurface treatment trenches cannot be installed or will not be effective.~~

(~~e~~d) **Prohibitions.** The owner/operator shall not dispose or store wastes or contaminants other than sewage in the lagoon. The owner/operator shall not discharge or dispose of sludge from the lagoon prior to obtaining approval from the DEQ.

(~~f~~e) **Closure.** The DEQ may, when public health or safety issues arise, require the owner/operator to properly close a lagoon when it is no longer in use.

(~~g~~f) **Examples.** Refer to Appendix O, "Examples of ~~Minimum Design Criteria for~~ Lagoon Installation" for examples.

252:641-15-2. Lagoon design

(a) **Sizing.** The lagoon shall be designed according to Appendix H, Figures ~~7 and 8~~ 23 and 24. No lagoon shall have bottom dimensions smaller than ten feet (10') by ten feet (10') or, for round lagoons, have a diameter smaller than fifteen feet (15').

(b) **Uniform shape.** The shape of ~~all cells~~ the lagoon shall be ~~uniform,~~ essentially square ~~and reasonably level,~~ or round with no islands or peninsulas.

(c) **Total Depth.** The total depth of the lagoon shall be at least seven feet (7').

252:641-15-3. Bottom construction

The bottom of the lagoon shall meet the following requirements:

(~~a~~1) **Level bottom.** The bottom of the lagoon shall be level.

(~~b~~2) **Compacted clay.** The bottom of the lagoon and the interior slope of the dike shall be constructed of homogeneous clay soil and shall be compacted thoroughly.

(~~c~~3) **Leakage test required.** During the final inspection, a leakage test shall be conducted on the lagoon.

(A) **Leakage test procedure.** The leakage test shall be performed in a manner approved by the DEQ or by:

(~~1~~i) digging one (1) hole in the bottom of the lagoon and four (4) equally spaced holes on the interior slope of the dike at the four-foot water elevation line of the lagoon. ~~no deeper than six inches (6")~~ The test holes shall be six inches (6") deep;

(~~2~~ii) presoaking the ~~hole~~ holes by filling ~~it~~ them with water and refilling ~~it~~ them as necessary to maintain a water depth of six inches (6") in ~~the~~ each hole for at least four (4) hours. The presoak shall commence no earlier than twenty-four (24) hours prior to the start of the leakage test procedure; and

(~~3~~iii) after completing the presoak, filling each hole with water and then recording the drop in the water level in sixty (60) minutes or the time it takes until one inch (1") of water has percolated into the soil.

(B) **Failing leakage test.** If the leakage rate in any of the test holes exceeds one inch (1") in sixty (60) minutes, the lagoon shall be lined with bentonite,

twelve inches (12") of compacted clay (Group 5 soil), or a synthetic liner in accordance with OAC 252:656. The lagoon shall be retested after installation of a clay or bentonite liner and may not be approved until the leakage rate is less than or equal to one inch (1") in sixty (60) minutes.

~~(d) **Failing leakage test.** If the leakage rate exceeds one inch (1") in sixty (60) minutes, the lagoon shall be lined with bentonite, twelve inches (12") of compacted clay (Group 5 soil), or a synthetic liner in accordance with OAC 252:656. The lagoon bottom shall be retested after installation of a clay or bentonite liner and may not be approved until the leakage rate is less than or equal to one inch (1") in sixty (60) minutes.~~

252:641-15-4. Dikes

Dikes shall be constructed as follows:

(~~a~~1) **Topsoil.** Before construction, all vegetation and topsoil shall be removed in the area of the dikes.

(~~b~~2) **Lifts.** ~~The dikes~~ Dikes shall be constructed of homogenous clay in six to nine inch (6"-9") compacted lifts.

(~~c~~3) **Slope.** Dikes shall be constructed with a slope of no more than one foot (1') vertical rise per three feet (3') horizontal run (1:3) with a minimum top width of four feet (4'). The top of dikes shall be uniformly graded with no depressions or mounds that would hinder maintenance.

(~~d~~4) **Gravity flow systems.** For gravity flow systems, the top of the dike shall be at least six inches (6") below the lowest floor elevation of any building served.

(~~e~~5) **Surface runoff.** The top of the ~~dikes~~ dike shall be at least one foot (1') above the surrounding terrain to divert surface runoff.

252:641-15-5. Lagoon inlet line and septic tank outlet

(a) **Lagoon inlet line.** The lagoon inlet line shall:

(1) be made of solid pipe that complies with the minimum specifications listed in Appendix C;

(2) terminate in the center of the lagoon;

(3) be anchored and supported; and

(4) discharge onto a concrete structure that is a minimum of one (1) square foot.

(b) **Septic tank outlet.** For gravity flow systems, the outlet of the septic tank shall be at least one foot (1') above the designed five-foot (5') maximum liquid depth of the lagoon.

252:641-15-6. Fence

(a) **Fence required.** In order to prevent unauthorized access to the lagoon, the lagoon area shall be surrounded with a fence unless the entire property is fenced and access is controlled. ~~A gate shall be provided for access for mowing equipment and maintenance needs. In order to protect public health and safety, the DEQ may require more stringent fencing requirements, even when the entire property is fenced.~~

(b) **Specifications.** The fence shall:

(1) ~~At~~ be, at a minimum, ~~the fence shall be~~ four feet (4') high and provide protection equivalent to the protection afforded by a woven wire or equally-spaced five (5) wire fence. Lagoons that fall within the definition of a small public sewage system and that are located within three hundred fifty feet (350') of existing or platted residential areas or that are in public access areas shall be surrounded by a six-foot (6') woven wire fence or equivalent.

(2) have a gate that provides access to the lagoon for mowing equipment and maintenance needs.

(3) ~~No fence shall~~ not interfere with wind action to the lagoon's surface or shade the lagoon.

(c) **DEQ authority to require more stringent fencing requirements.** In order to protect public health and safety, the DEQ may require more stringent fencing requirements, even when the entire property is fenced.

SUBCHAPTER 21. CERTIFICATION FOR ON-SITE SEWAGE TREATMENT SYSTEM INSTALLERS

252:641-21-1. General provisions

(a) **Applicability.** Persons may become certified by DEQ to install on-site sewage treatment systems by complying with the requirements of this Subchapter.

(b) **Inspections.** Certified installers may self-inspect and approve only systems they install, modify, or repair within the category(ies) for which they are certified. Certified installers may self-inspect and approve any lift-stations or flow equalization tanks they install. However, certified installers may not self-inspect and approve any:

(1) small public sewage system that has a design flow greater than one thousand, five hundred (1,500) gallons per day; or

(2) alternative system~~, except for subsurface standardized alternative systems, which may be self-inspected and approved by installers certified in the subsurface category~~.

(c) **Compliance.** Certified installers shall comply with all the rules in this Chapter.

(d) **Certification period.** Certifications shall be effective from ~~January~~ February 1 or the day of certification, through ~~December~~ January 31, unless modified by an Administrative Proceeding.

(e) **Specified dates.** If any date specified in this Subchapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(f) **Application time frame.** Applications will become void if the applicant fails to meet all certification requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

(g) **Categories of certification.** The following are the categories of certification for which an installer may become certified:

(1) ~~**Subsurface**~~ **Conventional/Shallow Extended/ET/A (CSE).** The ~~subsurface~~ "CSE" category includes all systems that utilize conventional subsurface absorption fields, shallow extended subsurface absorption fields, or ET/A fields described in Subchapter ~~11~~ 12 of this Chapter.

(2) **Lagoon.** The "Lagoon" category includes all systems that utilize a lagoon described in Subchapter 15 of this Chapter.

(~~2~~3) **Aerobic-Spray.** The ~~aerobic~~ "Aerobic-Spray" category includes all aerobic treatment systems, which are described in Subchapter 10 of this Chapter, that utilize a spray irrigation field described in Subchapter ~~13~~ 12 of this Chapter.

~~(3) **Lagoon.** The lagoon category includes all systems described in Subchapter 15 of this Chapter.~~

(4) **Aerobic-Drip.** The "Aerobic-Drip" category includes all aerobic treatment systems, which are described in Subchapter 10 of this Chapter, that utilize a drip irrigation field described in Subchapter 12 of this Chapter.

(5) **Low Pressure Dosing (LPD).** The "LPD" category includes all systems that utilize a low pressure dosing field described in Subchapter 12 of this Chapter.

~~(h) **Levels of certification.** The following are the levels of certification available:~~

~~(1) **Class C.** Class C installers are installers who have been certified to install and self inspect one of the three categories of on-site sewage disposal systems.~~

~~(2) **Class B.** Class B installers are installers who have been certified to install and self inspect two of the three categories of on-site sewage disposal systems.~~

~~(3) **Class A.** Class A installers are installers who have been certified to install and self inspect all three of the categories of on-site sewage disposal systems.~~

252:641-21-2. Prerequisites for new certifications and renewals

Before being eligible for certification or renewal, an applicant must:

(1) be an individual,

(2) be eighteen (18) years of age or older,

(3) owe no outstanding fees or fines to the DEQ,

(4) be in compliance with the income tax and immigration laws of this state, and

(~~4~~5) be in compliance with all DEQ rules and final orders.

252:641-21-2.1. New ~~Certification~~ certification application requirements

An applicant may become certified in any category of certification by doing the following:

(1) **Application.** The applicant must submit to ~~the local~~ DEQ ~~office~~ a completed and signed DEQ Form 641-002, "Certified Installer Application". If the applicant is not currently certified in at least one category of certification, then the applicant must also pay the annual certification fee and submit documentation that the applicant has done the following:

(A) **Installation experience.** The installer must have installed at least ~~ten (10)~~ five (5) on-site sewage treatment systems in Oklahoma that meet or exceed the rules in this Chapter as determined by an inspection performed by DEQ. These systems must have been installed within the two-year time period preceding the date of ~~application~~ certification and may not include any joint inspections required in (5) of this subsection;

(B) **Approval percentage rate.** The installer must have had at least ninety percent (90%) of the systems he/she installed within the last year approved upon the initial inspection, with any disapproved systems only requiring minor changes; and

(C) **Financial assurance.** The installer must document financial assurance by submitting to DEQ one of the following:

(i) **Surety bond.** The applicant may document financial assurance by submitting to DEQ a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars ($10,000) with the following stipulations:

(I) The applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond;

(II) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the installer is certified. Upon notification to DEQ that a bond is no longer in effect, DEQ may immediately begin the process to suspend the installer's certification(s); and

(III) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds from which DEQ may pay for the repair or replacement of a faulty or improperly installed system along with DEQ's costs associated with its response and oversight.

(ii) **Affidavit for tribal and governmental installers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

(I) the installer is working solely for a federally recognized tribe or a governmental entity; and

(II) the entity will pay for the repair or replacement of faulty or improperly installed systems.

(2) **Training.** The applicant must complete the required DEQ training for the category of certification sought;

(3) **Examination.** The applicant must pass the examination for the category of certification sought with a score of at least seventy percent (70%). Any applicant found cheating on an examination will not be certified, will be subject to having any current certifications revoked, and shall be prohibited from applying for any certifications for a period of twelve (12) months;

(4) **Examination fee.** The applicant must pay to the DEQ the appropriate examination fee; and

(5) **Joint inspections.** The applicant must complete at least two (2) joint field inspections with the DEQ. The systems inspected must:

(A) have been installed by the installer seeking certification; and

(B) be in the category of certification sought.

252:641-21-3. Certification renewal requirements

(a) **Renewal.** A certified installer may renew unexpired certifications by submitting to DEQ the following by ~~December 31~~January 15:

(1) a completed renewal application provided by the DEQ;

(2) the required annual certification fee; and

(3) documentation that the applicant completed approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance.

~~(b) **Grace period.** There is a thirty-one day grace period to renew expired certifications. During this grace period, a late fee will not be assessed and certified installers may continue to self-inspect.~~

(~~c~~b) **Late renewals.** The applicant shall pay a ~~Ten Dollar ($10.00)~~ Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January ~~31~~ 15.

(~~d~~c) **Failure to renew.** Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-21-12. Duties and responsibilities

(a) **Systems installed.** For each new installation, modification or repair self-inspected and approved a certified installer shall comply with the following:

(1) **Notify DEQ.** The installer must give DEQ an opportunity to inspect a portion of the system to ascertain that the certified installer continues to meet certification requirements. The certified installer shall notify the local DEQ office, before construction begins, of the time, date and location that an ~~individual or small public~~ on-site sewage treatment system will be installed, modified or repaired. The installer shall pay DEQ a ~~Thirty Dollar($30.00)~~ Fifty-Dollar ($50.00) fee each time the installer fails to notify the DEQ ~~either~~ prior to ~~or on the day~~ commencing construction ~~begins~~.

(2) **Submittals to DEQ.** Within ~~ten (10)~~ fifteen (15) working days after the work has been completed, the certified installer shall submit an accurate, completed DEQ Form 641-576A or 641-576S to the local DEQ office. The installer shall pay DEQ a Thirty Dollars ($30.00) fee each time the installer fails to submit a completed DEQ Form 641-576A or 641-576S within ~~ten (10)~~ fifteen (15) days of completing the work.

(b) **Record keeping.** Certified installers are responsible for maintaining their own records for:

(1) each system installed; and

(2) all training classes completed.

(c) **Identification.** Each certified installer shall present their identification card to DEQ personnel upon request.

252:641-21-13. Certification suspension and revocation

(a) **Reasons for suspension or revocation.** After notice and opportunity for hearing, the DEQ may suspend or revoke an installer's certification(s) for:

(1) procedural violations such as allowing the bond to expire, failing to pay fees, failing to complete continuing education requirements or other related procedural issues;

(2) gross inefficiency or incompetence;

(3) any violation of the Environmental Quality Code, this Chapter, or any final DEQ order; or

(4) dishonesty, fraud or misrepresentation to DEQ.

(b) **Suspension.** Any person whose certification(s) is suspended by the DEQ:

(1) may not self-inspect and approve any on-site sewage treatment systems until their certification(s) has been reinstated or they have received a new certification(s).

(2) may not apply to become certified in any additional category(ies) during the suspension period.

(3) may apply for reinstatement of their certification(s) at any time during the twelve (12) months following the date of their suspension by:

(A) correcting any deficiency(ies);

(B) paying any outstanding fees or fines owed to DEQ including the reinstatement fee of ~~Ten Dollars ($10.00)~~ Fifty Dollars ($50.00);

(C) meeting the renewal requirements of ~~Section 3 of this Subchapter~~ 252:641-21-3 if the reinstatement takes place during the following certification period; and

(D) being in compliance with all final DEQ rules and orders.

(c) **Revocation.** Any individual who has had their certification(s) revoked by the DEQ:

(1) may not self-inspect and approve any on-site sewage treatment system; and

(2) must wait at least one (1) year from the date of revocation before filing an application for a new certification(s), unless a final order states otherwise.

SUBCHAPTER 22. CERTIFICATION FOR PERSONS WHO PERFORM SOIL PROFILE DESCRIPTIONS

252:641-22-1. General provisions

(a) **Applicability.** Any person who performs a soil profile description to be used to design an on-site sewage treatment system must first be certified by the DEQ. Persons can become certified by the DEQ to perform soil profile descriptions by complying with the requirements of this ~~subchapter~~ Subchapter.

(b) **Compliance.** Certified soil profilers shall comply with all the rules in this Chapter.

(c) **Certification Period.** Certifications shall be effective from ~~January~~ February 1 or the day of certification, through ~~December~~ January 31, unless modified by an Administrative Proceeding.

(d) **Specified dates.** If any date specified in this Subchapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(e) **Application time frame.** Applications will become void if the applicant fails to meet all certification requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

252:641-22-2. Prerequisites for new certifications and renewals

Before being eligible for certification or renewal, an applicant must:

(1) be an individual,

(2) be eighteen (18) years of age or older,

(3) be a Professional Engineer, Professional Land Surveyor, Professional Sanitarian or Professional Environmental Specialist registered to practice in Oklahoma or Soil Scientist as defined in 27A O.S. § 3-1-103(20),

(4) owe no outstanding fees or fines to the DEQ,

(5) be in compliance with the income tax and immigration laws of this state, and

(~~5~~6) be in compliance with all DEQ rules and final orders.

252:641-22-3. New certification application requirements

An applicant may, at any time, apply to become a certified soil profiler by doing the following:

(1) **Application.** The applicant must submit to the DEQ a completed and signed DEQ Form 641-011, "Certified Soil Profiler Application";

(2) **Training.** The applicant must complete the required DEQ training;

(3) **Examination and fee.** The applicant must pay the examination fee and pass the examination for becoming a soil profiler. Any applicant found cheating on an examination will not be certified and shall be prohibited from applying for certification for a period of twelve (12) months;

(4) **Joint profiles.** The applicant must complete at least four (4) joint soil profile descriptions with the DEQ;

(5) **Annual fee.** The applicant must pay to the DEQ the annual certification fee; and

(6) **Financial assurance.** The applicant must document financial assurance by providing DEQ with one of the following:

(A) **Surety bond.** The applicant may document financial assurance by submitting to DEQ a copy of a surety bond guaranteeing payment or performance in the amount of Ten Thousand Dollars ($10,000.00) with the following stipulations:

(i) ~~the~~ The applicant must be named as the principal of the bond and DEQ must be named as obligee of the bond.

(ii) The bond must be effective before the certification can be granted by DEQ and must remain in effect as long as the soil profiler is certified. Upon notification to DEQ that a bond is no longer in effect, DEQ may immediately begin the process to suspend the profiler's certification.

(iii) Payments made under the terms of the bond shall be made by the surety directly to DEQ. DEQ shall establish an account with these funds to cover the costs:

(I) to bring an on-site sewage treatment system into compliance when the system was improperly designed using an inaccurate soil profile description; and

(II) for DEQ's response and oversight.

(B) **Affidavit for tribal and governmental soil testers.** The applicant may document financial assurance by submitting to DEQ an affidavit that:

(i) the soil profiler is working solely for a federally recognized tribe or a governmental entity; and

(ii) the entity will pay for the repair or replacement of improperly designed systems.

252:641-22-4. Certification renewal requirements

(a) **Renewal.** A certified soil profiler may renew an unexpired certification by doing the following by ~~December 31~~ January 15:

(1) **Application.** The soil profiler must submit to DEQ a completed renewal application provided by the DEQ;

(2) **Annual fee.** The soil profiler must pay to DEQ the required annual certification fee;

(3) **Renewal training.** The soil profiler must submit to DEQ documentation that the applicant completed approved renewal training for that certificate year. Renewal training credit may be granted for courses or workshops of four (4) hours or more that have been approved in writing by the DEQ in advance;

(4) **Texturing samples.** The soil profiler must complete the analysis of any soil samples issued to them by the DEQ for texturing. All results must be submitted to DEQ on DEQ Form 641-006, "Soil Texturing Worksheet" within fourteen (14) days of receiving the soil samples; and

(5) **Annual texturing test.** The soil profiler shall pass the annual texturing test.

(b) **Late fees.** The soil profiler shall pay a ~~Ten Dollar ($10.00)~~ Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January ~~31~~ 15.

(c) **Failure to renew.** Any certification that has not been renewed within twelve (12) months of expiring may not be renewed. Such applicants must apply for a new certification.

252:641-22-5. Duties and responsibilities

(a) **Soil profile descriptions.** For each soil profile description performed, the soil profiler shall notify the local DEQ office the day the soil profile description will be performed to allow the DEQ the opportunity to corroborate the results. The

soil profiler shall pay DEQ a ~~Thirty Dollar ($30.00)~~ Fifty-Dollar ($50.00) fee each time the soil profiler fails to notify the DEQ ~~either~~ prior to ~~or on the day~~ commencing the soil profile description ~~is to be performed~~.

(b) **Record keeping.** Certified soil profilers are responsible for maintaining their own records for:

(1) each soil profile description performed; and

(2) all training classes completed.

(c) **Identification.** Each certified soil profiler shall present their identification card to DEQ personnel upon request.

252:641-22-6. Certification suspension and revocation

(a) **Reasons for suspension or revocation.** After notice and opportunity for hearing, the DEQ may suspend or revoke certification for:

(1) procedural violations such as allowing the bond to expire, failing to pay fees, failing to complete continuing education requirements or other related procedural issues;

(2) gross inefficiency or incompetence;

(3) any violation of the Environmental Quality Code, this Chapter, or any final DEQ order; or

(4) dishonesty, fraud or misrepresentation to DEQ.

(b) **Suspension.** Any person whose certification is suspended by the DEQ:

(1) may not perform soil profile descriptions for use in designing on-site sewage treatment systems until their certification has been reinstated or they have received a new certification.

(2) may apply for reinstatement of their certification at any time during the twelve (12) months following the date of their suspension by:

(A) correcting any deficiency(ies);

(B) paying any outstanding fees or fines owed to DEQ including the reinstatement fee of ~~Ten Dollars ($10.00)~~ Fifty Dollars ($50.00);

(C) meeting the renewal requirements of ~~Section 4 of this Subchapter~~ 252:641-22-4 if the reinstatement takes place during the following certification period; and

(D) being in compliance with all final DEQ rules and orders.

(c) **Revocation.** Any individual whose certification has been revoked by the DEQ must wait one (1) year from the date of revocation before filing an application for a new certificate, unless a final order states otherwise.

SUBCHAPTER 23. FEES

252:641-23-1. Requested services fees

(a) **Fees.** The following fee schedule applies to services provided by the Environmental Complaints and Local Services Division (ECLS) of the DEQ.

(1) Soil profile description:

(A) When DEQ augers test holes-

(i) ~~$125.00~~ $150.00 (Effective July 1, 2008)

(ii) $175.00 (Effective July 1, 2009)

(iii) $200.00 (Effective July 1, 2010)

(iv) $225.00 (Effective July 1, 2011)

(v) $250.00 (Effective July 1, 2012)

(B) When pits are provided by applicant -

(i) ~~$50.00~~ $60.00 (Effective July 1, 2008)

(ii) $80.00 (Effective July 1, 2009)

(iii) $100.00 (Effective July 1, 2010)

(iv) $125.00 (Effective July 1, 2011)

(v) $150.00 (Effective July 1, 2012)

(2) DEQ authorization or permit to construct a new on-site sewage treatment system when the average daily flow is:

~~(A) construct a new on-site sewage treatment system with a design flow:~~

~~(i) equal to or less than one thousand five hundred (1,500) gallons per day - $85.00~~

~~(ii) greater than one thousand five hundred (1,500) gallons per day - $200.00~~

~~(B) modify an existing on-site sewage treatment system - $50.00~~

(A) less than or equal to one thousand five hundred (1,500) gallons and when the installer is:

(i) certified to self-inspect the system -

(I) $150.00 (Effective July 1, 2008)

(II) $175.00 (Effective July 1, 2009)

(III) $200.00 (Effective July 1, 2010)

(IV) $225.00 (Effective July 1, 2011)

(V) $250.00 (Effective July 1, 2012)

(ii) not certified to self-inspect the system -

(I) $250.00 (Effective July 1, 2008)

(II) $275.00 (Effective July 1, 2009)

(III) $300.00 (Effective July 1, 2010)

(IV) $325.00 (Effective July 1, 2011)

(V) $350.00 (Effective July 1, 2012)

(B) greater than one thousand five hundred (1,500) gallons -

(i) $350.00 (Effective July 1, 2008)

(ii) $375.00 (Effective July 1, 2009)

(iii) $400.00 (Effective July 1, 2010)

(iv) $425.00 (Effective July 1, 2011)

(v) $450.00 (Effective July 1, 2012)

(3) DEQ authorization to modify an existing on-site sewage treatment system when the installer is:

(A) certified to self-inspect the system -

(i) $60.00 (Effective July 1, 2008)

(ii) $80.00 (Effective July 1, 2009)

(iii) $100.00 (Effective July 1, 2010)

(iv) $125.00 (Effective July 1, 2011)

(v) $150.00 (Effective July 1, 2012)

(B) not certified to self-inspect the system -

(i) $160.00 (Effective July 1, 2008)

(ii) $180.00 (Effective July 1, 2009)

(iii) $200.00 (Effective July 1, 2010)

(iv) $225.00 (Effective July 1, 2011)

(v) $250.00 (Effective July 1, 2012)

(~~3~~4) Plan review of an alternative on-site sewage treatment system -

(A) ~~$75.00~~ $100.00 (Effective July 1, 2008)

(B) $125.00 (Effective July 1, 2009)
(C) $150.00 (Effective July 1, 2010)
(D) $175.00 (Effective July 1, 2011)
(E) $200.00 (Effective July 1, 2012)

(~~4~~5) Existing system evaluation report -
(A) ~~$125.00~~ $150.00 (Effective July 1, 2008)
(B) $175.00 (Effective July 1, 2009)
(C) $200.00 (Effective July 1, 2010)
(D) $225.00 (Effective July 1, 2011)
(E) $250.00 (Effective July 1, 2012)

(b) **Waiver of fees.**

(1) **Indigents and nonprofit organizations.** The DEQ may waive fees for indigents and nonprofit organizations. Requests for a waiver of fees under this paragraph shall be decided by the Director of the Environmental Complaints and Local Services Division of the DEQ.

(2) **Investigation of complaints.** The DEQ may perform a soil profile description as a part of an investigation of a system known to be malfunctioning or a system which is the subject of a complaint filed by a third party. No fee shall be charged as a part of this investigation.

~~(3) **Standardized alternative systems.** DEQ shall waive the plan review fee for standardized alternative systems.~~

252:641-23-2. Certified sewage treatment system installer fees

(a) **Certification fees.** The following are the fees associated with the installer certification program.

(1) Annual certification fee -
(A) $150.00
(B) $175.00 (Effective July 1, 2010)
(C) $200.00 (Effective July 1, 2012)

(2) Examination fee for each category of certification -
(A) $100.00
(B) $125.00 (Effective July 1, 2010)
(C) $150,00 (Effective July 1, 2012)

(3) Late fee - ~~$10.00~~ $50.00
(4) Reinstatement fee - ~~$10.00~~ $50.00
(5) Failure to notify fee - ~~$30.00~~ $50.00
(6) Failure to submit paperwork timely fee - $30.00

(b) **Nonrefundable.** Fees are nonrefundable.

252:641-23-3. Certified soil profiler fees

(a) **Certification fees.** The following are the fees associated with the soil profiler certification program.

(1) Annual certification fee -
(A) ~~$50.00~~ $150.00 (Effective July 1, 2008)
(B) $175.00 (Effective July 1, 2010)
(C) $200.00 (Effective July 1, 2012)

(2) Examination fee -
(A) ~~$50.00~~ $100.00 (Effective July 1, 2008)
(B) $125.00 (Effective July 1, 2010)
(C) $150.00 (Effective July 1, 2012)

(3) Late fee - ~~$10.00~~ $50.00
(4) Reinstatement fee - ~~$10.00~~ $50.00
(5) Failure to notify fee - ~~$30.00~~ $50.00

(b) **Nonrefundable.** Fees are nonrefundable.

252:641-23-4. Fee escalator based on consumer price index (CPI)

To assist in meeting rising costs to DEQ associated with the on-site sewage program, the fees set out in Subchapter 23 shall be automatically adjusted on July 1, 2013, and every year thereafter on July 1st, to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. DEQ may round the adjusted fees up to the nearest dollar. DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

APPENDIX A. MINIMUM LOT SIZE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX A. SYSTEM OPTIONS WITH MINIMUM VERTICAL SEPARATION DISTANCES AND MINIMUM LOT SIZE REQUIREMENTS [NEW]

Figure 1. Options and Vertical Separation Distances for Systems Designed Using a Soil Profile Description

PREVALENT SOIL GROUP IN SEPARATION RANGE	CONVENTIONAL AND SHALLOW EXTENDED SUBSURFACE ABSORPTION FIELD	LOW PRESSURE DOSING FIELD	ET/A FIELD	LAGOON	DRIP IRRIGATION FIELD PRECEDED BY AEROBIC TREATMENT UNIT	SPRAY IRRIGATION FIELD PRECEDED BY AEROBIC TREATMENT UNIT
1	**NOT ALLOWED**	**ALLOWED** If at least 24" of separation between the trench bottom and the limiting layer	**ALLOWED** If installed in Group 5 soil with at least 6" of separation between the trench bottom and soil impervious to boring or water saturated soil. ET/A's are not allowed in Zone 1, *see* Appendix H, Figures 10 and 11. Requires lot size of at least 1 acre.	**ALLOWED** No applicable vertical separation range. Requires a lot size of at least 2 ½ acres. Lagoons are not allowed in Zone 1, *see* Appendix H, Figures 23 and 24. Lagoons are not acceptable in Zones 7-10 when the flow is less than 100 gpd.	**ALLOWED** If at least 18" of separation between the drip line and rock and/or water saturated soil	**ALLOWED** No applicable vertical separation range.
2	**ALLOWED** If at least 24" of separation between the trench bottom and the limiting layer	**ALLOWED** If at least 16" of separation between the trench bottom and the limiting layer			**ALLOWED** If at least 14" of separation between the drip line and rock and/or water saturated soil	
2a	**ALLOWED** If at least 21" of separation between the trench bottom and the limiting layer	**ALLOWED** If at least 14" of separation between the trench bottom and the limiting layer			**ALLOWED** If at least 12" of separation between the drip line and rock and/or water saturated soil	
3	**ALLOWED** If at least 18" of separation between the trench bottom and the limiting layer	**ALLOWED** If at least 12" of separation between the trench bottom and the limiting layer			**ALLOWED** If at least 10" of separation between the drip line and rock and/or water saturated soil	
3a	**ALLOWED** If at least 14" of separation between the trench bottom and the limiting layer	**ALLOWED** If at least 10" of separation between the trench bottom and the limiting layer			**ALLOWED** If at least 8" of separation between the drip line and rock and/or water saturated soil	
4	**ALLOWED** If at least 10" of separation between the trench bottom and the limiting layer	**ALLOWED** If at least 6" of separation between the trench bottom and the limiting layer			**ALLOWED** If at least 6" of separation between the drip line and rock and/or water saturated soil	
5	**NOT ALLOWED**	**NOT ALLOWED**			**ALLOWED** If at least 6" of separation between the drip line and rock and/or water saturated soil	

Figure 2. Options and Vertical Separation Distances for Systems Designed Using a Percolation Test

PERCOLATION RATE	CONVENTIONAL SUBSURFACE ABSORPTION FIELD	SHALLOW EXTENDED SUBSURFACE ABSORPTION FIELD - LOW PRESSURE DOSING FIELD - ET/A FIELD	LAGOON	DRIP IRRIGATION FIELD PRECEDED BY AEROBIC TREATMENT UNIT	SPRAY IRRIGATION FIELD PRECEDED BY AEROBIC TREATMENT UNIT
0-75 mpi	**ALLOWED** If at least 6" of separation between the bottom of the trench and the bottom of the percolation test hole	**NOT ALLOWED** Has to be designed with a soil profile description	**ALLOWED**	**NOT ALLOWED** Has to be designed with soil profile description	**ALLOWED** If sized using Group 5 sizing criteria
>75 mpi	**NOT ALLOWED**				

Figure 3. Minimum Lot Size Requirements

TYPE OF TREATMENT/DISPERSAL FIELD	MINIMUM LOT SIZE†	
	With private well	*With public water*
Conventional or Shallow Extended Subsurface Absorption Field in Dispersal Site with: (a) Percolation rate of 30 minutes or less; or (b) Group 2, 2a or 3 soil classification	3/4 acre	1/2 acre
Conventional or Shallow Extended Subsurface Absorption Field in Dispersal Site with: (a) Percolation rate of more than 30 minutes; or (b) Group 3a or 4 soil classification	1 acre	1 acre
Low Pressure Dosing Field in Dispersal Site with Group 1 or 2 soil classification	3/4 acre	1/2 acre
Evapotranspiration/Absorption (ET/A) Field	1 acre	1 acre
Drip Irrigation Field	3/4 acre	1/2 acre
Spray Irrigation Field	3/4 acre	1/2 acre
Lagoon	2 1/2 acres	2 1/2 acres

† The minimum lot size excludes road easements.

APPENDIX B. SOIL GROUPS [REVOKED]

APPENDIX B. SOIL GROUPS [NEW]

SOIL GROUP	CORRESPONDING SOIL TEXTURES
1	• Coarse sand • Loamy coarse sand • All soils with a rock fragment content of > 35% by volume having continuous voids > 1 mm
2	• Sand • Loamy sand (not including coarse sand or loamy coarse sand)
2a	• Sandy loam
3	• Sandy clay loam • Loam • Silt loam with ≤20% clay • Silt
3a	• Sandy clay without slickensides with moderate and strong soil structure • Silt loam with >20% clay
4	• Clay loam • Silty clay loam
5	• Sandy clay with slickensides or weak soil structure • Clay • Silty clay

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

USE	PIPE SIZE	ACCEPTABLE MATERIALS
Building sewer and other solid pipe when used for single family residences only	Minimum 3" diameter	*Acrylonitrile Butadiene Styrene (ABS)*: ASTM D2661 ASTM D2751 ASTM F628 *Polyvinyl Chloride (PVC)*: ASTM D2665 ASTM D2949 ASTM 3033 ASTM 3034 ASTM F789
Building sewer and other solid pipe when the average flow is 2,000 gpd or less	Minimum 4" diameter	
Building sewer and other solid pipe when the average flow is greater than 2,000 gpd	Minimum 6" diameter	
Discharge line from lift stations or other pressurized effluent waste water lines	Minimum 1" diameter	*Polyvinyl Chloride (PVC)*: ASTM D2846 ASTM F441 ASTM F442 Schedule 40
Low pressure dosing manifold pipe	3" diameter	
Low pressure dosing perforated pipe	1 ½" diameter	
Perforated pipe when used in a conventional subsurface absorption field or an ET/A field	Minimum 3" diameter	*Polyethylene (PE)*: ASTM F405 ASTM F810 ASTM D3350 *Polyvinyl Chloride (PVC)*: ASTM D2729 ASTM D3034 ASTM D3350

APPENDIX D. SAMPLING FREQUENCY & TESTING REQUIREMENTS FOR ON-SITE SURFACE APPLICATION OF TREATED SEWAGE [REVOKED]

The following tests shall be performed on the effluent and the specified criteria met for aerobic sewage treatment systems that utilize surface application of treated wastewater:

REQUIRED TESTS	MINIMUM STANDARDS	FREQUENCY
Free-Chlorine Residual or Fecal Coliform	1 mg/liter in or after the pump tank or <200MPN/1000 ml in or after the pump tank	2 per year, to be performed every 6 months
BOD & TSS	Less than 65 mg/liter	1 per year

APPENDIX E. SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE DISPOSAL SYSTEMS [REVOKED]

APPENDIX E. HORIZONTAL SEPARATION DISTANCE REQUIREMENTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

Required Horizontal Separation Distances in Feet

	Aerobic Treatment Unit, Flow Equalization Tank, Low Pressure Dosing Tank, Lift Station, Septic Tank & Trash Tank	Perforated Pipe, Chamber, or Drip Irrigation Line	Solid Pipe	Lagoons	Spray Irrigation Heads	Spray Irrigation Effluent
Private Well or Surface Water Supply	50 [1]	50 [1]	50 [3]	50 [2, 4]	50 [1]	25
Public Water Supply Well	300	300	50	300 [4]	300	300
Building	5	5	N/A	50 [5, 6]	N/A	N/A
Other Structure [7]	N/A [8]	5	N/A [9]	N/A	N/A	N/A
Waterline	5	15	10 [10]	15 [4]	15	N/A
Property Line	5	5	5	10 [5]	15	15
Impoundment or Stream [11]	15	15	N/A	15 [5]	25	25
French Drain/ Curtain Drain	15	15	N/A	15 [5]	15	15

[1]Distances shall be one hundred feet (100') if the soil percolates one inch (1") in less than five (5) minutes or is classified as a Group 1 soil in the separation range.
[2]Distances shall be one hundred feet (100') if the ground slopes toward the water supply.
[3]Distances may be reduced up to ten feet (10') if, at a minimum, Schedule 40 pipe is used.
[4]The distance shall be measured horizontally from the center line of the nearest dike.
[5]The distance shall be measured from the outside base of the nearest dike.
[6]This only applies to residences that are not located on the owner's property.
[7]"Other structures" include but are not limited to driveways, parking lots and paved areas.
[8]If septic tanks are located under paved areas, access to all manhole/cleanout openings shall be provided.
[9]If solid pipe is installed under a roadway or a driveway, the pipe under the roadway/driveway and the ten feet (10') of pipe extending out from under the roadway/driveway on both sides shall be, at a minimum Schedule 40 pipe or sleeved with Schedule 40 pipe.
[10]Ten feet (10') horizontal or two feet (2') vertical separation shall be maintained between any water line and solid pipe. When proper horizontal and vertical separation cannot be obtained then the solid pipe shall be constructed of, at a minimum, Schedule 40 pipe and shall be installed so the joints of both the water line and the solid pipe are as far apart as possible.
[11]This includes the top bank of any stream or the normal pool elevation of an impoundment that is not used for a surface water supply.

APPENDIX F. SMALL PUBLIC SYSTEMS SEWAGE FLOW [REVOKED]

APPENDIX F. ESTIMATED AVERAGE DAILY FLOW FOR SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

TYPE OF ESTABLISHMENT	FLOW UNIT	ESTIMATED AVERAGE DAILY FLOW In Gallons
Bar or Lounge	Per Seat	10
Boarding School	Per Room	50
Church w/o Kitchen	Per Sanctuary Seat	4
Church w/Kitchen	Per Sanctuary Seat	6
Condominiums, Apartments, Townhouses, Mobile Home Parks, and Housing Developments	Per Residence w/1 or 2 Bedrooms	200
	Each additional Bedroom	67
Construction Site	Per Worker	50
Country Club	Per Member	25
Daycare w/o Kitchen	Per Child	15
Daycare w/Kitchen	Per Child	25
Factory	Per Person Per Shift	15
Hospital	Per Bed	200
Hotel or Motel	*Per Bed*	75
Lounge	Per Seat	10
Movie Theater	Per Seat	5
Nursing Home	Per Bed	100
Office Building w/o Food Service	Per Occupant	5
Office Building w/Food Service	Per Occupant	10
Park w/o Bathhouse	Per Person	10
Park w/Bathhouse	Per Person	15
Laundry Mat	Per Machine	250
Restaurant-Fast Food	Per Seat	15
Restaurant-Full Service	Per Seat	35
RV Park	Per Space	50
School w/Food Service	Per Student	25
School w/o Food Service	Per Student	15
Service Station	Per Vehicle	10
Stores	Per Restroom	200
Swimming Pool Bathhouses	Per Person	10
Youth Camps	Per Camper	30

APPENDIX H. SIZE CHARTS FOR ON-SITE SYSTEMS [REVOKED]

APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

Figure 1. Individual Conventional Subsurface Absorption Fields Designed Using a Percolation Test

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	200	270	340	70
16-30 minutes per inch	310	410	510	100
31-45 minutes per inch	420	560	700	140
46-60 minutes per inch	590	790	990	200
61-75 minutes per inch	770	1,030	1,290	260
>75 minutes per inch	Prohibited			

†These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 2. Individual Conventional Subsurface Absorption Fields Utilizing Chambers When Designed Using a Percolation Test

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	160	215	270	55
16-30 minutes per inch	250	330	410	80
31-45 minutes per inch	340	450	560	110
46-60 minutes per inch	470	630	790	160
61-75 minutes per inch	620	830	1040	210
>75 minutes per inch	Prohibited			

†These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 3. Individual Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	Prohibited			

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 4. Small Public Conventional Subsurface Absorption Fields Designed Using a Percolation Test

Minimum Linear Feet Per Gallon per Day

PERCOLATION RATE FOR DISPERSAL SITE	LINEAR FEET PER GALLON PER DAY
0-15 minutes per inch	1.2
16-30 minutes per inch	1.5
31-45 minutes per inch	2
46-60 minutes per inch	2.5
61-75 minutes per inch	3.85
>75 minutes per inch	Prohibited

Figure 5. Small Public Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	0.8
2a	1.3
3	1.7
3a	2.5
4	3.3
5	Prohibited

Figure 6. Individual Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	260	340	420	80
2a	400	530	660	130
3	540	720	900	180
3a	800	1,060	1,320	260
4	1,060	1,410	1,760	350
5	Prohibited			

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 7. Small Public Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	1.3
2a	2.1
3	2.7
3a	4.0
4	5.3
5	Prohibited

Figure 8. Individual Low Pressure Dosing Fields Designed Using a Soil Profile Description

Total Linear Trench Length in Feet

SOIL GROUP††	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Five
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4, & 5	Prohibited			

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

†† Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

Figure 9. Small Public Low Pressure Dosing Fields Designed Using a Soil Profile Description

Total Linear Trench Length in Feet

SOIL GROUP†	AVERAGE DAILY FLOW IN GALLONS			
	200	275	350	400††
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4 & 5	Prohibited			

† Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.
††Low pressure dosing fields may be allowed for average daily flows over 400 gpd, but they will have to be designed and approved as an alternative on-site sewage treatment system.

Figure 10. *Individual ET/A Fields Designed Using a Soil Profile Description - Soil Group* 5 Only

Minimum Trench Length in Feet

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE †			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,059	2,745	3,432	686
2	1,872	2,496	3,120	624
3	1,647	2,196	2,745	549
4	1,471	1,961	2,451	490
5	1,373	1,830	2,288	457
6	1,144	1,525	1,907	381
7	958	1,277	1,596	319
8	792	1,056	1,320	264
9	675	900	1,125	225
10	580	773	967	193

†These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 11. Small Public ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only

Minimum Trench Length in Feet

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
25	261	238	209	187	174	145	122	100	86	70
50	522	475	418	373	348	290	243	200	171	141
75	783	712	626	560	522	435	364	300	257	212
100	1,044	949	835	746	696	580	485	401	342	282
200	2,088	1,898	1,670	1,491	1,392	1,160	971	803	684	564
300	3,131	2,847	2,505	2,237	2,088	1,740	1,456	1,204	1,027	846
400	4,175	3,796	3,340	2,982	2,784	2,320	1,942	1,606	1,369	1,128
500	5,219	4,745	4,175	3,728	3,479	2,899	2,427	2,007	1,711	1,411
600	6,263	5,694	5,010	4,473	4,175	3,479	2,913	2,409	2,053	1,693
700	7,307	6,642	5,845	5,219	4,871	4,059	3,398	2,810	2,396	1,975
800	8,351	7,591	6,680	5,965	5,567	4,639	3,884	3,112	2,738	2,257
900	9,394	8,540	7,515	6,710	6,263	5,219	4,369	3,613	3,080	2,539
1,000	10,438	9,489	8,351	7,456	6,959	5,799	4,855	4,015	3,422	2,821
1,100	11,482	10,438	9,186	8,201	7,655	6,379	5,340	4,416	3,765	3,105
1,200	12,526	11,387	10,021	8,947	8,351	6,959	5,826	4,818	4,107	3,385
1,300	13,570	12,336	10,856	9,693	9,046	7,539	6,311	5,219	4,449	3,667
1,400	14,613	13,285	11,691	10,438	9,742	8,119	6,797	5,621	4,791	3,950
1,500	15,657	14,234	12,526	11,184	10,438	8,698	7,282	6,022	5,134	4,232
1,600	16,701	15,183	13,361	11,929	11,134	9,278	7,768	6,423	5,476	4,514
1,700	17,745	16,132	14,196	12,675	11,830	9,858	8,253	6,825	5,818	4,796
1,800	18,789	17,081	15,031	13,420	12,526	10,438	8,739	7,226	6,160	5,078
1,900	19,832	18,030	15,866	14,166	13,222	11,018	9,224	7,628	6,502	5,360
2,000	20,876	18,978	16,701	14,912	13,918	11,598	9,710	8,029	6,845	5,642
2,500	26,095	23,718	20,876	18,640	17,397	14,498	12,138	10,037	8,556	7,053
3,000	31,314	28,458	25,052	22,367	20,876	17,397	14,565	12,044	10,267	8,463
3,500	36,533	33,212	29,227	26,096	24,356	20,296	16,993	14,052	11,978	9,874
4,000	41,753	37,957	33,402	29,823	27,835	23,196	19,420	16,059	13,689	11,284
4,500	46,972	42,702	37,578	33,551	31,314	26,096	21,848	18,066	15,401	12,695
5,000	52,191	47,446	41,573	37,279	34,794	28,995	24,275	20,073	17,112	14,106

Figure 12. Individual Drip Irrigation Fields Designed Using a Soil Profile Description

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	125	165	205	40
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	1,000	1,330	1,660	330

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 13. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 1 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	7,282	9,709	12,137	2,427
2	8,010	10,680	13,350	2,670
2a	8,738	11,651	14,564	2,913
3	9,467	12,622	15,777	3,155
3a	10,195	13,593	16,991	3,398
4	10,923	14,564	18,205	3,641
5	14,564	19,418	24,273	4,854

†These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 14. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 2 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	4,161	5,548	6,935	1,387
2	4,577	6,103	7,629	1,526
2a	4,993	6,658	8,322	1,665
3	5,409	7,212	9,016	1,803
3a	5,825	7,767	9,709	1,942
4	6,242	8,322	10,403	2,080
5	8,322	11,096	13,870	2,774

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 15. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 3 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,913	3,884	4,855	971
2	3,204	4,272	5,340	1,068
2a	3,495	4,660	5,825	1,165
3	3,786	5,049	6,311	1,263
3a	4,078	5,437	6,796	1,359
4	4,369	5,825	7,282	1,456
5	5,825	7,767	9,709	1,942

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 16. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 4 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,330	3,107	3,884	777
2	2,563	3,418	4,272	855
2a	2,796	3,728	4,660	932
3	3,029	4,039	5,049	1,010
3a	3,262	4,350	5,437	1,088
4	3,495	4,661	5,825	1,166
5	4,660	6,214	7,767	1,554

†These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 17. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 5 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,821	2,428	3,034	607
2	2,003	2,670	3,337	667
2a	2,185	2,913	3,641	728
3	2,367	3,156	3,944	789
3a	2,549	3,399	4,248	850
4	2,731	3,641	4,551	910
5	3,641	4,855	6,068	1,214

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 18. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 6 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,533	2,044	2,555	511
2	1,686	2,248	2,811	562
2a	1,840	2,453	3,066	613
3	1,993	2,657	3,322	664
3a	2,146	2,862	3,577	716
4	2,300	3,066	3,833	766
5	3,066	4,088	5,110	1,022

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 19. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 7 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,324	1,766	2,207	442
2	1,456	1,942	2,427	486
2a	1,589	2,119	2,648	530
3	1,721	2,472	2,868	574
3a	1,854	2,472	3,089	618
4	1,986	2,648	3,310	662
5	2,648	3,531	4,413	883

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 20. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 8 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,165	1,554	1,942	389
2	1,282	1,709	2,136	427
2a	1,398	1,864	2,330	466
3	1,515	2,020	2,525	505
3a	1,631	2,175	2,719	544
4	1,748	2,330	2,913	582
5	2,330	3,107	3,884	777

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 21. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 9 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,041	1,387	1,734	346
2	1,145	1,526	1,907	381
2a	1,249	1,664	2,081	415
3	1,353	1,803	2,254	450
3a	1,457	1,942	2,428	485
4	1,561	2,081	2,601	520
5	2,081	2,774	3,468	693

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 22. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 10 [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	940	1,253	1,566	313
2	1,033	1,378	1,723	345
2a	1,127	1,504	1,879	377
3	1,221	1,629	2,036	408
3a	1,315	1,754	2,192	439
4	1,409	1,880	2,349	471
5	1,879	2,506	3,132	627

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 23. Individual Lagoons

Length in Feet of Each Side of the Bottom of a Square Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	40	50	60	65
4	35	45	55	60
5	30	40	50	55
6	25	35	45	50
7	20	30	35	45
8	20	25	30	35
9	15	20	25	30
10	10	15	20	25

Diameter in Feet of the Bottom of a Round Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	50	60	70	80
4	45	55	65	75
5	40	50	60	70
6	35	45	50	60
7	30	40	45	55
8	25	30	40	45
9	20	30	35	40
10	15	25	30	35

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 24. Small Public Lagoons

Length in Feet of Each Side of the Bottom of a Square Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		18	16	14	10	Prohibited			
200			38	35	32	27	22	17	14	11
300			54	49	46	40	34	28	24	20
400			67	61	58	51	44	37	32	27
500			78	72	69	60	52	45	39	34
600			88	82	78	69	60	52	46	40
700			98	91	87	77	68	59	52	46
800			107	99	95	84	74	65	58	51
900			115	107	102	91	81	71	63	56
1,000			123	114	110	97	87	76	68	61
1,100			130	122	116	104	92	81	73	65
1,200			138	128	123	110	98	86	77	69
1,300			144	135	129	115	103	91	82	73
1,400			151	141	135	121	108	95	86	77
1,500			157	147	141	126	113	100	90	81
1,600			163	153	147	131	117	104	94	85
1,700			169	158	152	136	122	108	98	88
1,800			175	164	157	141	126	112	101	92
1,900			181	169	162	146	131	116	105	95
2,000			186	174	167	150	135	120	108	98
2,500			212	198	190	171	154	137	125	114
3,000			235	220	212	191	172	154	140	127
3,500			256	240	231	209	188	168	153	140
4,000			276	259	249	225	203	182	166	151
4,500			295	276	266	240	218	195	178	163
5,000			312	293	282	255	231	207	189	173

Diameter in Feet of the Bottom of a Round Small Public Lagoon

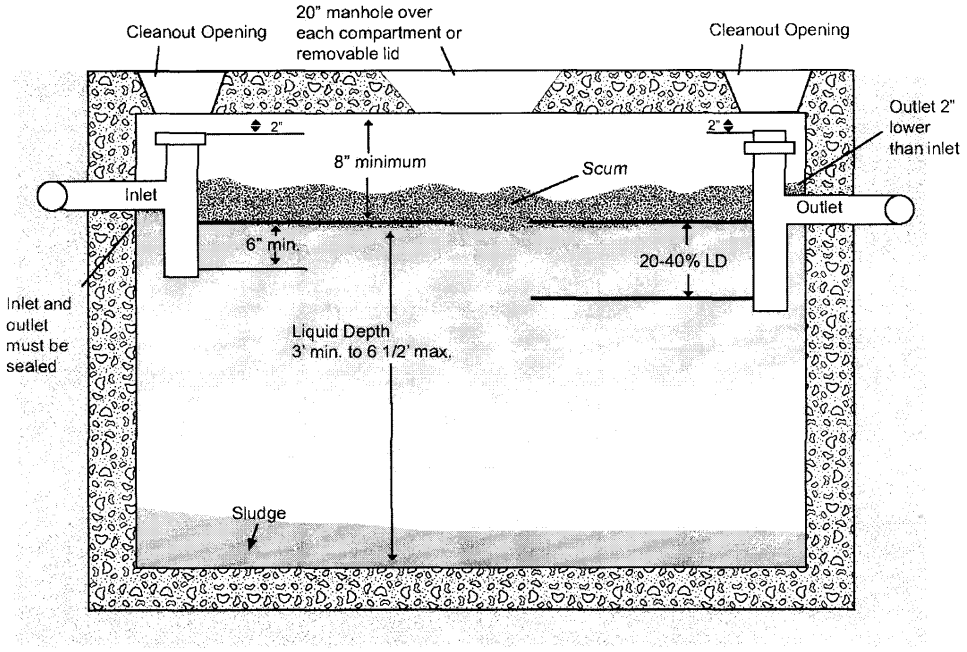
AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		25	22	20	15	Prohibited			
200			47	43	40	34	29	23	20	16
300			65	59	56	49	42	35	31	26
400			79	73	70	61	53	45	40	35
500			92	85	81	72	63	54	49	43
600			104	96	92	81	72	62	56	50
700			114	106	102	90	80	69	63	56
800			124	116	111	99	88	76	70	62
900			134	125	119	106	95	82	76	68
1,000			143	133	128	114	102	89	81	73
1,100			151	141	135	121	108	94	87	78
1,200			159	149	143	128	114	100	92	83
1,300			167	156	150	134	120	105	97	88
1,400			174	163	156	140	126	110	102	92
1,500			181	170	163	146	131	115	106	96
1,600			188	176	169	152	136	120	111	100
1,700			195	183	175	158	142	125	115	104
1,800			202	189	181	163	147	129	119	108
1,900			208	195	187	168	151	133	124	112
2,000			214	201	193	173	156	138	128	116
2,500			243	228	219	197	178	157	146	133
3,000			269	252	243	219	198	175	163	149
3,500			293	275	265	239	216	192	178	163
4,000			315	296	285	258	233	207	193	176
4,500			336	316	304	275	249	221	206	189
5,000			356	335	322	292	264	235	219	201

Figure 25. Net Evaporation Zones

COUNTY	ZONE	COUNTY	ZONE	COUNTY	ZONE
Adair	1	Grant	9	Nowata	5
Alfalfa	9	Greer	9	Okfuskee	7
Atoka	6	Harmon	9	Oklahoma	8
Beaver	10	Harper	9	Okmulgee	6
Beckham	9	Haskell	3	Osage	7
Blaine	9	Hughes	6	Ottawa	2
Bryan	6	Jackson	9	Pawnee	7
Caddo	9	Jefferson	9	Payne	7
Canadian	9	Johnston	7	Pittsburg	5
Carter	7	Kay	8	Pontotoc	7
Cherokee	3	Kingfisher	9	Pottawatomie	7
Choctaw	2	Kiowa	9	Pushmataha	2
Cimarron	10	Latimer	2	Roger Mills	9
Cleveland	8	LeFlore	1	Rogers	5
Coal	6	Lincoln	7	Seminole	7
Comanche	9	Logan	8	Sequoyah	1
Cotton	9	Love	7	Stephens	8
Craig	4	McClain	8	Texas	10
Creek	7	McCurtain	1	Tillman	9
Custer	9	McIntosh	5	Tulsa	6
Delaware	1	Major	9	Wagoner	5
Dewey	9	Marshall	7	Washington	6
Ellis	9	Mayes	5	Washita	9
Garfield	9	Murray	7	Woods	9
Garvin	8	Muskogee	5	Woodward	9
Grady	9	Noble	8		

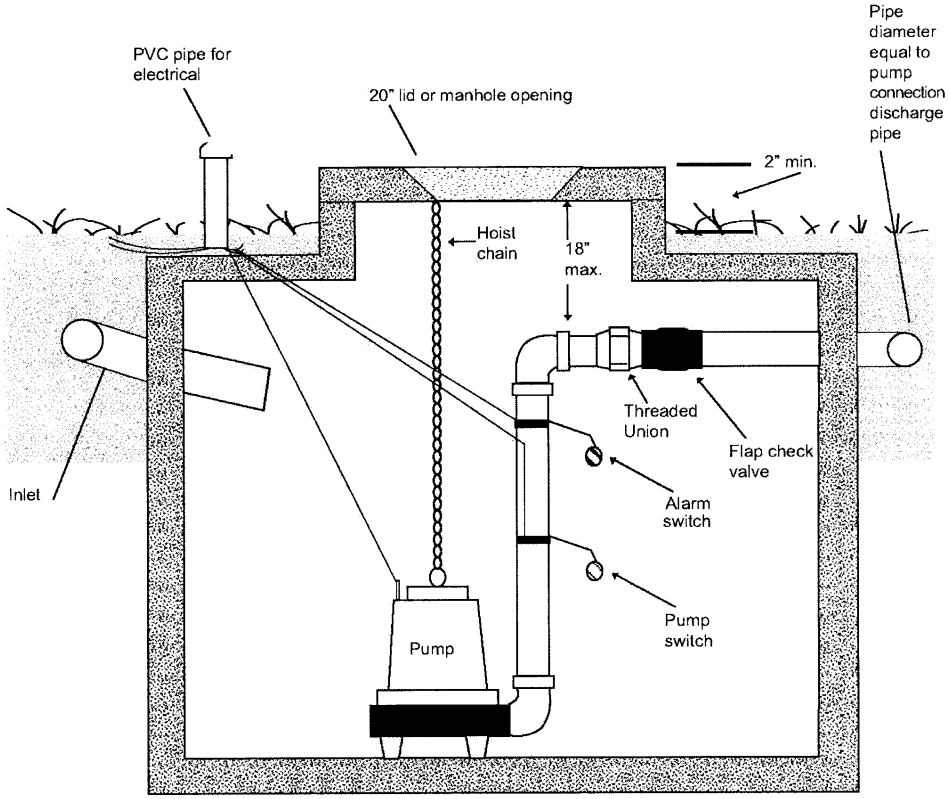
APPENDIX I. MINIMUM DESIGN CRITERIA FOR SEPTIC TANK INSTALLATION [REVOKED]

APPENDIX I. EXAMPLE OF THE REQUIREMENTS FOR A SEPTIC TANK [NEW]



APPENDIX J. MINIMUM DESIGN CRITERIA FOR LIFT STATION INSTALLATION [REVOKED]

APPENDIX J. EXAMPLE OF THE REQUIREMENTS FOR A PUMP TANK [NEW]



APPENDIX K. EXAMPLES OF SUBSURFACE SYSTEM LAYOUTS [REVOKED]

APPENDIX K. EXAMPLE LAYOUTS OF CONVENTIONAL SUBSURFACE ABSORPTION SYSTEMS, LOW PRESSURE DOSING SYSTEMS AND ET/A SYSTEMS [NEW]

Figure 1. Level Systems (Top View)

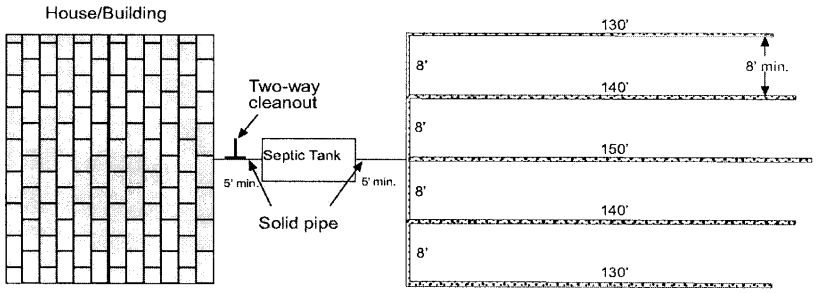


Figure 2. Level Systems (Side View)

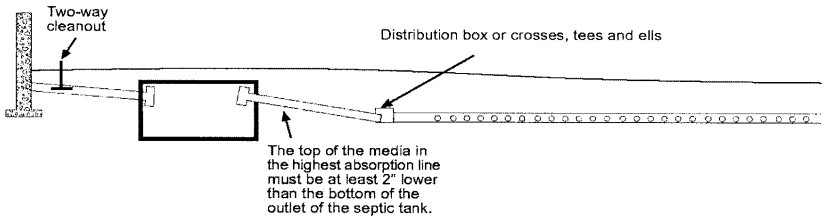


Figure 3. Low Pressure Dosing

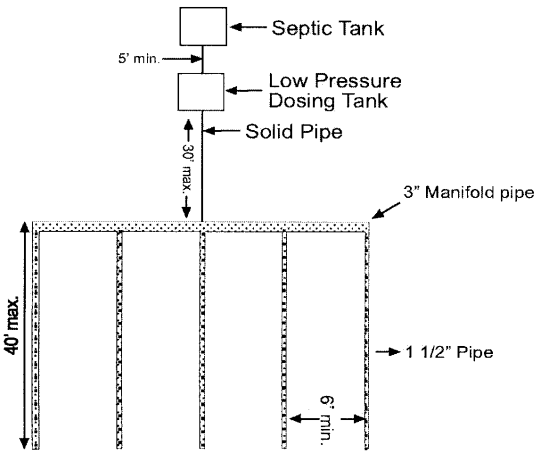


Figure 4. Retention Systems (Top View)

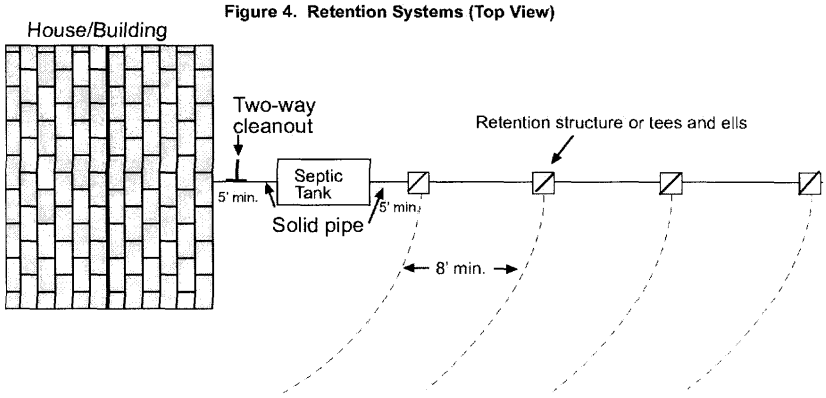
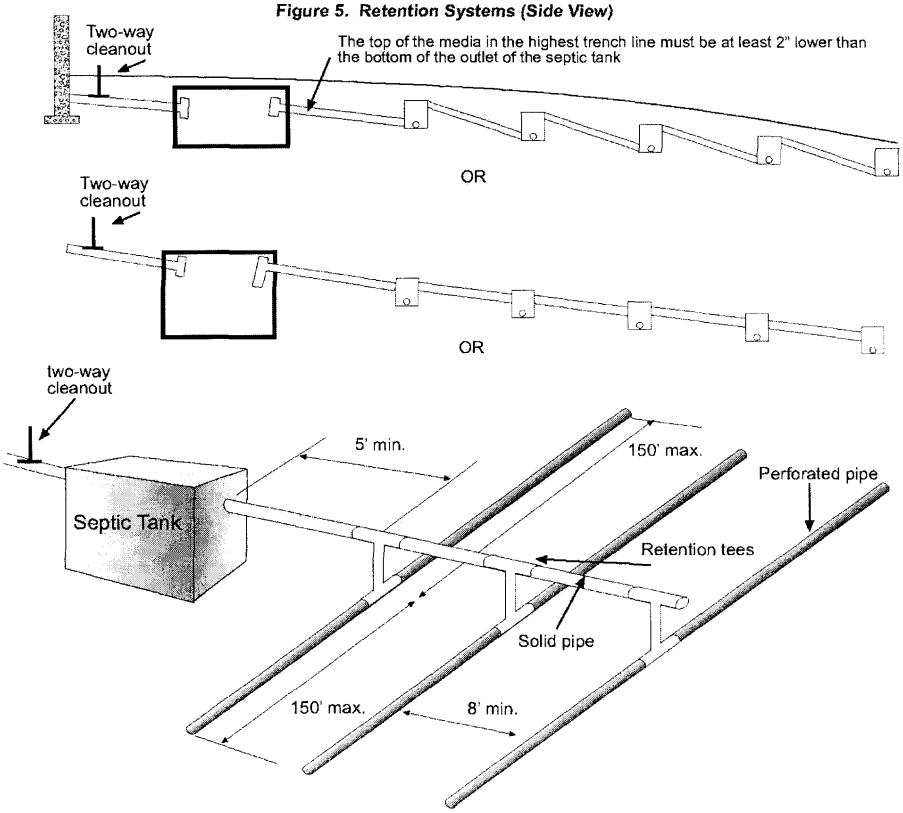


Figure 5. Retention Systems (Side View)



APPENDIX L. EXAMPLES OF RETENTION AND DISTRIBUTION STRUCTURE [REVOKED]

APPENDIX L. EXAMPLES OF RETENTION AND DISTRIBUTION STRUCTURES [NEW]

Figure 1. Retention Structure (Box)

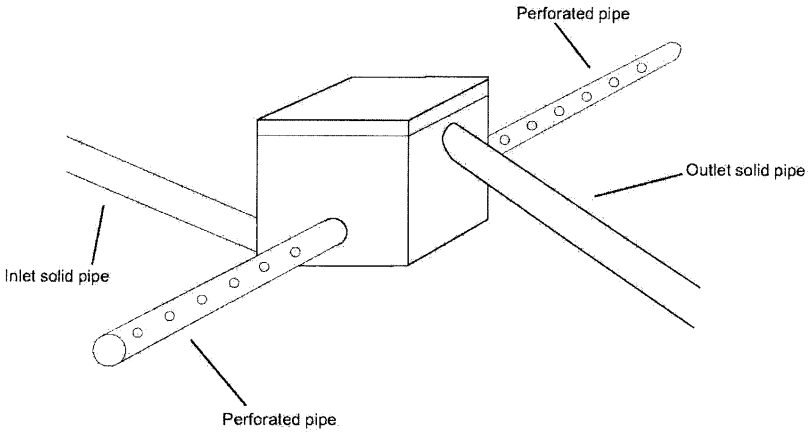
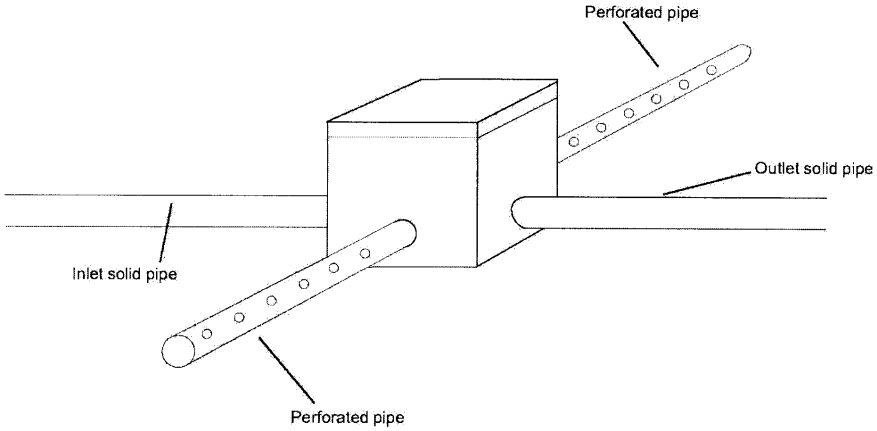


Figure 2. Distribution Structure (Box)



APPENDIX M. EXAMPLES OF TRENCH INSTALLATION [REVOKED]

APPENDIX M. EXAMPLES OF TRENCH INSTALLATION [NEW]

Figure 1. Cross-Section of Conventional Subsurface Absorption Trench

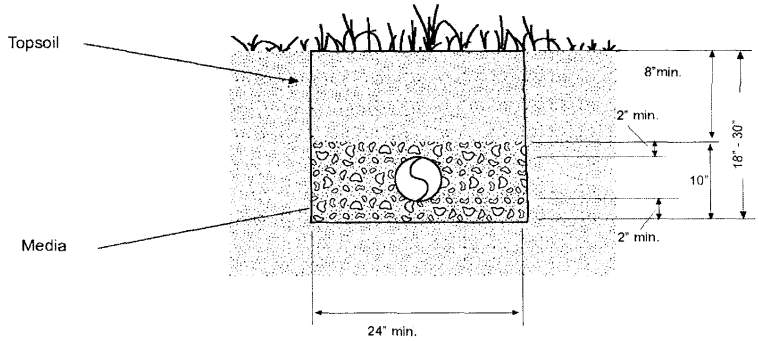


Figure 2. Cross-Section of ET/A Trench

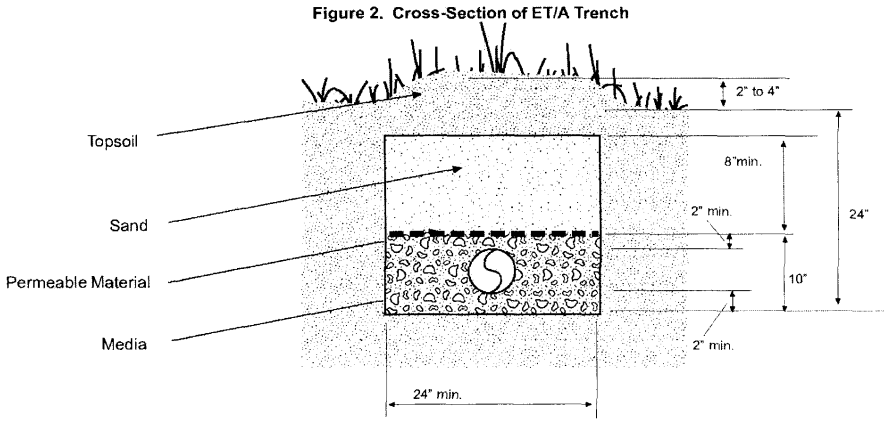
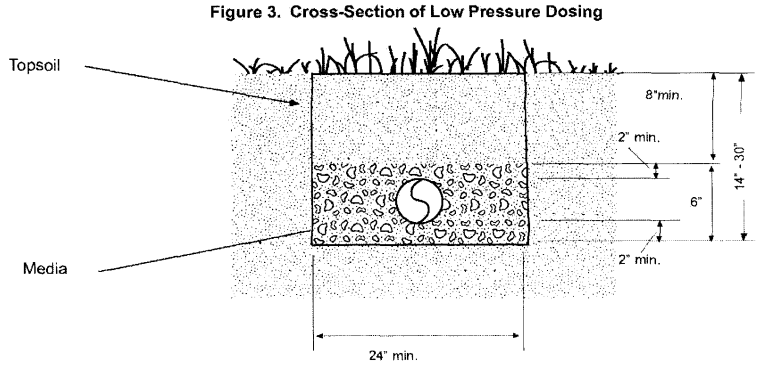


Figure 3. Cross-Section of Low Pressure Dosing



APPENDIX N. MINIMUM DESIGN CRITERIA FOR CHAMBER SYSTEMS INSTALLATION [REVOKED]

APPENDIX N. EXAMPLES OF CHAMBERS BEING USED FOR STORAGE AND DISPERSAL [NEW]

Figure 1. Level Systems

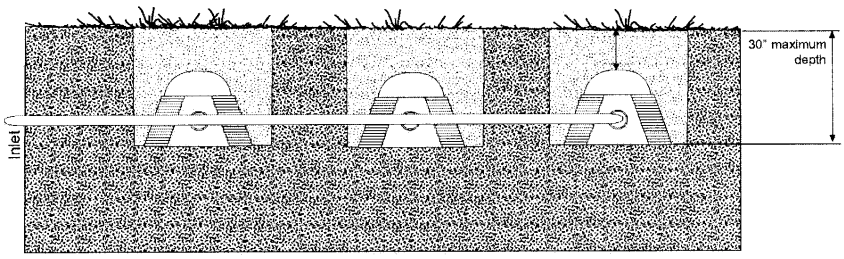
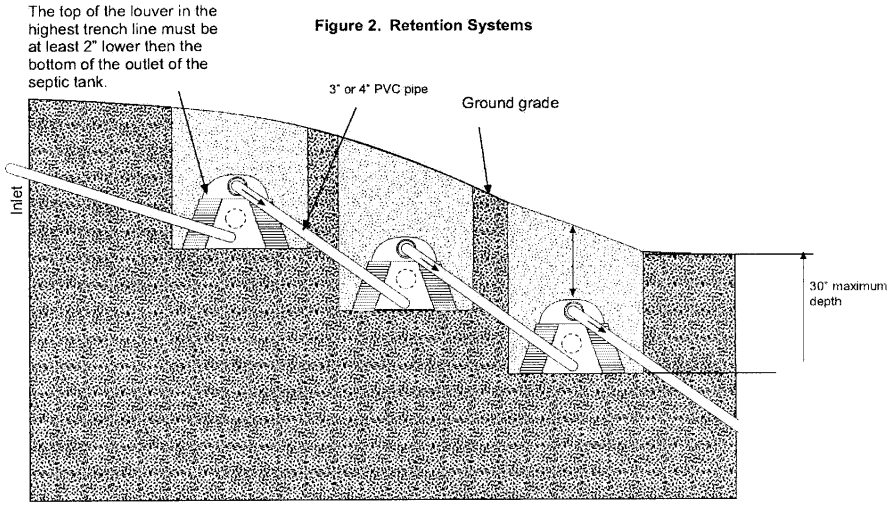


Figure 2. Retention Systems



APPENDIX O. EXAMPLES OF MINIMUM DESIGN CRITERIA FOR LAGOON INSTALLATION [REVOKED]

APPENDIX O. EXAMPLES OF LAGOON INSTALLATION [NEW]

Figure 1. Lagoon (side view)

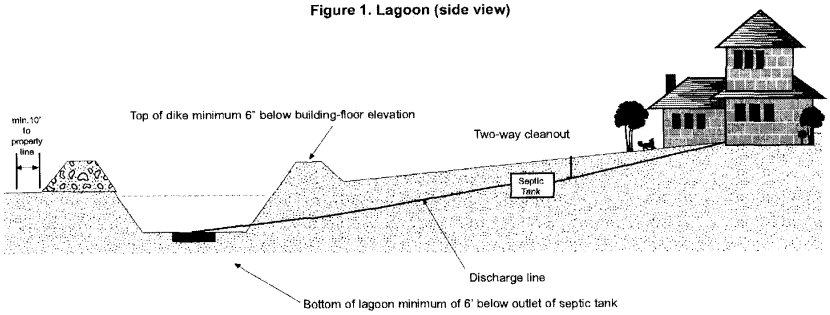
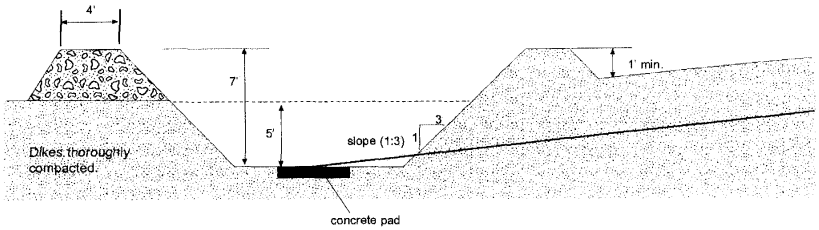


Figure 2. Lagoon Detail



Compacted soil

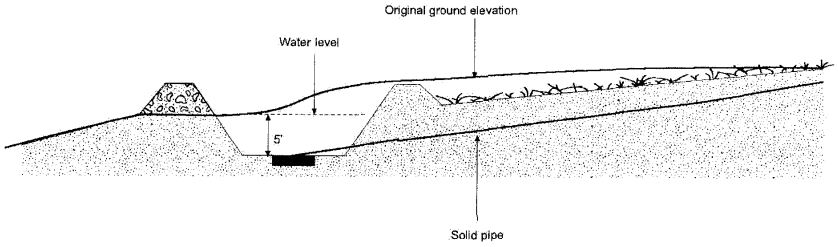
Undisturbed soil

The DEQ encourages seeding, sodding or sprigging dikes with perennial, low-growing grasses to prevent erosion.

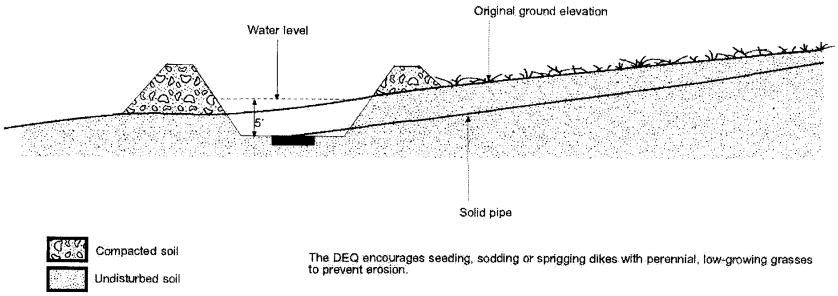
Figure 3. Lagoons Constructed On Steep Slopes

Note: Drawings not to scale; slopes are to be 3 horizontal to 1 vertical.

Recommended: Maximum water level at or below original ground elevation.



Not recommended: Maximum water level above original ground elevation.



The DEQ encourages seeding, sodding or sprigging dikes with perennial, low-growing grasses to prevent erosion.

[OAR Docket #08-1099; filed 5-30-08]

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

[OAR Docket #08-1100]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Procedures
252:656-3-9. Fees [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*
DATES:
Comment period:
December 3, 2007, through January 15, 2008
Public hearing:
January 15, 2008, and February 29, 2008
Adoption:
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Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
Submitted to Senate:
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Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Department proposes to increase its non-industrial wastewater construction permitting fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1993, through 2007. Additionally, the Department proposes to have fees automatically increase every year thereafter pursuant to any increase in the consumer price index over the previous year.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. PERMIT PROCEDURES

252:656-3-9. Fees

(a) Permits will not be issued until all fees are paid unless a monthly billing agreement with the DEQ and the permittee is current.

(b) ~~Treatment~~ Beginning July 1, 2008, treatment works construction permit fees are based on design flow as follows:

(1) New facilities or major modifications:
(A) 1.0 MGD and greater ~~$2,000~~ $2,863.00
(B) 0.50 MGD - 0.99 MGD ~~$1,500~~ $2,147.00
(C) 0.10 MGD - 0.49 MGD ~~$1,000~~ $1,431.00
(D) 0.01 MGD - 0.09 MGD ~~$500~~ $716.00
(E) less than 0.01 MGD ~~$250~~ $358.00

(2) Minor modifications that will not alter the design capacity of the facility such as flow measurement, discharge structures and equalization basins:
(A) 1.0 MGD and greater ~~$500~~ $716.00
(B) 0.50 MGD - 0.99 MGD ~~$400~~ $573.00
(C) 0.10 MGD - 0.49 MGD ~~$300~~ $429.00
(D) 0.01 MGD - 0.09 MGD ~~$200~~ $286.00
(E) less than 0.01 MGD ~~$100~~ $143.00

(c) ~~Collection~~ Beginning July 1, 2008, collection system improvement fees are:

(1) Line extensions: ~~$10~~ $15.00 per 100 ft., rounded to the nearest 100 ft. with a ~~$100~~ $143.00 minimum.

(2) Lift station(s): ~~$50~~ $72.00 per 100 GPM, rounded to the nearest 100 GPM peak capacity with a ~~$100~~ $143.00 minimum.

(3) Municipal permit exemptions under OAC 252:656-3-3 pay 20% of the collection system fees quarterly.

(d) To assist in meeting rising costs to the Department of the water pollution control program associated with permitting of non-industrial wastewater systems, the fees set out in paragraphs (b) and (c) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index:" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(e) Emergency grant projects are exempt from construction permit fees (wastewater systems funded in part or in whole by grant monies made available through the Oklahoma Water Resources Board as authorized by Title 82, § 1085.39).

(~~e~~f) REAP (Rural Economic Assistance Program) Grant Projects are exempt from permit fees.

(~~f~~g) The maximum fee for any one application will not exceed ~~$2,000.00~~ $3,174.45.

(~~g~~h) Any person or entity that constructs or modifies a wastewater collection system or treatment works subject to these rules, prior to the issuance of a permit, is subject to the doubling of all fees required by this chapter, as deemed necessary to offset additional administrative costs of such reviews. Further, the submission of appropriate fees and/or the issuance of a permit does not preclude any person or entity from further enforcement and/or fines as set out by State statutes and rules, for constructing or modifying a wastewater collection system or treatment works prior to the issuance of all appropriate permits as required by this chapter.

[OAR Docket #08-1100; filed 5-30-08]

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

[OAR Docket #08-1101]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:690-1-4. Incorporation of USEPA regulations by reference [AMENDED]
AUTHORITY:
Water Quality Standards Implementation Plan, 27A O.S.,§ 1-1-202; Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*
DATES:
Comment period:
December 3, 2007, through January 15, 2008
Public hearing:
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Submitted to Governor:
March 10, 2008
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March 10, 2008
Gubernatorial approval:
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
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Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following federal regulations from 40 CFR, as published on July 1, 2007:
40 CFR Part 260. Hazardous Waste Management System: General, except 260.20 through 260.22.
40 CFR Part 261. Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
40 CFR 262.42(a)(2)(e).
40 CFR Part 263. Standards Applicable to Transporters of Hazardous Waste.
40 CFR Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
40 CFR 264.1(f)
40 CFR 264.149
40 CFR 264.150
40 CFR 264.301(l)
40 CFR Part 264 Appendix VI
40 CFR Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
40 CFR 265.1(c)(4)
40 CFR 265.149
40 CFR 265.150
40 CFR Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
40 CFR Part 268. Land Disposal Restrictions, except:
40 CFR 268.5
40 CFR 268.6
40 CFR 268.10
40 CFR 268.11
40 CFR 268.12
40 CFR 268.13
40 CFR 268.42(b)
40 CFR 268.44(a) through (g)
40 CFR 268.44(m) through (p).
40 CFR Part 270. Permit Programs, except 270.14(b)(18).
40 CFR Part 273. Universal Waste Rule.
40 CFR Part 279. Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."
40 CFR Part 116 (Hazardous Substances List)
40 CFR Part 117 (Reportable Quantities for Hazardous Substances)
40 CFR 122.2 - (definitions)
40 CFR 122.24 - (concentrated aquatic animal production facilities)
40 CFR 122.25 - (aquaculture projects)
40 CFR 122.26 - (stormwater discharges)
40 CFR 122.27 - (silviculture)
40 CFR 122.28(a) and (b) - (general permits)
40 CFR 122.29 - (new sources and new dischargers)
40 CFR 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
40 CFR 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
40 CFR 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
40 CFR 122.41 - (permit conditions)
40 CFR 122.42 - (conditions for specified categories of permits)
40 CFR 122.43 - (establishing permit conditions)
40 CFR 122.44 - (establishing permit limitations, standards and other conditions)
40 CFR 122.45 - (calculating permit conditions)
40 CFR 122.46 - (permit duration)
40 CFR 122.47(a) - (schedules of compliance)
40 CFR 122.48 - (monitoring requirements)

40 CFR 122.50 - (disposal into wells)
40 CFR 122.61 - (permit transfer)
40 CFR 122.62 - (permit modification)
40 CFR 122.63 - (minor modifications of permits)
40 CFR 122.64 - (permit termination)
40 CFR Part 122 Appendices A through J
40 CFR Part 125 (criteria and standards for NPDES):
Subpart A (technology-based treatment),
Subpart B (criteria for aquaculture projects),
Subpart D (fundamentally different factors),
Subpart H (alternative effluent limitations),
Subpart I (new cooling water intakes),
Subpart J (existing cooling water intakes), and
Subpart L (disposal of sewage sludge under CWA 405)
40 CFR Part 129 (Toxic Pollutant Effluent Standards)
40 CFR Part 136 (testing and laboratory)
40 CFR Sections 401-471 (Effluent Guidelines 7 and Standards)
40 CFR Section 110.6 (notice of oil discharge)
40 CFR Part 302 (CERCLA exemption from NPDES permits)
40 CFR 503.1 (Purpose and applicability)
40 CFR 503.2 (Compliance period)
40 CFR 503.3 (Permits and direct enforceability)
40 CFR 503.4 (Relationship to other regulations)
40 CFR 503.5 (Additional or more stringent requirements)
40 CFR 503.6(a)-(e),(g)-(j) (Exclusions)
40 CFR 503.7 (Requirement for a person who prepares biosolids)
40 CFR 503.8 (Sampling and analysis)
40 CFR 503.9 (General definitions)
40 CFR 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
40 CFR 503.11 (Special definitions)
40 CFR 503.12 (General requirements)
40 CFR 503.13 (Pollutant limits)
40 CFR 503.14 (Management practices)
40 CFR 503.15 (Operational standards - pathogens and vector attraction reduction)
40 CFR 503.16(a) (Frequency of monitoring)
40 CFR 503.17(a) (Recordkeeping)
40 CFR 503.18 (Reporting)
40 CFR 503.30 (Scope)
40 CFR 503.31 (Special definitions)
40 CFR 503.32(a), (b) (Pathogens)
40 CFR 503.33(a), (b)(1)-(11) (Vector attraction reduction)
40 CFR 503.40 (Applicability)
40 CFR 503.41 (Special definitions)
40 CFR 503.42 (General requirements)
40 CFR 503.43 (Pollutant (Metal) limits)
40 CFR 503.44 (Operational standard - total hydrocarbons)
40 CFR 503.45 (Management practices)
40 CFR 503.46 (Frequency of monitoring)
40 CFR 503.47 (Recordkeeping)
40 CFR 503.48 (Reporting)
40 CFR Part 503 Appendices:
Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
Appendix B (Pathogen treatment processes)
40 CFR Part 130 (Water Quality Planning and Management)
40 CFR Part 144 (Underground Injection Control Program)
40 CFR Part 145 (State UIC Program Requirements)
40 CFR Part 146 (Underground Injection Control Program: Criteria and Standards)
40 CFR Part 147 (State Underground Injection Control Programs)
40 CFR Part 148 (Hazardous Waste Injection Restrictions)

Incorporating rules:

OAC 252:690-1-4

Availability:

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

ANALYSIS:

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations from July 1, 2006, to July 1, 2007.

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. INTRODUCTION

252:690-1-4. Incorporation of USEPA regulations by reference

The following federal regulations at 40 CFR, as published on July 1, ~~2006~~ 2007, are incorporated by reference and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(A) **Part 260.** Hazardous Waste Management System: General, except 260.20 through 260.22.

(B) **Part 261.** Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(C) 262.42(a)(2)(e).

(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 264.1(f)
(ii) 264.149
(iii) 264.150
(iv) 264.301(l)
(v) Part 264 Appendix VI

(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

(i) 265.1(c)(4)
(ii) 265.149
(iii) 265.150

(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

(H) **Part 268.** Land Disposal Restrictions, except:

(i) 268.5
(ii) 268.6

(iii) 268.10
(iv) 268.11
(v) 268.12
(vi) 268.13
(vii) 268.42(b)
(viii) 268.44(a) through (g)
(ix) 268.44(m) through (p).

(I) **Part 270.** Permit Programs, except 270.14(b)(18).

(J) **Part 273.** Universal Waste Rule.

(K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(2) **OAC 252:606 (Discharge Standards).**

(A) Part 116 (Hazardous Substances List)

(B) Part 117 (Reportable Quantities for Hazardous Substances)

(C) The following from PART 122 (NPDES PERMIT REGULATIONS):

(i) 122.2 - (definitions)
(ii) 122.24 - (concentrated aquatic animal production facilities)
(iii) 122.25 - (aquaculture projects)
(iv) 122.26 - (stormwater discharges)
(v) 122.27 - (silviculture)
(vi) 122.28(a) and (b) - (general permits)
(vii) 122.29 - (new sources and new dischargers)
(viii) 122.32 B As an operator of a small MS4, am I regulated under the NPDES storm water program?
(ix) 122.34 B As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
(x) 122.35 B As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
(xi) 122.41 - (permit conditions)
(xii) 122.42 - (conditions for specified categories of permits)
(xiii) 122.43 - (establishing permit conditions)
(xiv) 122.44 - (establishing permit limitations, standards and other conditions)
(xv) 122.45 - (calculating permit conditions)
(xvi) 122.46 - (permit duration)
(xvii) 122.47(a) - (schedules of compliance)
(xviii) 122.48 - (monitoring requirements)
(xix) 122.50 - (disposal into wells)
(xx) 122.61 - (permit transfer)
(xxi) 122.62 - (permit modification)
(xxii) 122.63 - (minor modifications of permits)
(xxiii) 122.64 - (permit termination)
(xxiv) Appendices A through J

(D) The following from PART 125 (criteria and standards for NPDES):

(i) Subpart A (technology-based treatment),
(ii) Subpart B (criteria for aquaculture projects),
(iii) Subpart D (fundamentally different factors),
(iv) Subpart H (alternative effluent limitations),
(v) Subpart I (new cooling water intakes),
(vi) Subpart J (existing cooling water intakes), and
(vii) Subpart L (disposal of sewage sludge under CWA 405)

(E) Part 129 (Toxic Pollutant Effluent Standards)

(F) Part 136 (testing and laboratory)

(G) Sections 401-471 (Effluent Guidelines 7 and Standards)

(H) Section 110.6 (notice of oil discharge)

(I) Part 302 (CERCLA exemption from NPDES permits)

(J) The following Sections from Part 503, Subpart A (General Provisions):

(i) 503.1 (Purpose and applicability)
(ii) 503.2 (Compliance period)
(iii) 503.3 (Permits and direct enforceability)
(iv) 503.4 (Relationship to other regulations)
(v) 503.5 (Additional or more stringent requirements)
(vi) 503.6(a)-(e),(g)-(j) (Exclusions)
(vii) 503.7 (Requirement for a person who prepares biosolids)
(viii) 503.8 (Sampling and analysis)
(ix) 503.9 (General definitions)

(K) The following Sections from Part 503, Subpart B (Land Application):

(i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(ii) 503.11 (Special definitions)
(iii) 503.12 (General requirements)
(iv) 503.13 (Pollutant limits)
(v) 503.14 (Management practices)
(vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
(vii) 503.16(a) (Frequency of monitoring)
(viii) 503.17(a) (Recordkeeping)
(ix) 503.18 (Reporting)

(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

(i) 503.30 (Scope)
(ii) 503.31 (Special definitions)
(iii) 503.32(a), (b) (Pathogens)
(iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(M) The following Sections from Part 503 Subpart E (Incineration)

(i) 503.40 (Applicability)
(ii) 503.41 (Special definitions)
(iii) 503.42 (General requirements)
(iv) 503.43 (Pollutant (Metal) limits)
(v) 503.44 (Operational standard - total hydrocarbons)

(vi) 503.45 (Management practices)
(vii) 503.46 (Frequency of monitoring)
(viii) 503.47 (Recordkeeping)
(ix) 503.48 (Reporting)

(N) The following Appendices from Part 503:
(i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
(ii) Appendix B (Pathogen treatment processes)

(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)

(4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:
(A) Part 144 (Underground Injection Control Program)
(B) Part 145 (State UIC Program Requirements)
(C) Part 146 (Underground Injection Control Program: Criteria and Standards)
(D) Part 147 (State Underground Injection Control Programs)
(E) Part 148 (Hazardous Waste Injection Restrictions)

(5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

[OAR Docket #08-1101; filed 5-30-08]

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

[OAR Docket #08-1102]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:710-1-12. Certification fee schedule [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Waterworks and Wastewater Works Advisory Council powers and duties, 59 O.S.,§§ 1103 and 1104 and 27A O.S., § 2-2-201; and Water Quality, 27A O.S.,§§ 2-6-101 *et seq.*
DATES:
Comment period:
December 15, 2007, through January 18, 2008
Public hearing:
January 18, 2008, and February 29, 2008
Adoption:
February 29, 2008
Submitted to Governor:
March 10, 2008
Submitted to House:
March 10, 2008
Submitted to Senate:
March 10, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008
Final adoption:
May 2, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed changes to the Waterworks and Wastewater Works Operator Certification rules would increase application and annual fees by the rate of inflation since the effective date of the last fee modification, which was on or about July 1, 1994, and the projected inflation rate over the next five years. One-half of the fee increase would go into effect on July 1, 2008, with the remaining fee increase effective July 1, 2009. Additionally, the Department proposes to have fees automatically increase every five years thereafter pursuant to any increase in the consumer price index over the previous five years.
CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.state.ok.us) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:710-1-12. Certification fee schedule

(a) **Operators of waterworks or wastewater works.** Certification fees for operators of waterworks or wastewater works are:
(1) Application fee for certification - ~~$40.00~~ beginning July 1, 2008, $51.00; beginning July 1, 2009, $62.00.
(2) Certification renewal fee - ~~$30.00~~ beginning July 1, 2008, $38.00; beginning July 1, 2009, $46.00.
(3) Registration fee for helpers (per helper) - ~~$15.00~~ beginning July 1, 2008, $19.00; beginning July 1, 2009, $23.00.
(4) Renewal registration fee for helpers (per helper) - ~~$15.00~~ beginning July 1, 2008, $19.00; beginning July 1, 2009, $23.00.
(5) Reinstatement penalty - ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month for each month certification is expired.
(6) Late payment of application fee - ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated

exam. The ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month late fee will apply to all previously delinquent application fees 180 days after the effective date of this subsection.

(b) **Operators of laboratories owned by or associated with waterworks or wastewater works.** Certification fees for Operators of laboratories owned by or associated with waterworks or wastewater works are:

(1) Application fee for certification - ~~$40.00~~ beginning July 1, 2008, $51.00; beginning July 1, 2009, $62.00.

(2) Certification renewal fee - ~~$30.00~~ beginning July 1, 2008, $38.00; beginning July 1, 2009, $46.00.

(3) Reinstatement penalty - ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month for each month certification is expired.

(4) Late payment of application fee - ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month for each month the application fee is not received after a 120 day grace period from the date of the examination. After 180 days without payment of the application fee, the applicant must reapply and pass the validated exam. The ~~$5.00~~ beginning July 1, 2008, $6.50; beginning July 1, 2009, $8.00 per month late fee will apply to all previously delinquent fees 180 days after the effective date of this subsection.

(c) **Nonrefundable.** Fees charged under this section are not refundable.

(d) **Nontransferable.** Fees may not be transferred from one applicant to another.

(e) **Automatic fee adjustment.** To assist in meeting rising costs to the Department of the operator certification program associated with licensing and enforcement of certified operators, the fees set out in paragraphs (a) and (b) above shall be automatically adjusted on July 1st every five years to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the calendar year immediately preceding the start of that five-year time period. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

[OAR Docket #08-1102; filed 5-30-08]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 10. PUBLIC PURPOSE SUPPORT AND ASSISTANCE

OAR Docket #08–1131

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RULES:
300:10-1-2. [AMENDED]
AUTHORITY:
Grand River Dam Authority; 82 O.S.Supp.2007, § 861A(B)(1); 82 O.S.Supp.2007, § 863.2(B), 82 O.S.Supp.2007, § 862(t).
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ANALYSIS:
These rules prescribe the circumstances under which the Grand River Dam Authority would approve or deny requests for financial assistance to qualified groups to promote economic/industrial development, tourism and recreational activities and conservation and development of natural resources in the communities and industrial areas the Authority serves, all of which are deemed to be governmental public purposes. Such support and assistance would include marketing, consumer education, community relations and customer service functions which the Authority performs.
CONTACT PERSON:
Gretchen Zumwalt-Smith, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-5545

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

300:10-1-2. Policy

~~It shall be the policy of the Authority to fulfill the above objectives by establishing the following provisions:~~

(a~~1~~) GRDA supports and assists activities, organizations, and causes which advance both governmental public purposes, as well as corporate purposes of GRDA by promoting community and economic development, tourism and recreational activities, and conservation and development of natural resources in the communities and industrial areas it serves. This support and assistance will be in compliance with state laws governing GRDA's activities including marketing, consumer education, community relations and customer service functions which it performs.

~~(2) GENERAL~~

~~(A) GRDA is a body corporate and politic created by statute and is an agency of the state of Oklahoma. As a result thereof, all funds generated, received and expended by GRDA are public funds and subject to state laws and regulations governing the receipt and expenditure of public funds in the same manner as all other state agencies. Among other activities prescribed by law, GRDA produces, sells and distributes electricity throughout its statutory district, as well as other areas. It is in competition with other electric utilities in the provision of these services.~~

~~(B) GRDA has had a longstanding practice of supporting and assisting organizations which promote certain public purposes as described above in GRDA's Policy Statement. This practice has been deemed by the Board of Directors of GRDA to enhance its competitive position and to be important generally in carrying out the prudent operation of the business of GRDA.~~

~~(C) The Board of Directors historically viewed requests for support and assistance in light of whether such a request furthers a public purpose, as well as the corporate purposes of GRDA. The Board finds it necessary and desirable and in the best interest of GRDA and its ratepayers to affirm the application of the public purpose/corporate purpose standard and to better define the working framework for the handling of requests for support and assistance.~~

(b~~3~~) GUIDELINES FOR GRDA's SUPPORT

(1~~A~~) GRDA may support the following organizational types:

(A~~i~~) Community and Economic Development Organizations

(B~~ii~~) Chambers of Commerce

(C~~iii~~) Tourism and Recreational Organizations

(D~~iv~~) Agricultural Organizations

(E~~v~~) Environmental Organizations

(F) Other similar public and private agencies

~~(B) GRDA may support and assist communities that are either served by GRDA, or in which any of its facilities are located, and the GRDA lakes (Grand Lake and Lake Hudson). They are the following:~~

~~(i) Claremore~~

~~(ii) Collinsville~~

~~(iii) Cushing~~

~~(iv) Mannford~~

~~(v) Miami~~

~~(vi) Pawnee~~

~~(vii) Pryor~~

~~(viii) Sallisaw~~

~~(ix) Siloam Springs, AR – Located outside 24 country service district, but are GRDA customers~~

~~(x) Skiatook~~

~~(xi) Stillwater~~

~~(xii) Stilwell~~

~~(xiii) Stroud~~

~~(xiv) Tahlequah~~

~~(xv) Wagoner~~

~~(xvi) Lindsay – Located outside 24 country service district, but are GRDA customers~~

~~(xvii) Coffeyville, KS – Located outside 24 country service district, but are GRDA customers~~

~~(xviii) Vinita – GRDA facility location~~

~~(xix) Chouteau – GRDA facility location~~

~~(xx) North Grand Lake~~

~~(xxi) South Grand Lake~~

~~(xxii) East Grand Lake~~

~~(xxiii) West Grand Lake~~

~~(xxiv) Lake Hudson~~

~~(xxv) Fort Gibson Lake~~

~~(xxvi) Communities may which at any time may be served by GRDA.~~

(2) GRDA may support and assist communities and/or projects located within the boundaries of the district that are served by GRDA, in which any of its assets are located.

(3~~C~~) A budget per community/~~region~~ area will be set based on what is in the best interest of GRDA. Factors taken into consideration will include the number of citizens benefiting from the programs/projects, revenue to GRDA, and the overall need of the community and/or project. Any support and assistance provided by GRDA shall be at its sole discretion, provided however, that such support and assistance shall be limited to an amount not to exceed a total of fifteen thousand dollars ($15,000) per year for one (1) or more projects or efforts that are for the benefit of or impact the quality of life for each city or community which GRDA serves or in which it has ~~facilities~~assets.

(4~~D~~) GRDA will not monetarily support the following:

(A~~i~~) Individuals

(B~~ii~~) Political campaigns/parties

(C~~iii~~) Religious organizations

(D~~iv~~) Private Schools

(E~~v~~) Private for-profit organizations

(F~~vi~~) Solicitations received by form letters

(G~~vii~~) Groups that discriminate on the basis of age, race, sex, or national origin

(H~~viii~~) Activities, organizations or causes which do not advance a public purpose and a GRDA corporate purpose

(c~~4~~) RESPONSIBILITIES AND EVALUATION OF REQUESTS

(1~~A~~) Community Relations ~~Director~~ Department will:

(A~~i~~) Budget for support and assistance.

(B~~ii~~) Classify all expenditure requests for accounting purposes.

(C~~iii~~) Evaluate requests to determine whether they meet a public purpose and a corporate purpose within guidelines established by GRDA management and the Board of Directors.

(D~~iv~~) Process requests including ensuring required approvals.

(E~~v~~) Prepare a quarterly report summarizing expenditures disbursements for presentation to the Board.

(F~~vi~~) Perform evaluations on expenditure disbursements.

(i~~I~~) All ~~$5000~~ $10,000 or greater expenses will be evaluated and documented on a quarterly basis.

~~(II) 5% of all other expenses will be subject to be evaluated and documented on a quarterly basis.~~

(2~~B~~) Requester will submit request for monetary support to the Community Relations Director. It should contain a concise proposal which may include:

(A~~i~~) Purpose and mission of group requesting funds.

(B~~ii~~) Expected or intended results for use of funds.

(C~~iii~~) Such other documentation as is appropriate to evaluate the request.

(d~~5~~) APPROVAL PROCESS

(1~~A~~) The only GRDA employee authorized to process requests for support and assistance will be the Community Relations Director.

(2~~B~~) The following approval levels are applicable to the total commitment made to any single request:

(A~~i~~) Expenditures ~~$500.00~~ $2,500 or below~~: Marketing Superintendent or~~ shall be approved by the Community Relations Director

(B~~ii~~) Expenditures ~~$500.01 to $9,999.99: General Manager~~ greater than $2,500 shall be approved by the Chief Executive Officer and/or the Chief Operating Officer

(C~~iii~~) ~~Expenditures $10,000 and above: General Manager and the Board of Directors~~

[OAR Docket #08-1131; filed 6-4-08]

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

[OAR Docket #08-1132]

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300:20-1-8. [AMENDED]
300:20-1-9. [AMENDED]
300:20-1-10. [AMENDED]
300:20-1-11. [AMENDED]
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ANALYSIS:
The rule amendments make modifications to the Grand River Dam Authority's purchasing policy by clarifying the types of purchases that can be made, the means by which these purchases can be made, and the responsibilities of various personnel in making these purchases. The changes exempt employee training and conference registration expenses from the purchasing policy's competitive bidding requirements. The modifications allow for the purchase of certain safety equipment and purchases for employee recognition purposes allowed by statute. The amendments allow GRDA to utilize purchasing contracts available to public utilities when such contracts would provide the best value. The rules clarify that the requisition review process applies to all projects or work orders whose total cost is in excess of $2,500 or where the purchase is made pursuant to 300:20-1-8. The amendments allow the General Manager or Chief Operating Officer to approve routine purchases in amounts not exceeding $50,000. The changes allow personnel outside of the Purchasing Department to negotiate the return of rejected equipment or supplies. The new section 300:20-1-16 allows GRDA to make acquisitions by reverse auction bidding. It establishes guidelines for how these auctions will be conducted and permits GRDA to contract with outside vendors to conduct these auctions on its behalf.
CONTACT PERSON:
Gretchen Zumwalt-Smith, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-5545

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

300:20-1-1. Introduction to purchasing policy

(a) The material contained herein is designed to explain and facilitate understanding of the Purchasing Department, its functions, policies and procedures. The material will also serve as a guide to the Operating Departments and serve as a tool to provide information and direction to the various departments and functions of GRDA. Its primary purpose is to communicate policies and give guidance to personnel in charge of purchases, personnel assigned to the purchasing function and others with delegated purchasing authority. This policy does not apply to contracts for professional services as defined in Section 803 of Title 18, as well as power capacity, energy, transmission and ancillary services, and business expenses described in Section 300:20-1-15(c) or employee training or conference registration expenses. Such contracts shall be exempt from competitive bidding procedures. The purchase of coal and natural gas, and the delivery of same, may be confidential and therefore the bidding process may deviate from the guidelines set forth herein.

(b) The included policy statements represent the basic intentions and goals of the GRDA Board of Directors. They represent the permanent foundation upon which the Authority operates, and are expected to be relatively independent of the changing technologies and methods used to carry them out. It is the responsibility of all who have been delegated the authority to commit GRDA funds through the purchasing function to adhere to the policies contained herein.

(c) The procedures set forth are expressly designed to implement the Board's policy and state law. Procedures will conform to changes in policy or law and when necessary, procedures will be modified on an "as needed basis" to refine the purchasing process.

(d) **Definitions.**

(1) **Purchasing.** Identification and recognition of the required need for goods and services in all parts of the organization, and the assurance of satisfaction of those needs at the lowest possible cost, consistent with the best quality of goods required. Purchasing reflects the role of a service department by serving as the primary contact between the various functions of GRDA and its suppliers.

(2) **Policies.** Policies, as referred to herein, are pre-decisions made by Management and the Board of Directors for the purpose of giving information and direction. Policies establish basic philosophies and climates, and determine the major values upon which the Purchasing function must operate.

(3) **Procedures.** Procedures are the prescribed means of accomplishing policy. Their intent is to provide GRDA personnel with the guidelines and, where appropriate, specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

300:20-1-4. Responsibilities

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

(b) The General Manager is responsible for the actions of the Assistant General Managers and their subordinates who perform purchasing procedures and the General Manager is responsible for approving emergency purchases above $50,000.00. The General Manager shall approve routine purchases in excess of $5,000 but not more than $50,000 or delegate an approval threshold for such purchases to the Chief Operating Officer not to exceed $50,000.

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

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

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

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

(g) The Purchasing Department is to serve as the exclusive channel through which all requests regarding prices and products are handled. This Department and no other will conduct all correspondence with suppliers involving prices or quotations. In cases where technical details are necessary, the department requesting an acquisition may correspond with suppliers. In such cases, the Purchasing Department should be provided with copies of all such correspondence. Close communication and coordination between the Purchasing Department and the department requesting supplies must occur. This Subsection g does not apply to emergency purchases and small-dollar purchases in an amount designated by the general manager, but not to exceed $2,500.00.

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

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

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

(k) Purchasing Department personnel are to inform requisitioning departments whenever the quantity or specifications

of materials ordered are inconsistent with sound purchasing practices or market conditions.

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

(m) Purchasing Department personnel will negotiate the return of rejected equipment or supplies to the supplier, unless delegated to the user Department by the Superintendent of Procurement.

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

300:20-1-8. State of Oklahoma statewide and state use contracts

Non-mandatory statewide contracts awarded by the Department of Central Services (DCS), for use by certain local governments and state agencies may be utilized by GRDA. These contracts cover a variety of needs common to many agencies. A list of available contracts is maintained by DCS Central Purchasing. As a matter of policy, requisitions will be reviewed by those preparing requisitions to determine State Contract availability before orders are placed. Statewide Contracts will be used when the end result is timely delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent. Those preparing requisitions should also consider other contracts (e.g., multistate, multi-governmental, etc.) issued or allowed by DCS Central Purchasing or multi-utility contracts when such contracts would provide the best value to GRDA. GRDA must also comply with the applicable provisions statutes and administrative rules related to the State Use Committee.

300:20-1-9. Purchases for employees

It shall be the duty of the Purchasing Department to procure for the Authority and not attempt to invest Authority time in procurement for the personal gain of its employees. This policy does not, of course, include the Authority's program for supplying safety eye glasses or safety shoes for the employee at discounted rates or to purchases made for employee recognition purposes as may be allowed by state statutes.

300:20-1-10. Requisition review

This ~~policy~~ section applies to all ordinary procurements in excess of $2,500, individual components of a total project or work order in excess of $2,500, or any procurement, regardless of amount, that is purchased in accordance with the provisions of 300:20-1-8. The Purchasing Department shall have the responsibility and authority to review specifications and sources within the following guidelines:

(1) The user and the Purchasing Department shall be jointly responsible for developing a list of acceptable vendors of a specific product or service whenever necessary, with the user being responsible for the technical aspects of the evaluation and the Purchasing Department being responsible for the financial and service aspects. Once a list of acceptable vendors has been established, the Purchasing Department shall be responsible for the selection of vendors from that list who can best respond to the requirements of each particular order.

(2) Purchasing shall review the specifications of each purchase requisition. The review shall include: requests for "sole source or sole brand" purchases; requests for goods of a quality or quantity that seem to be greater or less than required; requests that do not conform to Authority standards; and requests without proper authorization. Buyers shall not materially alter specifications without discussion with the requestor.

(3) Requisitions which do not contain enough specific information will be returned to the requestor for further attention. "Sole source or sole brand" requisitions shall be accompanied by a "Sole Source or Sole Brand Affidavit" completely showing the factual basis substantiating the exclusion of other bidders.

300:20-1-11. Responsibilities, delegation, source selection, evaluations, and disputes

(a) The purchasing process is primarily the responsibility of the Purchasing Department and the Chief Financial Officer and requires consideration of several factors. In managing the purchasing process, the Purchasing Department will coordinate closely with other departments to comply with applicable purchasing requirements and standards. The user departments play a key role in the purchasing process by developing adequate and reasonable specifications for each purchase. Those specifications shall be submitted to and reviewed by the Purchasing Department.

(b) Except as prescribed herein, the purchasing process cannot be delegated to employees outside of the Purchasing Department except in circumstances whereby the Chief Financial Officer in coordination with the General Manager or an Assistant General Manager temporarily assigns the other employees to the Purchasing Department or as defined in the internal uniform procedures described herein.

(c) The Chief Financial Officer or designee has the responsibility of maintaining a uniform set of procedures and forms to service the bid process, the process for non-competitive purchases (sole source, sole brand, State Use, etc.), and other purchasing matters. Considerations should include the need for forms for vendor notifications, bid analysis and summary, competitive invitations, instructions to bidders, policy statement of bid award, and sealed bid envelopes. Purchasing Department personnel are responsible for obtaining bids on all material or services covered under this policy as described herein or the internal uniform procedures. Source selection methods shall be of the following types, depending upon the size and nature of the potential purchase:

(1) In accordance with the uniform procedures established by the Chief Financial Officer, $2,500.00 or less.

(2) Written Over $2,500.00.

(3) Sealed Bids Over $50,000.00.

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

accordance with procedures established by the Chief Financial Officer.

(d) The aforementioned thresholds are based on the estimated cost at the time of requisition made by the requisitioner. It is recognized that certain estimated costs may vary significantly with the bid amounts. If time is of the essence to obtain the goods or services, the estimated cost shall govern the selection method upon approval by the General Manager or designee. The General Manager or designee may require the requisitioner to justify that a good faith effort was made in developing the original cost estimate.

(~~d~~e) If a dispute arises on purchased goods and services concerning vendor selection, quotation, or evaluation, the affected vendor may contact the Contracting and Acquisitions Agent assigned to the particular purchase for possible resolution of the dispute. If a dispute arises on purchased goods and services concerning the amount due or non-payment to a vendor, the affected vendor may contact the Accounts Payable Supervisor for possible resolution of the dispute. In both cases, should the dispute not be resolved to the vendor's satisfaction, the vendor may contact the GRDA employee designated by the Chief Financial Officer for further discussion.

(~~e~~f) The Chief Financial Officer or designee will cause to be included in each bid request file a bid analysis summary, required affidavits, and insurance requirement forms. Purchase orders requiring insurance will be sent to the Assistant General Manager of Regulatory Compliance and Risk Management for review. The following factors in combination, not necessarily listed in their order of importance, will be considered in reviewing bids and awarding contracts:

(1) Price

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

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

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

(5) Free on Board points and shipping charges

(6) Last purchase cost

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

300:20-1-16. Reverse auction bidding

(a) As an alternative to any applicable purchasing procedure, a reverse auction bidding procedure may be used by the Purchasing Department to obtain bids for the purchase of goods or services of any type or kind when to do so is the best interest of GRDA. The reverse auction shall be a real-time bidding process in which multiple suppliers, anonymous to each other, submit bids electronically to provide goods or services. GRDA may contract with a third party to conduct reverse auctions on its behalf.

(b) Reverse auctions held by or for GRDA shall be subject to the following:

(1) GRDA shall have the authority to require vendors to register and prequalify prior to participating in a reverse auction. As part of this process, GRDA may require vendors to agree to any terms, conditions or other requirements.

(2) GRDA shall have the authority to determine the criteria that will be used as the basis for making awards.

(3) Reverse auctions shall be held at a previously announced time and internet location and for a previously announced fixed duration. Reverse auction bids shall be accepted until the bid closure unless GRDA determines it is in its best interest to extend the closing time. Bidders must be notified of the extension by public announcement at the internet location at least fifteen (15) minutes prior to the original closing time. A bid may be received after bid closure only due to a significant error or event that affected the electronic receipt of any reverse auction bid.

(4) All reverse auction bids shall be posted and updated electronically and on a real-time basis.

(5) All bids submitted electronically through the reverse auction bidding process are subject to the same public disclosure laws and requirements that govern other bids.

(c) The purchasing department shall develop such procedures and guidelines as necessary to implement this policy.

[OAR Docket #08-1132; filed 6-4-08]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 35. LAKE RULES

[OAR Docket #08-1133]

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PERMANENT final adoption
RULES:
Subchapter 27. Vegetation Management Plan
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300:35-27-2. [AMENDED]
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The amendments modify the existing permitting standards and procedures for allowing vegetation management activities on Grand River Dam Authority property. The changes clarify the types of vegetation management activities that can be permitted and that are prohibited. The new section 300:35-27-8 allows the Chief Executive Officer to issue general permits in response to natural disasters and other emergencies.
CONTACT PERSON:
Gretchen Zumwalt-Smith, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-5545

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008.

SUBCHAPTER 27. VEGETATION MANAGEMENT PLAN

300:35-27-1. Scope and intent

~~Shoreline vegetation protects and preserves a healthy vegetative buffer along the shoreline to maintain and enhance the natural and aesthetic resources of the GRDA lakes. Vegetation can help stabilize the shoreline, prevent erosion, and protect water quality. A natural vegetation buffer improves water quality by filtering and trapping organics and chemical pollutants. A vegetative buffer can enhance the natural appearance of the shoreline. This Vegetation Management Plan ("VMP") provides the objectives for maintaining GRDA project property.~~ Shoreline vegetation protects and preserves a healthy vegetative buffer along the shoreline to maintain and enhance the natural and aesthetic resources of the GRDA lakes. Vegetation can help stabilize the shoreline, prevent erosion, and protect water quality. A natural vegetation buffer improves water quality by filtering and trapping organics and chemical pollutants. A vegetative buffer can enhance the natural appearance of the shoreline. These rules provide the objectives for maintaining GRDA Project Land.

300:35-27-2. Applicability

~~(a) No person may brushhog, bulldoze, clear, or scrape GRDA property. No person may trim any tree or other vegetation on GRDA property. If a tree is dead and dangerous, or poses a hazard to the safety of the public or property, a person may apply for a permit to remove the tree. The VMP provides guidelines for property owners to apply for a permit to add landscaping plantings on GRDA lands. The VMP also provides the procedure by which permits for such activities are obtained.~~

~~(b) Floating debris, litter, and trash may be removed from GRDA lands and water at any time and does not require GRDA approval provided the method of removal complies with these rules.~~

(a) This subchapter governs vegetation management activity on GRDA Project Land only, and is not applicable on land not owned by GRDA or GRDA owned land that is not Project Land. "Project Land" means the land and other natural resources owned by GRDA that fall within the project boundary identified in the FERC licenses for the Pensacola Project, the Markham Ferry Project, and the W.R. Holway Project.

(b) Except as otherwise provided for in these rules, no person may engage in any vegetation management activity on GRDA Project Land without first obtaining a permit from GRDA. "Vegetation Management Activity" means any activity that results in or is intended to result in the alteration of the existing physical landscape of Project Land. It includes the trimming, cutting, pruning, mowing, planting or removal of any tree, shrub or other vegetation.

(c) Floating debris, driftwood, downed limbs/branches, litter, and trash may be removed from GRDA Project Land at any time and does not require GRDA approval, provided the method of removal complies with these rules.

(d) This subchapter does not apply to utility providers possessing an easement on Project Land. "Utility providers" includes, but is not limited to, public service companies, municipal utilities, electric companies and cooperatives, telecommunication companies, and rural water districts.

300:35-27-3. Permits

~~Individuals or entities wishing to remove vegetation (dead and dangerous trees, or hazardous trees only) or plant vegetation, are required to apply for and obtain a permit from the GRDA Office of Ecosystems Management before conducting any such activities. Applications are available at the GRDA Office of Ecosystems Management, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

(a) Individuals or entities wishing to engage in a Vegetation Management Activity are required to apply for and obtain a permit from the GRDA Office of Ecosystems Management before conducting any such activities.

(b) In order to be eligible to apply for a permit, an individual or entity must be the owner of the land adjacent to the GRDA land for which the permit is sought. If an applicant is not the adjacent landowner, the landowner must consent to the application.

(c) GRDA will consider applications to allow the removal of trees, shrubs, and vegetation for certain conditions and purposes including:

(1) Hazardous trees which pose substantial risk to the public, adjacent property, orproperly permitted structures on Project Land.

(2) Trees, shrubs, and vegetation which are dead, dying, or diseased.

(3) Trees, shrubs, and vegetation considered to be an invasive or noxious species by the Office of Ecosystems Management.

(4) Trees, shrubs, and vegetation which may contribute to unsafe conditions by creating visibility problems (sight line) near waterways, roadways, trails, paths, or other access points.

(5) Trees that are crowded from natural competition or that were overplanted may be selectively removed to maintain spacing for optimal tree growth and function.

(6) Trees, shrubs, and vegetation may be selectively removed to create and maintain an access corridor between an adjacent landowner's property and the shoreline. Corridors must consist of natural materials such as native grass, wood chips, or gravel/crushed rock. Placement of such must not involve earth moving or soil disturbance and must minimize ground disturbance and vegetation removal.

(7) Trees, shrubs, and vegetation may be selectively removed when necessary to facilitate another permitted use of Project Land.

(8) Trees, shrubs, and vegetation may be selectively removed for the creation and/or maintenance of a manicured lawn or for general landscaping purposes.

(d) GRDA will consider applications to allow the pruning or trimming of trees, shrubs, and vegetation for certain conditions and purposes including:

(1) Hazardous sections which pose substantial risk to the public, adjacent property, or properly permitted structures on Project Land.

(2) Dead, dying, or diseased sections to improve appearance and health.

(3) Pruning of trees for crown cleaning, crown thinning, and crown restoration.

(4) Pruning of trees, shrubs and vegetation to enhance the view of the lake.

(5) Pruning or trimming of trees, shrubs and vegetation for the creation and/or maintenance of a manicured lawn or for general landscaping purposes.

(e) GRDA will consider applications to allow for other Vegetation Management Activities including:

(1) Landscape plantings.

(2) Removal or pruning for public utility easements.

(3) Planting, removal, or pruning for shoreline stabilization purposes.

(f) In determining whether to grant a permit, the following will be considered and weighed as appropriate:

(1) Current permitted uses in the surrounding area.

(2) The aesthetic and biological impacts of pruning or removal on the vegetation.

(3) The potential for replacement with more desirable vegetation.

(4) The potential impacts on the aesthetic quality of the surrounding area, with consideration given to the views from the land and from the water.

(5) Potential environmental impacts on soils, shoreline/slope stability, water quality, and wildlife habitat.

(6) Special consideration for unique varieties, vegetation of great age, rare vegetation, or vegetation of horticultural or historical significance.

(7) Special consideration for native vegetation in undeveloped landscapes.

(g) Permit applications shall be subject to the following actions:

(1) Approved as submitted.

(2) Approved with modifications/conditions. Examples of modifications orconditions that may be placed on a permit include limiting the allowed activities,requiring activities be performed in a specific manner to minimize impact, and requiring mitigation or other enhancement measures.

(3) Rejected.

(h) Permits shall be valid for one year from the date of issuance and all Vegetation Management Activity authorized must be completed within that period.

(i) No permit shall be required for a utility provider possessing an easement on Project Land to perform Vegetation Management Activities necessary to exercise its rights pursuant to that easement.

300:35-27-4. Vegetation management

~~(a) Except for the mowing of lawns established and existing before June 1, 2005, no mowing is authorized on GRDA property.~~

~~(b) A permit must be obtained prior to removing any vegetation or planting landscape on GRDA property.~~

~~(c) Once a permit is obtained from GRDA, the following guidelines apply:~~

~~(1) No herbicides may be used for control/removal of vegetation.~~

~~(2) Pesticides shall not be applied on GRDA land.~~

~~(3) No living trees, brush, or shrubs will be removed.~~

~~(4) Dead and dangerous trees, or hazardous trees, to be cut must be marked in advance by the GRDA Office of Ecosystems Management.~~

~~(5) The sale of any tree that is removed or cut is prohibited.~~

~~(6) The removal of trees is approved only in cases where the trees are dead and dangerous, damaged and dangerous, diseased and dangerous, or present a public safety or property hazard.~~

~~(7) Vegetation may be cleared to create and maintain a foot path between GRDA land and an approved use of GRDA land such as a permitted dock. The foot path may not exceed four (4) feet wide. The path will extend from the common boundary between GRDA and the adjacent landowner to the water at normal summer elevation. The path will be located to minimize removal of trees or other vegetation on GRDA land. The path must be permitted in conjunction with the permitted dock.~~

~~(d) Once a permit for landscape planting is obtained from GRDA, the following guidelines apply:~~

~~(1) Planting of trees, shrubs, wildflowers, native grasses, and ground covers within GRDA lands may be allowed to create, improve, or enhance the vegetative cover, provided native plants are used.~~

~~(2) Fertilizers shall not be applied on GRDA lands.~~

~~(3) Vegetable gardens are prohibited on GRDA lands.~~

~~(e) The introduction or planting of invasive plant species is prohibited on GRDA lands and waters. In addition to any species designated by the Oklahoma Department of Wildlife Conservation, a list of such species includes:~~

~~(1) Invasive or pest plants: Russian Olive; Sumac; Paper Mulberry; Saltcedar or Tamarisk; Siberian Elm; Eastern Redcedar; Poison Ivy; Poison Oak; Poison Sumac.~~

~~(2) Noxious aquatic plants: Azolla pinnata - Mosquito Fern (aka - Water Velvet, Water Fern); Caulerpa taxifolia - Caulerpa (aka - Mediterranean Clone of Caulerpa); Eichhornia azure - Anchored Water Hyacinth (aka - Rooted Water Hyacinth, Blue Water Hyacinth, Saw petal Water Hyacinth); Hydrilla verticillata - Hydrilla (aka - Florida Elodea, Star Vine, Oxygen Plant, Oxygen Weed); Hygrophila polysperma - Hygro (aka - Miramar Weed, Green Hygro, Oriental Ludwigia, East Indian Hygrophila); Ipomoea aquatica - Water Spinach (aka - Swamp Morning Glory, Chinese Water Spinach, Water Bindweed, Aquatic Morning Glory); Lagarosiphon major - African Elodea (aka - Oxygen Weed); Limnophila species - Ambulia (aka - Asian Marshweed, Limno, Red Ambulia, Indian Ambulia); Lythrum salicaria - Purple Loosestrife (aka - Loosestrife); Marsilea quadrifolia - Marsilea (aka - European Waterclover, Four leaf Clover Fern, Water Fern, Water Clover, Hairy Pepperwort); Marsilea mutica - Australian Waterclover (aka - Varigated Water clover, Mardoo); Marsilea minuta - Waterclover; Melaleuca quinquenervia - Paperbark Tree (aka - melaleuca, Cajeput, Punk); Monochoria hastate - Cat's Claw (aka - Monochoria); Ottellia alismoides - Duck Lettuce; Sagittaria sagittifolia - Japanese Arrowhead (aka - Hawaiian Arrowhead, Common Arrowhead, Chinese Arrowhead); Salvinia auriculata - Gian Salvinia (aka - Butterfly, Fern, Water Fern, Water Moss); Salvinia biloba - Gioan Salvinia (aka - Salvinia); Salvinia herzogii - Gian Salvinia (aka - Salvinia); Salvinia molesta - Gian Salvinia (aka - Salvinia, Water Velvet, Karibaweed, Koi Kandy); Solanum tampicense - Wetland Nightshade; Sparganium erectum - Exotic Bur-reed; Glossostigma diandrum - Mud Mat.~~

~~(3) Noxious non-aquatic plants: Musk Thistle; Canada Thistle; Scotch Thistle.~~

(a) The following acts are prohibited on GRDA Project Land:

(1) Herbicides shall not be used for control/removal of vegetation.

(2) Pesticides shall not be applied on GRDA land.

(3) The sale of any tree or other vegetation that is removed or cut is prohibited.

(4) Fertilizers shall not be applied on GRDA land.

(5) Vegetable gardens are prohibited on GRDA land.

(6) The introduction or planting of invasive plant species is prohibited on GRDA Project Lands.

(7) Any Vegetation Management Activity that results in significant soil disturbance is prohibited.

(b) Machinery or equipment may be used to accomplish a permitted Vegetation Management Activity, subject to the following:

(1) Unless prohibited by GRDA, the following may be used in the performance of permitted activities:

(A) Hand-held tools including chainsaws and brush cutters.

(B) Mechanized equipment with a maximum power output not greater than 30 horsepower (hp), provided the use does not result in the unauthorized movement of soil, rocks, or existing live vegetation.

(2) The use of machinery with a maximum power output greater than 30 hp may be allowed with prior express approval from GRDA.

300:35-27-8. General permits for natural disasters and other emergencies

In the event a natural disaster or other emergency situation causes significant vegetation damage or debris accumulation within the project boundary to the extent that site specific permitting is impractical or would result in undue delay, the General Manager may issue a general vegetation permit governing all management activities within an affected area in lieu of requiring site specific permits. A general permit shall clearly identify the scope of allowed activities, the areas in which the permit is applicable, and the period of time for which the permit is valid.

[OAR Docket #08-1133; filed 6-4-08]

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

[OAR Docket #08-1113]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Contracts with Charitable Health Care Providers [NEW]
310:2-27-1 through 310:2-27-6 [NEW]
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Subchapter 27. Contracts with Charitable Health Care Providers [NEW]
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07-1707
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n/a
ANALYSIS:
The current emergency Rule sets forth processes and requirements to fulfill the legislative requirements of Senate Bill 930, codified at 51 O.S. Supp. 2007, SS 152 and 152.2 whereby a contract may be executed between a charitable health care provider and the Oklahoma State Department of Health or a city-county health department to provide health care services to medically indigent persons at, or on referral from a free clinic, where such providers would be considered a state employee for purposes of the Governmental Tort Claims Act (GTCA), and thus be immune from personal liability for such contract services provided at or on behalf of a free clinic. The State's potential liability for claims of negligence by a medically indigent person against a charitable health care provider under such contracts would be limited as provided by the Oklahoma GTCA. This permanent rule proposal establishes definitions, requirements, qualifications and the process for awarding contracts between health care professionals and the State Health Department or city-county health department. The rule defines key terms used within this Chapter, sets qualifications for health care professionals to enter into contracts with the State as a charitable healthcare provider and for individuals to be deemed medically indigent, and provides a process for healthcare professionals to apply for such contracts and for the cancellation of such contracts. The rule is required by direction of the Oklahoma Legislature as set forth in Senate Bill 930, codified at 51 O.S. Supp. 2007, SS 152 and 152.2. The intended effect of the rule proposal is to fulfill the legislative enactment for the administration of contracts between a charitable health care provider(s) and the Oklahoma State Department of Health or a city-county health department for the benefit of Oklahoma residents who are medically indigent. These contracts will provide health care professionals who treat medically indigent persons with immunity from personal liability for services rendered pursuant to such contracts. Ultimately, it is hoped that this contracting process should encourage greater participation by health care professionals in providing care at free clinics.
CONTACT PERSON:
Michael W. Brown, Director, Office of Primary Care and Rural Health Development, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-8428; facsimile: (405) 271-5493 electronic mail: Mikebr@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 27. CONTRACTS WITH CHARITABLE HEALTH CARE PROVIDERS

310:2-27-1. Purpose

The rules of this Subchapter are adopted to implement Senate Bill 930, Oklahoma Sessions 2007, for the administration of contracts between charitable health care providers and the Oklahoma State Department of Health or a city-county health department for the benefit of Oklahoma residents who are medically indigent. These rules establish eligibility criteria for charitable health care providers and medically indigent persons, procedures for entering into and revoking contracts between the Oklahoma State Department of Health or a city-county health department and a charitable health care provider and responsibilities and obligations pursuant to such contracts.

310:2-27-2. Definitions

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

"*Charitable health care provider*" or **"charitable provider"** *means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or the practice of a profession and who provides care to a medically indigent person*, as defined in this subchapter, *with no expectation of or acceptance of compensation of any kind*. [51 O.S.Supp.2007, § 152(3)]

"Charitable provider contract" means an annual agreement executed in compliance with this subchapter between a charitable health care provider and a contracting agency for the provision of health care services to the medically indigent.

"Claim" as used in 'claims history' means any written demand presented by a claimant or the claimant's authorized representative to recover money as compensation for an act or omission committed by a person who provides health care.

"Claims history" means a summary of the claims made against the applicant for a charitable provider contract with a contracting agency, including the number of claims, a brief description of each claim, the type of health care services being provided that precipitated each claim, and the money that was paid, or is being paid, for each claim, if any.

"Commissioner" means the Commissioner of Health and the chief executive officer of the Oklahoma State Department of Health.

"Contracting agency" means either the Oklahoma State Department of Health or a city-county health department.

"Department" means the Oklahoma State Department of Health.

"Free clinic" means a facility where the health care professional receives no form of compensation as provided at 76 O.S.Supp.2004, § 32 and the clinic requires no form of compensation from any patient.

"*Medically indigent*" *means a person requiring medically necessary hospital or other health care services for the person or the dependents of the person who has no public or private third-party coverage, and whose personal resources are insufficient to provide for needed health care*. [51 O.S.Supp.2007, § 152(8)]

"Person" means a human being or natural person, and does not include governmental agencies, corporations or other business entities.

"Person whose personal resources are insufficient to provide for needed health care" means a person who has declared that the person, or family of the person seeking health

care services, does not have sufficient resources to pay for the needed health care.

"Risk Management" means the Office of the Risk Management Administrator of the Department of Central Services as provided at 51 O.S.Supp.2006, § 156.

310:2-27-3. Contingency

The execution or continuation of a contract between a contracting agency and a charitable health care provider, as defined within and provided for in this subchapter, is contingent upon funding being available to the contracting agency for this purpose, and nothing within this subchapter shall be construed to grant to a charitable health care provider any greater rights than those otherwise provided by law.

310:2-27-4. Application to contract as a charitable health care provider

(a) The Department shall develop and provide an application form for a person to use when applying with a contracting agency to enter into a charitable provider contract.

(b) A person may apply to enter into a charitable provider contract as a charitable health care provider if such applicant:

(1) is licensed, certified, or otherwise authorized by the laws of Oklahoma to administer, in the ordinary course of business or in the practice of a profession, the health care that is the subject of the charitable health care contract;

(2) will provide health care to the medically indigent, as defined in section 310:2-27-2; and

(3) submits a complete application to a contracting agency requesting to enter into a charitable provider contract, and the application must include:

(A) the scope of service the applicant will provide to the medically indigent; and

(B) the applicant's claims history for the last five (5) years.

(c) The claims history of the applicant will be reviewed by Risk Management to determine the amount of the insurance premium the Department would be required to pay into the State's self-insurance pool. This assessment shall be considered by the contracting agency when determining if the applicant will be awarded a charitable provider contract.

(d) A health care provider whose application to be granted a charitable provider contract from a contracting agency is denied may re-submit the application with a different scope of service.

310:2-27-5. Charitable provider responsibilities

(a) The charitable provider is responsible for determining the patient is medically indigent before providing health care services by confirming that the person seeking services has:

(1) no health insurance;

(2) not been informed that he or she is Medicaid eligible; and

(3) insufficient income to pay for the needed health care services.

(b) All professional services rendered by the charitable provider to the medically indigent must be provided gratuitously and with no expectation or acceptance of compensation of any kind.

(c) Upon receipt of a claim by the charitable health care provider indicating that the claimant is seeking compensation for an act or omission by the charitable provider occurring when rendering professional services to a medically indigent person at, or on referral from, a free clinic, the charitable health care provider shall submit the claim to Risk Management and the contracting agency and shall not submit such claims to a professional malpractice insurance carrier.

(d) The charitable provider shall keep records related to the performance of the charitable health care contract during the term of the contract for a period of two years after the contract ends. Upon request, the charitable provider shall make these records available to the contracting agency or Risk Management.

310:2-27-6. Termination or rescission of charitable health care contracts

(a) Charitable health care contracts may be terminated or rescinded by the Department in the event of noncompliance with any provision of the charitable provider contract or this subchapter or the unavailability of funding for such contracts. Before terminating or rescinding a contract, the Department will give the charitable health care provider thirty (30) days written notice and request information as to why the charitable health care contract should not be terminated or rescinded.

(b) Upon completing the review of any information submitted in re-consideration of terminating or rescinding the charitable provider contract, the Department will provide the charitable health care provider its decision in writing. This final decision is not appealable.

[OAR Docket #08-1113; filed 6-3-08]

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

[OAR Docket #08-1112]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Purpose, Forms and Fees
310:105-1-3 [AMENDED]
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ANALYSIS:

The current Rule sets forth that a search of a vital statistic file (birth or death record) or acquiring a certified copy of a birth or death certificate requires the payment of a fee of Ten Dollars ($10.00) per search or certificate, and that amendment of birth and death certificates, issuance of a delayed birth certificate or adoption certificate, and amendment of a birth or death certificate due to court order require payment of a fee of Five Dollars ($5.00). The proposal will increase the fee for a vital record search or for a birth or death certificate to Fifteen Dollars ($15.00) per search or certificate. Additionally, this rule proposal will increase the fee for amendment of birth and death certificates, issuance of a delayed birth certificate or an adoption certificate, and amendment of a birth or death certificate due to court order to Twenty-five Dollars ($25.00) for birth and Twenty dollars ($20.00) for death, exempting medical certification data.

The intended effect of this proposal is to provide partial funding to offset over $11.5 million in statutorily mandated and unfunded health insurance and retirement increases during the past two years. Conservative estimates provide that an additional increase of at least 6% for health insurance and 1% for OPERS will add an additional $2 million in unfunded costs in FY 09. The total unfunded benefits mandates will exceed $13.5 million for three years. In addition continuing reductions in Federal funding of Health and Long Term Care, Communicable disease surveillance and intervention and a new required state match on Preparedness grants reduce program funding by close to another $2 million.

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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 SEPTEMBER 1, 2008:

SUBCHAPTER 1. PURPOSE, FORMS AND FEES

310:105-1-3. Fees for services, identification requirements and certified copies

A valid, legal photographic identification by applicant or individual attesting for applicant shall be required for issuance of birth, death, and stillbirth certificates. Except as otherwise provided in law or regulation, the following schedule of fees is adopted for services provided, certified copies of Vital Records, or for a search of files when no copy is made:

(1) Search of files ~~and~~or issuance of one (1) certified copy if record is found:

(A) Birth Certificates - ~~$10.00~~$15.00; additional certified copies requested - ~~$10.00~~$15.00 per copy.

(B) Death Certificates - ~~$10.00~~$15.00; additional certified copies requested - ~~$10.00~~$15.00 per copy.

(2) Delayed Registration:

(A) Initial search of files - ~~$10.00~~$15.00

(B) Certified copies after establishment of delayed registration - ~~$15.00~~$40.00 (~~$15.00~~$40.00 fee includes a ~~$5.00~~$25.00 processing fee and credit for initial ~~$10.00~~$15.00 search fee.)

(3) Birth record substitution:

(A) Adoptions:

(i) Search of records - ~~$10.00~~$15.00

(ii) Certified copy after substitution - ~~$15.00~~$40.00 (~~$15.00~~$40.00 fee includes a ~~$5.00~~$25.00 processing fee and credit for initial ~~$10.00~~$15.00 search fee.)

(B) Legitimations:

(i) Search of records - ~~$10.00~~$15.00

(ii) Certified copy after substitution - ~~$15.00~~$40.00 (~~$15.00~~$40.00 fee includes a ~~$5.00~~$25.00 processing fee and credit for initial ~~$10.00~~$15.00 search fee.)

(C) Certificate of Foreign Born:

(i) Search of records - ~~$10.00~~$15.00

(ii) Certified copy after preparation of and/or substitution of record - ~~$15.00~~$40.00 (~~$15.00~~$40.00 fee includes ~~$5.00~~$25.00 processing fee and credit for initial ~~$10.00~~$$15.00 search fee.)

(4) Amendments to Vital Records and Paternities:

(A) Initial search of birth records - ~~$10.00~~$15.00

(B) Certified copies of birth certificates after amended or paternity completed - ~~$15.00~~$40.00 (~~$15.00~~$40.00 fee includes a ~~$5.00~~$25.00 processing fee and credit for initial ~~$10.00~~$15.00 search fee.) Paternities which are submitted at the time of original filing by the hospital and meet all the requirements for filing are not subject to the amendment fee.

(C) Search of records and certified copies of amended death certificates - ~~$10.00~~$15.00.

(D) Certified copies of death certificates after amendment or correction completed - $35.00($35.00 fee includes a $20.00 processing fee and credit for initial $15.00 search fee) unless the requested amendment is to change the medical certification data. In this case, there is no amendment fee.

~~(5) Valid, legal photo I.D. by applicant or individual attesting for applicant required for issuance of birth, death, and stillbirths.~~

[OAR Docket #08-1112; filed 6-3-08]

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

[OAR Docket #08-1114]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-8. Schedule of Fines for the Fire Extinguisher Industry [NEW]
AUTHORITY:
Oklahoma State Board of Health; Fee and Fine Schedule For Occupational Licensing, 59 O.S., Section 61.1 et seq. and 1820.1 et seq.; 63 O.S. Section 1-106.1
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ANALYSIS:
The proposed new rule establishes language that is necessary to implement a new section of law codified in the Oklahoma Statutes as Section 1820.1 of Title 59, known as the "Fire Extinguisher Licensing Act". The purpose of the Act is to regulate the sale, installation, and servicing of portable fire extinguishers, including both engineered and pre-engineered systems. The proposed rule creates the administrative citations for companies and individuals performing Fire Extinguisher work without proper licensure.
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 11, 2008:

SUBCHAPTER 5. ADMINISTRATIVE FINE SCHEDULE

310:110-5-8. Schedule of fines for the fire extinguisher industry

The fine schedule for citations issued by the Department for violations of the Fire Extinguisher Licensing Act, Title 59 O.S. Section 1820.1 et seq., or the rules promulgated thereunder shall be subject to the fines as follows:

(1) Engaging in fire extinguisher business without a license in the appropriate category or classification:
(A) First - $200
(B) Subsequent - $200

(2) Company employing unlicensed person to perform fire extinguisher work (per person):
(A) First - $100
(B) Subsequent - $200

(3) Altering a license:
(A) First - $200
(B) Subsequent - $200

(4) Failure to display company license in conspicuous place:
(A) First - 50
(B) Subsequent - $200

(5) Individual not carrying a personal license:
(A) First - $ 50
(B) Subsequent - $200

(6) Failure to display company license number as required by statute or rule:
(A) First - $200
(B) Subsequent - $200

(7) Company employing person to perform fire extinguisher work without supervision of properly licensed manager:
(A) First - $200
(B) Subsequent - $200

(8) Failure to have properly licensed manager or technician on site:
(A) First - $200
(B) Subsequent - $200

(9) Failure to correct code violations per day after NOV compliance date:
(A) First - $200
(B) Subsequent - $200

(10) Failure to comply with a specific provision of the Fire Extinguisher Industry Regulations:
(A) First - $50
(B) Subsequent - $200

[OAR Docket #08-1114; filed 6-3-08]

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

[OAR Docket #08-1115]

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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]

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n/a
ANALYSIS:
310:205-1-2 provides definitions of terms used in the industry. The proposed rule change includes a definition for electronic access control. The Rule change is necessary because the definition for electronic access control was inadvertently left out of the previous rule. This change to the Rule will have the effect of clarifying other terms within the Rule. 310:205-3-2 provides for the application and licensing fees, period and display, examination alternatives or prerequisites. The proposed rule amendment allows the applicant to be issued a temporary license by either submitting a criminal history record check from the Oklahoma Bureau of Investigation and/or, if applicant has resided in any other State in the past (10) ten years, submit a criminal history record from that State, or by submitting completed finger print cards that will be sent to the proper authority to insure a clear criminal record check prior to licensure. The proposed amendment deletes the requirement for each licensure applicant to complete a mandatory pre-licensing training course offered by a provider approved by the Alarm and Locksmith Industry Committee. The proposed rule allows the owners and managers of licensed alarm and locksmith companies to provide their own training, or to send their employees to any training courses they deem appropriate. Competency testing within the categories of licensing will continue to be provided through examinations administered by the Department. 310:205-3-3 establishes the licensure requirement for Burglar Alarm Companies and Individuals engaged in burglar alarm work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-4 establishes the licensure requirement for Fire Alarm Companies and Individuals engaged in fire alarm work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-7 establishes the licensure requirement for Fire Sprinkler Companies and Individuals engaged in fire sprinkler work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-8 establishes the licensure requirement for Locksmith Companies and Individuals engaged in locksmith work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-9 establishes the licensure requirement for Electronic Access Control Companies and Individuals engaged in electronic access control work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-10 establishes the licensure requirement for Closed Circuit Television Companies and Individuals engaged in closed circuit television work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. 310:205-3-11 establishes the licensure requirement for Nurse Call Companies and Individuals engaged in nurse call work. The proposed rule will require individuals applying for licensure to pass an examination prescribed by the Committee. Additional minor changes are proposed within the existing alarm and locksmith industry categories to facilitate the proposed changes.
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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:205-1-2. Definitions

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

~~**"Approved provider"** means a person or entity that has been approved by the Committee to provide pre-licensing education courses.~~

~~**"BOCA"** means Building Officials and Code Administrators International, Inc.~~

"Burglar alarm company" means a business that provides burglar alarm systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a burglar alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Burglar alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Burglar alarm salesperson" means a person who sells to others on behalf of a licensed Oklahoma burglar alarm company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in design, plan, specification and/or lay out of a burglar alarm system on behalf of a burglar alarm company.

"Burglar alarm technician" means an individual who is employed by an Oklahoma licensed burglar alarm company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service burglar alarm equipment.

"Burglar alarm trainee" means an individual who is employed by an Oklahoma licensed burglar alarm company to assist burglar alarm technicians or managers and learn to properly install, service, and sell burglar alarm equipment.

"CABO" means The Council of American Building Officials.

"Certificate of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work.

"Certification of a system" shall mean testing per applicable code of any burglar alarm, fire alarm, electronic access control, closed circuit television, nurse call, locksmithing equipment, or fire sprinkler alarm system by a properly licensed individual working for a properly licensed company to verify that the system complies with all of the requirements of the applicable code or standard.

~~**"Certification of Personnel"** shall mean proof of successful completion of a standardized formal program of related instruction and testing as provided by a recognized provider and approved by the Alarm and Locksmith Industry Committee in compliance with section 310:205-3-2(f) of this Chapter.~~

"Closed circuit television" or **"(CCTV)"** means a system that provides video surveillance of an area or a client-prescribed area primarily by means of transmitting and/or recording of visual signals through cameras, receivers, monitors, and/or other visual imaging equipment.

"Closed circuit television company" means a business that provides closed circuit television systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of a CCTV system; holding one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Closed circuit television manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such closed circuit television business or a branch thereof.

"Closed circuit television technician" means an individual who is employed by an Oklahoma licensed closed circuit television company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service closed circuit television equipment.

"Closed circuit television trainee" means an individual who is employed by an Oklahoma licensed closed circuit television company to learn to properly install and service closed circuit television equipment.

"Closed circuit television salesperson" means a person who sells to others on behalf of a closed circuit television company by any means, including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in the sale, design, plan, and/or lay out of a closed circuit television system on behalf of a closed circuit company.

"Commercial building" means a building or structure used for any purpose or occupancy that is not defined in this section as a Residential Building.

"Commercial fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for any work performed in residential or commercial application.

"Commercial fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager, trainee, and/or technician to engage in the fire sprinkler alarm industry activities in compliance with this chapter for any residential or commercial application.

"Committee" means the Alarm and Locksmith Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Electronic access control" means the use of qualifying devices or identification methods at various points to control the movement of people within pre-defined perimeters through the use of electronic card readers, keypads, biometrics devices, or a combination of technologies that receives its primary power from an external source.

"Electronic access control company" means a business that offers to, or engages in, the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of electronic access control systems.

"Electronic access control company manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such electronic access control business or a branch thereof.

"Electronic access control technician" means an individual who is employed by an Oklahoma licensed electronic access control company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, and/or service electronic access control equipment.

"Electronic access control trainee" means an individual who is employed by an Oklahoma licensed electronic access control company to learn to properly install and service electronic access control equipment.

"Electronic access control salesperson" means a person who sells to others on behalf of an electronic access control company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan, and/or lay out of an electronic access control system on behalf of a electronic access control company.

"Fire alarm company" means a business that provides fire alarm systems to others by any means including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of fire alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly. The company shall be licensed as a residential or commercial fire alarm company as defined by this Chapter.

"Fire alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract and

who provides direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire alarm salesperson" means a person who sells to others on behalf of a fire alarm company by any means including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and or a person who participates in design, plan and/or lay out of an fire alarm system on behalf of an fire alarm company. The salesperson shall be licensed as a residential or commercial fire alarm salesperson as defined by this Chapter.

"Fire alarm technician" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, certify, inspect, or service fire alarm equipment. The fire alarm technician shall be licensed as a residential or commercial fire alarm technician as defined by this Chapter

"Fire alarm trainee" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to assist fire alarm technicians or managers and learn to properly install, service and sell fire alarm equipment.

"Fire sprinkler company" means a business that provides fire sprinkler systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to install, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a fire sprinkler system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation either directly or indirectly. The company shall be licensed as a residential or commercial company as defined by this Chapter.

"Fire sprinkler company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire sprinkler inspector" means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.

"Fire sprinkler technician" means an individual who is employed by an Oklahoma licensed fire sprinkler company to install, service and sell, maintain, repair, and/or test fire sprinkler equipment. The fire sprinkler technician shall be licensed as a residential or commercial fire sprinkler technician as defined by this Chapter.

"Fire sprinkler technician trainee" means an individual who is employed by an Oklahoma licensed fire sprinkler company to assist fire sprinkler technicians or managers and learn to properly install and service fire sprinkler systems.

"IBC" means the International Building Code.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or system test of any burglar alarm system, fire alarm system, electronic access control system, closed circuit television system, nurse call system, lock system, or fire sprinkler system to determine if the system has been installed and is operating according to the applicable code or standard.

"Locksmith company" means a business that provides locksmithing to others by any means, including but not limited to, design, install, service, repair, re-key, re-pin, sell, inspect, rebuild, record, adjust, unlock mechanical or electronic locks or advertisement of locksmith services; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Locksmith company manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such locksmith business or branch thereof.

"Locksmith salesperson" means a person who sells to others on behalf of a locksmith company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, or a person who participates in design, plan, and/or lay out of locksmithing equipment on behalf of a locksmith company.

"Locksmith technician" means an individual who is employed by an Oklahoma licensed locksmith company to design, install, service, inspect, repair, re-key, re-pin, sell, rebuild, record, adjust, or unlock mechanical or electronic locks on behalf of a locksmith company.

"Locksmith trainee" means an individual who is employed by an Oklahoma licensed locksmith company to learn to properly install, service, repair, rebuild, re-key, re-pin, sell, or unlock mechanical or electronic locks on behalf of a locksmith company.

"Locksmith tool" means any tool designed specifically to aid in removal, disassembly, re-assembly, installation, or maintenance of, or to be used to defeat or by-pass any electric or mechanical lock or system.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m^2)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"Monitoring company" means a business that offers to, or does monitor burglar alarms, electronic access control systems, closed circuit television, nurse call systems, and/or fire alarms located in Oklahoma.

"Monitoring company manager" means an individual who is employed by an Oklahoma licensed monitoring company and has control of the monitoring of systems located in Oklahoma.

"Multiple activity office" means a location where more than one regulated activity is performed or conducted.

"Multipurpose Fire Sprinkler System" means a single piping system within residential building and manufactured housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).

"NFPA" means the National Fire Protection Association.

"NICET" means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.

"Nurse call system" means a device or a series or assembly of interconnected devices which, when activated by automatic or manual means, produces an audible, visual, or electronic signal intended to detect or annunciate a need to summon response by a local medical staff or local medical personnel.

"Nurse call company" means a business that provides nurse call systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of nurse call systems; holding oneself or one's company out for hire to perform any such tasks; or otherwise offering to perform any such tasks for compensation, either directly or indirectly.

"Nurse call company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such nurse call system business or a branch thereof.

"Nurse call technician" means an individual who is employed by an Oklahoma licensed nurse call system company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service nurse call system equipment.

"Nurse call trainee" means an individual who is employed by an Oklahoma licensed nurse call system company to learn to properly install and service nurse call system equipment.

"Nurse call system salesperson" means a person who sells to others on behalf of an nurse call company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan and/or lay out of an nurse call system on behalf of a nurse call company.

"Ownership" means the dominion, title, or proprietary right in a company subject to the Alarm and Locksmith Industry Act and this Chapter.

"Qualifying devices" means a device or combination of devices such as retina readers, finger print pads, bio-metric readers, card swipes, etc. that are used to identify persons who have authorized entry through electronic access control systems.

"Residential building" shall mean buildings arranged for the use of one (1)- or two (2)-family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two (2)-hour fire separation assembly and all detached one (1)- or two (2)-family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.

"Residential fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.

"Residential fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager, or technician or trainee to engage in the fire sprinkler industry activities in compliance with this Chapter for fire sprinkler systems used in Residential Building and manufactured housing.

"Rough-in cabling or wiring" means the act of installing the cabling or wiring required for the activities regulated by this Chapter. This will include the preparation of the site for cabling or wiring, but shall not include the installation or connection of any electronic devices or parts thereof.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Supervision" means on-site supervision by a licensed manager, technician or salesperson.

"System" means a burglar alarm system, fire alarm system, fire sprinkler system, closed circuit television system, electronic access control system, locksmithing system, or a nurse call system, all as defined in these rules, or a portion or combination of such alarms or systems. However, the term "system" shall not include the following: (i) an alarm system installed in a motor vehicle; (ii) a burglar alarm system or household fire warning system sold at retail to an individual end user for self-installation; (iii) a single station fire alarm device sold at retail to an individual end user for self-installation or installed by a fire department, the State Fire Marshal, a public agency, a volunteer fire association, or their designated representatives.

"Trainee" means an individual who is employed by an Oklahoma licensed company to learn to properly engage in the activities regulated by this Chapter that can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-2. Application and license fees, period and display, and examination alternatives or prerequisites

(a) **Application and license fees.** The following fees apply to alarm and locksmith industry licensure:

(1) **Initial application and licensing fees.**

(A) Company application and License - $250.00; license issued after February 1, but before the end of the State fiscal year - $125.00 A company that is

owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.

(B) Company Manager - Application $100.00 and Licensing fee $100.00

(C) Inspector, technician, salesperson, technician trainee - Application $40.00 and Licensing fee $35.00

(D) Re-Examination, Per Attempt - $50.00

(E) Fire Sprinkler Technician Trainee $20.00

(F) Duplicate or Revised license $25.00

(2) **Renewal fees.**

(A) Company License - $250.00 A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.

(B) Company Manager - $100.00

(C) Inspector, Technician, Salesperson - $35.00

(D) ~~Technician~~ Trainee - $25.00

(E) Fire Sprinkler Technician Trainee $15.00

(b) **License period.**

(1) A license shall expire on June 30, 1991, and each year thereafter. Beginning on July 1, a license may be renewed by paying double the renewal fee.

(2) Initial ~~application~~applicants for managers, technicians, salespersons and trainees shall be submitted ~~within three (3) working days of employment~~ to the Department. This registration shall be contingent on a security background investigation. Trainees shall provide either:

(A) An application and a current criminal history record check dated within thirty days of application, from the Oklahoma State Bureau of Investigation. If the applicant has resided in any other state within the past ten (10) years a current criminal history record check from each state of previous residence will be required. In addition two (2) completed fingerprint cards and two (2) passport photo's. (This provides for temporary licensure) or;

(B) An application and two (2) completed fingerprint cards and two (2) passport photos. (This does not provide for temporary licensure.)

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

~~(4) Effective January 1, 2007, the Commissioner shall, upon proper application and payment of fee made with ninety (90) days from and after the effective date of the Alarm and Locksmith Industry Act, but not thereafter, license without examination those persons who can provide evidence that they were engaged in locksmithing, electronic access control, nurse call or closed circuit television work prior to January 1, 2007. Example of evidence includes but not is limited to;~~

~~(A) Invoices for work performed;~~

~~(B) Purchase receipts for industry related equipment;~~

~~(C) Documents of installation or services by employee;~~

~~(D) Other documents as approved by the Committee.~~

(4) A temporary license will be issued to an individual who has provided the documents required in 310:205-3-2(b)(2)(A). The temporary license will be valid for a period not to exceed (90) ninety days. An individual may be issued a second temporary license for good cause shown as determined by the Department.

(c) **Examination and Re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee. However, if the examinee notifies the Department within seventy two (72) hours before scheduled exam, the Department will reschedule the examination date with no additional fee required pursuant to 310:205-3-2(a)(1).

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the company name.

(e) **Personal license display.** Each manager, technician, technician trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Oklahoma State Department of Health or other authorities having jurisdiction. In addition the individual shall have a photo I.D. in their possession while engaged in the licensed activity.

~~(f) **Pre-licensing and course approval requirements.**~~

~~(1) An applicant for a license may submit certification or proof of passing the appropriate examination(s) from a nationally recognized approved provider as a prerequisite to an examination administered by the Department as provided for in this Chapter.~~

~~(2) In order to qualify, certification submitted by an applicant for licensure shall be from an approved provider that issues certification to individuals in the alarm and locksmith industry and is based on successful completion of an examination which determines if the applicant is sufficiently knowledgeable in burglar alarm systems, fire alarms, fire sprinkler, electronic access control, closed circuit television, nurse call, locksmithing, and/or technical sub fields of these systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and/or monitor systems or technical sub-fields of these systems according to nationally acceptable code standards.~~

~~(3) The Department shall accept certification from an approved provider if the certification standards have been~~

~~verified by the Alarm and Locksmith Industry Committee to include that the certifying approved provider:~~

~~(A) shall conduct certification activities which are national in scope;~~

~~(B) shall be administratively independent in matters pertaining to certification. Administratively independent means that all policy decisions relating to certification matters are the sole decision of the certifying approved provider and not subject to approval by any other body or the membership of an affiliated body, and that all financial matters related to the operation of the certifying approved provider are segregated from those of the parent or any affiliated approved provider;~~

~~(C) shall demonstrate that the approved provider staff possesses the knowledge and skills necessary to conduct the certification or re-certification programs or that non-staff consultants and professionals are available to sufficiently supplement staff knowledge and skills;~~

~~(D) shall use reliable testing mechanism(s) to evaluate individual knowledge that is objective, fair to all candidates, job related, and based on the knowledge and skills needed to function in the alarm and locksmith industry or technical sub-field of the alarm and locksmith industry;~~

~~(E) shall establish pass/fail levels that protect the public determining if the applicant is sufficiently knowledgeable in alarm and locksmith industry or technical sub-fields of the alarm and locksmith industry that meet applicable code standards, and that are generally acceptable in the psychometric community as being fair and reasonable; and~~

~~(F) shall publish and make available to the Department general descriptive materials on the procedures used in examination construction and validation, all eligibility requirements and determination procedures, and the procedures for examination administration including exam dates and locations, fees, reporting of results, re-certification requirements, and grievance or appeals procedures;~~

~~(G) Name and address of the approved provider;~~

~~(H) Contact person and his or her address, telephone number and fax number;~~

~~(I) If a prior approved course has substantially changed, a summarization of such changes; and~~

~~(J) The Department may automatically accept without further review, courses pre-approved by the Committee.~~

~~(K) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.~~

~~(L) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the Committee before it is advertised or held.~~

~~(M) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.~~

(~~g~~f) **Personal license information.**

(1) Each individual license holder shall notify the Oklahoma State Department of Health, on a form specified and provided by the Oklahoma State Department of Health, within fourteen (14) days of the following:

(A) Any change in the home address.

(B) Any separation from an employer or change in employer.

(C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and manager license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

310:205-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed burglar alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed burglar alarm manager at each office. Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with Section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this Chapter. A burglar alarm company shall notify the Department within fourteen (14) days in event of the death of the burglar alarm company manager or the manager's separation from the company for any other reason, and the company shall designate another licensed burglar alarm manager within (30) thirty days from separation.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-3(1)(A). The company will notify the Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(D) Each alarm company engaged in alarm business that sells a burglar alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the lockout, installer, or programming code of the system to the factory default setting when the consumer cancels the contract on customer-owned equipment. If a system is installed without a written contract with the consumer, the system shall have the lockout code, installer or programming code set at default.

(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of four (4) years of experience in the burglar alarm business. The experience shall include two (2) years verified/or licensed experience as a Burglar Alarm technician or other related experience approved by the Committee.

(B) ~~As of July 1, 2007, each applicant for licensure as a burglar alarm manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~Each burglar alarm manager applicant must pass an examination prescribed by the Committee.

(C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed burglar alarm company manager shall have a security background verification.

(E) Each licensed burglar alarm company manager that engages in residential systems must also be licensed as a residential fire alarm manager.

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a burglar alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~Each burglar alarm technician applicant must pass an examination prescribed by the Committee.

(C) Each technician shall have a security background verification.

(D) Each licensed burglar alarm technician that engages in residential systems must also be licensed as a residential fire alarm technician.

(E) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) Each licensed burglar alarm trainee that engages in residential systems must also be licensed as a residential fire alarm trainee.

(F) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(G) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a burglar alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~Each burglar alarm salesperson applicant

must pass an examination prescribed by the Committee.

(C) Each salesperson shall have a security background verification.

(D) Each licensed burglar alarm salesperson that engages in residential systems must also be licensed as a residential fire alarm salesperson.

310:205-3-4. Fire alarm license requirements

Licensing requirements for the fire alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma shall have a licensed manager at each office regarding each regulated activity. Each company shall employ an Oklahoma licensed fire alarm company manager. ~~After July 1, 2002, all fire alarm companies applying for initial licensure or any fire alarm company which changes managers or ownership shall comply with section 310:205-3-4 (2)(H) of this Chapter. After July 1, 2003, all~~All fire alarm companies will comply with section 310:205-3-4 (2)(H) of this Chapter. In the event of the death of the fire alarm company manager or his/her separation from the company for any other reason, a burglar alarm company shall notify the Department within fourteen (14) days and name a licensed burglar alarm manager within thirty (30) days after separation.

(B) A licensed fire alarm technician or manager shall be on site for any work being performed.

(C) A company whose manager only holds a residential fire alarm manager license shall be issued a residential fire alarm company license.

(D) A company whose manager holds a commercial fire alarm manager license shall be issued a commercial fire alarm company license.

(E) A company with a residential fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.

(F) A company with a commercial fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.

(H) A fire alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-4(1)(A). The company will notify the Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.

(J) Each fire alarm company that sells a fire alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the central station monitoring programming code of the system to the factory default setting when the consumer cancels the contract on customer owned equipment. If a system is installed without a written contract with the consumer, the system shall have the central station monitoring programming code set at default.

(2) **Manager.**

(A) Each application for licensure as a fire alarm manager shall include verification of four (4) years of experience in the fire alarm business. The experience shall include two (2) years verified/or licensed experience as a fire alarm technician. If applying for residential fire alarm manager, experience must show residential technical experience. If applying for commercial fire alarm manager, experience must show commercial technical experience.

~~(B) As of July 1, 2007, each applicant for licensure as a residential fire alarm manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

~~(C) As of July 1, 2007, each applicant for licensure as a commercial fire alarm manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(B) Each residential fire alarm manager applicant must pass an examination prescribed by the Committee.

(C) Each commercial fire alarm manager applicant must pass an examination prescribed by the Committee.

(D) Each licensed company manager shall be responsible for all activities of the office they are listed as manager for within the State of Oklahoma.

(E) Each licensed company manager shall have a security background verification.

(F) A manager with a residential fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building

and manufactured housing. Each licensed Fire alarm company manager that engages in residential systems must also be licensed as a burglar alarm manager.

(G) A manager with a commercial fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.

~~(B) As of July 1, 2007, each applicant for licensure as a residential fire alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from an approved provider and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

~~(C) As of July 1, 2007 each applicant for licensure as a commercial fire alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(B) Each residential fire alarm technician applicant must pass an examination prescribed by the Committee.

(C) Each commercial fire alarm technician applicant must pass an examination prescribed by the Committee.

(D) Each technician shall have a security background verification.

(E) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed. Each licensed fire alarm technician that engages in residential systems must also be licensed as a burglar alarm technician.

(F) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician/Salesperson trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed fire alarm company manager, fire alarm technician or a fire alarm salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician/salesperson trainee shall have a security background verification.

(E) Each technician/salesperson trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed. Each licensed fire alarm trainee that engages in residential systems must also be licensed as a burglar alarm trainee.

(F) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(G) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.

(C) Each salesperson shall have a security background verification.

~~(D) As of July 1, 2007, each applicant for licensure as a residential fire alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

~~(E) As of July 1, 2007, each applicant for licensure as a commercial fire alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(D) Each residential fire alarm salesperson applicant must pass an examination prescribed by the Committee.

(E) Each commercial fire alarm salesperson applicant must pass an examination prescribed by the Committee.

(F) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed. Each licensed fire alarm salesperson that engages in residential systems must also be licensed as a burglar sales person.

310:205-3-7. Fire sprinkler license requirements

Licensing requirements for the fire sprinkler industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire sprinkler company manager who shall attend the operations of that office. Each company which maintains multiple offices within Oklahoma,

except for offices established for single event activity such as job site construction offices, shall have a licensed manager at each individual office. The company licensed manager shall attend only one (1) of the company offices in Oklahoma. In the event of the death of the fire sprinkler company manager or his/her separation from the company for any other reason, a fire sprinkler company shall notify the Department within fourteen (14) days and name another licensed fire sprinkler manager within thirty (30) days from separation.

(B) A licensed fire sprinkler technician or manager must be on job site of any work being performed.

(C) A company whose manager only holds a residential fire sprinkler manager license shall be issued a residential fire sprinkler license.

(D) A company whose manager holds a commercial fire sprinkler manager license shall be issued commercial fire sprinkler license.

(E) A company with a residential fire sprinkler company license shall only offer to, or engage in the planning, sales, installation, repair, alteration, service, and inspection of residential multipurpose fire sprinkler systems on residential building and manufactured housing.

(F) A company with a commercial fire sprinkler company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential or commercial use.

(2) **Manager.**

(A) ~~As of July 1, 2007, each applicant for licensure as a residential fire sprinkler manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~Each residential fire sprinkler applicant must pass an examination prescribed by the Committee.

(B) Each licensed residential or commercial company manager accepts full responsibility for all activities of his company within the State of Oklahoma.

(C) A fire sprinkler company manager is a specialty contractor whose principal contracting business is the execution of contracts requiring the art, ability, experience, knowledge, science, and skill to design, fabricate, install, inspect (other than electrical), alter or repair, fire sprinkler systems, piping or tubing and appurtenances and equipment pertaining thereto, including both overhead and underground non-potable water mains, fire hydrant mains, standpipes, and hose connections to fire sprinkler systems, air line systems used in connection with fire sprinkler systems, and tanks and pumps connected thereto, in compliance with nationally recognized standards including state and local codes and standards for layout, installation and maintenance of fire sprinkler systems.

(D) ~~As of July 1, 2007, each applicant for licensure as a commercial fire sprinkler manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~Each commercial fire sprinkler manager applicant must pass an examination prescribed by the Committee.

(E) A residential fire sprinkler manager shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of multipurpose fire sprinkler systems for use in Residential Building and manufactured housing.

(F) A commercial fire sprinkler manager may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential of commercial use.

(3) **Technician.**

(A) Each residential or commercial fire sprinkler technician must work for a licensed Oklahoma fire sprinkler company and work under the supervision of a fire sprinkler company manager.

~~(B) As of July 1, 2007, each applicant for licensure as a residential fire sprinkler technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

~~(C) As of July 1, 2007, each applicant for licensure as a commercial fire sprinkler technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(B) Each residential fire sprinkler technician applicant must pass an examination administered by the Department.

(C) Each commercial fire sprinkler technician applicant must pass an examination prescribed by the Committee.

(D) A commercial fire sprinkler technician working for a fire sprinkler company with a residential license shall only perform fire sprinkler work for which the company is licensed.

(4) **Technician Trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma fire sprinkler company.

(B) A technician trainee shall work under the direct supervision of a licensed fire sprinkler company manager or fire sprinkler technician.

(C) There shall be no more than ten (10) technician trainees per fire sprinkler company manager or fire sprinkler technician per job site.

(D) A technician trainee must submit a trainee application to the Oklahoma State Department of Health within fifteen (15) days of being hired by a Oklahoma licensed fire sprinkler company.

(5) **Inspector.**

(A) ~~An applicant for initial licensure as a Fire Sprinkler Inspector shall possess an alarm industry license with the unlimited fire sprinkler manager or unlimited fire sprinkler technician category or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection. Beginning July 1, 2005, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level II certification in the sub-field of Inspection and Testing of Water Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection. Beginning July 1, 2007, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level III certification in the sub-field of Inspection and Testing of Water Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.~~An applicant for initial licensure as a fire sprinkler inspector applicant must pass an exam prescribed by the Committee.

(B) Each fire sprinkler inspector shall work for a licensed fire sprinkler company.

(C) Each fire sprinkler inspector shall inspect and test each fire sprinkler system to determine if the system has been installed and is operating according to the appropriate code and standard before certifying the system.

(D) Each fire sprinkler inspector shall work for a fire sprinkler company which possesses an unlimited fire sprinkler company license.

310:205-3-8. Locksmith license requirements

Licensing requirements for the locksmith industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed locksmith company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed locksmith manager at each office. In the event of the death of the locksmith company manager or his/her separation from the company for any other reason, a locksmith company shall notify the Department within fourteen (14) days and name another licensed locksmith manager within thirty (30) days from separation.

(B) A licensed locksmith technician or manager shall be on site for any work being performed.

(C) A locksmith company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-8(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(D) The initial sales and pinning of locks and lock system shall not require a locksmith license however, the repinning of locks subsequent to the initial sales shall require a locksmith license.

(E) Tow truck companies/operators licensed by the Department of Public Safety are exempted from the requirements of licensure and this Chapter when performing automotive locksmith services at their business location, and when performing automotive locksmith roadside services in a vehicle appropriate licensed and identified in accordance with the Department of Public Safety requirements for tow truck companies/operators.(Chapter 595:25)existing at the of the adoption of this rule or as may subsequently enumerated or adopted.

(F) An individual, company, corporation, institution, industry, business or religious organization, or employee thereof, is exempt from the requirements of this Chapter when performing locksmith category activities on the property of the same, provided the locksmith category services are not performed as a normal business practice on the property of another.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the locksmith business. The experience shall include verified/or licensed experience as a locksmith technician.

(B) ~~As of July 1, 2007, each applicant for licensure as a locksmith manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each locksmith manager applicant must pass an examination prescribed by the Committee.

(C) Each licensed locksmith company manager shall be responsible for all activities conducted within

the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed locksmith company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a locksmith technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each locksmith technician applicant must pass an examination prescribed by the Committee.

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician Trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma locksmith company.

(B) A technician trainee shall work under the direct supervision of a licensed locksmith company manager or a locksmith technician.

(C) There shall be no more than three (3) technician trainees per locksmith company manager or locksmith technician per job site.

(D) Each technician trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.

(B) ~~As of July 1, 2007 each applicant for licensure as a locksmith salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each locksmith salesperson applicant must pass an examination prescribed by the Committee.

(C) Each salesperson shall have a security background verification.

310:205-3-9. Electronic Access Control license requirements

Licensing requirements for the electronic access control are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed electronic access control company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed electronic access control manager at each office. In the event of the death of the electronic access control company manager or his/her separation from the company for any other reason, an electronic access control company shall notify the Department within fourteen (14) days and name another licensed electronic access control manager within thirty (30) days from separation.

(B) A licensed electronic access control technician or manager shall be on site for any work being performed.

(C) An electronic access control company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-9-(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the electronic access control business. The experience shall include verified and/or-licensed experience as an electronic access control technician.

(B) ~~As of July 1, 2007, each applicant for licensure as a electronic access control manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each electronic access control manager applicant must pass an examination prescribed by the Committee.

(C) Each licensed electronic access control company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed electronic access control company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a electronic access control technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each electronic access control technician applicant must pass an examination prescribed by the Committee.

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician/ Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma electronic access control company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed electronic access control company manager, electronic access control technician or a electronic access control salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per electronic access control company manager, electronic access control technician or electronic access control salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(F) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a electronic access control salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each electronic access control salesperson applicant must pass an examination prescribed by the Committee.

(C) Each salesperson shall have a security background verification.

310:205-3-10. Closed Circuit Television license requirements(CCTV)

Licensing requirements for the CCTV industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed CCTV company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma, shall have a licensed CCTV manager at each office. In the event of the death of the CCTV company manager or his/her separation from the company for any other reason, a CCTV company shall notify the Department within fourteen (14) days and name another licensed CCTV manager within thirty (30) days from separation.

(B) A licensed CCTV technician or manager shall be on site for any work being performed.

(C) A CCTV company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-10(1)(A). The company will notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a CCTV manager shall include verification of experience in the CCTV business. The experience shall include verified and/or licensed experience as a CCTV technician.

(B) ~~As of July 1, 2007, each applicant for licensure as a CCTV manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each closed circuit television manager applicant must pass an examination prescribed by the Committee.

(C) Each licensed CCTV company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed CCTV company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.

(B) ~~As of July 1, 2007 each applicant for licensure as a CCTV technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each closed circuit television technician applicant must pass an examination prescribed by the Committee.

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma CCTV company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed CCTV

company manager, CCTV technician or a CCTV salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per CCTV company manager, CCTV technician or CCTV salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(F) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a CCTV salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each closed circuit television salesperson applicant must pass an examination prescribed by the Committee.

(C) Each salesperson shall have a security background verification.

310:205-3-11. Nurse Call System license requirements

Licensing requirements for the nurse call industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed nurse call company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed nurse call manager at each office. In the event of the death of the nurse call company manager or his/her separation from the company for any other reason, a nurse call company shall notify the Department within fourteen (14) days and name another licensed nurse call manager within thirty (30) days from separation.

(B) A licensed nurse call technician or manager shall be on site for any work being performed.

(C) A nurse call company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-11(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the nurse call business. The experience shall include verified and/or licensed experience as a nurse call technician.

(B) ~~As of July 1, 2007, each applicant for licensure as a nurse call manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each nurse call manager applicant must pass an examination prescribed by the Committee.

(C) Each licensed nurse call company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed nurse call company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a nurse call technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each nurse call technician applicant must pass an examination prescribed by the Committee.

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee ~~pursuit~~pursuant to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma nurse call company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed nurse call company manager, nurse call technician or a nurse call salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per nurse call company manager, nurse call technician or nurse call salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category ~~pursuit~~pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(F) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the indirect supervision of a licensed company holding the appropriate license category.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.

(B) ~~As of July 1, 2007, each applicant for licensure as a nurse call salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).~~Each nurse call salesperson applicant must pass an examination prescribed by the Committee.

(C) Each salesperson shall have a security background verification.

[OAR Docket #08-1115; filed 6-3-08]

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

[OAR Docket #08-1116]

RULEMAKING ACTION:
PERMANENT final adoption
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]
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ANALYSIS:
The current rule establishes general provisions, examination, prerequisites, fees, and licensing requirements for Barbers Apprentices, Barbers School Graduates, Hardship Apprentices, Barber Instructors and Barber Schools or colleges. The proposed rule changes allows a barber who holds a license from another state or entity to obtain a license from Oklahoma without taking the Oklahoma barber examination. The proposed rule would establish an additional requirement for those seeking licensure under the reciprocal license rule. The proposed rule changes will increase the fee for Barbers from twenty five dollars to fifty dollars, Barber Instructors fee from fifty dollars to seventy five dollars, Barber Schools or colleges from two hundred dollars to four hundred dollars, Barber Apprentices from the current amount of ten dollars for a one-year license to fifty dollars for a two-year license, and raise the fee for a 12 month hardship apprentice license from ten dollars to twenty five dollars. In conjunction with these rule changes there will also be a two hundred dollar fee for a reciprocal barber license. Additional proposed rule changes would include an apprentice license to expire 24 months from the date of issue, instead of the current 12 months, except for a hardship apprentice license, which would be valid for 12 months, would require the supervising barber to submit to the Department, hours accumulated by the apprentice every three months, and that the barber apprentice shall complete three thousand hours in not less than eighteen months or more than twenty four months. The proposed changes are necessary to make the Barber Program self-supportive and the two-year license period for barber apprentices would reduce administrative costs. Additional changes are needed to allow for flexibility in working with States that recognize that the Oklahoma Barber Program meets their State requirements. The intended effect of these Rule changes is to make the barber program self-supportive and to allow the Oklahoma Barber Program to license individuals from States that reciprocate with Oklahoma and that can show that their licensure requirements are substantively the same as Oklahoma's.
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 11, 2008:

SUBCHAPTER 3. EXAMINATIONS

310:210-3-3. Examination prerequisite

(a) Applicants for the barber examination shall:

(1) Complete fifteen hundred (1,500) clock hours in no less than nine (9) months from an approved Oklahoma licensed barber school or college; or

(2) Complete eighteen (18) months and three thousand (3,000) clock hours as a licensed barber apprentice over a period of at least eighteen (18) months, and not more than two (2) years, under an Oklahoma licensed barber who has engaged in the practice of barbering for at least two (2) years. An applicant for examination shall not combine school and apprentice hours to meet the examination prerequisite. A barber apprentice who does not complete and file an examination application within five (5) years of completing the apprenticeship shall lose all accumulated apprenticeship hours;

(3) ~~Hold a valid current license in good standing to practice barbering issued by another state or country which has licensure requirements that are substantially equivalent to the requirements of this state.~~ Hold a valid current license in good standing to practice barbering issued by another state or entity, which has been determined by the Department to not meet the eligibility requirements

for reciprocal licensing. If the documents are not written in English, the person shall provide a certified English translation; or

(4) Hold a current Oklahoma cosmetologist license pursuant to the cosmetology rules and complete a seven hundred fifty (750) hour course of study consisting of barbering techniques in a barber school or college licensed pursuant to this Chapter; and

(5) Pay a fee established by the Board.

(b) Applicants for the barber instructor examination must possess a valid current barber license and shall:

(1) Verify four (4) years experience as a licensed barber; or

(2) Complete a six hundred (600) clock hour instructor course in no less than four (4) months from an approved Oklahoma licensed barber school or college and verify one (1) year as a licensed barber. Applicants may enroll and begin the instructor course at a licensed barber school upon passing the barber examination; and

(3) Pay a fee established by the board.

310:210-3-5. Standard

The current issue of "~~The Standard Textbook of Professional Barber Styling~~Milady's Standard Professional Barbering" textbook shall be the reference utilized by the Barber Board for examination purposes.

SUBCHAPTER 5. LICENSING

310:210-5-1. License required

~~A barber or instructor license shall only be issued to an individual who passes the required examination and pays the licensing fee established by the Board.~~A barber or instructor license shall only be issued to an individual who passes the required examination or meets the requirements for a reciprocal barber license as outlined in 310:210-5-9 of this chapter, and pays the appropriate licensing fee established by the Board. No person shall practice any phase of barbering for fee or otherwise who does not have a current valid barber, barber apprentice, graduate-apprentice, or instructor license, and a photo ID in their possession. A duplicate license shall be issued if the licensee submits a notarized statement as to its loss, except that an instructor upon a written request shall be issued a duplicate license as a barber without fee for use in a barber shop. The barber license number shall be the same as the instructor license.

310:210-5-2. Licensing fees

(a) **Annual license fees.** Annual license fees under the Barber Law are:

~~(1) Barber - $25.00~~

~~(2) Barber Apprentice - $10.00~~

~~(3) Barber School or College - $200.00~~

~~(4) Instructor - $50.00~~

~~(5) Graduate Apprentice - $10.00~~

(1) Barber - $25.00

(2) Instructor - $50.00

(3) Barber School or College - $200.00

(b) **Late renewal fees.** Late renewal fees under the Barber Law are:

~~(1) Barber - $50.00~~

~~(2) Barber School or College - $400.00~~

~~(3) Instructor - $75.00~~

(1) Barber - $50.00

(2) Instructor - $75.00

(3) Barber School or College - $400.00

(c) **Reciprocal license fee** Initial license fee - $200.00

(d) **Non-renewable license fees.** Non-renewable license fees under the Barber Law are:

(1) Barber Apprentice - $50.00

(2) Graduate Apprentice - $10.00

(3) Hardship Apprentice - $25.00

(~~c~~e) **Examination fees.** The barber examination and reexamination fees are $35.00. Instructor examination and reexamination fees are $50.00.

(~~d~~f) **Payments.** All license fees, examination fees, and reexamination fees, shall be paid by cash, cashier's check, personal check, or money order.

310:210-5-6. Expiration and renewal of license

(a) **License expiration.** The expiration date for licenses are:

(1) Barber: June 30 each year;

~~(2) Barber Apprentice: One (1) year from the date of issue;~~

(2) Barber Apprentice: Two (2) years from the date of issue;

(3) Barber School or College: June 30 of each year;

(4) Instructor: June 30 of each year;

(5) Graduate Apprentice: Four (4) months from the date of issue or upon successful completion of the Oklahoma barber exam if less than four (4) months from the date of issue;

(6) Hardship apprentice: One (1) year from the date of issue; and

(7) Transfer apprentice: ~~One (1) year~~Two (2) years from the date of issue of the original apprentice license.

(b) **License renewal.** License renewal requirements are:

(1) A barber or barber instructor license shall be renewable without penalty until the date of expiration. A renewal delivered in person or postmarked after the expiration date shall not be renewed without payment of the late renewal fee and only upon Department approval. Any barber or barber instructor license that has been expired for more than five (5) years shall not be renewable. Any person that has a license that has expired more than five (5) years before a request for renewal shall obtain another license by examination only, unless the person was able to renew the barber or barber instructor license when beginning active military duty and provides verification of being on active military duty and having returned or been discharged within six (6) months of making application.

~~(2) A barber apprentice license shall be renewed only once and shall be renewable upon expiration of the original license.~~

(2) A graduate apprentice, apprentice, or hardship apprentice license shall not be renewed.

(3) A barber school or college license shall be renewable without penalty until the date of expiration. A renewal delivered in person or postmarked after the expiration date shall not be renewed without payment of the late renewal fee and only upon Department approval.

~~(4) A graduate, hardship or transfer apprentice license shall not be renewed.~~

(c) **Application form.** An application form to renew a license shall be mailed to the address last reported in writing to the Department. Failure to receive the renewal application does not excuse the licensee from renewing the license prior to expiration.

310:210-5-8. Barber apprentice and graduate-apprentice employment

(a) **Barber requirements for barber apprentice employment.** An Oklahoma licensed barber who employs a barber apprentice shall provide direct supervision over an apprentice for what constitutes a complete day unless the barber also employs another qualified, licensed barber, full time, for an apprentice working in the shop. The licensed supervising barber shall keep an accurate record of the apprentice hours. The supervising barber shall submit to the Department reports of hours accumulated by the barber apprentice every three (3) months which shall be due by January 15, April 15, July 15, and October 15. Credit shall not be allowed for any hours received before the apprentice registers with the Department. Licensed barbers employing barber apprentices shall notify the Department, in writing, within fourteen (14) days of the date when a licensed barber apprentice leaves the barber's employment.

(b) **Apprentice ratio.** No barber shall have more than one (1) licensed barber apprentice and one (1) graduate-apprentice or two (2) graduate-apprentices, if no other apprentice is employed, in each shop. If a barber apprentice goes on active military duty and another apprentice is acquired during this time, these regulations will allow the apprentice returning from active military duty to resume apprenticeship and will allow two apprentices in the shop until each apprentice's two-year registration period expires.

(c) **Barber apprentice requirements.**

(1) A barber apprentice accumulates hours based on the actual number of hours under direct supervision performing and training in the shop.

(2) ~~A barber apprentice shall work not less than 1500 hours or more than 2000 hours during the duration of a barber apprentice license except where the provisions of OAC 310:210-5-7(a) apply.~~A barber apprentice shall complete 3,000 hours in not less than 18 months or more than 24 months during the duration of a barber apprentice license except where the provisions of OAC 310:210-5-8(d) apply.

(3) A barber apprentice work station shall be located in the same room of the shop as the supervising barber's work station.

(4) A graduate apprentice shall not be eligible to apply for a barber apprentice license within twelve months following the expiration of the graduate-apprentice license.

(d) **Hardship barber apprentice license.** A hardship barber apprentice license shall be issued only after review and approval by the Department. To qualify for a hardship apprentice license an apprentice must document circumstances beyond their control that have prevented them from obtaining the minimum required hours and months of experience while licensed for two (2) years as a barber apprentice. Upon completion and approval of the hardship barber apprentice license application, the license shall be issued.

(e) **Transfer barber apprentice license.** A transfer barber apprentice license shall be issued only after review and approval by the Department. To qualify for a transfer apprentice license an apprentice shall document the dissolution of the apprenticeship agreement by which the barber apprentice license was obtained. Upon completion and approval of the transfer barber apprentice license application, the license shall be issued.

(f) **Curriculum for barber apprentices.** The barber apprentice curriculum shall include each subject listed in OAC 310:210-9-10(b)(2). The minimum number of hours for each subject are listed in Appendix C of OAC 310:210.

(g) **Graduate-apprentice requirements.** No person shall be issued a license as a graduate-apprentice unless such person is at least sixteen (16) years of age and has completed the barber curriculum at an Oklahoma licensed barber school or college and whose application to take the Oklahoma barber examination has been accepted. A graduate apprentice shall not be eligible to apply for a barber apprentice license within twelve months following the expiration of the graduate-apprentice license.

310:210-5-9. Recriprocal barber license

The Department shall issue a barber license to any applicant who holds a current valid license from any other state or entity, which has been determined by the Department to have licensure requirements that are substantively equal to the requirements of this state. No license shall be issued unless the holder of an Oklahoma barber license would be issued a license by such other State or entity.

[OAR Docket #08-1116; filed 6-3-08]

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

[OAR Docket #08-1117]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:

Oklahoma State Board of Health; 63 O.S. 2001, Section 1-106.1 and 1-1118

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ANALYSIS:

The proposal amends Subchapter 3 of the present Fee Schedule For Consumer Health Services Regulations in order to correct items to correspond with the OAC 310:257 "Food Service Establishment Regulations". The new changes involve additional language to establish an application fee to the existing regulations to institute funding for Food Service Establishments, Drug Operational permits and Lodging establishment operational permits for the inspection programs and industry education activities.

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 11, 2008:

SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES

310:250-3-1. Food service establishments' permits

(a) The following are license classifications and associated fees for food service establishments: (1) Type 45 Class A- "Frozen Food Locker":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(2) Type 45 Class B - "Bar":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(3) Class C - "Combination Retail Food":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(4) Class E - "Health Facilities, State Prisons, Schools, (operated by non-profit institutions or government agencies) Non-Profit Institutions":

(A) Initial - Exempt
(B) Renewal - Exempt
(C) Late Renewal - Exempt

(5) Class F - "Food Service Establishment":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(6) Class G - "Food Service with Bar":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(7) Class M - "Mobile Food Service and Vendor":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(8) Class R - "Retail Food Store":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(9) Class S - "Seasonal Food Service":

(A) Non-Renewable - $100.00 for ~~one hundred fifty (150)~~one hundred eighty (180) consecutive days only

(10) Class T - "Temporary Food Service":

(A) $25.00 up to five (5) days + $5.00 each day in excess of five (5) days

(11) Class P - "Food Processors":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(12) Class W - "Food Wholesaler":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(13) Class X - "Privately Owned Prisons":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(14) Class Y - "Salvage Food":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(15) Class Z - "Water Bottling Facilities":

(A) Initial - $150.00
(B) Renewal - $100.00
(C) Late Renewal - $135.00

(b) An establishment qualifies for a fee exempt license if it is a "food service establishment --fee exempt" as that term is defined in ~~OAC 310:256-1-2~~OAC 310:257-1-2.

(c) Late renewal fees apply to any renewal application postmarked and/or received thirty (30) days after the expiration date of the license.

(d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

310:250-3-7. Application fee

(a) Applicant shall submit the prepared plans and specifications for review and approval as stated in "Food Service Establishment Regulations" OAC 310:257-15-6 thru 310:257-15-17. The application fee and plans shall be submitted to the Oklahoma State Department of Health, respective County Health Department in which the establishment shall operate.

(1) Type 45 Class A - "Frozen Food Locker" $200.00
(2) Type 45 Class B - "Bar" $200.00
(3) Type 45 Class C - "Combination Retail Food" $200.00
(4) Type 45 Class E - "Health Facilities, State Prisons, Schools, Non-Profit Institutions $200.00
(5) Type 45 Class F - "Food Service Establishment" $200.00
(6) Type 45 Class G - "Food Service with Bar" $200.00
(7) Type 45 Class M - "Mobile Food Service and Vendor" $200.00
(8) Type 45 Class R - "Retail Food Store" $200.00
(9) Type 45 Class S - "Seasonal Food Service" $200.00

(b) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:260 "Good Manufacturing Practice Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health.

(1) Type 45 Class A - "Frozen Food Locker" $200.00
(2) Type 45 Class E - "Health Facilities, State Prisons, Non-Profit Institutions $200.00
(3) Type 45 Class P - "Food Processors" $200.00
(4) Type 45 Class W - "Food Wholesalers" $200.00
(5) Type 45 Class X - "Privately Owned Prisons" $200.00
(6) Type 45 Class Y - "Salvage Food" $200.00
(7) Type 45 Class Z - "Water Bottling Facilities"
(8) Type 48 Class M - "Drug Manufacturers, over-the counter" $200.00
(9) Type 48 Class W - "Drug Warehouse" $200.00

(c) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:285 "Lodging Establishment Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health, respective County Health Department in which the establishment shall operate.

(1) Type 51 Class A - "Hotels and Motels" $200.00
(2) Type 51 Class B - "Hotels and Motels" $200.00
(3) Type 51 Class C - "Hotels and Motels" $200.00

[OAR Docket #08-1117; filed 6-3-08]

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

[OAR Docket #08-1118]

RULEMAKING ACTION:
PERMANENT final adoption
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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]
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Oklahoma State Board of Health; Oklahoma Sanitarian and Environmental Specialist Registration Act, 59 O.S., Section 1150.1 et seq.
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310:345-3-3.The Rule establishes the time for payment of registration fees as well as the amounts of registration fees for Sanitarians and Environmental Specialists. The proposed rule change establishes an increase of the registration fees for initial full registration from $20 to $25 per registration; in training to full registration from $20 to $25 per registration; yearly renewal from $7.50 to $25 per registration; lifetime from $20 to $60 per registration; and provides for an examination fee of $30 for applicants taking the Oklahoma examination as a qualification for initial registration. This Rule change is necessary because of the rising costs in the operation and maintenance of this program. The proposed increased revenue will have the effect of enabling this program to meet the budget demands for the operation and maintenance of this program. It should be noted the fees initially established at the inception of this program in 1953 have never been increased. 310:345-3-6.This Rule provides for reciprocity in the case of Sanitarians or Environmental Specialists from jurisdictions outside of Oklahoma. The proposed Rule change allows other reciprocal states to be on equivalency terms with Oklahoma's requirements. This Rule change is necessary so that other states will recognize Oklahoma's programs and criteria. The proposed change will have the effect of speeding the process of licensure. 310:345-5-3. This Rule provides for expiration and renewals of registrations for Sanitarians and Environmental Specialists. The proposed Rule changes the renewal fee from $7.50 to $25.00. The Rule change is necessary to cover the increasing costs of program administration. The proposed increased revenue will have the effect of enabling this program to meet the budget demands for the operation and maintenance of this program.

310:345-7-2. This Rule provides for the provisions of reinstatement of licensure for Sanitarian or Environmental Specialist. The proposed Rule will allow up to $25.00 to be charged for the reinstatement of a Sanitarian or Environmental Specialist license. The Rule change is necessary to cover the increasing costs of program administration. The proposed increased revenue will have the effect of enabling this program to meet the budget demands for the operation and maintenance of this program.

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 11, 2008:

SUBCHAPTER 3. APPLICATIONS

310:345-3-3. Fees

(a) **Payable when.** Fees shall be payable upon review by the Department and approval of an application.

(b) **R.P.S. or R.P.E.S.** The fee for registration as a Registered Professional Sanitarian or Registered Professional Environmental Specialist shall be Twenty-Five Dollars ~~($20.00)~~($25.00).

(c) **SIT or ESIT.** The fee for registration as a Sanitarian-In Training or Environmental Specialist-In-Training shall be Ten Dollars ($10.00).

(d) **SIT or ESIT approved as R.P.S. or R.P.E.S.** Sanitarians-In-Training or Environmental Specialists-In-Training who have served two years of such, and are in good standing shall pay a registration fee of Twenty-Five Dollars ~~($20.00)~~($25.00) on application for Registered Professional Sanitarian or Registered Professional Environmental Specialist.

(e) **Life Registered Sanitarian or Environmental Specialist.** The one time fee for registration as a Life Registered Sanitarian or Environmental Specialist is ~~$20.00~~ Sixty Dollars ($60.00).

(f) **Examination Fee.** The fee for the Oklahoma registration examination shall be Thirty Dollars ($30.00)

310:345-3-6. Reciprocity

The Commissioner shall, upon application therefore and upon payment of a fee of ~~Ten~~Twenty-Five Dollars ~~($10.00)~~($25.00), issue a certificate of registration as a Registered Professional Sanitarian or Registered Professional Environmental Specialist to any person who holds a certificate of registration issued by the proper authority of any state, territory or possession of the United States or any country, provided that the requirements for the registration of sanitarians or environmental specialists under which the certificate was issued do not conflict with the provisions of Oklahoma laws relative thereto and at the time said certificate was granted were a standard not lower than those specified in the Oklahoma Sanitarian and Environmental Specialist Registration Act and this Chapter.

SUBCHAPTER 5. REGISTRATION

310:345-5-3. Expiration and renewal

(a) **Expiration.** Each certificate and card of registration as a Registered Professional Sanitarian or Registered Professional Environmental Specialist shall expire on the last day of December following its issuance or renewal, and shall become invalid on that date unless renewed.

(b) **Renewal by December 31.** Each Registered Professional Sanitarian or Registered Professional Environmental Specialist desiring to continue the practice of the profession shall renew the certificate prior to the last day of December by paying to the Department a fee of ~~seven dollars and fifty cents ($7.50)~~Twenty- Five Dollars ($25.00); in return the Department shall issue a renewal card for the ensuing year.

(c) **Renewal after February 1.** Expired certificates may be renewed prior to February 1 of the year following their expiration without penalty. Beginning February 1 of the year following its expiration, expired certificates shall only be renewed by submitting a renewal fee of ~~$7.50~~Twenty-Five Dollars ($25.00) plus a penalty of ~~$2.50~~Ten Dollars ($10.00) for a total of ~~$10.00~~ Thirty-Five Dollars ($35.00).

(d) **Renewal ineligibility.** Except for extraordinary circumstances to be determined by the Council, all certificates which have not been renewed by March 1 of the year following its expiration shall be ineligible for renewal unless the registrant has successfully passed the sanitarian or environmental specialist examination, and the names of such registrants shall not appear in the roster issued annually during the month of September.

(e) **Department to notify.** As of February 1 of each year, the Department will mail a notice to each registrant who has failed to renew his certificate prior to February 1 and has not successfully completed the sanitarian or environmental specialist examination that his certificate will be ineligible for renewal as of March 1 of the year following its expiration.

SUBCHAPTER 7. REVOCATION AND REINSTATEMENT

310:345-7-2. Reinstatement

(a) Former registrants who have successfully completed the sanitarian or environmental specialist examination may make application for reinstatement on the basis prescribed in subsection (b) of this Section.

(b) The certificate of an applicant will be reinstated on simple application therefore on a form prescribed by the Department and accompanied by remittance equal to the total amount of money which would have been paid to the Department in late renewal fees up to the time of application, had the original certificate not been permitted to expire, plus an additional fee of Ten Dollars ($10.00) to reimburse the Department for expense of special handling required by this procedure.

(c) However, if the amount of the remittance computed as described in subsection (b) of this Section shall exceed ~~Twenty~~Thirty-Five Dollars ~~($20.00)~~($35.00), the applicant may file for registration as though he had not previously been registered.

(d) A former registrant whose certificate was originally issued without examination shall not be eligible for reinstatement, but may be issued a new registration after successful completion of the sanitarian or environmental specialist registration examination.

[OAR Docket #08-1118; filed 6-3-08]

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

[OAR Docket #08-1119]

RULEMAKING ACTION:
PERMANENT final adoption
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]
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310:400-5-3 The current Rule sets forth standards regarding professional competence and integrity. The proposal clarifies prohibition of therapy concurrently or subsequently in regard to parties involved in forensic matters. The change is necessary to ensure neutrality by the therapist. The effect of the Rule will protect all parties involved in forensic matters. 310:400-7-2.1 The current Rule sets forth requirements for re-applying for a revoked license. The proposal establishes a time limit to re-apply following revocation of licensure, requires applicants to submit additional documentation demonstrating rehabilitation, imposes possible limitations on practice, and requires review by the LMFT Advisory Board. This change is necessary to ensure that a disciplined therapist is fit to practice following administrative action. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from LMFTs. The current Rule also provides for the procedure and terms of re-application for a denied application. The proposal clarifies a denied application and requires the submission of additional documentation demonstrating rehabilitation and imposes possible limitations on practice. This change is necessary to ensure that a disciplined applicant is fit to practice following the denial of application for licensure. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from licensure candidates and LMFTs. 310:400-7-4 The current Rule establishes academic and experience requirements for licensure. The proposal specifically names the six regional accrediting associations that meet the academic requirement. The change is necessary to clarify which accrediting associations meet the requirement. The effect of the Rule will allow applicants to be more informed regarding the acceptable requirement. 310:400-7-5 The new proposed Rule defines forms used by the applicants, licensees and third parties to obtain licensee information. This addition is necessary to facilitate a process to obtain information from the applicant and to allow the Department to establish requirements for requesting and receiving such information. The effect of the Rule change will allow consistency in processing requests for information. 310:400-11-2 The current Rule establishes acceptable supervised experience. The proposal allows for consideration to approve out-of-state, on-site supervisors. This change is necessary to allow more flexibility regarding the acceptability of supervised experience for licensure candidates. The effect of the Rule will allow more licensure candidates to provide services to the citizens of Oklahoma. 310:400-11-3 The current Rule establishes supervisor qualifications. The proposal requires the completion of the continuing education requirement before the approved supervisor designation can be renewed. This change is necessary to ensure that approved supervisors remain abreast of current trends in therapy supervision. The effect of the Rule will ensure that licensure candidates are receiving the required supervision by qualified licensure supervisors. 310:400-11-5 The current rule establishes the responsibility of supervisors and supervisees. The proposal requires a time limit for approved supervisors to maintain supervision records for supervisees. This change is necessary to ensure appropriate record keeping of supervision activities. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from licensure candidates. 310:400-15-4 The current Rule sets forth requirements for continuing education. The proposal allows for presenters of continuing education programs to qualify who have experience teaching in a regionally accredited university setting, or has presented or is presenting at a national mental health conference provided by a national counseling association or by a program approved or offered by a state or federal agency with responsibility for mental health and substance abuse services. The change is necessary to allow more qualified individuals to be approved as presenters of continuing education. The proposal also establishes distance learning courses as an acceptable context to accrue continuing education. The change is necessary to consider all means of distance learning as acceptable continuing education. The effect of the Rule will allow licensees more opportunities to complete the continuing education requirement for licensure renewal. The proposal also defines the continuing education roster and the continuing education roster for LMFT Approved Supervisors. These changes are necessary to allow the Department to establish requirements for receiving renewal information on official Department forms. The effect of the Rule will ensure accurate, consistent information necessary to renew an LMFT license and approved supervisor status. 310:400-15-8 The current rule establishes provisions for licensure by endorsement. The proposal disallows experience to be considered in lieu of passing the national licensing examination in marital and family therapy. This change is necessary to ensure that endorsement applicants meet the same examination requirements as in-state applicants. The effect of the Rule will protect the citizens of Oklahoma by ensuring endorsement applicants have met the same licensing standard as in-state applicants.
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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 11, 2008:

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:400-5-3. Professional competence and integrity

(a) LMFTs are dedicated to maintaining high standards of professional competence and integrity.

(b) LMFTs are presumed to have violated high standards of integrity or competence if they:

(1) are convicted of a felony;

(2) are convicted of a misdemeanor (related to their qualifications or functions);

(3) engage in conduct which could lead to conviction of felonies, or misdemeanors related to their qualifications or functions;

(4) have their licenses or certificates suspended or revoked; or

(5) are no longer competent to practice marital and family therapy because they are impaired due to physical or mental causes or the abuse of alcohol or other substances.

(c) LMFTs shall seek appropriate professional assistance for their own personal problems or conflicts that are likely to impair their work performance and their clinical judgment.

(d) LMFTs, as teachers and supervisors, are dedicated to maintaining high standards of scholarship and presenting information that is accurate.

(e) LMFTs shall remain abreast of new developments in family therapy knowledge and practice through both educational activities and clinical experiences.

(f) LMFTs shall not engage in sexual or other harassment or exploitation of clients, students, trainees, supervisees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.

(g) LMFTs shall not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.

(h) LMFTs shall prevent the distortion or misuse of their clinical and research findings.

(i) LMFTs are aware that, because of their ability to influence and alter the lives of others, they must exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

(j) LMFTs shall protect the welfare of the client by storing and/or destroying, when appropriate, client files.

(k) LMFTs shall not, under normal circumstances, offer professional services to clients concurrently receiving services from another professional except with the knowledge of the professional.

(l) LMFTs shall display their original, current license certificate in a prominent place in the primary location of their practice.

(m) LMFTs shall keep the Department updated regarding changes in mailing address, phone number and place of employment. Failure to do so may place the license in jeopardy due to missed renewal notices and other important communications.

(n) LMFT candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, except under the following conditions:

(1) LMFT candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:400-5-1(i), 310:400-5-2(d) and 310:400-5-3(e),(g),(h),(i), and (n) of this Chapter.

(2) LMFT candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LMFT candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LMFT candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LMFT candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from

the legal guardian or from the legal custodian appointed by the Court.

(6) LMFT candidates and licensees who provide therapy services for a client may only provide fact witness testimony in forensic matters involving that client, unless otherwise required by law or court order. LMFT candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide therapy concurrently or subsequently to any person(s) involved or directly affected by the LMFT candidate's or licensee's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations of the LMFT candidate or licensee and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

(o) An LMFT, LMFT candidate, or applicant for LMFT licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:400-17-3, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LMFT, LMFT candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

310:400-7-2.1. Reapplication procedures

(a) **Re-application for revoked license.**

(1) No re-application for a revoked license will be considered for a period of 5 years following the revocation. Re-application after license is revoked as a result of administrative action shall include the following documents:

(A) Application form,
(B) Official university or college transcript,
(C) Three (3) Documents of recommendation.
(D) Internship/Practicum Documentation form,
(E) Supervision Agreement,
(F) On-Site Supervisor Verification Form,
(G) New Application Fee, and
(H) Two (2) classifiable sets of fingerprints.

(2) Applicant shall re-take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) All previously submitted and approved Supervised Experience shall not carry over to a new application.

(4) Application materials shall be reviewed by the advisory board.

(5) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of the revocation of licensure.

(6) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

(b) **Re-application for denied application.**

(1) Re-application after application has been denied as prescribed in Section 1925.15 of the Act shall include the following documents:

(A) Application form,
(B) Official university or college transcripts,
(C) Three (3) Documents of Recommendation,
(D) Internship/Practicum Documentation form,
(E) Supervision Agreement,
(F) On-Site Supervisor Verification Form,
(G) New Application Fee, and
(H) Two (2) classifiable sets of fingerprints.

(2) Application materials shall be reviewed by the LMFT Advisory Board.

(3) Applicant shall be required to take necessary examinations.

(4) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(5) Internship/Practicum Documentation Form on file shall carry over to a new application.

(6) All previously submitted and approved Supervised Experience shall carry over to a new application.

(7) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

(8) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of denial of licensure application.

(9) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

310:400-7-4. Academic and experience requirements

(a) **Fulfillment of Section 1925.6, subsection B of the LMFT Act.** Persons applying for licensure must have fulfilled the requirements listed in Section 1925.6, Subsection B of the LMFT Act.

(b) **Academic requirements.**

~~(1) Applicants must possess at least a masters degree in marital and family therapy from a college or university accredited by an agency recognized by the United States Department of Education or;~~

~~(2)~~ Applicants must possess at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a college

or university accredited by ~~an agency recognized by the United States Department of Education~~one of the following six regional accrediting associations recognized by the U.S. Department of Education: The New England Association of Schools and Colleges, The Middle States Association of Colleges and Schools, The North Central Association of Colleges and Schools, The Northwestern Association of Schools and Colleges; The Western Association of Schools and Colleges, or The Southern Association of Colleges and Schools which is content-equivalent to a graduate degree in marital and family therapy. In order to qualify as a "content-equivalent" degree, a graduate transcript must document the minimum number of graduate hours and knowledge areas listed below. Academic courses (3 semester hours or 4 quarter credit hours) must include a minimum of 45 class hours for each course.

(~~A~~1) Theoretical Foundations of Marital and Family Systems - any course which deals primarily in areas such as family life cycle; theories of family development; marriage and/or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling). (3 courses: 9 semester or 12 quarter hours.)

(~~B~~2) Assessment and Treatment in Marital and Family Therapy -any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods; overview of major clinical theories of marital and family therapy such as: communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational. (3 courses: 9 semester or 12 quarter hours.)

(~~C~~3) Human Development - any course which deals primarily in areas such as human development; personality theory; human sexuality, psychopathology; at least one of which must be in psychopathology or abnormal human behavior. (3 courses: 9 semester or 12 quarter hours.)

(~~D~~4) Ethics and Professional Studies - any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethics; family law. (1 course: 3 semester or 4 quarter hours.)

(~~E~~5) Research - any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy. (1 course: 3 semester or 4 quarter hours.)

(~~F~~6) Practicum/Internship (at least 300 clock hours.)

(c) **International degrees.** For applicants with international degrees, the Department shall review the applications of applicants for licensure under this Chapter who have received a post-secondary degree from an educational institution outside the United States. The Department shall determine whether the applicant's experience, command of the English language, and completed academic program meet the standards of an academic program of an accredited educational institution.

(~~c~~d) **Experience requirement.**

(1) Applicants must complete two (2) calendar years of work in marital and family therapy following the receipt of the qualifying degree.

(2) These two years must be completed under a supervisor approved by the Department.

(~~d~~e) **Examination.** Applicants must achieve a passing score on the LMFT examinations.

310:400-7-5. Additional forms

(a) Licensure Verification Request Form - name of licensee; licensee license number; and licensee license type.

(b) Out-of-State License Verification Form - identifying information; type of credential held in other state; license number; issue and expiration date of license; current standing of license; past complaints or sanctions; exam information; supervision information; graduate education; internship documentation; signature and identifying information of person verifying from out-of-state.

(c) Mailing Addresses Request/Order Form - type of licensure list requested; format requested; identifying information of person making request.

(d) Licensure Reactivation Request Form - licensure type, identifying information; employment information; graduate education; license type and number; dates of inactivation and reactivation of license.

(e) LMFT Continuing Education Approval Application Form - name of workshop; program context; program knowledge area; name of presenter; presenter qualifications; date of presentation; number of hours requested; sponsoring agency; name of contact; phone number of contact; signature and signature date of contact; program content in relation to mental health ethics; program content in relation to therapy supervision; number of hours requested for mental health ethics; number of hour requested for therapy supervision.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENTS

310:400-11-2. Acceptable supervised experience

Supervised experience is acceptable when:

(1) it begins after all applicable academic requirements as stated in Subchapter 7 have been completed, and supervision agreement has been approved by the Department.

(2) official application for licensure has been made. This includes Application, application fee, Internship/Practicum Documentation Form, official graduate transcript, three (3) Document of Recommendation Forms, completed criminal background check, On-Site Supervisor Verification Form, and Supervision Agreement. Applicants who have met part or all of supervision experience requirements for clinical membership in AAMFT will be considered to have met part or all of the supervision requirements for licensure in Oklahoma.

(3) it consists of the performance of therapy activities as described in Section 1925.2, subsection 7 and 9 of the LMFT Act and contains the following characteristics:

(A) supervision focuses on the raw data from a supervisee's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings and the LMFT Act and Regulations.

(B) supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.

(C) individual supervision shall be face-to-face with one supervisor and one or two supervisees.

(D) group supervision may be done with up to six supervisees and a supervisor.

(4) supervised experience hours may be accrued in academic, governmental, or private practice settings.

(5) the supervised experience is accrued in a private for-profit or private not-for-profit therapy setting without having an approved LMFT supervisor providing on-site supervision, if the agency employing the LMFT Candidate provides an on-site supervisor who is available to the LMFT Candidate any time services are being rendered by the LMFT Candidate, and the LMFT Candidate is receiving supervision for licensure from an approved LMFT supervisor. Out of state on-site supervisors may be approved on a case-by-case basis.

310:400-11-3. Supervisor qualifications

(a) In order to be approved as a supervisor for therapists seeking MFT licensure, an individual must:

(1) be an American Association for Marriage and Family Therapy approved Supervisor familiar with Oklahoma LMFT Act and Rules duly promulgated, or

(2) be an LMFT

(A) with two (2) years of experience in marital and family therapy beyond the number of years of experience required for licensure and

(B) who has successfully completed a graduate course in therapist supervision (at least 45 contact hours) or equivalent course of study acceptable to the Department. This equivalent course of study should consist of workshops in marriage and family therapy supervision in combination with directed study of the marriage and family therapy supervision literature. Fifteen (15) of the 45 clock hours should be in a class or workshop format which includes a minimum of four supervisors-in-training; the other 30 clock hours should be reserved for the directed study. Directed study must be approved and monitored by an Approved Supervisor.

(b) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee. Approved Supervisor designation will not be renewed until the continuing education requirement is met.

310:400-11-5. Documentation of supervised experience

(a) An LMFT Supervision Agreement between supervisor and supervisee as well as the On-Site Supervisor Verification form must be received and approved by the Department prior to the accrual of supervision hours.

(b) Semi-annual documentation of supervision hours, evaluation of competence, date of observations (live or tape), and date of consultation between approved supervisor and on-site supervisor must be submitted by the supervisor and co-signed by the supervisee on official Supervision Evaluation Forms.

(c) Upon completing the supervision requirement, the supervisee must complete and submit the Final Evaluation of Supervision Experience by Supervisee form for each supervisor. The Final Evaluation of Supervision Experience by Supervisee Form shall include the name of the supervisee and supervisor; period covered by supervision; ratings of supervision; recommendation of supervisor to other supervisees.

(d) Supervisors shall maintain supervision records for at least seven (7) years beyond termination of supervision.

SUBCHAPTER 15. ISSUANCE AND MAINTENANCE OF LICENSE

310:400-15-4. Continuing education.

(a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.

(b) **Number of hours required.**

(1) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours.

(2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics from programs pre-approved by the Department or its designee. Continuing education in mental health ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act;

(B) Addresses regulations as promulgated in Subchapter 5 of this Chapter; and

(C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.

(D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.

(3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee. Continuing education in Therapy Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter; and

(B) Contains content in one or more of the following knowledge areas:

(i) Overview of a supervision model;

(ii) Supervisors' areas of focus and roles in supervision;

(iii) Supervisors' process and practical application;

(iv) Ethical dilemmas involved in therapy supervision;

(v) Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;

(vi) Overview of AAMFT standards of supervision; or

(vii) Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and

(C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.

(c) **Acceptable continuing education.** Continuing education is acceptable to the Department when it:

(1) approximates the content of any of the academic areas listed under Subchapter 7 of this Chapter~~.~~ and;

(2) is presented by a person who:

(A) is licensed or certified by therapy related professions~~.~~;

~~(3) is presented by~~

(B) is a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training~~,~~; or

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in Section 310:400-7-4 of this Chapter; or

(D) the person is presenting or has presented at a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(E) is presenting or has presented in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(~~4~~3) takes place in the context of:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved ~~home study~~distance learning course~~.~~;

(B) takes place in the context of a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services.

(d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to section 310:400-15-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.

(e) **Continuing education accrual from ~~home study~~distance learning courses.** Continuing education may be accrued when the LMFT completes ~~home study~~distance learning programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through ~~home study~~distance learning courses.

(f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

(g) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

(1) an official continuing education validation form furnished by the presenter, or,

(2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,

(3) an official college transcript showing courses or audit credit.

(4) (For teaching) a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(h) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster, on official Department forms, (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop, date of workshop, and the number of hours of each workshop. Only C.E. accrued in the preceding license renewal period is acceptable.

(i) **Audit of continuing education submissions.** In November of each year, the Department will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's

must then provide the Department with verification of all credits claimed on their Continuing Education Roster on or before the renewal deadline. The Department may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(j) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(k) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the Department for disciplinary action and may result in suspension or revocation of license.

(l) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Department to make a determination of the suitability of the program for continuing education requirements.

(m) **Continuing Education Rosters for LMFT Approved Supervisors.** Every three (3) years, LMFT Approved Supervisors are required to submit three (3) hours of continuing education in therapy supervision on the LMFT Approved Supervisor Continuing Education Roster. The LMFT Approved Supervisor Continuing Education Roster shall include name of licensee, signature and signature date of licensee, total clock hours of workshop(s), name of therapy supervision workshop, sponsoring agency of workshop(s), date of workshop(s), and number of hours of each workshop.

310:400-15-8. Licensure by endorsement

~~(a)~~ ~~**Exam.**~~ The Commissioner may grant a license by endorsement, in accordance with Section 1925.9~~ A~~ of the LMFT Act.

(~~b~~1) **Submission of license or verification card.** An applicant for licensure by endorsement must submit a copy of the current active license, certificate or verification card, and may be required to submit a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency.

(~~c~~2) **Licensing procedures.** An applicant must submit the application form and documents as requested, license fees, three current documents of recommendation and official transcript(s).

(~~d~~3) The Department shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(~~1~~A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing;

(~~2~~B) The applicant fulfills the requirements of Section 1925.6 A. and B. of the LMFT Act;

(~~3~~C) The applicant must have at least a masters degree ~~in marital and family therapy or a content equivalent degree as stated in Section 1925.6 (C)(1) of the LMFT Act~~ from a regionally accredited college or university;

(~~4~~D) The applicant takes and passes the examination as provided under Section 1925.7 of the LMFT Act, ~~unless:~~ and

~~(A)~~ ~~The~~ the applicant has passed ~~a~~the national written, marital and family examination that, in the judgement of the Department, is substantially equivalent to the examination established by the Department~~; or~~.

~~(B)~~ ~~Has practiced marital and family therapy for seven (7) of the last ten (10) years immediately preceding application for licensure in Oklahoma; and~~

(~~5~~E) The applicant takes and passes the Oklahoma LMFT Oral Examination.

[OAR Docket #08-1119; filed 6-3-08]

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

[OAR Docket #08-1120]

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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]
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310:403-5-2 The current Rule describes forms used during the application and licensure process. The proposal defines forms used by the licensees and third parties to obtain licensee information. This change is necessary to facilitate a process to obtain information from the applicant and to allow the Department to establish requirements for requesting and receiving such information. The effect of the Rule change will allow consistency in processing requests for information. 310:403-11-8 The current Rule sets forth requirements for re-applying for a revoked license. The proposal establishes a time limit to re-apply following revocation of licensure, requires applicants to submit additional documentation demonstrating rehabilitation, imposes possible limitations on practice, and requires review by the LBP Advisory Board. This change is necessary to ensure that a disciplined practitioner is fit to practice following administration action. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from LBPs. 310:403-11-11 The current Rule provides for the procedure and terms of re-application for a denied application. The proposal clarifies a denied application and requires the submission additional documentation demonstrating rehabilitation and imposes possible limitations on practice. This change is necessary to ensure that a disciplined applicant is fit to practice following the denial of application for licensure. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from LBPs. 310:403-15-4 The current rule establishes the responsibility of supervisors and supervisees. The proposal requires a time limit for approved supervisors to maintain supervision records for supervisees. This change is necessary to ensure appropriate record keeping of supervision activities. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from licensure candidates. 310:403-15-5 The current Rule provides for the acceptability of supervised experience. The proposal allows for supervised experience to be accrued in a private setting when an agency employs a qualified on-site supervisor, allows Licensed Alcohol and Drug Counselors to be qualified on-site supervisors, and allows for consideration to approve out-of-state, on-site supervisors. This change is necessary to allow more flexibility regarding the acceptability of supervised experience for licensure candidates. The effect of the Rule will allow more practitioner candidates to provide services to the citizens of Oklahoma. 310:403-21-2 The current Rule provides for the procedure and terms of the submission of the continuing education roster. The proposal defines the continuing education roster. This change is necessary to allow the Department to establish requirements for receiving renewal information on official Department forms. The effect of the Rule will ensure accurate, consistent information necessary to renew an LBP license.

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 11, 2008:

SUBCHAPTER 5. FORMS

310:403-5-2. Description of forms

(a) The Application Form requires the following:
- (1) Identifying information of applicant;
- (2) Possession of other credentials;
- (3) Previous misconduct;
- (4) Education;
- (5) References;
- (6) Proposed professional Practice; and,
- (7) Notarization.

(b) The Internship/Practicum Documentation Form requires the following:
- (1) Identifying information of applicant;
- (2) Place, time, duration and nature of supervised experience;
- (3) School arranging supervision and name of supervisor; and,
- (4) Signature and title of supervisor.

(c) The Document of Recommendation requires the following:
- (1) Identifying information of applicant;
- (2) Scale of performance rating personal character and professional skills;
- (3) Circumstances and time period rater has known applicant;
- (4) Space for rater's comments;
- (5) Identifying information of rater.

(d) The Statement of Professional Disclosure is composed of alternative forms depending on the status of the applicant, as follows.
- (1) The LBP Candidate's Statement of Professional Disclosure requires the following:
  - (A) Explanation of LBP Candidate's responsibilities;
  - (B) Name and contact information for person who will be responsible for the client's records in the event of the LBP Candidate's infirmity or death;
  - (C) Supervisor's identifying information;
  - (D) Address and phone number of the Department; and,
  - (E) Signatures of client and LBP Candidate.
- (2) The LBP's Statement of Professional Disclosure requires the following:
  - (A) Explanation of the LBP's responsibilities;
  - (B) Name and contact information for person who will be responsible for the client's records in the event of the LBP's infirmity or death;
  - (C) Address and phone number of the Department; and,
  - (D) Signatures of client and LBP.

(e) The Supervision Agreement requires the following:
- (1) Statement of agreement to fulfill Subchapter 15 and consequences of violation; and
- (2) Identifying information and signatures of supervisee and supervisor.

(f) The On-Site Supervisor Verification Form requires the following identifying information:
- (1) Name of applicant;
- (2) Place of employment;
- (3) On-Site Supervisor Information;
- (4) A reproduction of the regulation regarding supervision accrued in a private setting.

(g) The Evaluation of Supervised Experience Form requires the following:
- (1) Names of supervisee and supervisor;
- (2) Name and location of supervision site;
- (3) Duration of work experience and supervision;
- (4) Types of professional activities and clients seen;

(5) Rating of quality of professional activities;
(6) Supervisor and supervisee comments; and
(7) Signatures of supervisee and supervisor.

(h) The Continuing Education Roster requires the following:
(1) LBP's name and license number;
(2) Total number of hours accrued and LBP's signature and signature date of licensee;
(3) Listing of workshops, sponsor, content and date of continuing education experience.

(i) The Licensure Verification Request Form requires the following information:
(1) Name of licensee;
(2) Licensee license number; and
(3) Licensee license type.

(j) The Out-of-State Licensure Verification Form requires the following information:
(1) Identifying information;
(2) Type of credential held in other state;
(3) License number;
(4) Issue and expiration date of license;
(5) Current standing of license;
(6) Past complaints or sanctions;
(7) Exam information;
(8) Supervision information;
(9) Graduate education;
(10) Internship documentation;
(11) Signature and identifying information of person verifying from out-of-state.

(k) The Mailing Addresses Request/Order Form requires the following information:
(1) Type of licensure list requested;
(2) Format requested;
(3) Identifying information of person making request.

(l) The Licensure Reactivation Request Form requires the following information:
(1) Licensure type;
(2) Identifying information;
(3) Employment information;
(4) Graduate education;
(5) License type and number;
(6) Dates of inactivation and reactivation of license.

SUBCHAPTER 11. APPLICATION PROCEDURES

310:403-11-8. Re-application for revoked license

(a) No re-application for a revoked license will be considered for a period of 5 years following the revocation.

(~~a~~b) Re-application after license is revoked for administrative action shall include the following documents:
(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(~~b~~c) Applicant shall re-take two examinations:
(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.

(~~c~~d) Internship Documentation Form on file may carry over to a new application.

(~~d~~e) All previously submitted and approved Supervised Experience shall not carry over to a new application.

(f) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of revocation.

(g) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

(h) Application materials shall be reviewed by the LBP Advisory Board for approval.

310:403-11-11. Re-application for denied application

(a) Re-application after licensure application has been denied as prescribed in Section 1941 of the Act, shall include the following documents:
(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of Recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Application materials shall be reviewed by the LBP Advisory Board for approval.

(c) Applicant shall be required to take necessary examinations.

(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(e) Internship Documentation Form on file may carry over to a new application.

(f) All previously submitted and approved Supervised Experience shall carry over to a new application.

(g) Applicant shall obtain approved supervision until the exams are taken and passed as described in Subchapter 310:403-15-2(e)(2).

(h) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of denial of licensure application.

(i) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

SUBCHAPTER 15. SUPERVISED EXPERIENCE REQUIREMENTS

310:403-15-4. Responsibility of supervisors and supervisees

(a) The supervisor and supervisee shall be jointly responsible for the following:

(1) Ensuring the requirements under this subchapter are fulfilled. A failure to comply may result in the loss of supervision hours, denial of licensure, initiation of formal complaint procedures, and/or loss of approved supervisor status.

(2) Ensuring the client's right to confidentiality is protected and rules of the supervisor's and supervisee's employer(s) are adhered to during the course of supervision.

(b) The supervisor shall maintain supervision records for each supervisee for at least five (5) years beyond the termination or completion of the supervised experience.

310:403-15-5. Acceptability of supervised experience

(a) Supervised experience is acceptable when it consists of the performance of behavioral health services as described in Section 1931, of the Act as described below.

(1) Supervision shall focus on the raw data from an LBP Candidate's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings.

(2) Supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.

(3) Individual supervision consists of face-to-face contact with one supervisor and one LBP Candidate.

(4) Group supervision may be conducted with two (2) to six (6) LBP Candidates and a supervisor.

(b) An LBP Candidate may accrue supervised experience hours in academic, governmental or private practice settings.

(c) ~~Supervision shall be accrued~~The supervised experience is accrued in a private not-for-profit or a private for-profit practice ~~only if~~ without having an on-site approved LBP Supervisor providing supervision, if:

(1) ~~The LBP Candidate works at the same location as a person licensed in the state of Oklahoma as~~The agency employing the LBP candidate employs a person licensed in the state of Oklahoma as a Licensed Behavioral Practitioner, a Licensed Professional Counselor, a Licensed Marital and Family Therapist, a Psychologist, a Physician, ~~or~~ a Licensed Clinical Social Worker, or a Licensed Alcohol and Drug Counselor who directs and is responsible for the professional duties of the LBP Candidate~~;~~ and is available to the LBP candidate any time services are being rendered by the LBP candidate. Out of state on-site supervisors may be approved on a case-by-case basis.

(2) The LBP Candidate is receiving supervision for licensure from an approved LBP supervisor who is not required to work at the same location as the LBP Candidate.

SUBCHAPTER 21. CONTINUING EDUCATION REQUIREMENTS

310:403-21-2. Submission of continuing education roster

LBPs shall submit a Continuing Education Roster to the Department, on an official Department form, of ten (10) clock hours of continuing education per year by December 31 of each year. One (1) academic hour is equal to fifteen (l5) clock hours. Rosters may be obtained from the Department. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop(s), date of workshops(s), and the number of hours of each workshop. Only continuing education accrued in the preceding license renewal period shall be acceptable. ~~Rosters may be obtained from the Department. Only continuing education accrued in the preceding license renewal period shall be acceptable.~~

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

[OAR Docket #08-1121]

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310:405-3-3 [AMENDED]
Subchapter 7. Application Procedures
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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]

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310:405-3-3 The current Rule describes acts of discrimination in a counseling setting. The proposal expands the definition to align with the American Counseling Association's (ACA) definition. The effect of the Rule will provide consistency with the more widely recognized definition of discrimination. The new proposed Rule in this subchapter defines private or independent practice. The addition is necessary to provide clarification regarding requirements to engage in private or independent practice of professional counseling. The effect of the Rule will ensure that only Licensed Professional Counselors can engage in private or independent practice as referenced by the LPC Act and Regulations. 310:405-7-2 The current Rule describes forms used during the application and licensure process. The proposal defines forms used by the applicants, licensees and third parties to obtain licensee information. This change is necessary to facilitate a process to obtain information from the applicant and to allow the Department to establish requirements for requesting and receiving such information. The effect of the Rule change will allow consistency in processing requests for information. 310:405-7-5 The current Rule sets forth requirements for re-applying for a revoked license. The proposal establishes a time limit to re-apply following revocation of licensure, requires applicants to submit additional documentation demonstrating rehabilitation, imposes possible limitations on practice, and requires review by the LPC Advisory Board. This change is necessary to ensure that a disciplined counselor is fit to practice following administrative action. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from LPCs. 310:405-7-8 The current Rule provides for the procedure and terms of re-application for a denied application. The proposal clarifies a denied application and requires the submission of additional documentation demonstrating rehabilitation and imposes possible limitations on practice. This change is necessary to ensure that a disciplined applicant is fit to practice following the denial of application for licensure. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from LPCs. 310:405-7-9 The current Rule describes the process for requesting an administrative hearing following the denial of licensure. The proposal clarifies the correct reference from the LPC Act. The effect of the Rule will provide consistency between the Act and the Regulations. 310:405-11-2 The current rule establishes the responsibility of supervisors and supervisees. The proposal requires a time limit for approved supervisors to maintain supervision records for supervisees. This change is necessary to ensure appropriate record keeping of supervision activities. The effect of the Rule change will provide protection for the citizens of Oklahoma receiving services from licensure candidates. 310:405-11-3 The current Rule provides for the acceptability of supervised experience. The proposal allows for supervised experience to be accrued in a private setting when a facility employs a qualified on-site supervisor, allows Licensed Alcohol and Drug Counselors to be qualified on-site supervisors, and allows for consideration to approve out-of-state, on-site supervisors. This change is necessary to allow more flexibility regarding the acceptability of supervised experience for licensure candidates. The effect of the Rule will allow more licensure candidates to provide services to the citizens of Oklahoma. 310:405-11-4 The current Rule establishes supervisor qualifications. The proposal requires the completion of the continuing education requirement before the approved supervisor designation can be renewed. This change is necessary to ensure that approved supervisors remain abreast of current trends in counseling supervision. The effect of the Rule will ensure that licensure candidates are receiving the required supervision by qualified licensure supervisors. 310:405-17-2 The current Rule establishes the number of hours of continuing education required to renew the license. The proposal specifies the equivalency of academic course work and the clock hour requirement. The change is necessary to provide clarification of the amount of clock hour credit that will be given to college courses. The effect of the Rule will allow licensees to submit the proper amount of college course work to fulfill the continuing education requirement. 310:405-17-3 The current Rule establishes acceptable continuing education requirements. The proposal allows for presenters of continuing education programs to qualify who have experience teaching in a regionally accredited university setting, or has presented or is presenting at a national mental health conference provided by a national counseling association or by a program approved or offered by a state or federal agency with responsibility for mental health and substance abuse services. The proposal also establishes distance learning courses as an acceptable context to accrue continuing education. The change is necessary to allow more qualified individuals to be approved as presenters of continuing education and to consider all means of distance learning as acceptable continuing education. The effect of the Rule will allow licensees more opportunities to complete the continuing education requirement for licensure renewal. 310:405-17-4.1 The current Rule establishes continuing education accrual from home study courses. The proposal changes home study courses to distance learning courses as an acceptable context to acquire continuing education. The proposal also establishes presenter qualifications. The change is necessary so that all means of distance learning will be considered as acceptable continuing education and to ensure qualified presenters. The effect of the Rule will allow licensees more opportunities to complete the continuing education requirement for licensure renewal. 310:405-17-6.1 The current Rule provides for the procedure and terms of the submission of the continuing education roster. The proposal defines the continuing education roster. This change is necessary to allow the Department to establish requirements for receiving renewal information on official Department forms. The effect of the Rule will ensure accurate, consistent information necessary to renew an LPC license. 310:405-29-4 The new proposed Rule in this Subchapter describes informed consent. The addition is necessary to establish a standard regarding informed consent in the counseling setting. The effect of the Rule will provide direction and clarification regarding informed consent for the counselor and the client.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-3. Client welfare

(a) **Discrimination.** LPCs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination ~~on the basis of race, color, age, gender, religion or national origin~~ based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. LPCs do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

(b) **Records.**

(1) **Requirement of records.** LPCs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services. LPCs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(2) **Confidentiality.** LPCs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

(3) **Confidentiality of records.** LPCs shall be responsible for complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(4) **Client access.** LPCs shall provide the client with a copy of the client's record in accordance with state and federal laws. In situations involving multiple clients, access to records is limited to those parts of records that do not include confidential information related to another client.

(c) **Dual relationships.** LPCs shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the LPC reasonably suspects that he or she has inadvertently entered into a dual relationship the LPC shall record that fact in the records of the affected client(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the LPC cannot readily refer the client to another counselor or other professional, the LPC shall complete one or more of the following measures as necessary to prevent the exploitation of the client and/or the impairment of the LPC's professional judgment:

(1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;

(2) Consult with the other professional(s) to understand the potential impairment to the LPC's professional judgment and the risk of harm to the client of continuing the dual relationship.

(d) **Providing counseling to persons of prior association.** LPCs shall not undertake to provide counseling to any person with whom the LPC has had any prior sexual contact or close personal relationship within the previous five (5) years.

(e) **Interaction with former clients.** LPCs shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former client for two (2) years after the termination of the counseling relationship. LPCs shall not engage in any activity that is or may be sexual in nature with a former client for at least five (5) years after the termination of the counseling relationship. LPCs shall not exploit or obtain an advantage over a former client by the use of information or trust gained during the counseling relationship.

(f) **Invasion of privacy.** LPCs shall not make inquiry into persons or matters that are not reasonably calculated to assist or benefit the counseling process.

(g) **Private or Independent Practice.** No person may engage in the private or independent practice of professional counseling work or open a facility with the intent of providing private or independent counseling practice unless that person:

(1) is licensed under this Act as a Licensed Professional Counselor; and,

(2) has met all requirements of Section 310:405-11-5 of the LPC Regulations; and

(3) has continued to meet all continuing education requirements set forth in Subchapter 17 of this Chapter.

(~~g~~h) **Referral.**

(1) If LPCs determine that they are unable to be of professional assistance to a client, the LPC shall not enter a counseling relationship. LPCs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LPC shall terminate the relationship.

(2) LPCs shall not abandon or neglect current clients in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an LPC becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LPC's duty of responsibility to the current client, including a suspension of the LPC's license or any other situation or condition described in subchapter 3 of these rules, the LPC shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship.

SUBCHAPTER 7. APPLICATION PROCEDURES

310:405-7-2. Application materials and forms

(a) Each application shall include the following documents:

(1) Application form,

(2) Official transcript, mailed from the university or college,

(3) Three (3) Document of recommendation forms,

(4) Practicum documentation form,

(5) Two (2) classifiable sets of fingerprints, and

(6) Fees.

(b) The Application Form requires the following:

(1) Identifying information;

(2) Possession of other credentials;

(3) Previous misconduct;

(4) Education;

(5) References;

(6) Proposed professional practice; and

(7) Notarization.

(c) The Internship/Practicum Documentation form requires the following:

(1) Identifying information; and

(2) Time, place, location of practicum.

(d) The Document of Recommendation requires the following:

(1) Identifying information;

(2) Ratings of ethical and professional characteristics; and

(3) Circumstances and time period submitter has known applicant.

(e) The Statement of Professional Disclosure requires the following:

(1) Statement providing for the applicant's disclosure of professional standing; and

(2) Statement providing for making contact with OSDH for further information.

(f) The Supervision Agreement requires identifying information of supervisee and supervisor.

(g) The On-Site Supervisor Verification Form requires identifying information as follows:

(1) Name of applicant;

(2) Place of employment;

(3) On-Site Supervisor information;

(4) A reproduction of the regulation regarding supervision accrued in a private setting.

(h) The Licensure Verification Request Form requires the following information:

(1) Name of licensee;

(2) Licensee license number; and

(3) Licensee license type.

(i) The Out-of-State Licensure Verification Form requires the following information:

(1) Identifying information;

(2) Type of credential held in other state;

(3) License number;

(4) Issue and expiration date of license;

(5) Current standing of license;

(6) Past complaints or sanctions;

(7) Exam information;

(8) Supervision information;

(9) Graduate education;

(10) Internship documentation; and

(11) Signature and identifying information of person verifying from out-of-state.

(j) The Mailing Addresses Request/Order Form requires the following information:

(1) Type of licensure list requested;

(2) Format requested; and

(3) Identifying information of person making request.

(k) The Licensure Reactivation Request Form requires the following information:

(1) Licensure type;

(2) Identifying information;

(3) Employment information;

(4) Graduate education;

(5) License type and number; and

(6) Dates of inactivation and reactivation of license.

(l) The LPC Continuing Education Approval Application Form requires the following information:

(1) name of workshop;

(2) program context;

(3) program knowledge area;

(4) name of presenter;

(5) presenter qualifications;

(6) date of presentation;

(7) number of hours requested;

(8) sponsoring agency;

(9) name of contact;

(10) phone number of contact;

(11) signature and signature date of contact;

(12) program content in relation to counseling ethics;

(13) program content in relation to counseling supervision;

(14) number of hours requested for counseling ethics; and

(15) number of hour requested for counseling supervision.

(m) The Continuing Education Rosters for LPC Approved Supervisors require the following information:

(1) name of licensee;

(2) signature and signature date of licensee;

(3) total clock hours of workshop(s);

(4) name of counseling supervision workshop;

(5) sponsoring agency of workshop(s);and

(6) date of workshop(s), and number of hours of each workshop.

310:405-7-5. Re-application for revoked license

(a) No re-application for a revoked license will be considered for a period of 5 years following the revocation. Re-application after license is revoked for administrative action shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure,

(6) New Application Fee,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The National Counselor Examination or another equivalent examination as determined by the Department; and

(2) The Oklahoma Legal and Ethical Responsibilities Examination.

(c) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall not carry over to a new application.

(e) Application materials shall be reviewed by the advisory board.

(f) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of the revocation of licensure.

(g) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

310:405-7-8. Re-application for denied application

(a) Re-application after application has been denied, as prescribed in Section 1912 of the LPC Act, shall included the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,
(3) Document of Recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Application materials shall be reviewed by the LPC Advisory Board.

(c) Applicant shall be required to take necessary examinations.

(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(e) Internship/Practicum Documentation Form on file shall carry over to a new application.

(f) All previously submitted and approved Supervised Experience shall carry over to a new application.

(g) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:405-31-7.

310:405-7-9. Denial of licensure application

Following the denial of a licensure application by the Commissioner of Health, as prescribed in Section ~~1905~~1912 of the LPC Act, the applicant may request an administrative hearing to contest the denial of their application within 15 days of receiving notification from the Department. If a hearing is not requested within 15 days, the denial will be final.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

310:405-11-2. Responsibility of supervisors and supervisees

(a) The supervisor and supervisee hall be jointly responsible for the following:

(1) Ensuring the requirements under this subchapter are fulfilled. A failure to comply may result in the loss of supervision hours, denial of licensure, initiation of formal complaint procedures, and/or loss of approved supervisor status.

(2) Ensuring the client's right to confidentiality is protected and the rules of the supervisor and supervisee's employers are adhered to during the course of supervision.

(b) The supervisor shall maintain supervision records for each supervisee for at least five (5) years beyond the termination or completion of the supervised experience.

310:405-11-3. Acceptability of supervised experience

(a) Supervised experience is acceptable when it consists of the performance of counseling activities as described in Section 1902, of the Act under supervision as described below.

(1) Supervision shall focus on the raw data from a supervisee's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings.

(2) Supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.

(3) Individual supervision consists of face-to-face contact with one supervisor and one supervisee.

(4) Group supervision may be conducted with two (2) to six (6) supervisees and a supervisor.

(b) Supervised experience begins after all applicable academic requirements, as stated in LPC Regulations, Subchapter 9, have been completed.

(c) An LPC Candidate may accrue supervised experience hours in academic, governmental or private-not-for-profit and private for-profit settings.

(d) Supervised experienced hours shall be accrued in a private for-profit or not-for-profit counseling practice setting, only if:

(1) The LPC Candidate ~~works~~is employed at the same ~~location~~facility as a person licensed in the state of Oklahoma as a Licensed Professional Counselor, a Licensed Marital and Family Therapist, a Licensed Behavioral Practitioner, a Psychologist, a Psychiatrist, ~~or~~ a Clinical Social Worker, or a Licensed Alcohol and Drug Counselor, whose assigned job duties include being immediately available to the LPC Candidate for supervision at any time the LPC Candidate is engaging in the practice of counseling or counseling-related services. Out of state on-site supervisors may be approved on a case-by-case basis; and

(2) The LPC Candidate is receiving supervision for licensure from an approved LPC supervisor who is not required to work at the same location as the LPC Candidate.

310:405-11-4. Supervisor qualifications

Supervisor qualifications include:

(1) A Licensed Professional Counselor who has practiced in positions relevant to those the LPC proposes to supervise for two (2) years beyond the date of issue of the license, and

(2) An LPC who was licensed by endorsement from another state who has practiced in positions relevant to those they propose to supervise for one (1) year beyond the date of issue of the Oklahoma license.

(3) As of January 1, 2000:

(A) an LPC who has successfully completed a graduate course in counselor supervision of at least forty-five (45) contact hours or equivalent course of study acceptable to the Department. This equivalent course of study shall consist of workshops in counseling supervision in combination with directed study of counseling supervision literature. Fifteen (15) of the forty-five (45) contact hours shall be in a class or workshop format which includes four (4) supervisors-in-training; the other thirty (30) contact hours shall be reserved for directed study, and

(B) an LPC who has passed the Oklahoma Legal and Ethical Responsibilities Examination.

(4) An agreement to be "on call" to the supervisee on a twenty-four (24) hour basis and to arrange for an alternate supervisor if not available.

(5) After receipt of the LPC supervision agreement, LPC supervisor may be approved by the Department.

(6) Approved LPC Supervisors are required to complete a minimum of three (3) clock hours of continuing education in counseling supervision each renewal period.

(7) Approved Supervisor designation will not be renewed until the continuing education requirement is met.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:405-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of continuing education per year. One (1) graduate academic semester credit hour is equal to fifteen (15) clock hours. One (1) graduate academic quarter credit hour is equal to ten (10) clock hours.

(b) A minimum of three (3) clock hours of continuing education hours must be in counseling ethics from programs pre-approved by the Department or its designee. Continuing education in counseling ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses ethics issues specifically pertaining to the practice of counseling, as defined in Section 1902(6) of this Act, counseling treatment interventions, consulting, referral activities, or research activities as defined in Section 1902 of this Act.

(2) Addresses regulations as promulgated in Subchapter 3 of this Chapter.

(3) Meets all requirements of sections 2-5 of Section 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling ethics continuing education must be accrued in a face-to-face setting.

(c) Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision from programs pre-approved by the Department of its designee. Continuing education in Counseling Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses issues specifically related to the practice of clinical supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter.

(2) Contains content in one or more of the following knowledge areas:

(A) Ethical and legal considerations in the practice of clinical supervision;

(B) Theoretical models of clinical supervision;

(C) Clinical supervision intervention methods and modalities; and

(D) Research in clinical supervision; and

(3) Meets all requirements of sections 2-5 of Subchapter 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling supervision continuing education must be accrued in a face-to-face setting.

310:405-17-3. Acceptable continuing education

Continuing education (C.E.) is acceptable to the Department when it:

(1) Approximates the content of any of the academic areas listed under subchapter 310:405-9-2 of this chapter. and;

(2) Is presented by an LPC or other person licensed or certified by other counselor related positions, a person who:

(A) is licensed or certified by counseling related professions;

(3) is presented by

(B) is presented by a licensed or certified member of a non-counseling field, i.e. medicine, law if the content of the presentation is counselor related and falls within the presenter's area of training,; or

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in Section 310:405-9-2 of this Chapter; or

(D) the person is presenting or has presented at a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(E) is presenting or has presented in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(43) Takes place in the context of:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved home studydistance learning course.;

(B) takes place in the context of a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), American Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services; and

(~~5~~4) Is accrued during the twelve (12) months preceding the renewal deadline or, in the case of the first licensing period, twenty-four (24) months preceding.

310:405-17-4.1. Continuing education accrual from ~~home study~~distance learning courses

Continuing education may be accrued when the LPC completes ~~home study~~distance learning programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through ~~home study~~distance learning courses. Presenter or program author must meet all requirements of 310:405-17-3 of this Chapter.

310:405-17-6.1. Submission of continuing education roster

LPCs shall submit a Continuing Education Roster (not individual verification of attendance documents) on an official Department form with the license renewal fee. Rosters may be obtained from the Department. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop(s), date of workshop(s), and the number of hours of each workshop. Only continuing education accrued in the preceding license renewal period shall be acceptable.

SUBCHAPTER 29. CONSUMER INFORMATION

310:405-29-4. Informed consent

Clients have the freedom to choose whether to enter into or remain in a counseling relationship and need adequate information about the counseling process and the LPC. LPCs have an obligation to review in writing and verbally with clients the rights and responsibilities of both the LPC and the client. Informed consent is an ongoing part of the counseling process, and LPCs appropriately document discussions of informed consent throughout the counseling relationship.

[OAR Docket #08-1121; filed 6-3-08]

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

[OAR Docket #08-1122]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
310:451-1-1 [NEW]
310:451-1-2 [NEW]
310:451-1-3 [NEW]
310:451-1-3.1 [NEW]
Subchapter 3. License Requirements [NEW]
310:451-3-1 [NEW]
310:451-3-2 [NEW]
310:451-3-3 [NEW]
310:451-3-4 [NEW]
310:451-3-5 [NEW]
Subchapter 5. Special Provisions [NEW]
310:451-5-1 [NEW]
310:451-5-2 [NEW]
310:451-5-3 [NEW]
Subchapter 7. Enforcement [NEW]
310:451-7-1 [NEW]
310:451-7-2 [NEW]
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International Code Council, the 2006 Edition of the International Building Code.
National Fire Protection Association, Standard Number 10, Portable Fire Extinguishers, 2007 Edition.
National Fire Protection Association, Standard Number 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 Edition.
National Fire Protection Association, Standard Number 12A, Standard on Halon 1301 Fire Extinguishing Systems, 2004 Edition.
National Fire Protection Association, Standard Number 17, Standard on Dry Chemical Extinguishing Systems, 2002 Edition.
National Fire Protection Association, Standard Number 17A, Standard on Wet Chemical Extinguishing Systems, 2002 Edition.
National Fire Protection Association, Standard Number 70, National Electrical Code, 2005 Edition.
National Fire Protection Association, Standard Number 72, National Fire Alarm Code, 2007 Edition.
National Fire Protection Association, Standard Number 96, Standard on Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 Edition.
National Fire Protection Association, Standard Number 101, Life Safety Code, 2006 Edition.
National Fire Protection Association, Standard Number 750, Standard on Water Mist Fire Protection Systems, 2006 Edition.
National Fire Protection Association, Standard Number 2001, Clean Agent Fire Extinguishing Systems, 2006 Edition.
Incorporating rules:
310:451-1-2
310:451-1-3
310:451-1-3.1
310:451-5-1
310:451-5-2
310:451-5-3

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma State Department of Health, Occupational Licensing Division, Fire Extinguisher Licensing Program, 1000 N.E. 10th Street, Oklahoma City, OK 73117

ANALYSIS:

The proposed new rule establishes language that is necessary to implement a new section of law codified in the Oklahoma Statutes as Section 1820.1 of Title 59, known as the "Fire Extinguisher Licensing Act". The purpose of the Act is to regulate the sale, installation, and servicing of portable fire extinguishers, including both engineered and pre-engineered systems. The proposed rule creates categories of licensure, definitions, qualifications, and requirements for companies, managers, technicians, salespersons, and trainees along with the respective licensing fees, within each category. Additional rule language establishes the criteria to qualify for initial licensing and the minimum qualifications for licensing thereafter.

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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:451-1-1. Purpose

The rules in this Chapter implement the Fire Extinguisher Licensing Act, Title 59 O.S. Supp. 2007, Section 1820.1 et seq.

310:451-1-2. Definitions

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

"Certificate of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work.

"Certification of a system" means testing per applicable code of any pre-engineered or engineered fire suppression system by a properly licensed individual working for a properly licensed company to verify that the system complies with all of the requirements of the applicable code, standard or manufacturer's manual.

"Commercial Building" means a building or structure used for any purpose or occupancy that is not defined in this section as a Residential Building.

"Committee" means the Fire Extinguisher Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Direct Supervision" means the presence of a licensed manager or technician on the premise within the hearing or eye sight of the individual(s)requiring supervision.

"Engineered Fire Suppression System" shall mean any fixed fire suppression unit that is designed by the installing or inspecting company. Manufacturers may provide design, installation or inspection criteria but each system is specifically designed for a specific hazard area by someone outside of the manufacturer of the system.

"Engineered fire suppression system company" means a business that provides engineered fire suppression systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a engineered fire suppression system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Engineered fire suppression system designer" means a person who designs engineered fire suppression systems on behalf of a licensed Oklahoma engineered fire suppression systems company.

"Engineered fire suppression system company qualified agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such engineered fire suppression systems industry business or a branch thereof.

"Engineered fire suppression system salesperson" means a person who sells to others on behalf of a licensed Oklahoma engineered fire suppression systems company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, who participates in the specification and/or lay out of a engineered fire suppression system on behalf of a engineered fire suppression systems company.

"Engineered fire suppression system technician" means an individual who is employed by an Oklahoma licensed engineered fire suppression systems company to plan, lay out, sell, install, maintain, repair, test, inspect or service engineered fire suppression systems.

"IBC" means the International Building Code.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or test of any portable fire extinguisher, pre-engineered fire suppression system or engineered fire suppression system to determine if the system has been installed and is operating according to the applicable code, standard or manufacturer's manual.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m2) or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"NFPA" means the National Fire Protection Association.

"Ownership" means the dominion, title, or proprietary right in a company subject to the Fire Extinguisher Licensing Licensing Act and this Chapter.

"Portable fire extinguisher" shall mean any hand held, wheeled, stationary or skid mounted unit designed for the unit itself to be mobile or the means of distributing the fire fighting agent to be mobile to extinguish a fire. This includes all units that use a nozzle connected directly to the unit or a nozzle connected to a hose of any length which is connected to the unit.

"Portable fire extinguisher company" means a business that provides portable fire extinguishers to others by any means, including, but not limited to, the sale, lease, rent, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a portable fire extinguisher; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Portable fire extinguisher company qualified agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such fire extinguisher industry business or a branch thereof.

"Portable fire extinguisher salesperson" means a person who sells to others on behalf of a licensed Oklahoma portable fire extinguisher company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in specification and/or lay out of a portable fire extinguisher on behalf of a portable fire extinguisher company.

"Portable fire extinguisher technician" means an individual who is employed by an Oklahoma licensed portable fire extinguisher company to plan, lay out, sell, install, maintain, repair, test, inspect or service portable fire extinguishers.

"Pre-engineered fire suppression system" shall mean any fixed fire suppression system that is engineered by the manufacturer and provides, to installing companies, a design manual with preset limitations for the design, inspection or installation of the system.

"Pre-engineered fire suppression company" means a business that provides pre-engineered fire suppression systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a pre-engineered fire suppression system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Pre-engineered fire suppression company qualified agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such Pre-engineered fire suppression industry business or a branch thereof.

"Pre-engineered fire suppression salesperson" means a person who sells to others on behalf of a licensed Oklahoma pre-engineered system company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in design, plan, specification and/or lay out of a pre-engineered fire suppression system on behalf of a pre-engineered system company.

"Pre-engineered fire suppression technician" means an individual who is employed by an Oklahoma licensed pre-engineered system company to design, plan, lay out, sell, install, maintain, repair, test, inspect or service pre-engineered fire suppression systems.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Supervision" means on-site supervision by a licensed qualified agent, technician or salesperson.

"System" means a pre-engineered or engineered fire suppression system, as defined in these rules, or a portion or combination of such systems.

"Trainee" means an individual who is employed by an Oklahoma licensed portable, pre-engineered or engineered company to learn to properly engage in the activities regulated by this Chapter that can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of work being performed.

310:451-1-3. Adopted references

The Board of Health hereby incorporates by reference the International Code Council (ICC) 2006 (IBC) Edition International Building Code; the 2007 Edition Standard for Portable Fire Extinguishers (NFPA 10); the 2005 Edition Standard on Carbon Dioxide Extinguishing Systems (NFPA 12); the 2004 Edition Standard on Halon 1301 Fire Extinguishing Systems (NFPA 12A); the 2002 Edition Standard for Dry Chemical Extinguishing Systems (NFPA 17); the 2002 Edition Standard for Wet Chemical Extinguishing Systems (NFPA 17A); the 2005 Edition National Electrical Code (NFPA 70); the 2007 Edition National Fire Alarm Code (NFPA 72); the 2004 Edition Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations (NFPA 96); the 2004 Edition Standard on Clean Agent Fire Extinguishing Systems (NFPA 2001); the 2006 Edition of the Standard on Water mist fire Protection Systems (NFPA 750); the 2006 Edition of the Clean Agent fire Extinguishing Systems (NFPA 2001) and the 2006 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) as the minimum standard of installation for the fire extinguisher industry in Oklahoma. If a conflict exists between any of the above referenced installation standards, the more stringent standard shall apply. If a conflict exists between any of the above referenced codes or standards and this Chapter, the requirements in this Chapter shall apply.

310:451-1-3.1. Compliance with intent of chapter

Where no specific standards or requirements are specified in this chapter or within other codes or regulations adopted by the State Department of Health, compliance with the applicable standards of the National Fire Protection Association, American National Standard Institute (ANSI), or other nationally recognized fire safety standards approved by the State is prima facie evidence of compliance with the intent of this chapter.

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:451-3-1. General application and license requirements

The categories of licensing in the Fire Extinguisher industry shall be:

(1) Portable fire extinguisher;
(2) Pre-Engineered fire suppression systems; or
(3) Engineered fire suppression systems.

310:451-3-2. Application and license fees, period and display, and examination alternatives or prerequisites

(a) **Application and license fees.** The following fees apply to fire extinguisher industry licensure:

(1) Initial application and licensing fees.
- (A) Company - $250.00;
- (B) Company Qualified agent $200.00
- (C) Designer Application $200.00
- (D) Technician - $75.00
- (E) Trainee - $75.00
- (F) Salesperson $75.00
- (G) Re-Examination, Per Attempt - $50.00

(2) Renewal fees.
- (A) Company License - $250.00
- (B) Company Qualified Agent - $100.00
- (C) Designer -$100.00
- (D) Technician - $35.00
- (E) Trainee - $35.00
- (F) Salesperson - $35.00
- (G) Duplicate license $25.00

(b) License period.

(1) A license shall expire on September 30, 2009, and each year thereafter. Renewals must be received or postmarked on or before September 30 of each year. Beginning on October 1, a license may be renewed by paying double the renewal fee.

(2) Initial applicants for managers, designers, technicians, salespersons and trainees shall provide either:
- (A) An application and a current criminal history record check dated within thirty days of application, from the Oklahoma State Bureau of Investigations. If the applicant has not resided in the State of Oklahoma for the past ten (10) years a current criminal history record check from each State of previous residents will be required. In addition two (2) completed fingerprint cards and two (2) passport photo's. (Provides for Temporary licensure) or;
- (B) An application, two (2) completed fingerprint cards and two (2) passport photo's. (Does not provide for Temporary Licensure)

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(4) From July 1, 2008 through September 30, 2008 the Commissioner shall, upon proper application and payment of fee made license without examination those persons who can provide evidence that they were engaged in fire suppression work prior to November 1, 2007. Example of evidence includes but not is limited to;
- (A) Invoices for work performed;
- (B) Purchase receipts for industry related equipment;
- (C) Documents of installation or services by employee;
- (D) Provide documentation of printed advertising dated prior to the effective date of November 1,2007.
- (E) Other documents as approved by the Committee.

(c) Examination and Re-examination. Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee. However, if the examinee notifies the Department within seventy two (72) hours before scheduled exam, the Department will reschedule the examination date with no additional fee required pursuant to 310:451-3-2(a)(1).

(d) Company license display. The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, plans, submittals and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the company name.

(e) Personal license display. Each qualified agent, designer, technician, trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Oklahoma State Department of Health or other authorities having jurisdiction. In addition the individual shall have a state/government issued photo I.D. in their possession while engaged in the licensed activity.

(f) Personal license information.

(1) Each individual license holder shall notify the Oklahoma State Department of Health, on a form specified and provided by the Oklahoma State Department of Health, within fourteen (14) days of the following:
- (A) Any change in the home address.
- (B) Any separation from an employer or change in employer.
- (C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and qualified agent license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

310:451-3-3. Portable Fire Extinguisher license requirements

Licensing requirements for the portable fire extinguisher industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed portable fire extinguisher qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma, shall apply for a separate license for each company office and have a licensed portable fire extinguisher qualified agent at each office. A portable fire extinguisher company shall notify the Department within fourteen (14) days in event of the death of the portable fire extinguisher qualified agent or the qualified agents separation from the company for any other reason, and the company shall designate another licensed portable fire extinguisher qualified agent within (30) thirty days from separation.

(B) A licensed portable fire extinguisher technician or qualified agent shall be on site for any work being performed.

(C) The company will notify the Department of the physical address and telephone number for each company office in accordance with 59 O.S. Section 1820.14.

(2) **Qualified Agent.**

(A) Each application for licensure as a portable fire extinguisher qualified agent shall include verification of experience in the portable fire extinguisher business. The experience shall include verified/or licensed experience as a portable fire extinguisher technician or other related experience approved by the Committee.

(B) Each licensed portable fire extinguisher company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agent.

(C) Each licensed portable fire extinguisher company qualified agent shall have a security background verification.

(D) As of October 1, 2008, each applicant for licensure as a portable fire extinguisher qualified agent shall pass an examination prescribed by the Committee.

(3) **Technician.**

(A) Each portable fire extinguisher technician shall work for a licensed portable fire extinguisher company and under the supervision of a portable fire extinguisher qualified agent.

(B) As of October 1, 2008, each applicant for licensure as a portable fire extinguisher technician shall pass an examination prescribed by the Committee.

(C) Each portable fire extinguisher technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.

(4) **Trainee.**

(A) A portable fire extinguisher trainee shall be employed by a licensed Oklahoma portable fire extinguisher company.

(B) A portable fire extinguisher trainee shall work under the direct supervision of a licensed portable fire extinguisher qualified agent, portable fire extinguisher technician or a portable fire extinguisher salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per portable fire extinguisher company qualified agent, portable fire extinguisher technician or portable fire extinguisher salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each portable fire extinguisher salesperson shall work for a licensed portable fire extinguisher company and under the supervision of a portable fire extinguisher company qualified agent.

(B) As of October 1, 2008, each applicant for licensure as a portable fire extinguisher salesperson shall pass an examination prescribed by the Committee.

(C) Each portable fire extinguisher salesperson shall have a security background verification.

310:451-3-4. Pre-Engineered fire suppression system license requirements

Licensing requirements for the pre-engineered fire suppression industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed pre-engineered fire suppression system qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma, shall apply for a separate company license for each company office and have a licensed pre-engineered fire suppression system qualified agent at each office. A pre-engineered fire suppression company shall notify the Department within fourteen (14) days in event of the death of the pre-engineered fire suppression system qualified agent or the qualified agents separation from the company for any other reason, and the company shall designate another licensed pre-engineered fire suppression system qualified agent within (30) thirty days from separation.

(B) A licensed pre-engineered fire suppression system technician or qualified agent shall be on site for any work being performed.

(C) The company will notify the Department of the physical address and telephone number for each

company office in accordance with 59 O.S. Section 1820.14.

(2) **Qualified Agent.**

(A) Each application for licensure as a pre-engineered fire suppression system qualified agent shall include verification of experience in the pre-engineered fire suppression system business. The experience shall include verified/or licensed experience as a pre-engineered fire suppression system technician or other related experience approved by the Committee.

(B) Each licensed pre-engineered fire suppression system company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agent.

(C) Each licensed pre-engineered fire suppression system qualified agent shall have a security background verification.

(D) As of October 1, 2008, each applicant for licensure as a pre-engineered fire suppression system qualified agent shall pass an examination prescribed by the Committee.

(3) **Technician.**

(A) Each pre-engineered fire suppression system technician shall work for a licensed pre-engineered fire suppression system company and under the supervision of a pre-engineered fire suppression system qualified agent.

(B) As of October 1, 2008, each applicant for licensure as a pre-engineered fire suppression system technician shall pass an examination prescribed by the Committee.

(C) Each pre-engineered fire suppression system technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.

(4) **Trainee.**

(A) A pre-engineered fire suppression system trainee shall be employed by a licensed Oklahoma pre-engineered fire suppression company.

(B) A pre-engineered fire suppression system trainee shall work under the direct supervision of a licensed pre-engineered fire suppression system qualified agent, pre-engineered fire suppression system technician or a pre-engineered fire suppression system salesperson.

(C) There shall be no more than three (3) trainees per pre-engineered fire suppression system company qualified agent, pre-engineered fire suppression system technician or pre-engineered fire suppression system salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each pre-engineered fire suppression system salesperson shall work for a licensed pre-engineered fire suppression system company and under the supervision of a pre-engineered fire suppression system company qualified agent.

(B) As of October 1, 2008, each applicant for licensure as a pre-engineered fire suppression system salesperson shall pass an examination prescribed by the Committee.

(C) Each pre-engineered fire suppression system salesperson shall have a security background verification.

310:451-3-5. Engineered System license requirements

Licensing requirements for the engineered fire suppression system industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed engineered fire suppression system qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma, shall apply for a separate company license for each company office and have a licensed engineered fire suppression system qualified agent at each office. A engineered fire suppression system company shall notify the Department within fourteen (14) days in event of the death of the engineered fire suppression system qualified agent or the qualified agents separation from the company for any other reason, and the company shall designate another licensed engineered system qualified agent within (30) thirty days from separation.

(B) A licensed engineered fire suppression system technician or qualified agent shall be on site for any work being performed.

(C) The company will notify the Department of the physical address and telephone number for each company office in accordance with 59 O.S. Section 1820.14.

(2) **Qualified Agent.**

(A) Each application for licensure as a engineered fire suppression system qualified agent shall include verification of experience in the engineered fire suppression system business. The experience shall include verified/or licensed experience as engineered fire suppression system technician or other related experience approved by the Committee.

(B) Each licensed engineered fire suppression system company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agent.

(C) Each licensed engineered fire suppression system qualified agent shall have a security background verification.

(D) As of October 1, 2008, each applicant for licensure as an engineered fire suppression system qualified agent shall pass an examination prescribed by the Committee.

(3) **Designer.**

(A) Each engineered fire suppression system designer shall work for a licensed engineered fire suppression system company and under the supervision of a engineered fire suppression system qualified agent.

(B) As of October 1, 2008, each applicant for licensure as an engineered fire suppression system designer shall pass an examination prescribed by the Committee.

(C) Each engineered fire suppression system designer shall have a security background verification.

(4) **Technician.**

(A) Each engineered fire suppression system technician shall work for a licensed engineered fire suppression system company and under the supervision of a engineered fire suppression system qualified agent.

(B) As of October 1, 2008, each applicant for licensure as an engineered fire suppression system technician shall pass an examination prescribed by the Committee.

(C) Each engineered fire suppression system technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.

(5) **Trainee.**

(A) A engineered fire suppression system trainee shall be employed by a licensed Oklahoma engineered fire suppression system company.

(B) A engineered fire suppression system trainee shall work under the direct supervision of a licensed engineered fire suppression system qualified agent, engineered fire suppression system technician or a engineered fire suppression system salesperson.

(C) There shall be no more than three (3) trainees per engineered system company qualified agent, engineered fire suppression system technician or engineered fire suppression system salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(6) **Salesperson.**

(a) Each engineered fire suppression system salesperson shall work for a licensed engineered fire suppression system company and under the supervision of a engineered fire suppression system company qualified agent.

(b) As of October 1, 2008, each applicant for licensure as a engineered fire suppression system salesperson shall pass an examination prescribed by the Committee.

(c) Each engineered fire suppression system salesperson shall have a security background verification.

SUBCHAPTER 5. SPECIAL PROVISIONS

310:451-5-1. Portable fire extinguisher tagging requirements

(a) **Traffic Light Bright Green Tag (Annual inspection tag/sticker).** The Green Tag shall be the visual record of the last annual inspection or initial certification testing where the system was found to be operable with no impairments. Fire extinguishers that are located in areas requiring weather resistant tags may use a white weather resistant self-adhesive tag in lieu of a green tag. The following additional requirements shall apply to the use of the Green Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5 1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's license number;

(D) The signature, printed name and license number of the portable fire extinguisher Technician certifying the system; and

(E) The date the inspection was performed.

(4) Only a portable fire extinguisher technician, employed by a portable fire extinguisher Company or the Fire Code Official may remove the tag.

(b) **Traffic Light Bright Red Tag (Annual inspection tag/sticker) Portable Fire Extinguisher Inoperable.** The intent of the Red Tag is to provide notification to the authority having jurisdiction of a portable fire extinguisher that has not been properly tested or is inoperable.

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5 1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's license number;

(D) The signature, printed name and the license number of a portable fire extinguisher technician certifying the system;

(E) The month and year the inspection was performed;

(F) A list of the deficiencies that render the system inoperable; and,

(G) A list of any deficiencies present that do not render the system inoperable.

(4) Only a portable fire extinguisher technician, employed by a portable fire extinguisher company or the Fire Code Official may remove an annual inspection tag.

(5) If a Red Tag is placed on a portable fire extinguisher the fire extinguisher Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

310:451-5-2. Pre-Engineered fire suppression system tagging requirements

(a) **The White Tag** shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the WhiteTag.

(1) The tag must be permanently affixed to the system as long as the system is in service.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The certifying company's name, address, and telephone number (local office);

(C) The certifying company's pre-engineered system company license number;

(D) The signature, printed name and the license number of the pre-engineered system technician certifying the system;

(E) The pre-engineered system permit number;

(F) The make and model of the pre-engineered system;

(G) The date of certification; and,

(H) The Code, Edition and year under which the system was installed.

(4) Only the Fire Code Official may remove an installation tag.

(b) **Traffic Light Bright Green Tag (Semi-annual inspection tag/sticker).** The Green Tag shall be the visual record of the last semi-annual inspection or initial certification testing where the pre-engineered system was found to be operable with no impairments. The following additional requirements shall apply to the use of the Green Tag:

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and the manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5 1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's pre-engineered system company license number.

(D) The signature, printed name and license number of the pre-engineered system technician certifying the system;

(E) The month and year the inspection was performed; and

(F) The type of pre-engineered system that was serviced.

(4) Only a Pre-engineered System technician, employed by a Pre-engineered System Company or the Fire Code Official may remove the tag.

(c) **Traffic Light Bright Yellow Tag (Semi-Annual inspection tag/sticker) Operational Pre-engineered System but with minor impairments.** The intent of the Yellow Tag is to provide notification to the authority having juris-diction of a system that is operable with impairments that do not severely compromise the system's functional operation. The Yellow Tag shall be the visual record of the last semi-annual inspection where the system was found to be operable but with minor impairments. The following additional requirements shall apply to the use of the Yellow Tag:

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5 1/4") in height and two and five-eights inches (2 5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's pre-engineered system company license number.

(D) The signature, printed name and license number of the pre-engineered system technician certifying the system;

(E) The month and year the inspection was performed;

(F) The type of pre-engineered system that was serviced; and

(G) A list of the impairments.

(4) Only a Pre-engineered System technician, employed by a Pre-engineered System Company or the Fire Code Official may remove the tag.

(5) If a Yellow Tag is placed on a pre-engineered system the Pre-engineered System Company shall notify the building owner or agent and the Fire Code Official, in writing of all impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.

(d) **Traffic Light Bright Red Tag (Semi-Annual inspection tag/sticker) Pre-engineered System Inoperable.** The intent of the Red Tag is to provide notification to the authority having jurisdiction of a pre-engineered system that is inoperable.

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and the manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5 -1/4") in height and two and five-eights inches (2 5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's pre-engineered system company license number.

(D) The signature, printed name and license number of the pre-engineered system technician certifying the system;

(E) The month and year the inspection was performed;

(F) The type of pre-engineered system that was serviced.

(G) A list of the deficiencies that render the pre-engineered system inoperable

(4) Only a Pre-engineered System technician, employed by a Pre-engineered System Company or the Fire Code Official may remove the tag.

(5) If a Red Tag is placed on a pre-engineered system the Pre-engineered System Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

310:451-5-3. Engineered fire suppression system tagging requirements.

(a) **White Tag (Installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag.

(1) The tag must be permanently affixed to the system as long as the system is in service.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The certifying company's name, address, and telephone number (local office);

(C) The certifying company's engineered system company license number;

(D) The signature, printed name and license number of the engineered system technician certifying the system;

(E) The engineered system permit number;

(F) The make and model of the engineered system;

(G) The month and year of certification; and,

(H) The Code, Edition and year under which the system was installed.

(4) Only the Fire Code Official may remove an installation tag.

(b) **Traffic Light Bright Green Tag (Semi-annual inspection tag/sticker).** The Green Tag shall be the visual record of the last semi-annual inspection or initial certification testing where the engineered system was found to be operable with no impairments. The following additional requirements shall apply to the use of the Green Tag:

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and the manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5-1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's engineered system company license number.

(D) The signature, printed name and license number of the engineered system technician certifying the system;

(E) The month and year the inspection was performed; and

(F) The type of engineered system that was serviced.

(4) Only a Engineered System technician, employed by a Engineered System Company or the Fire Code Official may remove the tag.

(c) **Traffic Light Bright Yellow Tag (Semi-Annual inspection tag/sticker) Operational Engineered System but with minor impairments.** The intent of the Yellow Tag is to provide notification to the authority having jurisdiction of a system that is operable with impairments that do not severely compromise the system's functional operation. The Yellow Tag shall be the visual record of the last semi-annual inspection where the system was found to be operable but with minor impairments. The following additional requirements shall apply to the use of the Yellow Tag:

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5-1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's engineered system company license number.

(D) The signature, printed name and license number of the engineered system technician certifying the system;

(E) The month and year the inspection was performed;

(F) The type of engineered system that was serviced; and

(G) A list of the impairments.

(4) Only a Engineered System technician, employed by a Engineered System Company or the Fire Code Official may remove the tag.

(5) If a Yellow Tag is placed on a Engineered system the Engineered System Company shall notify the building owner or agent and the Fire Code Official, in writing of all impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.

(d) **Traffic Light Bright Red Tag (Semi-Annual inspection tag/sticker) Engineered System Inoperable.** The intent of the Red Tag is to provide notification to the authority having jurisdiction of a engineered system that is inoperable.

(1) The semi-annual inspection must be conducted in accordance with NFPA testing standards and the manufacturer's specifications.

(2) The tag shall be five and one fourth inches (5-1/4") in height and two and five-eights inches (2-5/8") in width.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's engineered system company license number.

(D) The signature, printed name and license number of the engineered system technician certifying the system;

(E) The month and year the inspection was performed;

(F) The type of engineered system that was serviced.

(G) A list of the deficiencies that render the engineered system inoperable

(4) Only a Engineered System technician, employed by a Engineered System Company or the Fire Code Official may remove the tag.

(5) If a Red Tag is placed on a Engineered system the Engineered System Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

SUBCHAPTER 7. ENFORCEMENT

310:451-7-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

(e) Any person whose license is revoked pursuant to these rules may not perform fire extinguisher industry work before attaining licensure pursuant to OAC 310:451.

310:451-7-2. Prohibited acts

(a) No person, entity, or firm may perform portable, pre-engineered or engineered fire suppression work without first obtaining a license pursuant to these Rules.

(b) No person shall offer to engage in portable, pre-engineered or engineered fire suppression work during the period his license is suspended or revoked.

(c) No employing firm shall employ or use an unlicensed person to perform portable, pre-engineered or engineered fire suppression industry work.

(d) No person, entity, or firm may transfer a license or registration.

(e) No person, licensed pursuant to these Rules, shall enter into an agreement for the use of his license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.

(f) No person shall make a materially false or fraudulent statement in an application for license, engage in cheating, or otherwise commit an act in violation of title 59 O.S.2007, Section 1820.et seq.

[OAR Docket #08-1122; filed 6-3-08]

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

[OAR Docket #08-1123]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
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310:638-1-2 [AMENDED]
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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]
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The amendments to OAC 310:638 modify the workplace drug and alcohol testing standards and procedures to include saliva as an appropriate body component sample for workplace drug testing throughout the standards; establishes new standards for saliva drug screening and confirmation testing including a requirement for participation in an approved proficiency testing program; sets requirements for saliva specimen collection and transportation.

These revisions also revoke obsolete provisions for an interim licensure status.

This rule implements the Standards for Workplace Drug and Alcohol Testing Act as amended effective November 1, 2006. This permanent action will supersede the emergency adoption that became effective on April 2, 2007 and set to expire on July 14, 2008.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:638-1-2. Definitions

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

"Alcohol concentration" means the amount of alcohol present in urine or blood expressed in terms of percent of the weight of alcohol per volume of urine or blood (w/v), or the amount of alcohol present in breath expressed in terms of grams of alcohol per two hundred ten (210) liters of breath, or the amount of alcohol present in saliva expressed in grams of alcohol per one hundred (100) milliliters of saliva.

"Alcohol testing facility" means any building, place, or facility in which operations, procedures, or examinations of materials derived from the human body are performed for the purpose of alcohol testing and if, as a result of such testing, mandatory or discretionary consequences may be rendered to the individual.

"Approved drug screening procedure" means a procedure approved by the Commissioner of Health to initially screen urine ~~or~~, hair or saliva for the presence or absence of a drug or drugs.

"Blind performance test specimen" means a specimen submitted to a testing facility which is blank i.e., certified to contain no drug, or spiked with one or more drugs for which the testing facility is testing;

"Department" means the Oklahoma State Department of Health.

"Drug screen testing facility" means any building, place, or facility in which operations or procedures for the biological, serological, immunological, chemical, immunohematological, or other examinations of materials derived from the human body are performed for the purpose of drug testing and if, as a result of such testing, mandatory or discretionary consequences may be rendered to the individual.

"Proficiency testing program" means performance of testing on specimens containing those drugs and metabolites which each testing facility shall be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. The proficiency testing program for drug testing facilities shall be approved for use by the Commissioner of Health.

"Saliva" means mucosal transudate or a combination of oral fluids consisting of a mixture of gingival crevicular fluid and common saliva.

"Screening device test" means non-evidential breath testing apparatus such as tubes filled with materials that turn a certain color when alcohol-laden breath is blown into them or a small, hand-held electronic apparatus that registers the presence or absence of alcohol concentration in breath, or an apparatus which registers a particular alcohol concentration when a swab with saliva from the employee's mouth is inserted into it.

310:638-1-3. Qualifications of testing facilities

(a) **Drug screen testing facilities.**

(1) Drug screen testing facilities not certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists shall meet the provisions of this Chapter for the matrices for which they test for drugs of abuse in order to be eligible for licensure as a testing facility.

(2) Drug screen testing facilities certified for forensic urine drug testing by the United States Department of Health and Human Services, accredited for forensic urine drug testing by the College of American Pathologists, or licensed by a State acceptable to the Department shall be deemed to meet the requirements of OAC 310:638 Subchapter 5 and shall be eligible for licensure as a testing facility.

(b) **Drug confirmation testing facilities.** All facilities performing drug confirmation testing using urine or saliva as the testing matrix shall be certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists in order to be eligible for licensure as a testing facility. Facilities performing confirmation testing using hair as the testing matrix, shall have passed an inspection performed by the Department or be licensed by another State acceptable to the Department.

(c) **Notification requirements.** All testing facilities licensed by the Department based on certification by the United States Department of Health and Human Services, accreditation by the College of American Pathologists, or licensed by another State accepted by the Department shall notify the Department in writing within ten (10) days of the loss of such certification, accreditation, or licensure.

310:638-1-4. Body specimens appropriate for testing

(a) **Drugs.**

(1) **Initial tests.** Urine, saliva or hair shall be used for the initial test for all drugs.

(2) **Confirmation tests.** Urine, saliva or hair shall be used for the confirmation test for all drugs.

(b) **Alcohol.**

(1) **Initial tests.** Breath or saliva shall be used for the initial test for alcohol. Blood may be used for initial testing as described in OAC 310:638-7-4(b)(4).

(2) **Confirmation tests.** Breath or blood shall be used for the confirmation test for alcohol.

(3) **Rehabilitation/post-rehabilitation tests.** For alcohol testing which meets the criteria at 310:638-7-8(a), urine may be used as the specimen for initial and/or confirmation testing.

310:638-1-5. Drugs approved for testing in urine or saliva

(a) A licensed testing facility may test for any drug or class of drugs or their metabolites included in Schedule I, II, or III of the Controlled Substances Act (21 U.S.C. § 801, et seq.) provided testing for such substances has been approved by the Commissioner of Health.

(b) The following drugs or their metabolites have been approved for testing by the Commissioner of Health:

(1) marijuana;

(2) opiates:

(A) codeine;

(B) heroin;

(C) morphine;

(3) semi-synthetic and synthetic narcotics:

(A) hydrocodone;

(B) hydromorphone;

(C) meperidine;

(D) methadone;

(E) oxycodone;

(F) propoxyphene;

(4) cocaine;

(5) phencyclidine;

(6) amphetamines:

(A) amphetamines;

(B) methamphetamines;

(C) methylenedioxyamphetamine;

(D) methylenedioxymethamphetamine;

(E) phentermine;

(7) barbiturates:

(A) amobarbital;

(B) butalbital;

(C) pentobarbital;

(D) secobarbital

(8) benzodiazepines:

(A) diazepam;

(B) chlordiazepoxide;

(C) alprazolam;

(D) clorazepate; and

(9) methaqualone.

(c) If the United States Department of Health and Human Services has established an approved protocol and positive threshold for a substance not listed in (b) of this Section, testing for such a substance shall be deemed to be approved by the Commissioner of Health.

(d) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

310:638-1-6.2. Saliva cutoff levels for initial drug screening tests

The manufacturer of the saliva test system shall establish initial cutoff levels to be used when screening saliva specimens to determine whether they are negative for drugs or their metabolites. Such cutoffs shall be consistently applied for all saliva testing using that test system.

310:638-1-7.2. Cutoff levels for drug confirmation testing in saliva

(a) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS), or an equivalent accepted method of equal or greater accuracy as approved by the Commissioner of Health.

The manufacturer of the saliva test system shall establish confirmation cutoff levels to be used when confirming saliva specimens that screen positive. Such cutoffs shall be consistently applied for all saliva testing using that test system. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the testing facility record as "greater than the highest standard curve value."

(b) All confirmation testing on saliva shall be performed on the same specimen that was identified as positive on the initial screen.

310:638-1-8.2. Saliva specimen collection procedures

(a) **Designation of collection site.** Each saliva drug testing program shall have one (1) or more designated collection sites which have all necessary personnel, material, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of saliva specimens to a licensed drug testing facility.

(b) **Security.** While security is important with any collection, in the case of saliva, only the temporary storage area in the designated collection site needs to be secure.

(c) **Chain of custody.** Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of saliva specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) **Access to authorized personnel only.** The saliva collection site shall be off limits to unauthorized personnel during the actual collection of specimens.

(e) **Privacy.** Procedures for collecting saliva shall be performed on one individual at a time to prevent substitutions or interference with the collection of reliable samples.

(f) **Integrity and identity of specimen.** Saliva shall be collected in a device approved by the Federal Food and Drug Administration and according to the instructions provided by the manufacturer of the saliva collection device. The information on the saliva specimen container and on the chain of custody form shall identify the individual from whom the specimen was collected. The following minimum precautions shall be taken when collecting a saliva specimen to ensure specimens are obtained and correctly identified.

(1) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other employer official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(2) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(3) The collection site person shall note any unusual behavior or appearance on the chain of custody form.

(4) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to the specimen container being sealed with a tamper resistant seal and labeled with the individual's specimen number and other required information.

(6) The collection site person shall label the container which contains the saliva with the date, the individual's specimen number, and any other identifying information provided or required by the drug testing program.

(7) The individual shall initial the container for the purpose of certifying that it is the specimen collected from the individual.

(8) The collection site person shall indicate on the chain of custody form all information identifying the specimen. The collection site person shall sign the chain of custody form next to the identifying information or the chain of custody on the specimen container.

(9) The individual shall be asked to read and sign a statement certifying that the specimen identified as having been collected from the individual is in fact the specimen the individual provided.

(10) The collection site person shall complete the chain of custody form.

(g) **Collection control.** To the maximum extent possible, collection site personnel shall keep the individual's specimen container within sight both before and after collection. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) **Transportation to the testing facility.** Collection site personnel shall arrange to transport the collected specimens to the drug testing facility. The specimens shall be placed in containers which shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the chain of custody documentation is sealed separately from the specimen and placed inside the container sealed for transfer to the drug testing facility.

310:638-1-10. Training and qualifications of collection site personnel

(a) Collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor.

(b) A collection site person shall have successfully completed documented training to carry out this function or shall be a licensed medical professional or technician who acknowledges in writing he or she has been provided instructions for collection as described at OAC 310:638-1-8 ~~or~~, 310:638-1-8.1, or 310:638-1-8.2.

(1) A non-medical collection site person shall receive appropriate training in collection procedures as described at OAC 310:638-1-8~~ or~~, 310:638-1-8.1, or 310:638-1-8.2 and shall demonstrate proficiency in the application of these collection procedures prior to serving as a collection site person. A medical professional, technologist, or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person acknowledges in writing the receipt of instructions for collection as described at OAC 310:638-1-8~~ or~~, 310:638-1-8.1, or 310:638-1-8.2.

(2) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with OAC 310:638-1-8~~ or~~, 310:638-1-8.1, or 310:638-1-8.2. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

SUBCHAPTER 3. ADMINISTRATION

310:638-3-4. Interim licensure procedures [REVOKED]

~~(a) Upon adoption of this Chapter interim licensure may be granted to testing facilities until the initial application and inspection process is completed. Testing facilities requesting interim licensure shall indicate their intention in writing within sixty (60) days following the effective date of this Chapter. Requests for interim licensure shall include the following:~~

~~(1) Name and address of the testing facility;~~

~~(2) Name and qualifications of the testing facility director;~~

~~(3) Evidence of satisfactory performance on proficiency testing.~~

~~(b) Interim licensure shall be valid for a period not to exceed one hundred eighty (180) days. If the Department is in the process of evaluating a testing facility's application, the interim licensure shall be extended by the Department until a determination of approval or denial is made.~~

~~(c) Interim licensure may be granted to testing facilities performing drug and alcohol confirmation testing provided such testing facilities submit evidence they have enrolled in appropriate proficiency testing and are in a mandatory pre-application period prior to being granted certification for forensic urine drug testing by the United States Department of Health and Human Services or accreditation for forensic urine drug testing by the College of American Pathologists. Such interim licensure shall be granted until a determination of approval or denial is made by the certifying or accrediting body.~~

310:638-3-7. Inspections

(a) ~~Notice of intent for interim licensure and completed~~Completed applications received by the Department for initial licensure, licensure renewal, or for licensure reinstatement shall constitute consent for an on-site inspection during normal operating hours by representatives of the Department.

(b) Testing facilities as well as collection sites associated with a testing facility are subject to inspection during normal operating hours any time an on-site inspection is deemed necessary by the Commissioner of Health to protect the health and welfare of the public.

SUBCHAPTER 5. DRUG SCREEN TESTING FACILITIES

310:638-5-2. Personnel

The drug screen testing facility shall contract with, or employ, the following personnel to perform, supervise, and report ~~urine~~ drug screen tests:

(1) **Director.** The drug screen testing facility shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the drug screen testing facility. The director shall possess the following minimum qualifications:

(A) A bachelor's degree from an accredited institution in the chemical, biological, or physical sciences or medical technology; and

(B) Subsequent to graduation have had two (2) or more years of full-time drug testing experience.

(2) **Director responsibilities.** The director shall be engaged in, and be responsible for, the management of the drug screen testing facility even where another individual has overall responsibility for an entire multispecialty testing facility.

(A) The director shall be responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the drug screen testing facility. The director shall ensure the continued competency of drug screen testing facility personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(B) The director shall be responsible for the drug screen testing facility having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by the director whenever procedures are first placed into use, or changed, or when a new individual assumes responsibility for direction of the drug screen testing facility. Copies of all procedures and dates on which they are in effect shall be maintained.

(C) The director shall be responsible:

(i) for maintaining a quality assurance program to ensure the proper performance and reporting of all test results:

(ii) for maintaining acceptable analytical performance for all controls and standards;

(iii) for maintaining quality control testing; and

(iv) for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(D) The director shall be responsible for assuring all necessary action is taken to maintain satisfactory operation and performance of the drug screen testing facility in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. The director shall ensure that sample results are not reported until all corrective actions have been taken and he or she can ensure that the test results provided are accurate and reliable.

(3) **General supervisor.** A qualified general supervisor shall be on the premises during all hours in which tests are performed. The general supervisor shall be responsible for day-to-day operations and supervision of analysts. The general supervisor shall possess the following minimum qualifications:

(A) A high school diploma or equivalent and documented training by the manufacturer, or other qualified person, in the operation and maintenance of the test system utilized, to include the instrumentation, test reagents, calibration and quality control materials, and any other equipment or supplies required in the performance of the drug screen testing procedure; and

(B) Have training and experience in the theory and practice of the procedures used in the drug screen testing facility, resulting in a thorough understanding of:

(i) quality control practices and procedures;

(ii) the review, interpretation, and reporting of test results;

(iii) maintenance of chain of custody; and

(iv) proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(4) **Test validation.** The drug screen testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the drug screen testing facility's test reports. A drug screen testing facility may designate more than one person to perform this function. This individual(s) shall be any employee who is qualified as director or general supervisor.

(5) **Other personnel.** Other technical or nontechnical staff shall have the necessary training and skills for the tasks assigned, and shall perform only those procedures that require a degree of skill commensurate with their training, education, and technical ability.

(6) **Training.** The drug screen testing facility shall make available continuing education programs to meet the needs of facility personnel.

(7) **Personnel records.** Personnel records shall include at least the following:

(A) verification of education;

(B) initial skills orientation program;

(C) resume of training and experience;

(D) documentation of continuing education;

(E) certification or license, if any;

(F) references;

(G) job descriptions;

(H) records of performance evaluation and advancement;

(I) incident reports; and

(J) results of tests which establish employee competency.

310:638-5-3. Security and chain of custody

(a) Drug screen testing facilities shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to testing facility processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of federal or state agencies, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, time of entry, and purpose of entry shall be maintained.

(b) Drug screen testing facilities shall use internal chain of custody procedures to maintain control and accountability of specimens from receipt through completion of screening, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Authorized drug screen testing facility personnel shall be responsible for each ~~urine or hair~~ specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(c) When specimens are received, drug screen testing facility personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles and containers within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and containers and the agency's chain of custody forms shall be immediately reported to the employer and shall be noted on the drug screen testing facility's chain of custody form which shall accompany the specimens while they are in the drug screen testing facility's possession.

(d) Specimen bottles shall normally be retained within the drug screen testing facility's accession area until all analyses have been completed. Aliquots and the drug screen testing facility's chain of custody forms shall be used by drug screen testing facility personnel for conducting initial screening tests.

(e) Urine specimens shall be tested for adulteration.

(f) Testing facilities shall perform integrity checks on saliva specimens as required by facility policy.

310:638-5-4. Methods of analysis and specimen storage

(a) **Methods of analysis.**

(1) Licensed drug screen testing facilities shall have the capability of performing initial screening for the following classes of drugs or their metabolites: marijuana

and cocaine, using an immunoassay which meets the requirements of the United States Food and Drug Administration for commercial distribution or another approved screening procedure or if prepared in-house by the testing facility, documented evidence shall exist indicating that the antibody meets acceptable performance criteria.

(2) Initial screening shall be completed within forty-eight (48) hours following receipt of the specimen by the testing facility. If the initial screening cannot be completed within forty-eight (48) hours, the specimen shall not be accepted or shall be sent to another testing facility for screening.

(3) If the drug screen testing facility is not certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists all specimens that do not test negative shall be forwarded to an appropriate testing facility for confirmation.

(4) All confirmatory urine or saliva drug testing shall be performed by a testing facility that is certified for forensic urine drug testing by the United States Department of Health and Human Services or accredited for forensic urine drug testing by the College of American Pathologists.

(5) No positive urine or saliva drug screen shall be reported to the Review Officer until the positive initial screen has been confirmed as required. If the employer operates a drug screen testing facility, the employer shall not base any employment decision on a positive urine drug screen until the positive initial test has been confirmed and reviewed.

(6) No positive hair drug screen shall be reported to the Review Officer until the positive initial screen has been decontaminated and confirmed by the same laboratory.

(b) **Specimen storage.**

(1) Urine specimens that do not receive an initial test within twenty-four (24) hours of arrival at the drug screen testing facility shall be placed in secure refrigeration units where the temperatures do not exceed 6°C. Urine testing facilities shall have emergency power equipment or other appropriate storage shall be available in case of a prolonged power failure.

(2) The drug screen testing facility shall log in the split specimen, with the split specimen bottle seal remaining intact. The drug screen testing facility shall store this sample securely as in 310:638-5-4(b)(1).

(3) If the result of the primary specimen is negative, the drug screen testing facility may discard the split specimen. If the result of the test of the primary specimen is positive, the drug screen testing facility shall forward the split specimen, using appropriate chain of custody procedures, to a qualified testing facility for confirmation testing. The drug screen testing facility shall ensure the confirmatory testing facility retains the split specimen in properly secured frozen storage (-20°C or less) for a minimum of one (1) year.

(4) Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(5) Saliva specimens shall be stored and transported as required by the manufacturer of the collection device.

310:638-5-9. Quality assurance and quality control

(a) **Quality assurance.** Drug screen testing facilities shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) **Quality control.**

(1) Each analytical run of specimens to be screened shall include:

(A) Urine ~~or~~ , hair, or saliva specimens certified to contain no drug;

~~(B) Urine or hair specimens fortified with known standards; and~~

(~~C~~B) ~~Positive~~Urine ~~or~~ , hair, or saliva positive controls with the drug or metabolite at or near the threshold (cutoff).

(2) ~~In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values shall be used to calculate sample data.~~ Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. ~~A minimum of ten (10) percent of all test samples shall be quality control specimens. The drug screen testing facility's quality control samples, prepared from fortified urine or hair samples of determined concentration shall be included in the run and shall appear as normal samples to drug screen testing facility analysts. One (1) percent of each run, with a minimum of at least one sample, shall be the drug screen testing facility's own quality control samples.~~

310:638-5-10. Proficiency testing

(a) **Enrollment and performance.**

(1) Each drug ~~screen testing facility and each hair drug~~ screening and/or confirmation testing facility shall enroll and demonstrate satisfactory performance in a Department approved proficiency testing program established by an independent group which contains those drugs and metabolites for which urine ~~or~~, hair, or saliva is routinely screened.

(2) The drug testing facility shall satisfactorily perform in one proficiency testing event prior to initial licensure and demonstrate continued satisfactory performance to maintain licensure.

(3) The drug testing facility shall authorize the proficiency testing service to send results to the Oklahoma State Department of Health for review. The drug testing facility shall maintain records which shall document the handling, processing and examination of all proficiency testing samples for a minimum of two (2) years from the date of testing.

(4) The drug testing facility shall ensure that proficiency testing samples are analyzed at least three (3) times each year using the same techniques as those employed for screening unknown specimens.

(5) The proficiency testing samples shall be included with the routine sample run and tested with the same frequency as unknown samples by the individuals responsible for testing unknown specimens.

(6) The drug testing facility shall not engage in discussions or communications concerning proficiency testing results with other drug testing facilities nor shall they send proficiency testing samples or portions of the samples to another drug testing facility for analysis.

(b) **Satisfactory performance.**

(1) The drug testing facility shall maintain an overall testing event score of at least eighty (80) percent for proficiency testing performance to be considered satisfactory.

(2) Failure to participate in a proficiency testing event shall result in a score of zero (0) percent for the testing event.

(c) **Unsuccessful performance.** Failure to achieve satisfactory performance in two (2) consecutive testing events, or two (2) out of three (3) consecutive testing events, shall be determined to be unsuccessful performance.

[OAR Docket #08-1123; filed 6-3-08]

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

[OAR Docket #08-1124]

RULEMAKING ACTION:
PERMANENT final adoption
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]
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Availability:
Copies of the General Services Administration's "Federal Specification for the Star-of-Life Ambulance - KKK-A-1822F", dated August 1, 2007 may be downloaded at no cost from the General services Administration website at the following Internet address: http://www.gsa.gov/automotive or you may contact R. Shawn Rogers, Director, Emergency Medical Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: (405) 271-4027; facsimile: (405) 271-4240 electronic mail: shawnr@health.ok.gov
ANALYSIS:
The proposed changes update licensure requirements to include a HIPAA compliant system for receiving emergency calls, clarify the requirements for mutual aid agreements between ambulance services, update vehicle standards to conform with new Federal standards, update and consolidate requirements for pediatric equipment consistent with national Emergency Medical Services for Children recommendations, add a requirement that on-board equipment be "clean, in good working condition, and appropriately secured", require clear transfer of care including verbal and written reporting to the receiving facility, clarify requirements for participation in regional trauma planning meetings, update re-licensure requirements to conform with the National Registry of EMTs, and require attendance policies for Department-approved refresher training.
CONTACT PERSON:
R. Shawn Rogers, Director, Emergency Medical Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: (405) 271-4027; facsimile: (405) 271-4240 electronic mail: shawnr@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. AMBULANCE SERVICES

PART 1. GENERAL PROVISIONS

310:641-3-2. Definitions

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

"ACLS" means Advanced Cardiac Life Support.

"Act" means the "Oklahoma Emergency Response Systems Development Act".

"Advanced Life Support (ALS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Technician Intermediate, Emergency Medical Technician Intermediate Refresher, Emergency Medical Technician Paramedic, Emergency Medical Technician Paramedic Refresher, Continuing Education at the Emergency Medical Technician Intermediate and Paramedic levels, and such other courses of instruction that may be designated by the Department.

"AMLS" means Advanced Medical Life Support.

"ATLS" means Advanced Trauma Life Support.

"Base Station" means the primary location from which ambulances and crews respond to emergency calls on twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center.

"Basic Life Support (BLS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following BLS training: First Responder, First Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical Technician Basic level, and such other courses of instruction that may be designated by the Department.

"BLS" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated advisory defibrillator (SAAD).

"BTLS" means Basic Trauma Life Support.

"Board" means the State Board of Health.

"Certificate" means any certification or certificate issued by the Department, pursuant to the Act, or this Chapter.

"Clinical Coordinator" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"Clinical Experience" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"Council" means the Oklahoma Emergency Response Systems Development Advisory Council.

"Department" means the State Department of Health.

"Distance Learning" is ~~classroom~~ instruction of didactic portions of curriculum which requires ~~simultaneous~~ participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"Distributive Education" ~~is instructional delivery of didactic portions of curriculum which is independent of time and place.~~ means educational activity in which the learner, the instructor, and the educational materials are not all present in the same place at the same time, e.g,, continuing education activities that are offered on the Internet, via CD ROM or video, or through journal articles or audio tapes.

"DOT" means the United States Department of Transportation.

"Division" means the Emergency Medical Services Division.

"Emergency medical personnel" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"Emergency medical responder" means a person who has successfully completed a state-approved course using the national standard emergency medical responder curriculum and passed a competency-based examination from a state approved testing agency such as the National Registry of EMT's.

"EMS" means Emergency Medical Services.

"Emergency medical technician" EMT means an individual licensed by the Department as Basic, Intermediate, or Paramedic.

"EMT-B" means Emergency Medical Technician-Basic as licensed pursuant to the Act, or this Chapter.

"EMT-I" means Emergency Medical Technician-Intermediate as licensed pursuant to the Act, or this Chapter.

"EMT-P" means Emergency Medical Technician-Paramedic as licensed pursuant to the Act, or this Chapter.

"Emergency Medical Dispatcher (EMD)" means a person trained using a Department-approved curriculum for the management of calls for emergency medical care.

"Emergency transfer" means the movement of an acutely ill or injured patient from the scene to a health care (pre-hospital),or the movement of an acutely ill or injured patient from one health care facility to another health care facility (inter-facility).

"En Route Time" means the elapsed time from the time the emergency call is received by the EMS agency until the ambulance and complete crew is en route to the scene of the emergency.

"License" means any license issued by the Department, pursuant to the Act, or this Chapter.

"NHTSA" means National Highway Traffic Safety Administration.

"National Registry" means the National Registry of Emergency Medical Technicians, Columbus Ohio.

"Non-emergency transfer" means the movement of any patient in an ambulance other than an emergency transfer.

"PALS" means Pediatric Advanced Life Support.

"PEPP" means Pediatric Education for the Prehospital Professional.

"PHTLS" means Prehospital Trauma Life Support.

"PIC" means Pilot in Command

"PPC" means Prehospital Pediatric Care.

"Post" means a location where an ambulance may be positioned for an unspecified period of time while awaiting dispatch.

"Preceptor" means an individual with education, experience and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

"Program Administrator" means the individual designated in writing by a training program as responsible for all aspects of EMS training.

"Program Coordinator" means the individual designated in writing by a training program as responsible for all aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

"Response time" means the time from which a call is received by the EMS agency until the time the ambulance and complete crew arrives at the scene, unless the call is scheduled in advance.

"Statewide Ambulance coverage area" means a map of all ambulance response areas, maintained by the Department.

"Stretcher aid van" means any ground vehicle which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus [63 O.S. § 1-2503].

"Stretcher aid van patient" means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, non-emergent and does not require any medical monitoring equipment or assistance during transport [63 O.S. § 1-2503].

"Substation" means a permanent structure where a(an) ambulance(s) is/are stationed and available for calls on a twenty-four (24) hour basis.

"Training" means that education which is received through training programs as authorized by emergency medical services rule and regulation for training programs (Subchapter 7 of this Chapter).

"Transfer" means the movement of a patient in an ambulance.

"Trauma transfer and referral center" means an organization certified by the Department and staffed and equipped for the purpose of directing trauma patient transfers within a region that consists of a county with a population of three hundred thousand (300,000) or more and its contiguous communities, and facilitating the transfer of trauma patients into and out of the region for definitive trauma care at medical facilities that have the capacity and capability to appropriately care for the emergent medical needs of the patient.

PART 3. AMBULANCE SERVICES

310:641-3-10. License required

No person, company, governmental entity, including those established by Oklahoma Constitutional authority, or trust authority shall operate, advertise, or hold themselves out as providing any type of ambulance service without first obtaining a license to operate an ambulance service from the Department. The Department shall have sole discretion to approve or deny an application for ambulance service license based on the ability of the applicant to meet the requirements of this rule.

(1) Federal agencies are exempt from this licensing requirement unless the federal agency ambulance service routinely responds to emergency requests for service off federal property.

(2) Persons, companies, and governmental entities which operate on their own premises, are exempt from this licensing requirement, unless an ambulance patient is transported on the public streets and highways of Oklahoma, or outside of their own premises.

(3) An application for a license to operate an ambulance service shall be submitted on forms prescribed and provided by the Department. Ground, air, stretcher aid van and specialty care services shall each be considered a separate license.

(4) The application shall be signed under oath by the party or parties seeking to secure the license.

(5) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and rules.

(6) The application shall contain, but not be limited to the following:

(A) A statement of ownership shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;

(B) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included;

(C) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation, the name of each board member, or the chief administrative officer and/or chief operation officer shall be included;

(D) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year, and if a subscription program is anticipated the requirement of part 29, of these rules, shall be documented;

(E) Proof of vehicle and professional liability insurance, at least in the amount of one million dollars ($1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", O.S. 51-151, O.S. 51-152, O.S. 51-153 and O.S. 51-154, shall be forwarded. This insurance requirement shall remain in effect at all times while the service is licensed, and such proof shall be in the form of a Certificate of Insurance from the insurance company;

(F) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws shall be forwarded.

This insurance requirement shall remain in effect at all times while the service is licensed;

(G) Each licensee shall have medical control as prescribed by the Act and these rules;

(H) Copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(I) Paper or electronic copy of patient care protocols as required by medical control as prescribed by the Act and these rules;

(J) A documentation of support from the governmental authority(ies) having primary jurisdiction over the proposed emergency response area. If the emergency response area encompasses multiple jurisdictions, a written endorsement shall be presented from each;

(K) A description of the proposed level of service in the primary response area, including:

(i) A map defining the primary emergency response area including location(s) of base station, substations, and posts, and;

(ii) A description of the level of care to be provided, describing variations in care within the proposed service area, and;

(iii) Response time standards consistent with the requirements of OAC 310:641-3-15(a), for emergency and non-emergency requests for ambulance or stretcher aid van service within the primary response area;

(L) A written policy for receiving and dispatching emergency and non-emergency calls~~;~~:

(i) Ensuring HIPAA compliance; and,

(ii) Ensuring compliance with State and local EMS Communication Plans.

(M) Mutual aid agreements with all surrounding contiguous or overlapping licensed emergency ambulance services that contain procedures for disaster response including entry into the Incident Command System and National Incident Management System.

(7) An application for an initial, or new license, shall be accompanied by a non-refundable fee of six hundred ($600.00) dollars plus twenty ($20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty ($150.00) dollars shall be included for each ambulance substation in addition to the base station.

(8) If an area of Oklahoma is being served by a licensed ambulance service, or services, and the area has adopted "sole source" resolutions or ordinances or an Emergency Services District as established pursuant to Article 10, Section 9 © of the Oklahoma Constitution, the Department shall require the approval of the community(ies) and/or the emergency medical services authority of that service area, before an additional ambulance service shall be licensed for that same service area.

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-20. New vehicles

(a) A used vehicle which has new ownership, or a new vehicle which is of first registration, either leased, contracted for, or purchased on or after July 18, 1991, shall conform to the General Service Administration (GSA) specifications KKK-A-1822, as amended and as in effect at the time of manufacture. These requirements shall not apply to stretcher aid vans.

(b) Copies of the GSA KKK-A-1822, and their respective dates of effect, may be obtained from the Department. These several specifications are as follows:

(1) KKK-A-1822, effective January 2, 1974;

(2) KKK-A-1822A, effective April 1, 1980;

(3) KKK-A-1822B, effective June 1, 1985;

(4) KKK-A-1822C, effective January 1, 1990;

(5) KKK-A-1822D, effective November 1, 1994;

(6) KKK-A-1822E, effective June 1, 2002; ~~and~~

(7) KKK-A-1822F, effective August 1, 2007; and

(~~7~~8) any future GSA KKK-A-1822 specification, as may be issued.

(c) The business name, and/or a logo of the licensed ambulance service shall be placed on each side and the rear of the vehicle, and shall be at least three (3") inch high letters.

(d) The phrase "unless otherwise specified" shall mean that only the options printed within the respective KKK-A-1822 document are available for this purpose, specification, substitution, or option.

(e) Ambulance vehicles shall be exempt from the section of the KKK specifications which specifies color, emblems and markings.

(f) Specification KKK-A-1822 1.1.3 which requires the ambulance manufacture, or vendor who sells the vehicle, to furnish to the purchaser(s) a "Star of Life" certificate label, which shall be affixed in the oxygen compartment.

(g) Any vehicle initially placed in service after a purchase, lease, contract and/or remount shall be inspected, and approved and permitted under Section 310:641-3-22(e) of this Chapter, by the Department prior to utilization.

(h) Any part of a ground ambulance vehicle which is remounted by a professional remounting service shall meet the KKK-A-1822 specifications. This includes the proper placement, or replacement, of the "Star of Life" certification label in the oxygen compartment of the finished vehicle, before it can be utilized again as an ambulance in this State.

(i) A copy of the "letter of certification", as described in specification KKK-A-1822 4.3.5, shall be submitted to the Department for each ambulance vehicle make and model proposed for use in Oklahoma. Certification documentation of test verification shall be accepted only if performed by an independent testing facility, qualified to perform such tests. No vehicle shall be approved for use in Oklahoma unless certification documentation has been filed with the Department. A file of all letters of certification received by the Department shall be maintained, and a list of certified vehicles, sorted by manufacturer, shall be forwarded to the Oklahoma Motor Vehicle Commission annually by the Department.

(j) A list of approved manufacturers, salesmen and dealers who meet the provisions of the Oklahoma Motor Vehicle Commission, shall be compiled annually and be made available from the Department upon request to any interested party. The Department shall issue to approved manufacturers, salesmen and dealers a Certificate of Compliance to remain effective until the next revision of the Federal Ambulance Specification KKK-A-1822.

(k) The purchaser of any ambulance vehicle which violates this section shall be responsible for corrective action, if the vehicle is accepted before receipt of the Department approval and permit.

(l) If, while awaiting delivery of a new, remounted, or refurbished ambulance vehicle, a manufacturer or dealer provides a licensed ambulance service with an ambulance vehicle on temporary loan or lease, such temporarily loaned or leased ambulance vehicle shall comply with Federal Ambulance Specification KKK-A-1822 in effect at the time of manufacture, and shall be properly inspected and permitted by the Department prior to utilization as an ambulance in accordance with Section 310:641-3-20(f).

310:641-3-23. Equipment for ground transport vehicles

(a) Each ambulance vehicle, except for stretcher aid vans, shall carry the following:

(1) In addition to the on-board suction unit, a functioning portable suction apparatus with wide-bore tubing (1/4"), rigid and soft suction catheters for adults, children and infants, which may be electronically, manual or oxygen powered;

(2) A minimum of two (2) each, single use adult, pediatric and infant bag-valve mask resuscitators with an adult, child, and infant clear masks;

(3) Oropharyngeal airways, set or a minimum of one (1) of each size for adult (size 7,8,or 9), child (size 3,4,5,or 6), and infant (sizes 0,1,or 2), -- nasal pharyngeal airways are optional;

(4) Portable and wall mounted oxygen sets, with variable flow regulators and adequate length tubing, and an extra bottle of portable oxygen;

(5) A minimum of two (2) each adult, child, and infant size oxygen masks, and a minimum of two (2) adult nasal cannulas;

(6) Bandaging materials, as follows:

(A) Two (2) burn sheets, clean, wrapped, and marked in a plastic bag ~~does which not~~ that need ~~to~~ not be sterile;

(B) Fifty (50) sterile 4"x4" dressings;

(C) Six (6) sterile 6"x8" or 8"x10" dressings;

(D) Ten (10) roller bandages, 2" or larger, such as kerlix, kling, or equivalent;

(E) Four (4) rolls of tape (1/2" and larger);

(F) Four (4) sterile occlusive dressings, 3" x 8" or larger;

(G) Eight (8) triangular bandages, and;

(H) One (1) pair of bandage scissors must be on the ambulance or must be a required personal carry item for the EMS crew.

(7) Fracture immobilization devices, as follows:

(A) One (1) traction splint for lower extremity, with limb support slings, padded ankle hitch, padded pelvic support, traction strap;

(B) Upper and lower extremity splints for joint above and below fracture (such as pneumatic, wire ladder, wood, cardboard);

(C) Short spine board or vest type immobilizer, including straps and accessories;

(D) Two (2) long spine board including straps and head immobilization device;

(E) Two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and one (1) infant collar. Collars shall not be foam or fiber filled.

(8) Pediatric equipment including:

(A) Oropharyngeal airways, sizes 00-5, two (2) each;

(B) Self-inflating resuscitation bag, two (2) each infant and child sizes;

(C) Masks for bag-valve mask device, two (2) each neonate, infant and child sizes;

(D) Oxygen masks, two (2) each infant and child sizes;

(E) Nonrebreathing mask, two (2) pediatric size;

(F) Stethoscope, one (1) pediatric size;

(G) Backboard, one (1) pediatric size;

(H) Cervical immobilization device infant, child and adolescent sizes, two (2) each;

(I) Blood pressure cuff, two (2) each infant and child sizes;

(J) Suction catheters, one (1) each tonsil-tip and 6-14 French catheters;

(K) Extremity splints, one (1) complete set of pediatric sizes;

(L) Bulb syringes, sterile, two (2);

(M) Obstetric pack, sterile, one (1);

(N) Thermal blankets, two (2);

(O) Water-soluble lubricant packets, two (2);

(P) Blood glucose analysis system; and,

(Q) CO2 detection devices, either electronic or two (2) disposable.

(9) Pediatric Equipment and Supplies for Advanced Life Support Ambulances Only Including:

(A) One (1) transport monitor;

(B) One (1) defibrillator with pediatric paddles;

(C) Monitoring electrodes, two (2) set pediatric sizes;

(D) Laryngoscope with straight blades, two (2) sets 0-2, curved blades two sets 2-4;

(E) Endotrachael tube stylets, two sets of pediatrics sizes;

(F) Endotracheal tubes, two (2) sets of uncuffed 2.5 - 5.5, two (2) sets of cuffed 6.0-8.0;

(G) Magill forceps, one (1) pediatric size;

(H) Nasogastric tubes, two (2) each 8F-16F;

(I) Nebulizer, one (1) pediatric size;

(J) IV catheters, 14 to 26 gauge, Six (6) each;

(K) Interosseous needles, two (2) each;

(L) One (1) Length/weight-based drug dose chart or tape (eg. Broselow Tape);

(M) Resuscitation drugs (ACLS & PALS) and IV fluids (NS and/or LR) per Department-approved protocols.

(~~8~~10) Miscellaneous medical equipment, as follows:

(A) Portable blood pressure set in adult, child, and infant sizes;

(B) Stethoscope;

(C) Obstetrical kit, with towels, 4"x4" dressing, umbilical tape, bulb syringe, cord cutting device, clamps, sterile gloves, aluminum foil, and blanket;

(D) Universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions;

(E) Blood-glucose measurement equipment per medical direction and Department approval;

(F) CPAP per medical direction and Department approval; and

(~~F~~G) Semi-automatic advisory defibrillator (SAAD).

(~~9~~11) Other mandatory equipment, as follows:

(A) Trash receptacle which shall include a sufficient number of replacement bags and a receptacle for containment of medical wastes that displays the "biological hazard" emblem.

(B) Two way radio communication equipment on VHF; with a minimum of 155.340 MHz for hospital communications.

(C) One (1) sturdy, lightweight, all-level cot for the primary patient;

(D) A crash stable side or center mounting cot fastener and/or anchorage assembly of the quick release type;

(E) At least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles)

(F) Patient run reports;

(G) Two (2) fire extinguishers, mounted with quick release in cab and patient compartment (each dry powder, ABC, five (5#) pound);

(H) Two (2) operable flashlights;

(I) All ambulance equipment and supplies shall be maintained in accordance with OAC 310:641-3-60. Additionally, sterility shall be maintained on all sterile packaged items.

(J) Digital or strip type thermometers and single use probes.

(K) Six (6) instant cold packs.

(b) Intermediate equipment, in addition to the basic equipment-the ALS ambulance shall carry the following:

(1) Intravenous administration equipment in a sufficient quantity to treat multiple patients requiring this level of care;

(2) ~~Intraosseous~~Interosseous administration equipment if approved by local medical control;

(3) Appropriate quantities of sterile fluid as approved by local medical control;

(4) Adequate advanced airway equipment per medical control;

(5) Blood sampling equipment if approved by medical control;

(6) One (1) Occupational Safety and Health Administration (OSHA) approved sharps container;

(7) Pulse oximetry device if approved by medical control; and

(8) End tidal CO2 monitoring device

(c) Paramedic equipment, in addition to the required basic and intermediate equipment, the ALS ambulance will carry the following:

(1) Cardiac monitor/defibrillator with printout, defibrillator pads, quick-look paddles, EKG leads, chest attachment pads. Telemetry capability is optional. Monitor must be re-calibrated every twelve months and;

(2) Drugs (pre-load when available) approved by medical control, including those which are compatible with the recommendations of the American Heart Association's Emergency Cardiac Care Committee, as reflected in the Advanced Cardiac Life Support and Pediatric Advanced Life Support guidelines. Expired medications shall be immediately removed.

(d) Extrication equipment shall be available for each ambulance service by either mutual aid assistance with a fire department, other ambulance service, rescue squad, or carried in total on the service's vehicle.

(1) All ambulance vehicles shall carry the following equipment:

(A) Three (3) reflectors (triangular) or battery powered warning lights;

(B) Two (2) OSHA approved hard hats, with goggles or face shield; and

(C) Gauntlet leather gloves, two (2) pair of heavy work gloves; and

(D) One (1) spring-loaded window punch.

(2) All ambulance services shall have available either on board the ambulance or through mutual aid agreement with a fire department rescue unit, the following extrication equipment:

(A) One (1) hammer (3# to 5# with 15" handle);

(B) One (1) fire ax, flat head

(C) One (1) crowbar, (51" pinch point)

(D) One (1) bolt cutter (minimum 18")

(E) One (1) power jack, portable, hydraulic or pneumatic, and one (1) spreader tool kit, hand powered, at least of four (4) ton capacity and one (1) air gun kit, air cutting tools, (250psi with cylinder and chisels); "Jaws of Life" may be substituted

(F) One (1) shovel, pointed blade

(G) One (1) tin snip, double action (at least 8")

(H) Two (2) ropes, synthetic, kernmantle (50' x 3/4")

(I) Protective goggles, one (1) per occupant

(J) Two (2) utility knives, curved blade
(K) Two (2) lights, portable, battery operated;
(L) One (1) blanket (large 5'x 6' for patient protection during extrication)
(M) Two (2) baling hooks;
(N) One (1) spring loaded window punch;
(O) Twelve (12) blocks, hardwood shoring, (2"x4"x12" blocks with rope handles);
(P) Four (4) blocks, hardwood cribbing, (4"x4"x12" blocks with rope handles);
(Q) Four (4) blocks, hardwood cribbing, (wedge shaped with rope handles);
(R) One (1) come-along (2 ton, chain type and two (2) pull chains, alloy steel, rescue type (10' at least with grab hooks and rings);
(S) Two (2) extrication straps, synthetic fabric, (9' with quick release buckles)
(T) One (1) loop sling, extrication, (1" wide nylon or equal x 6' circumference with closure ring)

(e) Equipment shall be clean, in good working condition, and appropriately secured.

(~~e~~f) Optional equipment:
(1) Portable battery powered ventilator per local medical direction.
(2) Pneumatic anti shock garment (PASG), compartmentalized (legs and abdomen separate), control valves (closed/open), inflation pump per local medical direction.

PART 7. AIR AMBULANCES

310:641-3-30. Air ambulance license

(a) The air ambulance operator (applicant) shall meet the requirements of section 310:641-3-10 and be licensed at a Paramedic level and/or Specialty Care license in compliance with section 310:641-3-40. The air ambulance license shall be in addition to and separate from a specialty care license. In addition the following special requirements shall be forwarded for application, survey and renewal purposes, as requested on forms provided by the Department.
(1) A list of flight crew and qualifications.
(2) The air medial director and qualifications.
(3) Copy of the Federal Aviation Administration (FAA) Part 135 certificate.
(4) Copy of contracts for aircraft, medical equipment, personnel and explanations, if applicable.

(b) The issuance of an air ambulance license shall be consistent with 310:641-3-10, except for 310:641-3-10(a)(6)(J).

(c) The issuance of an air ambulance license shall be consistent with section 310:641-3-11.

(d) The renewal of an air ambulance license shall be consistent with section 310:641-3-12.

(e) Temporary aircraft shall be inspected consistent with 310:641-3-22(e)(5).

(f) The denial of an air ambulance license, or the renewal thereof shall be consistent with section 310:641-3-13, except that an air ambulance licensee shall not be held to the response criteria in Section 310:641-3-13(a)(3).

(g) Air ambulance licensees shall be subject to section 310:641-3-14.

(h) Air ambulance licensees shall ~~provide~~ document an on-going and active aviation safety program.

(i) An air ambulance provider holding a valid license in an adjoining state and operating and responding only from bases in that state may be reciprocally licensed in Oklahoma in accordance with 63 O.S. § 1-2513(B).

310:641-3-32. Air ambulance vehicles

(a) An air ambulance vehicle (aircraft) may be fixed wing, single or multi-engine, or rotary wing. Single engine aircraft shall be turbine powered.

(b) Operations of the aircraft shall be under the provisions of Part 91 and Part 135 of the Federal Aviation Regulations (FAR).

(c) The operator of an air ambulance service declares the capability of providing quality air ambulance services. These services include qualified flight crews, aircraft maintenance, patient configuration, space allocated for medical attendants and equipment as designated in Section 310:641-3-33.

(d) The aircraft design and configuration shall not compromise patient stability in loading, unloading or in-flight operations.
(1) The aircraft shall have an entry that allows loading and unloading without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis) of the patient, and does not compromise functioning of monitoring systems, intravenous lines, and manual or mechanical ventilation.
(2) A minimum of one stretcher shall be provided that can be carried to the patient.
(3) Aircraft stretchers and the means of securing it in-flight must be consistent with FAR's.
(4) The type and model of stretcher indicates the maximum gross weight allowed (inclusive of patient and equipment) as labeled on the stretcher.
(5) The stretcher shall be large enough to carry the 95th percentile adult patient, full length in the supine position. (The 95th percentile adult American male is 6 ft. and 212 lbs.)
(6) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available.
(7) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.
(8) If the ambulance stretcher is floor supported by its own wheels, there is a mechanism to secure it in position under all conditions. These restraints permit quick attachment and detachment for patient transfer.

(e) Patients transported by air will be restrained with a minimum of three straps, including shoulder straps, that must comply with FAA regulations. The ~~flowing~~ following additional requirements shall apply to achieve patient stability.
(1) Patients less than 60 pounds (27kg) shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by

a locking device. All patients under 40 pounds must be secured in a five-point safety strap device that allows good access to the patient from all sides and permits the patient's head to be raised at least 30 degrees. Velcro straps are not encouraged for use on pediatric devices.

(2) If a car seat is used, it shall have an FAA approved sticker.

(3) There shall be some type of restraining device within the isolette to protect the infant in the event of air turbulence.

(f) A Supplemental lighting system shall be installed in the aircraft/ambulance in which standard lighting is insufficient for patient care.

(1) A self-contained lighting system powered by a battery pack or portable light with a battery source must be available.

(2) Aircraft shall have a means to protect the pilot's night adaptation visions shall be provided for night operations either through the medical configuration or a dividing curtain. (Use of red lighting or low intensity lighting in the patient care area is acceptable if to isolate the patient care area.)

(g) An electric power outlet shall be provided with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment packages without compromising the operation of any other system or equipment. A back-up power source to enable use of equipment may be provided by an extra battery of appropriate voltage and capacity.

(h) Aircraft operational controls and communications equipment shall be physically protected from any intended or accidental interference by the patient, medical transport personnel, or equipment and supplies.

(i) Appropriately sized helmets shall be worn (by all rotor wing personnel on the aircraft except for the patient) OR the interior modification of the aircraft shall be clear of objects/projections OR the interior of the aircraft shall be padded to protect the head-strike envelope of the medical personnel and patients as appropriate to the aircraft.

(j) There shall be access and necessary space to ensure any onboard patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of medical transport personnel.

(k) Oxygen shall be installed according to FAA regulations in the aircraft and according to state and federal regulations for ambulances. Medical transport personnel shall be able to determine if oxygen is on by in-line pressure gauges mounted in the patient care area.

(1) Each gas outlet shall be clearly marked for identification.

(2) Oxygen flow shall be capable of being started and stopped at or near the oxygen source from inside the aircraft.

(3) The following indicators shall be accessible to medical transport personnel while enroute:

(A) Quantity of oxygen remaining.

(B) Measurement of liter flow.

(l) A variety of oxygen delivery devices consistent with the service's medical protocols shall be available.

(m) An appropriately secured portable oxygen tank with a delivery device shall be carried on the aircraft. Portable oxygen tank may not be secured between patient's legs while the aircraft is in motion.

(n) There shall be a back-up source of oxygen sufficient to allow completion of the transport in the event the main system fails. For air transports, this back-up source can be the required portable tank as long as the portable tank is accessible in the patient care area during flight.

(o) Storage of oxygen shall comply with applicable OSHA standards. (p) Oxygen flow meters and outlets shall be padded, flush mounted, or so located to prevent injury to medical transport personnel.

(p) Any occurrence which requires reporting to the FAA of emergency conditions or operations shall require a report in writing to the Department within ten business days.

(q) The licensee shall notify the Department prior to placing a substitute aircraft into operation. Any vehicle initially placed in service after a purchase, lease, contract and/or refurbish shall be inspected, approved, and permitted by the Department prior to utilization.

PART 27. TRANSFER PROTOCOLS

310:641-3-130. Transfer protocols

(a) Trauma triage, transport, and transfer guidelines shall adhere to the principle of delivering time-sensitive severely injured patients to hospitals with a level I or II trauma and emergency operative service classification without overloading those hospitals with stable at-risk patients, or patients with minor-to moderate injuries.

(b) Specific triage, transport, and transfer guidelines and facility utilization protocols shall be developed by medical control for the region, area, and/or local service vicinity as specified by 310:641-3-130(c) and (d), and submitted to the Department for approval.

(c) Protocols approved by the Department shall include the following requirements:

(1) Non-emergency transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(2) Emergency, non-injury related, non-life threatening transports shall be transported to the facility of the patient's choice, if within reasonable service range.

(3) Emergency, injury-related transports shall adhere to the Oklahoma Triage, Transport, and Transfer Guidelines approved by the Oklahoma State Trauma Advisory Council and the Oklahoma Emergency Response Systems Development Advisory Council and shall ensure that patients are delivered to the most appropriate classified hospital, either within their region or contiguous regions.

(4) Severely injured patients as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to a hospital classified at Level I or II for trauma and emergency operative services unless time and

distance factors are detrimental to patient care. These patients shall be transported to the next highest level trauma and emergency operative service classified hospital, unless a Department approved regional plan has been developed, in which case the regional plan shall be followed.

(5) Stable patients at risk for severe injury or with minor-to-moderate injury as described in the Oklahoma Triage, Transport, and Transfer Guidelines shall be transported to The closest appropriate facility. These patients may be transported to the hospital of the patient's or patients legal representative's choice consistent with regional guidelines.

(6) Emergency, life threatening, non-injury transports shall be to the nearest facility that can provide evaluation and stabilization appropriate to the patient's condition

(d) In counties with populations of 300,000 or more and their contiguous communities injury related transports shall be directed and coordinated by the trauma transfer and referral center for the region.

(1) All ambulance services providing pre-hospital emergency services in these regions shall contact the trauma transfer and referral center at intervals determined by the Department to register the transport of an injured patient to a hospital.

(2) All ambulance services transporting injured patients on a pre-hospital basis from areas outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region. The trauma transfer and referral center shall direct the ambulance to the appropriate hospital based on the regional plan, the severity of the injury, and the capacity status of the hospitals in the region.

(3) All ambulance services transferring injured patients from hospitals outside the region to hospitals in the region shall contact the trauma transfer and referral center before entering the region to advise the center of the patient transfer. The center shall maintain a record of the transfer for regional continuous quality improvement activities.

(e) The patient has a right to refuse transport.

(f) Each ambulance service shall ensure that the care of each patient is transferred appropriately to the receiving facility's licensed staff. The transfer of care will include verbal and written reports summarizing the assessment and treatment of the patient by the ambulance service.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11. License qualification

Persons applying for initial license shall meet the requirements for qualification, application, and procedure as follows:

(1) Applicant shall be at least eighteen (18) years of age.

(2) Applicant shall submit the following:

(A) An appropriate State application form specifying true, correct and complete information as to eligibility and character.

(B) An application fee as listed below:

(i) License fees for persons trained in Oklahoma, confirmed by a final course roster from a certified Oklahoma EMS Training Institution, including practical skills testing:

(I) EMT-Basic Licensure is Seventy-five dollars ($75.00).

(II) EMT- Intermediate or EMT Paramedic Licensure is One Hundred Fifty dollars ($150.00).

(ii) Practical skills retest fee:

(I) Partial: Fifty dollars ($50.00).

(II) Full: One Hundred dollars ($100.00)

(iii) License fee for persons holding current active status National Registry of EMT Certification:

(I) EMT-Basic Licensure is Seventy-five dollars ($75.00).

(II) EMT-Intermediate licensure including airway testing is One Hundred Seventy-five dollars ($175.00).

(III) EMT-Paramedic licensure is Two Hundred dollars ($200.00).

(3) Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS). Fees are non-refundable except if the application is rejected. Candidates who fail to appear at the scheduled examination will be charged the full fee when a new application is made.

(4) A license application may be denied on the basis of a felony which includes any conviction of assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery; murder or attempted murder; manslaughter, except involuntary manslaughter; rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering; child abuse; abuse, neglect or financial exploitation of any person entrusted to his care or possession; burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm; arson, substance abuse, and such other convictions or circumstances which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public. Each decision shall be determined on a case-by-case basis.

(5) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.

(6) Candidates are required to successfully complete the National Registry of Emergency Medical Technicians certification examinations.

(A) Practical examinations shall adhere to the policies of the National Registry and the Department. Candidates shall demonstrate an acceptable level of competency in all respective skill areas. The Department reserves the right to review and require additional practical examination of any candidate.

(i) A candidate for EMT-B shall complete a practical examination before applying for an examination. The practical examination may be conducted at an approved training program in accordance with National Registry policies and shall be separate from the completion of training. Verification of successful completion and the measured competency of each of the required skill areas shall be kept on file for a period of three (3) years at the training program, and summaries shall be submitted to the Department with the final course documentation.

(ii) A candidate for EMT-I shall apply for both the certification examinations. The examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(iii) A candidate for EMT-P shall apply for both the certification examinations. The examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(B) Candidates are allowed three full attempts to pass the practical examination (one "full attempt" is defined as completing all six (6) stations and two retests if so entitled). Candidates who fail a full attempt or any portion of a second retest must submit official documentation of remedial training over all skills before starting the next full attempt of the practical examination and re-examining over all six (6) stations. This official documentation must be signed by the EMT-Paramedic Training Program Director or medical director of training/operations which verifies remedial training over all skills has occurred since the last unsuccessful attempt and the candidate has demonstrated competence in all skills. Should a candidate fail the third full and final attempt of the practical examination, the candidate must complete a new, entire, state-approved EMT-Paramedic Training Program.

(C) Successful completion of the practical examination is valid for one (1) year only.

(7) The written examination is based on the respective national standard emergency medical technician curriculum, as developed and promulgated by the United States Department of Transportation including State approved changes. Each candidate shall realize an overall passing minimum score, and in the case of EMT-P a passing minimum score for each section. Candidates who fail the written examination may re-apply, if eligible, for subsequent examination by submitting another application and fee, and meet current entry requirements.

(A) Candidates are allowed three (3) opportunities to successfully complete the written examination, within the two (2) year limitation on training and within the one (1) year limitation of the practical examination.

(B) Candidates who opt to attempt a fourth written examination shall submit proof of successful completion of a Department approved emergency medical technician refresher course, at the respective level of training.

(C) No oral examination of the written test shall be permitted. Only special examination accommodations approved by the National Registry will be provided for examinations.

(8) The Department shall administer all National Registry EMT-I and EMT-P practical examinations. Training programs shall administer National Registry basic practical examinations. Agencies approved by the Department shall administer National Registry first responder practical examinations. All practical examinations are administered after completion of a State approved training course at all levels.

(9) Department approved evaluators shall be used for all EMT-I and EMT-P practical examinations.

(10) The Department may issue a license to any Nationally Registered EMT <u>with active status</u> who meets all other State requirements.

310:641-5-14. Renewal requirements

(a) An application for the renewal of all emergency medical technician licenses shall be submitted to the Department on or before March 31st, of the license expiration year if renewal is desired. A notice of expiration and application for renewal shall be mailed to each licensee, at the address of record. Licensees are solely responsible for meeting all requirements for renewal.

(1) Applicants for renewal shall submit, on an application form provided by the Department, true, correct, and complete information as to eligibility and character. Incorrect or incomplete documentation shall be cause for rejection.

(2) Requirements for renewal, in general, include current and continuous certification in basic life support (BLS), specified hours of continuing education, refresher training, and continued skill competency. In the case of EMT-I and EMT-P, skill competency shall be verified by a physician, and for EMT-P, advanced cardiac life support (ACLS) shall be documented.

(3) The EMT-B renewal requires the licensee to:

(A) Complete a basic refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2.

(B) Complete at least forty eight (48) hours of Department approved continuing education training. Twenty-four (24) hours of continuing education may be obtained through distributive education as defined in OAC 310:641-3-2. The maximum number of

hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic course, and the following topics -- pneumatic trousers, shock management, communications, hypothermia and other environmental injuries, air ambulance emergency care, child abuse, sexual assault, industrial accidents, explosion injuries, electrical hazards, neonatal care/SIDS, domestic violence, crime scene response, athletic injuries, rappelling, hazardous materials, crisis intervention, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, medico-legal aspects, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, ACLS, PALS, PPC, and Pediatric Education for the Prehospital Professional (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses--PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), and/or Dispatcher Training (12hrs):-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved in-service training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved Paramedic or Intermediate course shall fulfill the refresher and all continuing education requirements for the EMT Basic;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider, or Department approved equivalent. BLS/CPR training shall not be applied toward the forty-eight (48) hours of required continuing education training for Basic EMT's.

(D) Complete the Department renewal application with all required documentation and fee.

(4) The EMT-I renewal requires the licensee to:

(A) Complete an intermediate refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined in OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), ATLS, PHTLS, BTLS, PALS, or PEPP courses disqualify these courses from being applied to continuing education hours.

(B) Complete at least thirty six (36) hours of Department approved continuing education training. Eighteen (18) hours of continuing education may be obtained through distributive education as defined at OAC 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Basic, EMT Intermediate, and/or EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, communications, athletic injuries, rappelling, hazardous materials, crisis intervention, domestic violence, protective breathing apparatus, farm machinery extrication, medical terminology, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, ACLS, PALS, PPC, and Pediatric Education for the Prehospital Provider (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses--PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), and/or Dispatcher Training (12hrs)-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division. Successful completion of a Department approved Paramedic course shall fulfill the refresher and all continuing education requirements for the EMT Intermediate;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the thirty-six (36) hours of required continuing education training for Intermediate EMT's;

(D) Complete a skills review and maintenance verification for EMT-I by medical control, and;

(E) Complete the Department renewal application with all required documentation and fee.

(5) The EMT-P renewal requires the licensee to:

(A) Complete a paramedic refresher course adhering to Department standards. Ten (10) hours of the refresher may be completed through distributive education as defined at OAC 310:641-3-2. Refresher course modules met by successfully completing ACLS (initial course), AMLS, PHTLS, or BTLS, PALS, or PEPP. Use of these courses disqualify these

courses from being applied to continuing education hours.

(B) Complete at least twenty four (24) hours of Department approved continuing education training. Twelve (12) hours of continuing education may be obtained through distributive education as defined at 310:641-3-2. The maximum number of hours allowed for any one topic is twelve (12) hours. Department pre-approved continuing education includes any subject covered in the National Standard EMT Paramedic course, and the following topics: -- air ambulance emergency care, sexual assault, industrial accidents, explosion injuries, electrical hazards, crime scene response, athletic injuries, hazardous materials, crisis intervention, domestic violence, hypothermia and other environmental injuries, protective breathing apparatus, farm machinery extrication, medico-legal aspects, radioactive materials, and special rescue (diving, aerial, mountain). Bio-terrorism, EMS Geriatrics, PALS, PPC, and Pediatric Education for the Prehospital Professional (PEPP) or any other State approved courses will be allowed the number of hours specified on the course completion certificate up to 16 hours unless otherwise approved by the Department. Successful completion of the following National Standard courses-- PHTLS (16hrs), BTLS (16hrs), Auto Extrication (16hrs), Emergency Driving (12hrs), PALS (16 hrs.) and/or Dispatcher Training (12hrs)-- with the specified number of hours shown above may be applied to Continuing Education. These topics may be presented utilizing critiques, didactic sessions, practical drills, workshops, seminars, or other approved inservice training sessions. Any topic which is not specified above shall require prior written approval from the Division;

(C) Maintain basic life support (BLS) certification for health care providers, current through March 31 of licensure expiration. The BLS course shall adhere to the current standards of the American Heart Association CPR for the Health Care Provider, the American Red Cross CPR for the Professional Rescuer, the National Safety Council CPR for the Health Care Provider or Department approved equivalent. BLS/CPR training shall not be applied toward the twenty-four (24) hours of required continuing education training for paramedics;

(D) Complete biennial certification requirements for Advanced Cardiac Life Support (ACLS), in accordance with the American Heart Association. If a structured ACLS course is not available, the medical control may affirm, in writing, that ACLS skills and knowledge has been demonstrated;

(E) Complete a skills review and maintenance verification for EMT-P by medical control, and;

(F) Complete the Department renewal application with all required documentation and fee.

(b) Emergency medical technicians shall declare and provide documents on any felony conviction since their last issuance of a license. Denial of renewal, may be made upon any basis consistent with the provisions contained within Paragraph 310:641-5-11(6).

(c) The fee for renewal is ten ($10.00) dollars for EMT-B, fifteen ($15.00) for EMT-I, and twenty ($20.00) for EMT-P. Concurrent national registration is not included within the Oklahoma emergency medical technician renewal. Fees shall be in an acceptable form made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS).

(d) Successful retests of the National Registry exam shall suffice for re-licensure requirements at all levels.

(~~d~~e) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act, otherwise the decision shall be considered final to both parties.

PART 5. INSTRUCTOR QUALIFICATIONS

310:641-7-20. Instructor requirements

(a) **State Certified Emergency Medical Service Instructor.**

(1) A registry of approved emergency medical services instructors shall be maintained by the Department. Each instructor candidate shall submit to the Department an application for initial instructor certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification. This application shall constitute authorization for any inspection or investigation by the Department.

(2) Qualifications for instructor certification include:

(A) A resume or letter documenting two (2) years of direct field experience in emergency medical services within the previous five (5) years which meets or exceeds the level of training being taught;

(B) Current approval as a Basic Life Support Healthcare Provider Instructor (CPR) in accordance with American Heart Association (AHA) Instructor, American Red Cross Professional Rescuer Instructor, or National Safety Council CPR for the Health Care Provider Instructor standards. At the paramedic level, the instructor shall be a current American Heart Association, Advanced Cardiac Life Support (ACLS) provider and a Pediatric Advanced Life Support (PALS), Pediatric Emergency Medicine (APLS), Pediatric Prehospital Care (PPC) or Pediatric Education for the Prehospital Professional (PEPP) provider. Copies of all required documentation will be forwarded to the Department with application; ~~and~~

(C) Successful completion of a Department approved EMS Instructor Training Course or Fire Service Instructor I and/or II, with the EMS Instructor Training Bridge (ITC) Course or equivalent~~.~~; and

(D) Current state licensure.

(3) To teach, a qualified instructor must have a letter from the director and medical director of a certified first response agency or ambulance service or the coordinator of an approved training institution, documenting affiliation.

(b) Emergency Medical Service Lab Assistant.

(1) A file of qualified Lab Assistants shall be maintained by each certified training program, licensed ambulance service or certified first response agency including documentation of qualification.

(2) Qualifications for lab assistants include:

(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(B) Two (2) years of current experience in medical services which meets or exceeds the level of training being assisted or evaluated; and

(C) Any certification required for the skill being assisted or evaluated.

(c) Emergency Medical Service Instructor Educator.

(1) Instructor Training Courses (ITC) and Instructor Refresher Courses (IRC) shall be taught by a state certified Instructor Educator.

(2) An application for Instructor Educator shall be submitted on forms provided by the Department and accompanied by current documentation of qualification.

(3) Qualifications for Instructor educator include:

(A) Affiliation with an approved training program

(B) Current Oklahoma licensure as a Basic EMT or higher.

(C) Five (5) years experience as a EMS field provider.

(D) Current approval as an Oklahoma EMS Instructor

(E) Completion of the NHTSA/DOT EMS Instructor Training Course;

(F) Successful completion of instruction of at least 3 major (initial) EMT courses at the Basic level or higher;

(G) Attendance at all mandatory meetings with the Department and other Instructor Educators.

(4) EMS instructor educators must maintain EMS instructor certification(s). A registry of approved emergency medical services instructor educators shall be maintained by the Department.

PART 7. IN-SERVICE INSTRUCTION PROGRAM

310:641-7-30. Authorization

(a) Licensed ambulance services and certified first response agencies shall be authorized in-service instruction based upon the need for training and continuing education activities. In-service instruction is limited to refresher courses, first responder courses, continuing education and other training courses as designated by the Department.

(b) Ambulance services or first response agencies shall use certified instructors consistent with the requirements in 310:641-7-20. A guest presenter may be used provided a certified instructor is present and responsible for the training session.

(c) Ambulance service and first response agency personnel shall be the primary recipient of in-service instruction, however, in-service instruction may be provided to other ambulance services, first response agencies, and the public if approved by the service or agency head.

(d) All courses shall be approved as required in 310:641-7-15. Ambulance services and certified first response agency instructors may provide first responder and first responder refresher training to communities or other ambulance services according to the following guidelines:

(1) Instructors and/or ambulance services and certified first response agencies shall not charge for this instruction except for reimbursement for books, supplies and other reasonable expenses.

(2) Training shall be limited to the immediate service area of the licensed ambulance service, unless requested to provide such training by another ambulance service or first response agency.

(3) Courses must be approved and requested by the service or agency medical director.

(4) An attendance policy approved by the Department shall be on file at the agency.

(e) The Department may attend any in-service training as part of the quality management program.

(f) The Department may invalidate all or any portion of training conducted if a violation of the Act or rules has been substantiated.

[OAR Docket #08-1124; filed 6-3-08]

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

[OAR Docket #08-1125]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-1960 et seq.
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ANALYSIS:
The amendments to OAC 310:662 Subchapters 1, 2, and 3, decrease the amount of time an initial application can remain incomplete before it is summarily dismissed from ninety (90) to thirty (30) days. The proposed rule clarifies who may serve as the guardian of a home health client to prohibit an employee of the client's home care agency from serving in that role unless otherwise qualified, e.g., such as through a court appointment. The proposed amendments maintain the requirement for a continuous review of clinical records to ensure the adequacy of the plan of care and appropriateness of continuation of care while removing the specific requirement for review of client clinical records at a minimum interval of each sixty-two (62) days of service. These changes were initiated by requests submitted, reviewed, and recommended through the Home Health Advisory Board and are intended to streamline the licensure process and to remove and/or clarify obsolete regulatory language. The new language proposed in Subchapter 8 establish standards, procedures, and fees for licensure of agencies providing companion and sitter services as required by House Bill 1580 passed during the First Session of the 51st Legislature that amends the Home Care Act (the Act) by adding Section 1-1972 of title 63 that became effective November 1, 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., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:662-1-2. Definitions

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

"Act" means the Home Care Act, 63 O.S. Supp. 1996, §1-1960 et seq.

*"**Affiliated person**" means:*

(A) *any officer, director or partner of the applicant,*

(B) *any person employed by the applicant as a general or key manager who directs the operations of the facility which is the subject of the application, and*

(C) *any person owning or controlling more than five percent (5%) of the applicant's debt or equity.* [63 O.S. Supp. 1998, Section 1-1965]

"Autonomy" means capacity to be self-determining, to make choices in accord with one's own goals and values.

"Branch office" means a business location from which a home care agency located in Oklahoma provides service within a portion of the total geographic area served by the parent agency. Branch offices from out of state parent agencies shall be licensed as home care agencies as required by this Chapter. Branch offices from in state parent agencies may be licensed as a part of the parent agency. Each home care agency branch office shall operate under the same name(s) as the parent agency.

"Certified/accredited agency" means any home care agency located in Oklahoma which is certified or accredited by:

(A) Title XVIII or XIX of the federal Social Security Act;

(B) the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO); or

(C) the Community Health Accreditation Program of the National League for Nursing (CHAP).

"Client" means the consumer/patient/individual who receives the services of a home care agency and/or a companion or sitter service.

"Client's representative" means the client's legal guardian or person authorized by the client or client's legal guardian to assist the client in receiving home care services.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer(s) or a potential consumer(s) of home care services by an agency representative or affiliate. Coercive means include, but are not limited to, presentation of false and/or misleading information.

"Department" *means the Oklahoma State Department of Health.* [63 O.S. Supp. 1996, § 1-1961(3)]

"Evaluation" means documentation of a need for services based on the client self-report.

"Governing body" means the person(s) having ultimate responsibility, including fiscal and legal authority for the home care agency.

"Harassment" means repetitive, intimidating, or otherwise distressing contact directed at a specific consumer(s) or potential consumer(s) of home care by a specific home care agency seeking to recruit clients.

"Home care agency" *means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides.* [63 O.S. Supp. 1996, § 1-1961(4)]

"Home care agency administrator" *means a person who operates, manages, or supervises, or is in charge of a home care agency;* [63 O.S. Supp. 1996]

"Home care services" *means skilled or personal care services provided to clients in their place of residence for a fee.* [63 O.S. Supp. 1996, § 1-1961(5)]

"Home health aide" *means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee.* [63 O.S. Supp. 1996, § 1-1961(6)]

"Individual Service Plan" means documentation by the individual responsible for supervision of the companion or sitter services, or a designee, of the services requested by and agreed to be provided for a client.

"Infectious wastes" means waste capable of producing an infectious disease because it contains pathogens of sufficient virulence and quantity so that exposure to the waste by a susceptible human host could result in an infectious disease.

"Licensed practical nurse" means a person currently licensed to practice practical nursing in Oklahoma.

"Nurse registry" means any person that procures, offers, promises, or attempts contracts for registered nurses, licensed practical nurses, home health aides, or other providers of personal care who are compensated by fees as independent contractors, for the provision of home care services.

"Parent agency" means that part of a home care agency which develops and maintains administrative and professional control of subunits and/or branch offices.

"Personal care" *means assistance with dressing, bathing, ambulation, exercise or other personal needs.* [63 O.S. Supp. 1996, § 1-1961(7)]

"Personal needs" means assistance with activities of daily living such as getting out of bed, ambulation, exercise, toileting, dressing, eating, or bathing. Personal needs do not include domestic or maintenance services provided on a fee basis to maintain the home.

"Primary home care agency" means the agency that is responsible for the services furnished to clients and for implementation of the plan of care.

"Qualified therapist" means a trained respiratory therapist or technician, or a physical therapist, occupational therapist, or speech therapist who is currently licensed to practice their profession in Oklahoma.

"Qualified therapy assistant" means a physical therapy assistant or occupational therapy assistant who is currently licensed to assist physical therapists or occupational therapists in Oklahoma.

"Registered nurse" means a person currently licensed to practice registered nursing in Oklahoma.

"Sharps" means any discarded objects that can penetrate the skin including, but not limited to, hypodermic needles, syringes, lancet and scalpel blades. This definition includes broken glass or other sharp items that have come in contact with material defined as infectious wastes.

"Skilled care" *means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this State, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker.* [63 O.S. Supp. 1996, § 1-1961(8)]

"Solicitation" means coercion or harassment of any person or contact with a patient knowingly being treated by another home care agency for the purpose of attempting to persuade the patient to change home care agencies.

"Subsidiary" *means any person, firm, corporation or other legal entity which:*

(A) *controls or is controlled by the applicant,*

(B) *is controlled by an entity that also controls the applicant, or*

(C) *the applicant or an entity controlling the applicant has directly or indirectly the power to control.* [63 O.S. Supp. 1996]

"Subunit" means a semi-autonomous organization that serves clients in a geographic area different from that of the parent agency. A subunit is required to independently meet requirements of this Chapter and shall be licensed separately because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

SUBCHAPTER 2. LICENSES

310:662-2-1. Licensure

(a) **Base of operation.** Any home care agency providing home care services in Oklahoma shall operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services from each home care agency shall be supervised by personnel at that location.

(b) **Applicant.** Any person, corporation, partnership, association or other legal entity desiring to obtain a license to establish, or to obtain a renewal license to operate, a home care agency in this State shall make application to the State Department of Health in such form and accompanied by such information as the State Commissioner of Health shall prescribe. All applications shall include disclosure statements completed by the applicant which shall include, but not be limited to, the following information:

(1) The full name and address of the applicant, and all affiliated persons;

(2) The full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant;

(3) A description of any ongoing organizational relationships as they may affect operations within the state;

(4) The names, locations, and dates of ownership, operation, or management for all current and prior home care agencies owned, operated or managed in this State or in any other State by the applicant or by any affiliated persons;

(5) The name and location of the home care agency for which a license is sought;

(6) The full name and address of the applicant, and all affiliated persons, under whose ownership, operation, management, or supervision the home care agency will be conducted; and

(7) An affidavit attesting to the information provided.

(c) **Initial applicant data.** Information supplied by initial applicants shall include, but not be limited to, the following information:

(1) Projected number of visits or shifts per month for six (6) months beginning from the date of application.

(2) Evidence of staffing availability sufficient to cover projected visits/shifts.

(3) Evidence of financial solvency to include resources sufficient to ensure the agency's ability to provide adequate home care services. The agency shall have an annual operating budget which ensures sufficient resources to meet operating costs at all times and to maintain standards as required by this Chapter.

(4) If required by law, proof of business registration with the Secretary of State.

(5) Proof of liability insurance coverage of at least one hundred thousand dollars ($100,000.00) per occurrence, three hundred thousand dollars ($300,000.00) aggregate. Each agency shall maintain at least this level of coverage.

(6) Evidence of the applicant's prior business and professional experience in prior health care provider operations including, but not limited to, nursing homes, residential care homes, home care agencies, and hospices. The applicant shall disclose to the Department the compliance history of any person or persons having ownership, operational, management or supervisory authority in the agency. Compliance history disclosure shall include lawful orders of suspension, receivership, administrative penalty or sanction issued by the Department or by other administrative agencies in other states with similar responsibilities.

(7) Proof that the agency's administrator is currently certified by the Department as a home care agency administrator.

(d) **Licensure fees.**

(1) An application for an initial license to establish or operate a new home care agency or subunit shall be accompanied by a nonrefundable application fee of one thousand dollars-($1,000.00).

(2) A renewal application for an existing home care agency or subunit shall be accompanied by a nonrefundable licensing fee of five hundred dollars ($500.00).

(3) An application for license, or renewal thereof, to establish or operate a home care agency branch office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of twenty-five dollars ($25.00).

(4) Fees for renewal licenses prorated to expire on July 31 shall be based on the number of quarters [i.e. three (3) months] or portions thereof for the license. The fee for each quarter or portion thereof shall be one hundred twenty-five dollars ($125.00) for each parent agency or subunit license and six dollars and twenty-five cents ($6.25) for each branch license.

(e) **Exemptions.** The provisions of the Act and promulgated rules shall not apply to:

(1) *A person acting alone who provides services in the home of a relative, neighbor or friend.*

(2) *A person who provides maid services only.*

(3) *A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.*

(4) *A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act.*

(5) *A nurse-midwife.* [63 O.S. Supp. 1996, § 1-1962(C)]

(f) **Transfer of ownership of a licensed agency.**

(1) **Legal assignment.** The license for a home care agency is not transferable or assignable except a license may be transferred to any affiliated person, parent company or subsidiary of the applicant or legal entity which has an ongoing organizational relationship with the applicant. Proof of legal assignment with accompanying application for licensure shall be filed with the Department at the time of the change. There shall be no fee for legal assignment of an agency license.

(2) **Acquisition of a licensed agency.** If an entity is considering acquisition of a licensed agency, an application for license with a five hundred dollar ($500.00) fee for the agency and twenty-five dollar ($25.00) fee for each branch office operated by a parent agency shall be filed with the Department at least thirty (30) days prior to the effective date of the change. A copy of the executed sales agreement shall be provided to the Department.

(3) If a corporate licensee amends its articles of incorporation to revise its name, this subsection does not apply. The sale of stock of a corporate licensee does not cause this subsection to apply.

(4) No license shall be transferred from one location to another unless the Department is notified. If an agency is considering relocation, the agency shall notify the Department thirty (30) days prior to the intended relocation. The Department shall provide written notification to the agency amending the annual license to reflect the new location.

(5) Upon the effective date of a change of ownership or upon cessation of operation of an agency, the current license shall be mailed or returned to the Department. The agency shall advise the Department in writing at the time of cessation of operation where agency medical records shall be archived and how these records shall be accessed.

(g) **Licensure issuance/renewal.**

(1) A home care agency license shall be renewed annually. Each license shall expire on July 31 of each year.

(2) An initial license shall be issued for twelve (12) months. Initial licenses which do not expire on July 31 shall be renewed so that the renewal license shall expire on July 31. The fee for the renewal license following the issue of an initial license which does not expire on July 31 shall be prorated on a quarterly basis.

(3) Prior to license renewal the applicant shall submit proof of:

(A) Liability insurance coverage of at least one hundred thousand dollars ($100,000.00) per occurrence, three hundred thousand dollars ($300,000.00) aggregate.

(B) Proof that the agency's administrator is currently certified by the Department as home care agency administrators.

(4) A home care agency license shall be posted in a conspicuous place, open to the public, at the licensed premises.

(5) The license shall be issued only for the premises named in the application.

(h) **Deadlines for applications.** The license application shall be filed in accordance with the following deadlines.

(1) The application for an initial home care agency license shall be filed at least thirty (30) days before beginning operations.

(2) The application for an initial license, for a transfer of ownership or operation, shall be filed at least thirty (30) days prior to the transfer. If the Department finds that an emergency exists which threatens the welfare of clients, the thirty (30) day advance filing notice may be waived.

(3) The application for renewal of a licensed existing home care agency shall be filed at least thirty (30) days prior to the expiration date of the license.

(4) An incomplete initial or renewal application received by the Department shall be summarily dismissed after ~~ninety (90)~~ thirty (30) days of applicant notification of an incomplete application. Thereafter, the applicant shall submit a new application and the initial or renewal fee.

SUBCHAPTER 3. ADMINISTRATION

310:662-3-3. Standards of practice

(a) A home care agency shall maintain the highest level of standards in its business practices. The governing body of each agency shall adopt written standards of practice, which shall be strictly adhered to by all employees, agency contractors and owners of the agency.

(b) At a minimum, every home health agency shall include the following items in the agency's standards of practice:

(1) Neither the owner nor any home health agency employee or contractor shall knowingly mislead a client, family member, client's representative or caregiver concerning services, charges, or use of equipment.

(2) Neither the owner nor any home care agency employee or contractor shall misuse or misappropriate any property belonging to any client, family member, client's representative or caregiver.

(3) Neither the owner nor any home care agency employee or contractor shall knowingly and actively recruit a client under the care of another home care agency.

(4) The home care agency shall accept client referrals in a professional manner with no remuneration provided to the referring party.

(5) Solicitation of clients by coercion or harassment shall be prohibited.

(6) No agency, employee of any agency, or agency contractor shall serve as the guardian of a client unless such home care provider is related to the client by blood or marriage ~~and~~ and/or is otherwise eligible to serve as a guardian.

(7) All home care services shall be provided in compliance with accepted standards of practice.

SUBCHAPTER 8. SITTER OR COMPANION SERVICES

310:662-8-1. Applicability

No public or private agency or person shall establish, conduct or maintain a sitter or companion service or hold itself out to the public as a sitter or companion service without first obtaining a license from the State Department of Health.

310:662-8-2. Licensure

(a) **Application.** Any person, corporation, partnership, association or other legal entity desiring to obtain a license to establish, or to obtain a renewal license to operate, a companion or sitter service in this State shall make application to the State Department of Health in such form and accompanied by such information as the State Commissioner of Health shall prescribe. All applications shall include disclosure statements completed by the applicant which shall include, but not be limited to, the following information:

(1) The full name and address of the applicant, and all affiliated persons;

(2) The name and location of the companion or sitter service for which a license is sought;

(3) The full name of the individual responsible for supervision of the companion or sitter services that meets the requirements of the Act and evidence of current licensure and/or training as appropriate;

(4) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws. This insurance requirement shall remain in effect at all times while the service is licensed;

(5) Proof of liability insurance coverage of at least one hundred thousand dollars ($100,000.00) per occurrence, three hundred thousand dollars ($300,000.00) aggregate. Each service shall maintain at least this level of coverage.

(6) An affidavit attesting to the information provided.

(b) **Plan of delivery.** Each initial application shall be accompanied by a plan of delivery that describes the scope and range of companion or sitter service available to clients and their families as well as a description of the system of record keeping that meets the requirements specified in the Act. Each renewal application shall include written notification as to the changes in the plan of delivery.

(c) **License fees.**

(1) An application for an initial license to establish or operate a new companion or sitter service shall be accompanied by a nonrefundable application fee of one thousand dollars ($1000.00)

(2) A renewal application for an existing companion or sitter service shall be accompanied by a nonrefundable licensing fee of five hundred dollars ($500.00).

(3) An application is not considered to be filed unless it is accompanied by the appropriate form and fee.

310:662-8-3. Licensure issuance/renewal

(a) **Expiration.** Each license for a companion or sitter service shall expire one (1) year after issuance on the last day of the month of issuance unless suspended or revoked.

(b) **Deadlines for applications.** The license application shall be filed in accordance with the following deadlines.

(1) The application for a companion or sitter service license shall be filed at least thirty (30) days before beginning operations.

(2) The application for an initial license, for a transfer of ownership or operation, shall be filed at least thirty (30) days prior to the transfer. If the Department finds that an emergency exists which threatens the welfare of clients, the thirty (30) day advance filing notice may be waived.

(3) The application for renewal of a licensed existing sitter or companion service shall be filed at least thirty (30) days prior to the expiration date of the license.

(4) An incomplete initial or renewal application received by the Department shall be summarily dismissed after thirty (30) days of applicant notification of an incomplete application. Thereafter, the applicant shall submit a new application and the initial or renewal fee.

310:662-8-4. Base of operation

Each companion or sitter service shall operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services shall be supervised by personnel at that location. The license shall be issued only for the premises named in the application.

310:662-8-5. Criminal background checks

Each companion or sitter service shall maintain a copy of each background check that is conducted on an agency employee to meet the requirements of the Act.

310:662-8-6. Transfer of ownership of a licensed agency

(a) The license for a companion or sitter service is not transferable or assignable except a license may be transferred to any affiliated person, parent company or subsidiary of the applicant or legal entity which has an ongoing organizational relationship with the applicant. Proof of legal assignment with accompanying application for licensure shall be filed with the Department at the time of the change. There shall be no fee for legal assignment of a service license.

(b) If an entity is considering acquisition of a licensed agency, an application for license with a five hundred dollar ($500.00) fee for the service shall be filed with the Department at least thirty (30) days prior to the effective date of the change. A copy of the executed sales agreement shall be provided to the Department.

(c) If a corporate licensee amends its articles of incorporation to revise its name, this subsection does not apply. The sale of stock of a corporate licensee does not cause this subsection to apply.

(d) No license shall be transferred from one location to another unless the Department is notified. If a service is considering relocation, the service shall notify the Department thirty (30) days prior to the intended relocation. The Department shall provide written notification to the service amending the annual license to reflect the new location.

(e) Upon the effective date of a change of ownership or upon cessation of operation of a service, the current license shall be mailed or returned to the Department. The service shall advise the Department in writing at the time of cessation of operation where service records shall be archived and how these records shall be accessed.

310:662-8-7. Individual Service Plan

The individual responsible for supervision of the companion or sitter services shall prepare an Individual Service Plan at the time of the initial evaluation. The Individual Service Plan shall be developed after consultation with the client and/or the client's representative and shall include potential services to be provided and the requested hours of service. The Individual Service Plan for the client shall be communicated to the caregiver prior to or at the time of the delivery of care. The Individual Service Plan shall be revised as necessary, but it shall be reviewed and updated by the individual responsible for supervision of the companion or sitter services at least every six (6)months.

310:662-8-8. Complaint investigations

The Department shall investigate allegations of noncompliance with the requirements as specified in the Act.

310:662-8-9. Mediation

(a) If a complaint investigation results in a finding of noncompliance against a licensed companion or sitter service, the licensed service may request review of the findings by a mediator in an effort to come to consensus on the facts of the investigation and to resolve any conflicts between the licensed service and the Department.

(b) Requests for mediation shall be made in writing and shall be received by the Department within ten days after the service has received the notice of noncompliance from the Department.

(c) Mediators shall be certified by the Alternative Dispute Resolution System through the Supreme Court of Oklahoma.

[OAR Docket #08-1125; filed 6-3-08]

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

[OAR Docket #08-1126]

EDITOR'S NOTE: *As noted by the Oklahoma State Department of Health in the ANALYSIS below, these rules were originally filed and published in the June 15, 2007 issue of the Register [see 24 Ok Reg*

2007], with a stated effective date of June 25, 2007, and were subsequently published in the 2007 Supplement to the OAC. However, after the rules had been published in both the Register and the Supplement, the agency discovered that "an earlier draft, not adopted by the State Board of Health, was distributed to the [L]egislature, [G]overnor's office and Secretary of State for final adoption and publication in the Oklahoma Register." This year, after publishing another Notice of Rulemaking Intent, the Board readopted the same rules and submitted the readopted rules to the Governor and Legislature for review. The finally adopted rules were subsequently filed with the Secretary of State and are being published below.

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:663-1-2 [AMENDED]
310:663-1-4 [NEW]
Subchapter 3. Services and Care
310:663-3-5 [AMENDED]
310:663-3-8 [NEW]
Subchapter 7. Physical Plant Design
310:663-7-2 [AMENDED]
Subchapter 9. Staffing Requirements
310:663-9-6 [AMENDED]
Subchapter 13. Resident Contract
310:663-13-1 [AMENDED]
Subchapter 15. Resident Rights and Responsibilities
310:663-15-1 [AMENDED]
310:663-15-2 [AMENDED]
310:663-15-3 [NEW]
Subchapter 19. Administration, Records and Policies
310:663-19-1 [AMENDED]
310:663-19-2 [AMENDED]
310:663-19-3 [NEW]
Subchapter 25. Inspections and Investigations
310:663-25-3 [AMENDED]
310:663-25-4 [AMENDED]
Subchapter 29. Terminating and Continuing Services
310:663-29-2 [AMENDED]
Appendix B. Reference List for Standards of Practice [NEW]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-104; and Title 63 O.S. Section 1-890.1 et seq.
DATES:
Comment Period:
February 1, 2008 through March 13, 2008
Public Hearing:
March 13, 2008
Adoption:
March 13, 2008
Submitted to Governor:
March 24, 2008
Submitted to House:
March 24, 2008
Submitted to Senate:
March 24, 2008
Gubernatorial approval:
May 8, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2008
Final adoption:
May 15, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments are re-submitted in their entirety as reviewed and adopted at the Oklahoma State Board of Health, March 8, 2007, meeting. No additional amendments are offered. The re-submission is due to an error in distribution in which an earlier draft, not adopted by the State Board of Health, was distributed to the legislature, governor's office and Secretary of State for final adoption and publication in the Oklahoma Register, Volume 24, Number 19, OAR Docket #07-1090.

The sections of rule subject to amendment, as currently written, address definitions of certain terminology used in the rule; inappropriate placement in assisted living centers and involuntary discharge; the resident's right to privacy and independence to include access to their room thermostat and personal furnishings; staffing requirements when only one person is on duty; the resident's contract provisions and communications regarding the resident's contract; who may not serve as guardian of a resident; criteria and procedures for reporting certain incidents to the Department; procedures to ensure safe administration of medications; standards of practice in nursing care; procedures for issuing notice of violation and submission of a plan of correction; and procedures to be followed for voluntary closure of the facility.

Definitions are updated to define terminology in the proposed rule. A section is added to direct facilities to other provisions of applicable statute in Title 63. This meets guidance within the Administrative Rules on Rule Making to not restate statutory language where possible, while directing facility attention to important statutory language.

Additional criteria are provided to give facilities greater guidance on appropriate admissions to an Assisted Living facility as well as criteria for invoking an involuntary transfer or discharge. Contents of a notice of involuntary discharge are specified which include the resident's right to a hearing and the process by which a resident may request a hearing.

A new section is added to address an omission in the rule clarifying that facilities must be in compliance with Chapters 256 and 257 for Food Service Establishments in their food storage, preparation and service.

Staffing requirements are amended to increase resident supervision. New rules specify a minimum of two staff members for facilities housing more than six residents and in locked units where facilities are providing services to residents with Alzheimer's disease or related dementias.

The rule prohibiting an owner, operator, administrator or employee from appointment as a guardian or limited guardian of a resident is amended to include prohibiting appointment as power of attorney or durable power of attorney.

A new section of rule is created to require development, distribution and posting of facility procedures for receiving resident complaints. The rule includes a provision for distributing and posting the Department's complaint procedures.

The rules for incident reporting are amended to include additional incidents representing a threat to the health and/or safety of residents; requiring the reporting of those incidents to the Department; timelines for reporting; notification of the Nurse Aide Registry for allegations and/or occurrences of resident abuse, neglect, or misappropriation of resident's property by nurse aide; and, content of the incident report.

Medication administration rules are amended to directly cite the rule. Previously, the rule did not cite the language but only provided a reference to rules in other Chapters.

A new rule for the maintenance of resident records is created. The rule provides for content, confidentiality, protection, retention time frames, and possession in case of closure or ownership change.

Standards of practice are updated and placed in a new Appendix B.

The rule for Plans of Correction is expanded to define an acceptable plan of correction, penalties for failure to submit a Plan of Correction, and provisions for extension, rejection and right to appeal.

The notice requirements for voluntary closure are amended to define the content of the notice to residents and provide for a final notice to the Department to include effective date of closure, location of residents and provision for resident record storage.

The rule changes update the rules based on survey experience, history of complaint allegations and investigations, and public meetings held by the Long Term Care Facility Advisory Board.

The effect of these Rules will be to: enhance resident communications in the event of involuntary discharge; increase training of facility food service staff in avoiding foodborne illness; encourage constant supervision of residents with diminished mental capacity; prohibit owners, operators, administrators or employees from serving as a resident's power of attorney; ensure communication to residents and families of a procedure for submitting grievances to the facility and Department; enhance facility communication to the Department when there are incidents that affect the health safety and welfare of residents; provide standards for record keeping, retention and protection; encourage facility adherence to the most current standards of

practice; encourage plans of correction that result in long term correction of violations; ensure communication to residents of their rights in a facility closure and communication of the availability of supports to assist the resident in finding alternative placement; and encourage more detailed communication to the department on the reasons for closure and the location of residents if family or the Department need to locate a resident after their relocation.

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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:663-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish.

"Act" means the Continuum of Care and Assisted Living Act, Title 63 O.S. ~~Supp. 1997,~~ Sections 1-890.1 et seq. of the Oklahoma Statutes.

"Assisted living center" *means any home or establishment offering, coordinating or providing services to two (2) or more persons who*:

(A) *are domiciled therein*;

(B) *are unrelated to the operator*;

(C) *by choice or functional impairments, need assistance with personal care or nursing supervision*;

(D) *may need intermittent or unscheduled nursing care;*

(E) *may need medication assistance*; and

(F) *may need assistance with transfer and/or ambulation*; *Intermittent nursing care and home health aide services may be provided in an assisted living facility by a home health agency*~~[63:1-890.1.1]~~[63:1-890.2(1)].

"Chemical restraint" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms. Chemical restraint does not mean medication prescribed to maintain emotional stability.

"Commissioner" means the Commissioner of Health.

"Continuum of care facility" *means a home, establishment or institution providing nursing facility services as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the following:*

(A) *assisted living center services as defined in the Continuum of Care and Assisted Living Act*; and

(B) *adult day care center services as defined in Section 1-872 of Title 63 of the Oklahoma Statutes* [63:1-890.2.4].

"Department" means the Oklahoma State Department of Health.

"Direct care staff" in an assisted living center means qualified nursing, activity, social and therapy staff employed by or under the direct supervisory control of the assisted living center.

"Intermittent or unscheduled nursing care" means skilled nursing care given by a licensed practical nurse or registered nurse that is not required twenty-four (24) hours a day.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

"Personal care" *means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person* [63:1-1902.17] and includes assistance with toileting.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Representative" means an agent under a durable power of attorney for health care, or a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident.

"Resident" means anyone accepted for care through contractual agreement and who meets the admission criteria established pursuant to 310:663-3-2.

"Physical restraint" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Significant change" is defined as a major change in the resident's status that is not self limiting; affects more than one area of the resident's health status; and requires interdisciplinary review and/or revision of the care plan.

310:663-1-4. Other provisions applicable to assisted living centers

Assisted living centers subject to the provisions of this chapter shall comply with the following Oklahoma statutes as applicable:

(1) 63 O.S. Sections 1-879.2a et seq., Alzheimer's Disease Special Care Disclosure Act;

(2) 59 O.S. Sections 367 et seq., Utilization of Unused Prescription Medications Act;
(3) 63 O.S. Section 1-1909. (relating to documents and papers required to be displayed);
(4) 63 O.S. Section 1-1945. (relating to Long Term Care Security Act definitions);
(5) 63 O.S. Section 1-1946. (relating to registered sex offender or violent crime offender seeking placement in a long-term care facility - notification - facility's duty to determine registration status of applicants for care, residents, and employees);
(6) 63 O.S. Section 1-1950.1. (relating to definitions - criminal arrest check on certain persons offered employment - exemptions);
(7) 63 O.S. Section 1-1950.3. (relating to nurses aides - employment of persons not licensed);
(8) 63 O.S. Section 1-1950.4. (relating to nurse aides - uniform employment application);
(9) 63 O.S. Section 1-1950.4a. (relating to uniform employment application - penalty for false information);
(10) 63 O.S. Section 1-1950.5. (relating to caregiver - compensation - definition); and
(11) 63 O.S. Section 1-1951. (relating to certified nurse aides).

SUBCHAPTER 3. SERVICES AND CARE

310:663-3-5. ~~Inappropriate placement or length of stay in assisted living center~~Involuntary termination of residency

(a) **Termination of residency when inappropriately placed.** If an assisted living center finds pursuant to 310:663-3-4 (relating to appropriate placement) that a resident is inappropriately placed, the assisted living center shall inform the resident and/or the resident's representative if any. If voluntary ~~discharge or transfer~~ termination of residency is not arranged, the assisted living center shall provide written notice to the resident and to the resident's representative, giving the resident ~~ten (10)~~ thirty (30) days notice of the assisted living center's intent to ~~discharge or transfer~~ terminate the residency agreement and move the resident to an appropriate care provider. The ~~ten (10)~~ thirty (30) day requirement shall not apply:

(1) when emergency ~~transfer or discharge~~ termination of the residency agreement is mandated by the resident's immediate health needs; or

(2) when ~~the transfer or discharge~~ termination of the residency agreement is necessary for the physical safety of the resident or other residents.

(b) ~~Involuntary discharge provisions in 310:680-17-2(b), 310:680-17-2(c) and 310:680-17-3 shall apply for residents of assisted living centers for reasons other than inappropriate placement.~~ **Written notice of involuntary termination of residency for reasons of inappropriate placement.** The written notice of involuntary termination of residency for reasons of inappropriate placement shall include:

(1) A full explanation of the reasons for the termination of residency;
(2) The date of the notice;
(3) The date notice was given to the resident and the resident's representative; and,
(4) The date by which the resident must leave the assisted living center.

(c) **Involuntary termination of residency for reasons other than inappropriate placement.** Procedures for involuntary termination of residency for reasons other than inappropriate placement, by an assisted living center, are as follows:

(1) Written notice shall be provided to the resident, the resident's representative, the person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department, at least thirty (30) days in advance of the termination of residency date.

(2) The written notice shall include:

(A) A full explanation of the reasons for the termination of residency;
(B) The date of the notice;
(C) The date notice was given to the resident and the resident's representative;
(D) The date by which the resident must leave the assisted living center;
(E) Notice that the resident, the resident's representative or person responsible for payment of the resident's care may request a hearing with the Department;
(F) Notice that the request for hearing with the Department must be filed within ten (10) Department business days of receipt of the facility notice; and
(G) Notice that a written or verbal request for a hearing with the Department should be directed to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117, telephone (405)271-1269.

(3) An assisted living center shall not involuntarily terminate a residency agreement for reasons other than inappropriate placement without following the procedures in this section.

(4) If a written or verbal request for a hearing is timely filed by an eligible aggrieved party, the Department shall convene a hearing within ten (10) Department business days of receipt of the request. The request may be in the form of a written or verbal request for hearing from the resident or the resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request shall state the reason for the termination of residency and attach a copy of the letter from the assisted living center.

(5) While waiting for the hearing, the assisted living center shall not terminate the residency agreement unless the termination is an emergency situation. If the resident relocates from the assisted living center but wants to be readmitted, the Department may proceed with the hearing

and the assisted living center shall be required to readmit the resident if the discharge is found not to meet the requirements of OAC 310:663.

(6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the assisted living center, may be represented by counsel or may represent themselves. Assisted living centers operating as a corporation or limited liability company shall be represented by counsel.

(7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the assisted living center or at another place. If the hearing is conducted at another location the parties are responsible for providing the hearing room. The Department shall maintain a record on the case in accordance with the Administrative Procedures Act.

(8) The hearing shall be conducted in accordance with the Administrative Procedures Act. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the termination of the residency was according to law.

(9) If the Administrative Law Judge finds that the termination of residency was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(10) If the termination of residency is according to law, the order shall give the assisted living center the right to terminate the residency agreement.

(11) The scope of the hearing may include:

(A) Inadequate notice;

(B) Discharge based on reason not stated in the law;

(C) Sufficiency of the evidence to support the termination of residency; or

(D) The finding of emergency.

(12) The Administrative Law Judge shall render a written decision within ten (10) Department business days of the close of the record.

(13) If the Administrative Law Judge sustains the decision of the assisted living center, the assisted living center may proceed with the termination of residency. If the Administrative Law Judge finds in favor of the resident, the assisted living center shall withdraw its notice of intent to terminate the residency agreement. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed in accordance with the provisions of the Administrative Procedures Act.

310:663-3-8. Food storage, preparation and service

(a) **Use of Food Service Establishment rule.** Food shall be stored, prepared and served in accordance with Chapter 257 of this Title (relating to food service establishments) with the following additional requirements:

(b) **Ice.** Ice machines available to the residents, or the public, shall be a dispenser type, or have a locking enclosure.

(c) **Food.** A whole, intact, fruit or vegetable is an approved food source. The food supply shall be sufficient in quantity and variety to prepare menus for three (3) days. Leftovers that are potentially hazardous foods shall be used, or disposed of, within twenty-four (24) hours. Non-potentially hazardous leftovers that have been heated or cooked may be refrigerated for up to forty-eight (48) hours.

(d) **Milk, milk products and eggs.**

(1) **Milk grade.** Only grade A pasteurized fluid milk, as defined by the Oklahoma Milk and Milk Products Act, Title 2, Section 7-401 through 7-421, shall be used for beverage and shall be served directly into a glass from a milk dispenser or container.

(2) **Powdered or evaporated milk.** Powdered or evaporated milk products approved under the U.S. Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance (2003 Revision), may be used only as additives in cooked foods. This does not include the addition of powdered or evaporated milk products to milk or water as a milk for drinking purposes. Powdered or evaporated milk products may be used in instant desserts and whipped products or for cooking. When foods, in which powdered or evaporated milk has been added, are not cooked the foods shall be consumed within twenty-four (24) hours.

(3) **Milk Temperature.** Milk for drinking shall be stored at a temperature of 41° F. or below and shall not be stored in a frozen state.

(4) **Eggs.** Only clean, whole eggs with shell intact, pasteurized liquid, frozen, dry eggs, egg products and commercially prepared and packaged hard boiled eggs may be used. All eggs shall be thoroughly cooked except pasteurized egg products or pasteurized in-shell eggs may be used in place of pooled eggs or raw or undercooked eggs.

(e) **Food service training.** All staff assisting in, or responsible for food preparation shall have attended a food service training program offered or approved by the Department.

(f) **Applicability.** This section shall only apply to food prepared or served by the assisted living center within the licensed assisted living center.

SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-2. Privacy and independence

Each assisted living center shall ensure privacy and independence for its residents, to include the following:

(1) no more than two (2) residents shall occupy each sleeping room;

(2) shower and bathing facilities shall not be occupied by more than one (1) resident at a time;

(3) lockable doors on resident sleeping rooms or residences except in the case of documented contraindication;

(4) no more than four (4) residents sharing toilet facilities;

(5) no more than four (4) residents sharing bathing facilities, provided that the Department may approve more than four (4) residents per bathing facility based on documentation that the design of the bathing facility is

appropriate to the special needs of each resident who uses the bathing facility;

(6) provisions shall be made for each resident to control the temperature in the individual living unit through the use of a damper, register, thermostat, or other reasonable means that is under the control of the resident and that preserves resident privacy, independence and safety, provided that the Department may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each resident who has an alternate temperature control; and

(7) the resident shall have the right ~~of resident~~ to use personal furnishings in the individual living unit.

SUBCHAPTER 9. STAFFING REQUIREMENTS

310:663-9-6. Minimum staff for services ~~to cognitively impaired residents~~

(a) **Staffing.** Adequate trained staff shall be on duty, awake, and present at all times, 24 hours a day, 7 days a week, to meet the needs of residents and to carry out all the processes listed in the assisted living center's, written emergency and disaster preparedness plan for fires and other natural disasters.

(b) **Limitations on one-person staffing.** An assisted living center that has only one direct care staff member on duty ~~and awake during the night shift~~ shall:

(1) Disclose the one-person staffing and the plan for dealing with urgent and emergent situations to ~~the resident or the resident's representative~~ residents and their representatives before admission or prior to one-person staffing if such staffing was not previously practiced by the assisted living center; and.

(2) Have in place a plan, approved by the Department, for dealing with urgent or emergent situations, including resident falls, during periods when the assisted living center has only one direct-care staff member on duty.

(c) **Units designed to prevent or limit resident access to areas outside the designated unit or program.** An assisted living center shall have a minimum of two (2) staff members on duty and awake on all shifts if an assisted living center has a unit or program designed to prevent or limit resident access to areas outside the designated unit or program. A minimum of one (1) direct care staff is required to be on duty and awake at all times within the unit or program designed to prevent or limit resident access to areas outside the designated unit or program.

SUBCHAPTER 13. RESIDENT CONTRACT

310:663-13-1. Resident service contract

(a) Each assisted living center shall furnish to each resident a complete and understandable copy of the resident service contract.

(b) All rights, privileges and assurances guaranteed to residents under these rules or marketing materials are deemed incorporated in any contract between an assisted living center and a resident.

(c) The assisted living center shall ensure that the resident or the resident's representative, if any, is informed of all provisions of the resident service contract.

(d) The assisted living center shall provide all services that are specified in the resident's current service contract.

SUBCHAPTER 15. RESIDENT RIGHTS AND RESPONSIBILITIES

310:663-15-1. ~~Familiarity with~~ Resident rights

Each assisted living center and its staff shall be familiar with and shall observe all resident rights and responsibilities enumerated under Title 63 O.S. ~~Supp. 1997,~~ Section ~~1-1918.B~~1-1918(B).

310:663-15-2. Guardians and power of attorney

No owner, operator, administrator or employee of a continuum of care facility or assisted living center subject to the provisions of the Continuum of Care and Assisted Living Act, Nursing Home Care Act, or the Residential Care Act, shall be appointed power of attorney, durable power of attorney, guardian or limited guardian of a resident unless the owner, operator, administrator or employee is the spouse of the resident, or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment.

310:663-15-3. Complaints

(a) **Procedures.** The assisted living center shall make available to each resident or the resident's representative a copy of the assisted living center's complaint procedure. The assisted living center's complaint procedures shall be followed. The assisted living center's complaint procedure shall include at least the following requirements.

(1) The assisted living center shall list in its procedures:

(A) The names, addresses and telephone numbers of assisted living center staff persons designated to receive complaints for the assisted living center;

(B) Notice that a good faith complaint made against the assisted living center shall not result in reprisal against the person making the complaint; and

(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the continuum of care facility's or assisted living center's designated complaint staff, that the person may submit a complaint to the Department or other entities without prior notice to the continuum of care facility or assisted living center.

(2) If a resident, resident's representative or assisted living center employee submits to the administrator or designated complaint staff a complaint concerning resident abuse, neglect or misappropriation of resident's property, the assisted living center shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110 and OAC 310:663-19-1.

(b) **Posted complaint procedures.** Every assisted living center shall conspicuously post for display in an area accessible to residents, employees and visitors, the continuum of care facility's or assisted living center's complaint procedure specified in paragraph (a) and a description, provided by the Department, of complaint procedures established under this rule and the name, address and telephone number of a person authorized by the Department to receive complaints. A copy of the complaint procedure shall also be given to each resident, the resident's representative, or where appropriate, the court appointed guardian.

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-1. Incident reports

(a) **Timeline for reporting.** All reports to the Department shall be made via facsimile or by telephone within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted via facsimile or mail to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.

(~~a~~b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall ~~record incidents including falls that result in injury, injuries, runaways, violent behavior, and medication errors~~prepare a written incident report for the following incidents:

(1) allegations and incidents of resident abuse;

(2) allegations and incidents of resident neglect;

(3) allegations and incidents of misappropriation of resident's property;

(4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;

(5) storm damage resulting in relocation of a resident from a currently assigned room;

(6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;

(7) residents missing from the assisted living center upon determination by the assisted living center that the resident is missing;

(8) utility failure for more than 4 hours;

(9) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, head injury or require treatment at a hospital;

(10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,

(11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.

(~~b~~c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.

(~~c~~d) **Reports to the Department.** ~~The~~Each ~~continuum of care facility and~~ assisted living center shall report to the Department ~~allegations of resident abuse, neglect or misappropriation of resident's property~~ those incidents specified in 310:663-19-1(b). An assisted living center may use the Department's Long Term Care Incident Report Form.

(e) **Licensing boards.** ~~The~~Each ~~continuum of care facility and~~ assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by licensed personnel to the appropriate licensing board within five (5) business days.

(f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by a nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse, Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

(1) facility/center name, address and telephone;

(2) facility type;

(3) date;

(4) reporting party name or administrator name;

(5) employee name and address;

(6) employee certification number;

(7) employee social security number;

(8) employee telephone number;

(9) termination action and date (if applicable);

(10) other contact person name and address; and

(11) the details of the allegation or occurrence of abuse, neglect, or misappropriation of resident property.

~~(d) All reports to the Department shall be made by telephone within twelve (12) hours of the reportable incident. An initial report of the incident shall be mailed to the Department within five (5) working days after the incident. The final report shall be filed with the Department when the full investigation is complete.~~

(g) **Content of incident report.**

(1) The preliminary report shall at the minimum include:

(A) who, what, when, and where; and

(B) measures taken to protect the resident(s) during the investigation.

(2) The follow-up report shall at the minimum include:

(A) preliminary information;

(B) the extent of the injury or damage if any; and

(C) preliminary findings of the investigation.

(3) The final report shall, at the minimum, include preliminary and follow-up information and:

(A) a summary of investigative actions;

(B) investigative findings and conclusions based on findings;

(C) corrective measures to prevent future occurrences; and

(D) if items are omitted, why the items are omitted and when they will be provided.

310:663-19-2. Medication administration

(a) Each assisted living center shall adopt written procedures to ensure safe administration of medications ~~that are at least equivalent to 310:675-9-9.1(c)~~.

(1) Medications shall be administered only on a physician's order.

(2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication. Medications shall be prepared within one hour prior to administration.

(3) An accurate written record of medications administered shall be maintained. The medication record shall include:

(A) The identity and signature of the person administering the medication.

(B) The medication administered within one hour of the scheduled time.

(C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.

(D) Adverse reactions or results.

(E) Injection sites.

(F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.

(G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(b) An assisted living center may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

(1) The assisted living center shall have and follow a written policy and procedure to assure safety in dispensing and documenting medications given to each resident.

(2) The assisted living center shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for each medication maintained in bulk.

(3) Only a licensed nurse, physician, pharmacist, certified medication aide or medication aide technician may dispense for administration these medications and only upon a physician's written order for as needed or non-scheduled dosage regimens. The physician's written order shall be maintained in the resident's clinical record.

(4) Bulk medications shall be stored in the medication area and not in resident rooms.

(5) The assisted living center shall maintain records of all bulk medications that are dispensed on an individual signed medication administration record.

(6) The assisted living center shall maintain the original label on the container as it comes from the manufacturer or on the unit-of-use or blister package.

(7) The assisted living center shall establish in its policy and procedure the maximum size of packaging and shall ensure that each resident receives the correct dosage. The assisted living center shall not acquire nor maintain a liquid medication in a package size that exceeds 16 fluid ounces.

(8) An assisted living center shall have only oral analgesics, antacids, and laxatives for bulk dispensing. No other category of medication shall be maintained as bulk medication.

310:663-19-3. Maintenance of records

(a) There shall be an organized, accurate, clinical record, typewritten, electronic, or legibly written with pen and ink, for each resident admitted. The resident's record shall document all services provided under the direction of a licensed health care professional consistent with professional standards of practice.

(b) Each resident's records shall be retained for at least five (5) years after the resident's transfer, discharge or death. Destruction of records shall be done in a manner to preserve resident confidentiality.

(c) Records for the previous twelve (12) months of operation, whether original, electronic, or microfilm copies, shall be maintained in such form as to be legible and readily available upon request of the attending physician, the assisted living center and any person authorized by law to make such a request. Records more than twelve (12) months old, whether original, electronic, or microfilm copies, shall be maintained in such form as to be legible and available within seventy-two (72) hours upon request of the attending physician, the continuum of care facility or assisted living center, and any person authorized by law to make such a request.

(d) Information contained in each resident's record shall be confidential and disclosed only to the resident, persons authorized by the resident, and persons authorized by law or rule.

(e) Resident records shall be filed and stored to protect against loss, destruction, or unauthorized use.

(f) The Department shall be informed in writing within five (5) business days of discovery whenever any resident's records are defaced, or destroyed, before the end of the required retention period.

(g) If an assisted living center ceases operation, the Department shall be notified within five (5) business days of the arrangements for preserving the resident's record. The record shall be preserved for the required time and the information in the records shall be available to the health professionals or facilities assuming care of the resident so that continuity of care is available.

(h) If the ownership of the assisted living center changes, the new licensee shall have custody of original or true and correct copies of all records required by this section for all current residents and the records shall be available to the former licensee and other authorized persons.

(i) Incident reports required in 310:663-19-1. shall be retained, filed and stored to protect against loss, destruction, or unauthorized use for a period of two (2) years. Destruction of

incident reports shall be done in a manner to preserve resident confidentiality.

SUBCHAPTER 25. INSPECTIONS AND INVESTIGATIONS

310:663-25-3. Outcome standards

~~If~~ To the extent allowed in this Chapter, if an assisted living center provides or arranges skilled nursing care, the Department shall assess the quality of that care against applicable ~~national~~ standards of practice ~~adopted by the American Nurses Association and Specialty Nursing Organizations, as follows:~~

~~Standards of Clinical Nursing Practice, 1991;~~

~~Standards for Nursing Staff Development, 1990;~~

~~Standards and Scope of Gerontological Nursing Practice, 1983;~~

~~Standards of Medical-Surgical Nursing Practice, 1974;~~

~~Standards of Oncology Nursing Practice, 1987;~~

~~Standards of Rehabilitation Nursing Practice, 1986; and~~

~~Standards of Psychiatric-Mental Health Nursing Practice, 1982~~ specified in Appendix B.

310:663-25-4. Notice of violation, plans of correction, and right to hearing

(a) **Notice of Violation.** If upon survey or investigation the Department finds that the continuum of care facility or assisted living center is in violation of the Act or this Chapter, the Department shall provide written notice of the violation to the continuum of care facility or assisted living center.

(b) **Plan of Correction.** ~~The continuum of care facility or assisted living center shall have ten (10) working days after receipt of the notice of violation to file a plan of correction with the Department.~~

(1) A continuum of care facility or assisted living center shall submit a plan of correction within ten (10) Department business days after receipt of notice of violation. Failure to timely submit a plan of correction shall be subject to the penalties provided in Title 63 O.S. Section 1-890.6.

(2) An acceptable plan of correction shall:

(A) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice.

(B) Address how the continuum of care facility or assisted living center will identify other residents having the potential to be affected by the same deficient practice. Plans of correction specific to residents identified on the deficiency statement are acceptable only where the deficiency is determined to be unique to that resident and not indicative of a possible systemic problem.

(C) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur.

(D) Indicate how the continuum of care facility or assisted living center plans to monitor its performance to make sure that corrections are sustained. The continuum of care facility or assisted living center shall develop a plan for ensuring that correction is achieved and sustained. The actions taken to correct the deficient practice must be evaluated for its effectiveness. The plan of correction shall be incorporated into the quality assurance system. At the revisit, the monitoring records may be reviewed to determine the earliest date of compliance. If there is no evidence of evaluation of the correction, the earliest correction date will be the date of the revisit. The continuum of care facility or assisted living center is not required to provide quality assurance minutes for the purposes of this section.

(E) Include dates when corrective action will be completed for each violation. The corrective action completion dates shall not exceed sixty (60) calendar days from receipt of notice of violation.

(F) Be signed by the administrator.

(3) Upon written request from the continuum of care facility or assisted living center, the Department may extend the time period within which the violations are to be corrected where correction involves substantial structural improvement. Such request shall be provided to the Department within the timeline specified at 310:663-25-4(b)(1) (relating to submission within ten (10) Department business days) or prior to expiration of the correction time originally approved. The burden of proof shall be on the licensee to show good cause for not being able to comply with the timeline in 310:663-25-4(b)(2)(E) (relating to correction within sixty (60) days).

(4) The Department shall provide written notice of the acceptance or rejection of a plan of correction within ten (10) Department business days. If the Department fails to provide notice of acceptance or rejection within the required time frame, notice will be provided as soon as time permits and any delay on the Department's part will result in a day for day off-set in any per diem penalty. If the Department finds that the plan of correction does not meet the requirements for an acceptable plan of correction as specified in this section the Department shall provide notice of the rejection and the reason for the rejection to the continuum of care facility or assisted living center. The continuum of care facility or assisted living center shall have ten (10) Department business days after receipt of the notice of rejection in which to submit an amended plan. If the amended plan is not timely submitted, or if the amended plan is rejected, the Department shall give notice of intent to pursue penalties, as provided in Title 63 O.S. Section 1-890.6., or notice of intent to conduct a revisit to determine if violations continue.

(5) Acceptance of the plan of correction by the Department does not absolve the continuum of care facility or assisted living center of the responsibility for compliance should the implementation not result in correction and compliance. Acceptance indicates the Department's

acknowledgment that the continuum of care facility or assisted living center indicated a willingness to make timely corrections.

(6) If the violation has been corrected prior to submission and approval of a plan of correction, the continuum of care facility or assisted living center may submit a report of correction in place of a plan of correction. The report of correction shall address those requirements specified in this section.

(7) If a continuum of care facility or assisted living center desires to contest any Department action under this section, it shall send a written request for a hearing to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117. The request for hearing shall be submitted within ten (10) Department business days of receipt of notice of the contested action.

(c) **Right to Hearing.** The Department shall notify the ~~continuum of care facility or~~ assisted living center in writing of the Department's ~~its~~ intent to take remedial action, to impose an administrative penalty, or to take action against the license issued under the act, and of the rights of the assisted living center under this section, including without limitation the~~. The Department shall advise the continuum of care facility or assisted living center of its~~ right to a hearing.

SUBCHAPTER 29. TERMINATING AND CONTINUING SERVICES

310:663-29-2. Notice of voluntary closure

(a) **Timeline for notice of intent to close.** A continuum of care facility or assisted living center shall notify all residents, their representatives, and the Department in writing at least ninety (90) days before any of the following:

(1) voluntary cessation of business; or

(2) closure of all or part of a continuum of care facility or assisted living center.

(b) **Contents of notice.** The notice of closure shall state:

(1) the proposed date of closing;

(2) the reason for closing;

(3) an offer to assist the resident in securing an alternative placement;

(4) advise the resident or resident's representative on available housing alternatives and that where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance;

(5) the facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents.

(c) **Final notice of closure.** Following the move-out of the last resident, the continuum of care facility or assisted living center shall provide the Department, in writing, the following:

(1) the effective date of closure based on the discharge date of the last resident;

(2) a list of residents transferred or discharged and the location to where they relocated, whether another continuum of care facility or assisted living center or alternative placement; and

(3) the plan for storage of resident records pursuant to 310:663-19-3(g)(relating to preservation of resident records) and the name, address and phone number of the person responsible for the records.

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [NEW]

(Referring to OAC 310:663-25-3. Outcome Standards)

"Physical Examination and Health Assessment" - Third Edition - Carolyn Jarvis

"Medical-Surgical Nursing Assessment and Management of Clinical Problems" - Fifth Edition - Lewis, Heitkemper and Dirksen (Mosby)

"Handbook of Geriatric Nursing" - Second Edition - Lippincott, Williams and Wilkins

"Clinical Nursing Skills - Basic To Advanced Skills" - Fifth Edition - Smith, Duell and Martin

Oklahoma Board of Nursing Guidelines and Position Statements:

"A Decision-Making Model for Determining RN/LPN Scope of Practice Model - Model for Scope of Nursing Practice Decisions"

"Abandonment Statement"

"Advanced Practice Nurses with Prescriptive Authority Exclusionary Formulary"

"Delegation of Nursing Functions to Unlicensed Persons"

"Guidelines for Employment of Individuals Enrolled in or Non-Licensed Graduates of Nursing Education Programs"

"Guidelines for the Registered Nurse in Administering, Managing and Monitoring Patients Receiving Analgesia/Anesthesia by Catheter Techniques"

"Issuance of Temporary Licenses for RNs and LPNs"

"Licensure Verification and Photocopying of Nursing Licenses"

"Patient Assessment Guidelines"

"Refresher Course Policy"

"Wound Debridement by Licensed Nurses Guideline"

Standards of the American Nurses Association and Specialty Nursing Organizations:

"Nursing: Scope and Standards of Practice" Pub# 03SSNP - 2004

"Scope and Standards for Nurse Administrators" (Second Edition); Pub#03SSNA - 2004

"Scope and Standards of Diabetes Nursing Practice" (2nd Edition); Pub# DNP23 - 2003

"Scope and Standards of Forensic Nursing Practice" Pub# ST-4 - 1997

"Scope and Standards of Gerontological Nursing Practice" 2nd Edition; Pub# GNP21 - 2001

"Scope and Standards of Hospice and Palliative Nursing Practice" Pub# HPN22 - 2002

"Scope and Standards of Neuroscience Nursing Practice" Pub# NNS22 - 2002

"Scope and Standards of Nursing Informatics Practice" Pub# NIP21 - 2001

"Scope and Standards of Psychiatric-Mental Health Nursing Practice" Pub# PMH-20 - 2000

"Statement on the Scope and Standards for the Nurse Who Specializes in Developmental Disabilities and/or Mental Retardation" Pub# 9802ST - 1998

"Statement on the Scope and Standards of Oncology Nursing Practice" Pub# MS-23 - 1996

[OAR Docket #08-1126; filed 6-3-08]

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

[OAR Docket #08-1127]

RULEMAKING ACTION:
PERMANENT final adoption
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]
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310:667-40-11 [AMENDED]
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Subchapter 21. Drug Distribution
310:667-21-7 [AMENDED]
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Subchapter 25. Surgical services
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Subchapter 39. Critical Access Hospital
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310:667-39-9 [AMENDED]
310:667-39-11 [AMENDED]
Subchapter 40. Emergency Hospital
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310:667-40-9 [AMENDED]
310:667-40-11 [AMENDED]
Gubernatorial approval:
April 2, 2007
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amendments to OAC 310:667 modify language in the licensure rules for completion of patient history and physical examinations prior to admission; the current rule requires physical examinations to be completed no more than seven (7) days prior to admission; the revised rule allows such examinations to be conducted up to thirty days (30) prior to admission as long as certain conditions are met. The proposed modifications adjust the timelines throughout the rules for authentication of verbal orders from "as soon as possible" to "as soon as possible within forty-eight (48) hours" and add a clarification to the drug storage requirements that certain drugs and biologicals must be maintained in locked storage in a secure area. These amendments also expand and clarifying the individuals qualified to perform, and the requirements for completion of, post-anesthesia follow up; the rule currently requires the practitioner responsible for administering the anesthesia to complete the post-anesthesia evaluation during the post-anesthesia recovery period; the proposed rule allows any practitioner qualified to administer anesthesia to complete the post-anesthesia evaluation. This proposed permanent rule modifies hospital licensure standards to be consistent with U.S. Code of Federal Regulations for hospitals certified by the U.S. Department of Human Services to participate in the federal Medicare program that became effective January 26, 2007. This permanent action will supersede the emergency adoption that became effective on April 2, 2007 and set to expire on July 14, 2008.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 15. NURSING SERVICE

310:667-15-6. Evaluation and review of nursing care

(a) There shall be a continuous review and evaluation of the nursing care provided for patients. There shall be written nursing care procedures and nursing care plans for patients.

(b) Nursing care policies and procedures shall be written and be consistent with current standards of practice and be reviewed and revised as necessary.

(c) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(d) Nursing care plans shall include assessment, planning, intervention, and evaluation. Nursing care plans shall be established for each inpatient and be revised as necessary.

(e) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(f) Only the following shall be permitted to administer medications, and in all instances, in accordance with state and federal law:

(1) A licensed physician or licensed independent practitioner;

(2) A registered nurse;

(3) A licensed practical nurse; or

(4) Other practitioners, if designated by the medical staff and authorized by law.

(5) Facilities participating in a program for training nursing students may permit nursing students to administer medications to patients provided the facility has on file an agreement between the nursing school and the facility, outlining protocols for participation, scope of involvement, education levels of students, level of supervision, and a current roster of nursing students in the program. Specific details relating to the operation of the program shall be included in the facility's policies and procedures manual.

(g) All medical orders shall be signed by the prescribing physician or practitioner. Telephone and verbal orders for medications shall be given only to the practitioner authorized by administration to receive these orders and be signed by the prescribing physician or practitioner as soon as possible within forty-eight (48) hours. Other orders may be accepted by staff as designated by medical staff policy, consistent with state and federal laws.

(h) Verbal orders may be authenticated as described at OAC 310:667-19-2(c)(4).

(i) Blood product transfusions and intravenous medications shall be administered as required by written hospital policy in accordance with state and federal law. Hospital staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(j) An effective hospital procedure shall be established for reporting transfusion reactions and adverse drug reactions.

SUBCHAPTER 19. MEDICAL RECORDS DEPARTMENT

310:667-19-2. Reports and records

(a) Reports shall be made by each hospital to the appropriate agency, including but not limited to the following:

(1) Communicable disease.

(2) Births and deaths.

(3) Periodic reports to the Department on forms supplied for this purpose.

(4) Newborn hearing screening report.

(A) All hospital nurseries shall complete a newborn hearing screening report form on all live newborns discharged from their facility. For facilities with a two-year average annual birth census of 15 or greater, physiologic hearing screening results as well as "at risk" indicators must be recorded on the report form; for facilities with a two-year average annual birth census of fewer than 15, "at risk" indicators must be recorded and if physiologic hearing screening is conducted, those results also must be recorded on the report form. It shall be the responsibility of the hospital administrator to assure that the Newborn Hearing Screening Report Form is correctly completed and subsequently submitted to the Department. The hospital administrator may designate one individual, who shall then be responsible for review of all newborn discharge summaries to insure that a report form has been completed for each infant and that the report form is a permanent part of that infant's record. A copy of the hearing screening report form must be given to the infant's caregiver at discharge.

(B) If an infant is transferred from one hospital to another, the second hospital shall be responsible for providing physiologic hearing screening, "risk indicator" screening, and for completion of the report form.

(C) It shall be the responsibility of the hospital administrator to insure that all completed report forms are mailed to the Department within seven (7) days of an infant's birth.

(D) It shall be the responsibility of the attending physician or licensed independent practitioner to inform parents if their infant passed or was referred on the physiologic hearing screening and/or if the infant is to be considered "at risk" for hearing impairment. Prior to discharge, the attending physician or licensed independent practitioner shall review the completed report form and shall inform the parents of their infant's status. Infants who do not pass the physiologic screening shall be referred for a diagnostic audiological evaluation as soon as possible.

(E) It shall be the responsibility of the coordinator of the Newborn Hearing Screening Program at the Department to arrange for hospital in-service training for all hospital personnel involved in the process of completion of report forms. A manual of procedures shall be available in regard to processing of screening forms. The literature for distribution to parents shall be available from the Department.

(5) Newborn metabolic disorder screening.

(A) **Testing of newborns.** All newborns in Oklahoma shall be tested for phenylketonuria, hypothyroidism, galactosemia and sickle cell diseases by a Certified Newborn Metabolic Disorder Screening Laboratory as defined in Chapter 550 of this Title; a parent or guardian may refuse metabolic disorder screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices. A parent or guardian who refuses metabolic disorder screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices shall also indicate in writing this refusal in the newborn's medical record with a copy sent to the Newborn Metabolic Disorder Screening Program, Maternal and Child Health Service, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299.

(B) **Specimen collection for hospital births.** For all live hospital births, the physician or licensed independent practitioner shall order the collection of a newborn metabolic disorder screening specimen on

all newborns prior to transfusion, at three to five days of age or immediately prior to discharge, whichever comes first. Specimens shall be collected on the Newborn Metabolic Disorder Form Kit using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(i) If the initial specimen for any infant is collected prior to 24 hours of age, the hospital and the physician or licensed independent practitioner are responsible for notifying the infant's parents that a repeat specimen is necessary at three to five days of age. The infant's physician or licensed independent practitioner is responsible for insuring that the repeat specimen is collected.

(ii) The hospital is responsible for submitting a satisfactory specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge, or if the infant is to be hospitalized for an extended period of time, the name of the infant's physician or licensed independent practitioner.

(iii) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(iv) Infants transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician or licensed independent practitioner and the receiving hospital to insure a specimen is collected.

(v) It is the responsibility of the hospital and physician or licensed independent practitioner to insure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn Metabolic Disorder Screening Program Coordinator shall be notified by contacting Maternal and Child Health Service, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. The physician or licensed independent practitioner is responsible for insuring the specimen is collected at three to five days of age.

(C) **Screening for premature/sick infants.** For all premature/sick infants, the physician or licensed independent practitioner shall order the collection of a newborn metabolic disorder screening specimen prior to red blood cell transfusion, at three to seven days of age, or immediately prior to discharge, whichever comes first. It is recommended that a repeat newborn metabolic disorder screening specimen be collected at 14 days of age. Specimens shall be collected on the Newborn Metabolic Disorder Form Kit using capillary or venous blood. The hospital is responsible for collecting specimens on all premature/sick infants.

(i) Premature/sick infants screened prior to 24 hours of age must be re-screened between 7-14 days of age.

(ii) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be re-screened by the 7th day of life and a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes or phenotype. The accepted time period to determine hemoglobin type is 90 to 120 days after transfusion.

(iii) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a serum free T4 (measured by direct dialysis or an equivalent method) at 7-14 days of age.

(D) **Hospital recording.** The hospital shall implement a procedure to assure that a newborn screening specimen has been collected on every newborn and mailed to the Newborn Metabolic Disorder Screening Laboratory within 24 - 48 hours of collection.

(i) The hospital shall immediately notify the infant's physician or licensed independent practitioner, and parents or guardians if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(ii) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Metabolic Disorder Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician or licensed independent practitioner.

(iii) Any hospital or any other laboratory which collects, handles or forwards newborn metabolic disorder screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician or licensed independent practitioner, name of the health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the form kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results.

(iv) The hospital is responsible for assuring that employees who collect, handle or perform newborn metabolic screening tests are informed of their responsibilities with respect to screening procedures.

(E) **Parent and health care provider education.** The hospital will be responsible or designate a responsible party to distribute the Newborn Metabolic Disorder Screening Program's written educational materials on newborn metabolic disorder screening

provided by the Department to at least one of each newborn's parent or legal guardian.

(F) **Training.** Hospitals shall provide ongoing training programs for their employees involved with newborn screening procedures. These training programs shall include methods of collecting a Satisfactory Newborn Metabolic Disorder Screening Specimen.

(6) Birth defects. Each hospital shall maintain a list of patients up to six (6) years of age who have been diagnosed with birth defects, and all women discharged with a diagnosis of stillbirth or miscarriage. On request, each hospital shall make the medical records of these individuals available to the State Department of Health.

(7) Abortions. Attending physicians shall complete and submit to the Department a report form for each abortion performed or induced as required by 63 O.S. 1999, Section 1-738.

(b) **Record of patient admission.**

(1) All persons admitted to any institution covered by these standards shall be under the care of a doctor of medicine (M.D.) or osteopathy (D.O.) duly licensed to practice medicine and surgery in the State of Oklahoma or a licensed independent practitioner, whose name shall be shown on the admitting record.

(2) The hospital admitting record also shall show the following for each patient.

(A) Full name of patient with age, sex, address, marital status, birth date, home phone number, date of admission, and admitting diagnosis.

(B) Next of kin, with address, phone number, and relationship.

(C) Date and time of admission, the admission and final diagnoses, and the name of physician or licensed independent practitioner.

(D) Any advanced directive for health care as defined in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

(3) Special clinical reports shall be kept, including the following:

(A) Obstetrical patients throughout labor, delivery, and post-partum.

(B) Newborn, giving the infant's weight, length, and other notes relative to physical examination.

(C) Surgical and operative procedures, including pathological reports.

(D) Record of anesthesia administration.

(c) **Orders for medications, treatments, and tests.**

(1) All medication orders shall be written in ink and signed by the ordering physician or practitioner authorized by law to order the medication, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician- approved hospital policy after an assessment for contraindications. The order shall be preserved on the patient's chart.

(2) All orders shall be written in ink and signed by the ordering physician or practitioner. Orders received by resident physicians shall be co-signed if required by medical staff bylaws. The order shall be preserved on the patient's chart.

(3) All orders taken from the physician or practitioner, for entry by persons other than the physician or practitioner, shall be countersigned as soon as possible within forty-eight (48) hours.

(4) Verbal orders may be authenticated by an authorized physician or practitioner other than the ordering physician or practitioner when this practice is defined and approved in the medical staff bylaws. If allowed, medical staff bylaws must identify the physicians or practitioners who may authenticate another physician's or practitioner's verbal order, e.g. physician partners or attending physicians or practitioners, and define the circumstances under which this practice is allowed. The bylaws must also specify that when a covering or attending physician or practitioner authenticates the ordering physician's or practitioner's verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final.

310:667-19-13. Promptness of record completion

(a) Current records and those on discharged patients shall be completed promptly.

(b) All dictated reports shall include the date of dictation and the date of transcription.

(c) Medical record transcription shall be timely. Current records; e.g. progress notes, consultation reports, operative notes, radiology reports, shall be transcribed and available for review in the medical record within forty-eight (48) hours of dictation.

(d) History and physical examinations shall be completed, signed, and placed in the medical record within forty-eight (48) hours following admission or not more than ~~seven (7)~~ thirty (30) days prior to admission.

(e) When the medical history and physical examination are completed within thirty (30) days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. A timely review of the prior history and physical examination or an updated examination must be completed and documented in the patient's medical record within forty-eight (48) hours.

(~~e~~f) Records of patients discharged shall be completed within thirty (30) days following discharge.

(~~f~~g) If a patient is readmitted within thirty (30) days for the same condition, reference to the previous history and physical examination with an interval note shall suffice.

SUBCHAPTER 21. DRUG DISTRIBUTION

310:667-21-7. Access to pharmacy or drug room

(a) All drugs and biologicals shall be kept in a secure area. Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse and Control Act of 1970 must be kept locked within a secure area.

(b) Provisions shall be made for obtaining drugs after the pharmacy or drug room is closed. The procedure shall specify the personnel permitted access to the drug storage area, method of maintaining drug control, and inventory and methods of record keeping of drugs and biologicals removed. Access to the drug room/pharmacy shall be restricted to authorized individuals.

310:667-21-8. Drug handling

(a) Drugs shall be given to hospital patients only upon written order of a physician or practitioner legally authorized to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. No change in an order shall be made without the approval of the prescriber. Verbal orders are discouraged but, when necessary, shall be written by an authorized employee and signed by the person legally authorized to write a prescription as soon as possible within 48 hours or meet the requirements at OAC 310:667-19-2(c)(4).

(b) Single use units of controlled substances shall be used in the hospital except in the pharmacy where multiple dose vials may be used for IV admixtures.

(c) All Schedule drugs in the hospital, except those in the pharmacy, shall be verified by actual count at the change of shift by two (2) licensed nurses and documented. Schedule drugs outside the pharmacy which are contained in, and controlled by, an automated dispensing device may be verified by actual count at the time of each access and documented. Adequate day-to-day accountability-of-use records shall be maintained and shall include the date and time of each check of a schedule drug substance supply, the balance on hand, the names of patients receiving drugs, the physician's or prescribing practitioner's name, quantity of medication used and wasted, and the signatures of the two persons making the check. Wastage of schedule drugs shall be witnessed by at least two (2) persons, one (1) of which shall be a licensed health professional. Witnesses shall document wastage by signature.

(d) The medical staff shall establish a written policy that all toxic or dangerous drugs not specifically prescribed as to time or number of doses shall be automatically stopped after a reasonable time limit set by the staff. Examples of drugs ordinarily thought of as toxic or dangerous drugs include: controlled substances, sedatives, anticoagulants, antibiotics, oxytocics, and steroids.

(e) The administrator, or his or her authorized representative, shall inventory pharmacy controlled substances and alcohol at least annually.

(f) Drugs past the date of expiration shall be removed from stock and shall not be available for patient use.

SUBCHAPTER 25. SURGICAL SERVICES

310:667-25-2. Anesthesia services

(a) Anesthesia services may be provided through a separately organized department or as a service of the department of surgery. The service shall have effective policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of strict safety controls.

(b) Each anesthesia service shall have written policies and procedures. These policies and procedures shall include, but not be limited to:

(1) Pre-anesthesia evaluation.

(2) Intraoperative anesthesia report.

(3) Post-anesthesia follow-up report.

(4) Approved anesthesia agents.

(5) Drug accountability procedures in accordance with hospital policies.

(6) Infection control in anesthesia procedures.

(7) Safety procedures for oxygen and gas anesthetics.

(c) There shall be required for every patient:

(1) Pre-anesthetic evaluation by a physician or other practitioner authorized to perform pre-anesthesia evaluations with findings recorded not more than forty-eight (48) hours before surgery.

(2) Anesthetic record on a special form.

(3) Post-anesthetic follow-up conducted during the post anesthesia recovery period by a person authorized to administer anesthesia to the patient, with findings recorded~~, by the person responsible for administering the anesthesia to the patient~~ not more than forty-eight (48) hours after surgery.

(d) The anesthesia service shall be responsible for all anesthetics administered in the hospital.

(e) In hospitals where there is no department of anesthesia, the department of surgery shall be responsible for establishing general policies and supervision for the administration of anesthetics.

(f) If anesthetics are not administered by a qualified anesthesiologist, they shall be administered by a physician anesthetist, dentist, oral surgeon, podiatrist, or a certified registered nurse anesthetist under the supervision of the operating surgeon. The hospital medical staff shall designate in writing those persons qualified to administer anesthetics and delineate what the person is qualified to do.

(g) During all general anesthetics, regional anesthetics, and monitored anesthesia care, the patient's oxygenation, ventilation, circulation and temperature shall be continually evaluated.

(h) Safety precautions shall include where appropriate:

(1) Shockproof and spark-proof equipment.

(2) Humidity control.

(3) Proper grounding.

(4) Safety regulations posted.

(5) Storage of oxidizing gases shall meet the standards of the National Fire Protection Association Code. The use of flammable anesthetics as anesthetic agents is forbidden.

SUBCHAPTER 39. CRITICAL ACCESS HOSPITAL

310:667-39-6. Medical and professional staff

(a) **General.** The CAH shall have an organized medical and professional staff responsible for the quality of care provided to all patients. The staff shall operate under bylaws approved by the governing body.

(b) **Composition.** The CAH shall have a medical and professional staff composed of one (1) or more physicians and which may also include one (1) or more licensed independent practitioners with privileges at the CAH. Privileges may also be extended to other health care professionals who are authorized by state law to provide treatment services.

(1) The staff shall periodically reexamine credentials and conduct appraisals of its members and make recommendations regarding reappointments and privilege delineations to the governing body. The staff shall also examine credentials of candidates for staff membership and make recommendations regarding appointments and privileges extended.

(2) Temporary staff privileges may be extended to qualified physicians, licensed independent practitioners and other professional staff as specified in the medical and professional staff bylaws.

(3) Patient admission quotas or revenue generation minimums shall not be a condition for appointment or reappointment.

(c) **Organization and accountability.** The medical and professional staff shall be well organized and accountable to the governing body for the quality of medical care provided to patients.

(1) The staff shall be organized and elect officers as required by approved medical staff bylaws. Officers of the staff shall hold active privileges and may include elected licensed independent practitioners. The chief of staff (or equivalent) shall be a physician who shall be responsible for organization and enforcement of the bylaws.

(2) The staff shall meet at least monthly as a committee of the whole to review the quality of medical care provided, fulfill committee functions specified in the staff bylaws, and to consider and recommend actions to the governing body. Meetings may include staff from the affiliated general medical surgical hospital or other off-site physicians or practitioners who have privileges at the CAH and may be conducted by teleconference. Minutes of meetings shall be maintained and available for review at the CAH.

(d) **Medical and professional staff bylaws.** The medical and professional staff shall adopt and enforce bylaws to carry out their responsibilities. The medical staff bylaws shall:

(1) Be approved by the governing body.

(2) Include a statement of the duties and privileges of each category of the medical and professional staff. These categories shall include a category of licensed independent practitioner, and may include a category of supervised practitioner in addition to other categories; e.g, active, courtesy, consulting, etc.

(3) Describe the organization of the medical and professional staff.

(4) Describe the qualifications for each category of the medical and professional staff.

(5) Require each inpatient to have a history and physical examination performed no more than ~~seven (7)~~ thirty (30) days before, or forty-eight (48) hours after, admission by a physician or licensed independent practitioner. The examination shall be approved and signed by the physician or licensed independent practitioner. The approval and signature may be performed electronically or by facsimile.

(6) When the medical history and physical examination are completed within thirty (30) days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. A timely review of the prior history and physical examination or an updated examination must be completed and documented in the patient's medical record within forty-eight (48) hours.

(~~6~~7) Specify the procedure for determining the privileges to be granted to individual physicians and practitioners initially and on reappointment and the process for physicians and practitioners to request these privileges.

(~~7~~8) Specify the mechanism to withdraw privileges of staff members and the circumstances when privileges shall be withdrawn.

(~~8~~9) Specify the mechanism for appeal of decisions regarding staff membership and privilege delineations.

(~~9~~10) Specify the mechanism for monitoring and controlling the use of preventive antibiotics and the use of antibiotics in the presence of infection.

310:667-39-9. Nursing service

(a) **General.** Each CAH shall have an organized nursing service which provides twenty-four (24) hour nursing services for patients. The nursing service shall be supervised by a registered nurse.

(b) **Organization.** The nursing service shall be well-organized with written policies delineating administrative and patient care responsibilities. The director of nursing shall be a registered nurse who shall be responsible for the operation of the service, including determining the staff necessary to provide nursing care for all areas of the CAH. Nursing care shall be provided as specified by written procedures approved by the director of nursing and the governing body. All nursing procedures shall be consistent with state and federal law and current standards of practice. Procedures shall be reviewed and revised as necessary.

(c) **Staffing.** The nursing service shall have adequate numbers of licensed nurses and other nursing personnel available to provide nursing care to all patients as needed based on patient census and acuity. At least one (1) registered nurse shall be on duty on-site to furnish or supervise all nursing services whenever patient care is provided. If the CAH has no inpatients, the registered nurse may be available on an on-call basis provided he or she is available to return to the CAH in a period of time not to exceed twenty (20) minutes.

(d) **Qualifications.**

(1) Individuals selected for the nursing staff shall be qualified by education and experience for the positions they are assigned. The CAH shall verify current licensure of licensed nurses and maintain documentation of verification.

(2) The selection and promotion of nursing service personnel shall be based on their qualifications and capabilities. The director of nursing shall have input regarding the employment, promotion, evaluation and termination of all nursing service personnel.

(3) The qualifications required for each category of nursing staff shall be in written policy and job descriptions, and shall be available in the CAH for reference. The functions of all nursing service personnel shall be clearly defined by written policy.

(e) **Delivery of care.**

(1) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(2) Each inpatient shall have a nursing care plan that includes assessment, planning, intervention, and evaluation. Nursing care plans shall be revised as necessary.

(3) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(4) All drugs and biologicals shall be administered in accordance with state and federal laws by authorized individuals. Orders for drugs and biologicals shall be in writing and signed by the prescribing physician or practitioner who shall be authorized by law to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. When telephone or verbal orders for drugs or biologicals are used, they shall be given only to a practitioner authorized by administration to receive these orders and signed by the prescribing practitioner as soon as possible within forty-eight (48) hours or meet the requirements at OAC 310:667-19-2(c)(4).

(5) Blood products and intravenous medications shall be administered as required by CAH written policy in accordance with state and federal law. CAH staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(6) There shall be an effective procedure for reporting transfusion and adverse drug reactions to the attending physician or licensed independent practitioner and the prescribing physician or practitioner. Errors in drug administration and adverse reactions shall be compiled and reported through the quality assurance committee to the medical and professional staff.

(7) All nursing service personnel shall be trained and currently certified to perform cardio-pulmonary resuscitation (CPR) and shall be knowledgeable of all CAH emergency protocols.

(f) **Patient restraint.** If patients are physically restrained, the CAH shall comply with all requirements specified in OAC 310:667-15-8. If patients are chemically restrained, the CAH shall comply with all requirements specified in OAC 310:667-15-9.

310:667-39-11. Medical record services

(a) **General.** The CAH shall have medical record services that ensure a medical record is maintained for every patient evaluated or treated in the facility. Medical record services shall be appropriate to the scope and complexity of the services performed and shall ensure prompt completion, filing, and retrieval of records. In general, services such as transcription, computer indexing and coding, and electronic storage may be performed off-site as a contracted service as long as the medical record remains under the control of the CAH. The CAH shall ensure that medical records maintained by a contracted service remain confidential and can be immediately accessed by CAH staff.

(b) **Reports to agencies and the Department.** The CAH shall comply with all requirements specified in OAC 310:667-19-2(a) regarding the reports made to agencies and the Department.

(c) **Content.** The medical record shall contain information to justify patient admission and treatment, support the diagnosis, and describe the patient's progress and response to treatment and services received. All entries shall be legible and complete, and shall be authenticated and dated promptly by the person, identified by name and discipline, who is responsible for ordering, providing or evaluating the service furnished.

(1) The author of each entry shall be identified and shall authenticate their entry. Authentication may include written signatures or computerized or electronic entries. If computerized or electronic authentications are used, the CAH shall comply with all requirements specified at OAC 310:667-19-10(e). Telephone and verbal orders shall be authenticated by the physician or practitioner giving the order as soon as possible within forty-eight (48) hours or meet the requirements at OAC 310:667-19-2(c)(4). Reports of history and physical examinations and discharge summaries shall be authenticated by the authorized physician or practitioner who performed the examination or produced the summary or meet the requirements at OAC 310:667-19-10(e) if authenticated by another physician or practitioner. Signature stamps may be used to authenticate entries in the medical record provided the requirements at OAC 310:667-19-10(d) are met.

(2) All inpatient records shall document the following as appropriate:

(A) Patient identifying information including individuals to be contacted in case of an emergency.

(B) Evidence of a physical examination, including a health history, performed not more than ~~seven (7)~~ thirty (30) days prior to admission or within forty-eight (48) hours after admission. The history and physical examination shall be completed, signed and placed in the record within 48 hours of admission.

(C) Admitting diagnosis.

(D) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(E) Documentation of complications, hospital acquired infections, and unfavorable reactions to any drug or biological.

(F) Properly executed informed consent forms for procedures and treatments performed. The medical and professional staff shall establish which procedures or treatments require informed consent consistent with Federal and State law.

(G) All physicians' or practitioners' orders, nursing notes, reports of treatment, medication records, diagnostic reports, vital signs and other information necessary to monitor the patient's condition.

(H) Discharge summary with outcome of hospitalization, disposition of case, medications at the time of discharge, and provisions for follow-up care.

(I) Reports. All reports and records shall be completed and filed within a period consistent with good medical practice and not longer than thirty (30) days following discharge.

(J) Final diagnosis.

(d) **Maintenance of records.** The CAH shall maintain a medical record for each inpatient and outpatient. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible. The CAH shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records shall be retained at least five (5) years after the date the patient was last seen or at least of three (3) years after the date of the patient's death. Records of newborns or minors shall be retained three (3) years past the age of majority. Medical records may be maintained in their original form or may be preserved by other means as specified by OAC 310:667-19-14(b).

(2) The CAH shall have, or provide, a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) Medical records shall be confidentially maintained. Information from, or copies of, records shall be released only to authorized individuals in accordance with state law, and the CAH shall ensure that unauthorized individuals cannot gain access to, or alter medical records. Original medical records shall be released only in accordance with federal or state laws or by court order.

(4) Facsimile copies shall be acceptable as any portion of the medical record. If the facsimile is transmitted on thermal paper, that paper shall be photocopied to preserve its integrity in the record. Facsimile copies shall be considered the same as original copies.

(5) In the event of closure of the CAH, the CAH shall inform the Department of the disposition of the patient medical records. Disposition shall be in a manner to protect the integrity of the information contained in the medical record. These records shall be retained and disposed of as specified by OAC 310:667-19-14(b)(4).

SUBCHAPTER 40. EMERGENCY HOSPITAL

310:667-40-6. Medical and professional staff

(a) **General.** The EH shall have an organized medical and professional staff responsible for the quality of care provided to all patients. The staff shall operate under bylaws approved by the governing body. The medical and professional staff may function as a part of an affiliated hospital's organized staff as long as individual physician and practitioner privileges are independently recommended and approved by the EH governing body. If staff functions are combined with an affiliated hospital, EH functions required by the medical and professional staff bylaws shall be independently identified and reviewed during combined staff meetings.

(b) **Composition.** The EH shall have a medical and professional staff composed of one (1) or more physicians or licensed independent practitioners. Privileges may also be extended to other health care professionals who are authorized by state law to provide treatment services.

(1) The staff shall periodically reexamine credentials and conduct appraisals of its members and make recommendations regarding reappointments and privilege delineations to the governing body. The staff shall also examine credentials of candidates for staff membership and make recommendations regarding appointments and privileges extended.

(2) Temporary staff privileges may be extended to physicians and licensed independent practitioners and other professional staff as specified in the medical and professional staff bylaws.

(3) Patient admission quotas or revenue generation minimums shall not be a condition for appointment or reappointment.

(c) **Organization and accountability.** The medical and professional staff shall be well organized and accountable to the governing body for the quality of medical care provided to patients.

(1) The staff shall be organized and elect officers as required by approved medical staff bylaws.

(2) The staff shall meet at least quarterly as a committee of the whole to review the quality of medical care provided, fulfill committee functions specified in the staff bylaws, and to consider and recommend actions to the governing body. Meetings may include staff from the affiliated hospitals or other off-site physicians or practitioners who have privileges at the EH and may be conducted by teleconference. Minutes of meetings shall be maintained and available for review at the EH.

(d) **Medical and professional staff bylaws.** The medical and professional staff shall adopt and enforce bylaws to carry out their responsibilities. The medical staff bylaws shall:

(1) Be approved by the governing body.

(2) Include a statement of the duties and privileges of each category of the medical and professional staff. These categories shall include a category of licensed independent practitioner, and may include a category of

supervised practitioner. All physicians and licensed independent practitioners with privileges may admit patients for stabilization or observational care.

(3) Describe the organization of the medical and professional staff.

(4) Describe the qualifications for each category of the medical and professional staff.

(5) Require each inpatient to have a history and physical examination performed no more than ~~seven (7)~~ thirty (30) days before, or forty-eight (48) hours after, admission by a physician or licensed independent practitioner. The examination shall be approved and signed by the physician or licensed independent practitioner. The approval and signature may be performed electronically or by facsimile.

(6) When the medical history and physical examination are completed within thirty (30) days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. A review of the prior history and physical examination or an updated examination must be completed immediately upon admission and documented in the patient's medical record within forty-eight (48) hours.

(~~6~~7) Specify the procedure for determining the privileges to be granted to individual physicians and practitioners initially and on reappointment and the process for physicians and practitioners to request these privileges.

(~~7~~8) Specify the mechanism to withdraw privileges of staff members and the circumstances when privileges shall be withdrawn.

(~~8~~9) Specify the mechanism for appeal of decisions regarding staff membership and privilege delineations.

310:667-40-9. Nursing service

(a) **General.** Each EH shall have an organized nursing service which provides twenty-four (24) hour nursing services for patients. The nursing service shall be supervised by a registered nurse.

(b) **Organization.** The nursing service shall be well-organized with written policies delineating administrative and patient care responsibilities. The director of nursing shall be a registered nurse who shall be responsible for the operation of the service, including determining the staff necessary to provide nursing care for the EH. Nursing care shall be provided as specified by written procedures approved by the director of nursing and the governing body. All nursing procedures shall be consistent with state and federal law and current standards of practice. Procedures shall be reviewed and revised as necessary.

(c) **Staffing.** The nursing service shall have adequate numbers of licensed nurses and other nursing personnel available to provide nursing care to all patients as needed based on patient census and acuity. At least one (1) registered nurse shall be on duty on-site to furnish or supervise all nursing services whenever patient care is provided. If the EH has no inpatients, the registered nurse may be available on an on-call basis provided he or she is available to return to the EH in a period of time not to exceed twenty (20) minutes.

(d) **Qualifications.**

(1) Individuals selected for the nursing staff shall be qualified by education and experience for the positions they are assigned. The EH shall verify current licensure of licensed nurses and maintain documentation of verification.

(2) The selection and promotion of nursing service personnel shall be based on their qualifications and capabilities. The director of nursing shall have input regarding the employment, promotion, evaluation and termination of all nursing service personnel.

(3) The qualifications required for each category of nursing staff shall be in written policy and job descriptions, and shall be available in the EH for reference. The functions of all nursing service personnel shall be clearly defined by written policy.

(e) **Delivery of care.**

(1) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(2) Each inpatient shall have a nursing care plan that includes assessment, planning, intervention, and evaluation. Nursing care plans shall be revised as necessary.

(3) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(4) All drugs and biologicals shall be administered in accordance with state and federal laws by authorized individuals. Orders for drugs and biologicals shall be in writing and signed by the prescribing physician or practitioner who shall be authorized by law to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. When telephone or verbal orders for drugs or biologicals are used, they shall be given only to a practitioner authorized by administration to receive these orders and signed by the prescribing physician or practitioner as soon as possible within forty-eight (48) hours or meet the requirements at OAC 310:667-19-2(c)(4).

(5) Blood products and intravenous medications shall be administered as required by EH written policy in accordance with state and federal law. EH staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(6) There shall be an effective procedure for reporting transfusion and adverse drug reactions to the attending physician or licensed independent practitioner and the prescribing physician or practitioner. Errors in drug administration and adverse reactions shall be compiled and reported through the quality assurance committee to the medical and professional staff.

(7) All nursing service personnel shall be trained and currently certified to perform cardio-pulmonary resuscitation (CPR) and shall be knowledgeable of all EH emergency protocols.

(f) **Patient restraint.** If patients are physically restrained, the EH shall comply with all requirements specified in OAC

310:667-15-8. If patients are chemically restrained, the EH shall comply with all requirements specified in OAC 310:667-15-9.

310:667-40-11. Medical record services

(a) **General.** The EH shall have medical record services that ensure a medical record is maintained for every patient evaluated or treated in the facility. Medical record services shall be appropriate to the scope and complexity of the services performed and shall ensure prompt completion, filing, and retrieval of records. In general, services such as transcription, computer indexing and coding, and electronic storage may be performed off-site as a contracted service as long as the medical record remains under the control of the EH. The EH shall ensure that medical records maintained by a contracted service remain confidential and can be immediately accessed by EH staff.

(b) **Reports to agencies and the Department.** The EH shall comply with all requirements specified in OAC 310:667-19-2(a) regarding the reports made to agencies and the Department.

(c) **Content.** The medical record shall contain information to justify patient admission and treatment, support the diagnosis, and describe the patient's progress and response to treatment and services received. All entries shall be legible and complete, and shall be authenticated and dated promptly by the person, identified by name and discipline, who is responsible for ordering, providing or evaluating the service furnished.

(1) The author of each entry shall be identified and shall authenticate their entry. Authentication may include written signatures or computerized or electronic entries. If computerized or electronic authentications are used, the EH shall comply with all requirements specified at OAC 310:667-19-10(e). Telephone and verbal orders shall be authenticated by the physician or practitioner giving the order as soon as possible within forty-eight (48) hours or meet the requirements at OAC 310:667-19-2(c)(4). Reports of history and physical examinations and discharge summaries shall be authenticated by the authorized physician or practitioner who performed the examination or produced the summary or meet the requirements at OAC 310:667-19-10(e) if authenticated by another physician or practitioner. Signature stamps may be used to authenticate entries in the medical record provided the requirements at OAC 310:667-19-10(d) are met.

(2) All inpatient records shall document the following as appropriate:

(A) Patient identifying information including individuals to be contacted in case of an emergency.

(B) Evidence of a physical examination, including a health history, performed not more than ~~seven (7)~~ thirty (30) days prior to admission or within forty-eight (48) hours after admission. The history and physical examination shall be completed, signed and placed in the record within 48 hours of admission.

(C) Admitting diagnosis.

(D) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(E) Documentation of complications, hospital acquired infections, and unfavorable reactions to any drug or biological.

(F) Properly executed informed consent forms for procedures and treatments performed. The medical and professional staff shall establish which procedures or treatments require informed consent consistent with Federal and State law.

(G) All physicians' and practitioners' orders, nursing notes, reports of treatment, medication records, diagnostic reports, vital signs and other information necessary to monitor the patient's condition.

(H) Discharge summary with outcome of hospitalization, disposition of case, medications at the time of discharge, and provisions for follow-up care.

(I) Reports. All reports and records shall be completed and filed within a period consistent with good medical practice and not longer than thirty (30) days following discharge.

(J) Final diagnosis.

(d) **Maintenance of records.** The EH shall maintain a medical record for each emergency, stabilization, or observational patient. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible. The EH shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records shall be retained at least five (5) years after the date the patient was last seen or at least of three (3) years after the date of the patient's death. Records of minors shall be retained three (3) years past the age of majority. Medical records may be maintained in their original form or may be preserved by other means as specified by OAC 310:667-19-14(b).

(2) The EH shall have, or provide, a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) Medical records shall be confidentially maintained. Information from, or copies of, records shall be released only to authorized individuals in accordance with state law, and the EH shall ensure that unauthorized individuals cannot gain access to, or alter medical records. Original medical records shall be released only in accordance with federal or state laws or by court order.

(4) Facsimile copies shall be acceptable as any portion of the medical record. If the facsimile is transmitted on thermal paper, that paper shall be photocopied to preserve its integrity in the record. Facsimile copies shall be considered the same as original copies.

(5) In the event of closure of the EH, the EH shall inform the Department of the disposition of the patient medical records. Disposition shall be in a manner to protect the integrity of the information contained in the

medical record. These records shall be retained and disposed of as specified by OAC 310:667-19-14(b)(4).

[OAR Docket #08-1127; filed 6-3-08]

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

[OAR Docket #08-1128]

EDITOR'S NOTE: *As noted by the Oklahoma State Department of Health in the ANALYSIS below, these rules were originally filed and published in the June 15, 2007 issue of the Register [see 24 Ok Reg 2030] , with a stated effective date of June 25, 2007, and were subsequently published in the 2007 Supplement to the OAC. However, after the rules had been published in both the Register and the Supplement, the agency discovered that "an earlier draft, not adopted by the State Board of Health, was distributed to the [L]egislature, [G]overnor's office and Secretary of State for final adoption and publication in the Oklahoma Register." This year, after publishing another Notice of Rulemaking Intent, the Board readopted the same rules and submitted the readopted rules to the Governor and Legislature for review. The finally adopted rules were subsequently filed with the Secretary of State and are being published below.*

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:675-1-2. [AMENDED]
Subchapter 7. Administration
310:675-7-5.1. [AMENDED]
310:675-7-12.1. [AMENDED]
310:675-7-17.1. [AMENDED]
310:675-7-18.1. [AMENDED]
310:675-7-21. [NEW]
Subchapter 9. Resident Care Services
310:675-9-13.1. [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-7. [AMENDED]
Subchapter 21. Nontechnical Services Workers [NEW]
310:675-21-1. [NEW]
310:675-21-2. [NEW]
310:675-21-3. [NEW]
310:675-21-4. [NEW]
310:675-21-5. [NEW]
Appendix B. Reference List for Standards of Practice [REVOKED]
Appendix B. Reference List for Standards of Practice [NEW]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104, and Section 1-1901 et seq.
DATES:
Comment Period:
February 1, 2008 through March 13, 2008
Public Hearing:
March 13, 2008
Adoption:
March 13, 2008
Submitted to Governor:
March 24, 2008
Submitted to House:
March 24, 2008
Submitted to Senate:
March 24, 2008
Gubernatorial approval:
May 8, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2008
Final adoption:
May 15, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments are re-submitted in their entirety as reviewed and adopted at the Oklahoma State Board of Health, March 8, 2007, meeting. No additional amendments are offered. The re-submission is due to an error in distribution in which an earlier draft, not adopted by the State Board of Health, was distributed to the legislature, governor's office and Secretary of State for final adoption and publication in the Oklahoma Register, Volume 24, Number 19, OAR Docket #07-1096.

The proposed amendments and new language update the rules based on changes in statute, survey experience, history of facility incident reports, complaint allegations and investigations, request and experience of the Department's Tuberculosis Division, and public meetings held by the Long Term Care Facility Advisory Board.

Definitions are updated to clarify terminology in the proposed rule relating to reports to local law enforcement.

The timeline for initial incident reporting is changed to correspond with statutory language of twenty-four (24) hours. Further amendments clarify the types of incidents to be reported and the content to be included in filed incident reports.

Infection control rules are amended to reflect the latest guidance on facility tuberculosis risk assessment, and resident and staff tuberculosis skin testing from the Centers for Disease Control.

New rules are developed to implement the Long-term Care Security Act pertaining to determination of sex or violent offender status for all facility staff and residents; procedures for determination of status; recommended registry search strategy; change in status after employment or admission; posting of offender status; and, content of notice to department of sex or violent offender's presence in the facility.

Food storage, supply and sanitation rules are amended to reflect the newly adopted Chapter 257. Food service staff rules are amended to enhance the training requirements for food service staff while reducing routine food services staff in-service time.

Subchapter 21 is added to implement the abuse registry for nontechnical services workers as required in 63 O.S. Sections 1-1950.6 through 1-1950.9. The new subchapter includes procedures of investigations, notice, hearings, orders, and entry of findings into an abuse registry.

Standards of practice are updated in Appendix B.
CONTACT PERSON:
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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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:675-1-2. Definitions

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

"Act" means Title 63 of the Oklahoma Statutes, Sections 1-1901 and following as amended also known as the Nursing Home Care Act.

"Allied health professional" means one of the following persons: physician assistant, physical, speech, or occupational therapist, occupational therapy assistant, physical therapy assistant, or qualified social worker.

"Attendant" means the person having control of an animal/pet visiting or in residence in a facility.

"Approval" means the mandatory state government process by which an agency or program is reviewed, and publicly proclaimed, to render a service worthy of note.

"CEP" means the nurse aide competency evaluation program.

"Certification" means the process by which a non-governmental agency, or association, or governmental agency attests that an individual or facility has met certain predetermined standards specified by the certifying body.

"Certified medication aide" means a person who has passed a Department approved program for administering medications.

"Certified nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents of a facility, who is not a licensed health professional and has completed a Department approved training and competency program.

"Charge nurse" means a registered nurse or licensed practical nurse responsible for supervising nursing services on a specific shift.

"Chemical restraints" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms.

"Consultant registered nurse" means a registered nurse who provides consultation to the director of nursing and administrator concerning the delivery of nursing care for all residents in the facility.

"Denial" means a decision made by the appropriate body to disapprove an application.

"Direct care staff" means nursing, activity, social and therapy staff.

"Director of nursing" means either a registered nurse or licensed practical nurse, who has the authority and responsibility to administer nursing services within the facility.

"Emergency" means, for the purposes of Title 63 O.S. Section 1-1912, a serious, potentially life-threatening or life-endangering situation in which immediate action is necessary to ensure the health, safety, or welfare of residents, and for which the facility:

(A) does not have a plan acceptable to the Department to ensure health, safety or welfare of residents; or

(B) refuses to remedy the situation.

"Health related services" means any medically directed service provided by any person in a facility that may include but is not limited to, the following:

(A) Positioning and turning of residents.

(B) Self-help skill training.

(C) Assistance with prosthetic/assistive devices.

(D) Medication administration.

(E) Nutrition and hydration.

(F) Monitoring of resident vital signs.

(G) Catheter and nasogastric care.

(H) Behavior modification programs.

(I) Administering a medically related care plan

(J) Restorative services.

"In charge" and **"supervision"** means the administrator must have the requisite authorization from the licensee to make those purchases and incur those necessarily attendant debts in order to comply with the rules promulgated by the Board and all pertinent state statutes.

"Inservice education" means activities intended to assist the individual to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Licensed health professional" means one of the following: a physician; dentist, podiatrist, chiropractor, physician assistant, nurse practitioner; pharmacist; physical, speech, or occupational therapist; registered nurse, licensed practical nurse; licensed or certified social worker; or licensed/registered dietician.

"Licensed nurse" means a registered nurse or a licensed practical nurse who is currently licensed by the Oklahoma Board of Nursing.

"Licensed pharmacist" means a person who is a graduate of an accredited pharmacy program and is currently licensed by the Oklahoma Board of Pharmacy.

"Licensed practical nurse" means a person who is a graduate of a state approved practical nursing education program, or who meets other qualifications established by the Oklahoma Board of Nursing, and is currently licensed by the Oklahoma Board of Nursing.

"Licensure" means the process by which the Department grants to persons or entities the right to establish, operate, or maintain any facility.

"Local law enforcement" means:

(A) The municipal police department, if the facility is within the jurisdiction of any municipality of this state, or

(B) The county sheriff, if the facility is outside the jurisdiction of any municipality within this state.

"Manager" or "supervisor" means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident, without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by

federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Nurse aide" means any person providing nursing or nursing related services to residents in a facility, but does not include an individual who is a licensed health professional, or who volunteers to provide such services without monetary compensation.

"Nurse aide trainee" means any person who has been employed by a facility to provide nursing care or health related services, and is enrolled in but has not completed a Department approved training and competency program.

"Orientation" means the training for a particular job activity given to all employees.

"Perishables" means food supplies, to include dietary supplements and intravenous feedings, medical supplies, and medications.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Registered nurse" means a person who is a graduate of a state approved registered nursing education program, and who is currently licensed by the Oklahoma Board of Nursing.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency evaluation program, or a competency evaluation program, approved by the Department.

"Revoke" means to rescind approval of a previous action.

"Specialized facility" means any facility which offers or provides inpatient long-term care services on a twenty-four hour basis to a limited category of persons requiring such services, including, but not limited to, a facility providing health or habilitation services for developmentally disabled persons, infants and/or children, or Alzheimer's and dementia residents.

"Standards of nursing practice" means an authoritative statement that describes a level of care or performance common to the profession of nursing by which the quality of nursing practice can be judged. Standards of nursing practice include both standards of care and standards of professional performance.

"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"Standards of professional performance" means a description of a competent level of behavior in the professional role including activities related to quality assurance, education, consultation, research, ethics, resource utilization, accountability, peer review, and interdisciplinary collaboration.

"Suspended license" means a license that is issued for a period not to exceed three years to a facility which has temporarily closed or ceased operations.

"Training and competency evaluation program" means a program approved by the Department to instruct and evaluate individuals to act as nurse aides.

"Transfer" means the move of a resident from one facility to another facility.

"Intra-facility transfer" means the moving of a resident from one room to another within a facility.

"Transfer of ownership" means a change of substantial, or controlling interest, in the ownership of a facility. A change of less than five percent (5%) of the interest of the owner does not constitute a transfer of ownership unless it also results in a change of control of the owner.

"Willful violation" means:

(A) a pattern of violation of the direct-care staffing requirement;

(B) a violation of the direct-care staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or

(C) the reporting of materially inaccurate or misleading information of direct-care staffing to the Health Care Authority.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-5.1. Reports to state and federal agencies

~~(a) The facility shall report communicable diseases to the Department as specified by the Board.~~

(a) **Timeline for reporting.** All reports to the Department shall be made by telephone or facsimile within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be mailed or faxed to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.

~~(b) The facility shall report deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device, according to applicable state and federal laws. The facility shall also report such deaths to the Department.~~

(b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(I)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).

~~(c) The facility shall report to the Department allegations of resident abuse, neglect or misappropriation of residents' property. The facility shall report allegations of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.~~

(c) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

~~(d) The facility shall report unusual incidents, such as missing residents, abuse and neglect of residents, to the Department and to other appropriate agencies.~~

(d) **Reporting communicable diseases.** The facility shall report *communicable diseases* [63 O.S. §1-1939(I)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).

~~(e) All reports to the Department shall be made by telephone or facsimile within twelve hours of the reportable incident. An initial report of the incident shall be mailed or faxed to the Department within five working days after the incident. The final report shall be filed with the Department when the full investigation is complete.~~

(e) **Reporting certain deaths.** The facility shall report *deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device*, [63 O.S. §1-1939(I)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.

~~(f) The facility shall report to the Department allegations of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:~~

~~(1) facility name, address, and telephone;~~
~~(2) facility type;~~
~~(3) date;~~
~~(4) reporting party name or administrator name;~~
~~(5) employee name and address;~~
~~(6) employee certification number;~~
~~(7) employee social security number;~~
~~(8) employee telephone number;~~
~~(9) termination action and date;~~
~~(10) other contact person name and address; and~~
~~(11) facts of abuse, neglect, or misappropriation of resident property.~~

(f) **Reporting missing residents.** The facility shall report *missing residents* to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. *In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing* [63 O.S. §1-1939(I)(1)(c)].

(g) **Reporting criminal acts.** The facility shall report *situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement* [63 O.S. §1-1939(I)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff's office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.

(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than four (4) hours.

(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in fractures, head injury or require treatment at a hospital.

(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.

(k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.

(l) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

(1) facility name, address, and telephone;
(2) facility type;
(3) date;
(4) reporting party name or administrator name;
(5) employee name and address;
(6) employee certification number;
(7) employee social security number;
(8) employee telephone number;
(9) termination action and date;
(10) other contact person name and address; and
(11) facts of abuse, neglect, or misappropriation of resident property.

(m) **Content of reports to the department.** Reports to the Department made pursuant to this section shall contain the following:

(1) The preliminary report shall, at the minimum, include:
  (A) who, what, when, and where; and
  (B) measures taken to protect the resident(s) during the investigation.
(2) The follow-up report shall, at the minimum, include:
  (A) preliminary information;
  (B) the extent of the injury or damage if any; and
  (C) preliminary findings of the investigation.
(3) The final report shall, at the minimum, include preliminary and follow-up information and:
  (A) a summary of investigative actions;
  (B) investigative findings and conclusions based on findings; and
  (C) corrective measures to prevent future occurrences.
  (D) if items are omitted, why the items are omitted and when they will be provided.

310:675-7-12.1. Incident reports

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, ~~or~~ where injury may

have occurred, including but not limited to, head injuries, medication, ~~and~~ treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

(c) **Incident format.** Incident reports shall be on a printed incident report form.

(d) **Incident reports signatures.** The charge nurse, at the time of the incident, shall prepare and sign the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

(e) **Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(f) **Incident records on file.** A copy of each incident report shall be on file in the facility.

~~(g) The facility shall notify the Department within twelve hours of all incidents pertaining to fire, storm damage, death other than by natural causes, missing residents, a utility failure for more than four hours, and incidents affecting the life and safety of residents. An initial incident report shall be submitted to the Department within five working days. A final report shall be filed with the Department, when the investigation is complete or the incident is resolved.~~

(~~h~~g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

(~~i~~h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

310:675-7-17.1. Infection control

(a) The facility shall have an infection control policy and procedures to provide a safe and sanitary environment. The policy shall address the prevention and transmission of disease and infection. The facility, and its personnel, shall practice the universal precautions identified by the Centers for Disease Control. All personnel shall demonstrate their knowledge of universal precautions through performance of duties.

(b) The facility shall maintain a sanitary environment and prevent the development and transmission of infection in the following areas.

(1) Food handling practices.
(2) Laundry practices including linen handling.
(3) Disposal of environmental and resident wastes.
(4) Pest control measures.
(5) Traffic control for high-risk areas.
(6) Visiting rules for high-risk residents.
(7) Sources of air-borne infections.
(8) Health status of all employees and residents.
(9) Isolation area for residents with communicable diseases.

(c) Infection control policies to ~~break~~ prevent the transmission of infection shall include the following:

(1) Excluding personnel and visitors with communicable infections.
(2) Limiting traffic in dietary and medication rooms.
(3) Using aseptic and isolation techniques including hand washing techniques.
(4) Bagging each resident's trash and refuse.
(5) Issuing daily damp wipe cloths, treated dust cloths and clean wet mops, as needed.
(6) Laundering the used wet mops and cleaning cloths every day.
(7) Cleaning the equipment for resident use daily, and the storage and housekeeping closets as needed.
(8) Providing properly identifiable plastic bags for the proper disposal of infected materials.
(9) **Tuberculosis risk assessment.** An annual facility tuberculosis risk assessment is to be performed by a licensed nurse or physician using a Department approved risk assessment tool.

(d) When scheduled to be cleaned, the toilet areas, utility rooms, and work closets, shall be cleaned with a disinfectant solution and fresh air shall be introduced to deodorize.

(e) **Tuberculin skin test for residents.** Within thirty (30) days from admission, all residents admitted to the facility after the adoption of this rule shall receive a two-step tuberculin skin test in conformance with the "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

(1) Tuberculin skin tests shall be administered by a licensed nurse or physician.
(2) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.
(3) Residents claiming a prior positive tuberculin skin test shall have documentation in their medical record, obtained from a licensed health care professional, of their test results and interpretation; otherwise, a two-step tuberculin skin test shall be done.

310:675-7-18.1. Personnel records

Each facility shall maintain a personnel record for each current employee containing:

(1) Application for employment. An application for employment which contains employee's full name, social security number, professional license or registration number, if any, employment classification, and information about past employment, including: place of employment, position held, length of employment, and reason for leaving.
(2) **Employee time records.** Copies of current employee time records, signed by the employee, shall be maintained by the facility for at ~~least thirty~~least thirty-six (36) months.
(3) Training, arrest check, and certifcation. Documentation of orientation and training (may be kept in separate

file), continuing education, a copy of the criminal arrest check, and appropriate certification and licensure.

(4) **Health examination on hire.** Record of health examination conducted within thirty days of employment which shall include, but not be limited to, a complete medical history, physical examination by body system and, a two-step tuberculin skin test in conformance with the "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

(A) Tuberculin skin tests shall be administered by a licensed nurse or physician.

(B) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.

(C) Employees claiming a prior positive tuberculin skin test shall have documentation in their file, obtained from a licensed health care professional, of their test results and interpretation, otherwise, a two-step tuberculin skin test shall be done.

(5) **Tuberculin skin test.** Results of ~~annual~~ subsequent tuberculin skin test performed based on facility TB risk classification established in OAC 310:675-7-17(c)(9) (relating to annual facility tuberculosis risk assessment) or results of a physician's examination for signs and symptoms of tuberculosis for those employees who react significantly to a tuberculin skin test. All tests and examinations shall be in conformance with the "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

310:675-7-21. Sex or violent offender status

(a) **Determination of status.** A facility subject to the provisions of this Chapter shall determine whether the following individuals have registered pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act:

(1) An applicant for admission or participation,

(2) A resident, client or participant of a facility subject to the provisions of this Chapter, and

(3) All employees of facilities subject to the provisions of this Chapter, in addition to the required criminal arrest check in 63 O.S. §1-1950.1 and 63 O.S. §1-1950.8 (relating to criminal arrest checks).

(b) Procedures for determination of status. Prior to admission or employment but no later than three (3) business days from acceptance of any resident or participant, the employing or receiving facility subject to the provisions of this Chapter shall determine from local law enforcement, the Department of Corrections, or the Department of Corrections' Sex Offender and Mary Rippy Violent Crime Offender registries, whether the prospective employee or accepted resident or participant is registered or qualifies for registration on either registry.

(c) **Recommended registry search strategy.** A facility subject to the provisions of this Chapter may utilize the first three letters of the last name and an asterisk, and the first letter of the first name and asterisk, any known alias, and appearance criteria as provided for search within the Department of Correction's Internet based sex and violent crime offender registries.

(d) **Change in status after employment or admission.** A facility subject to the provisions of this Chapter shall repeat the screening in OAC 310:675-7-21(b) (regarding procedures for determination of status) subsequent to the receipt of any information that an employee, resident or participant's registration status may have been altered or updated after the initial screening.

(e) **Posting of offender status.** Pursuant to 63 O.S. §1-1909(4), a facility subject to the provisions of this Chapter shall conspicuously post for display in an area of its offices accessible to residents, employees and visitors a copy of any notification from the local law enforcement authority regarding the registration status of any person residing in the facility who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

(f) **Notice to Department of sex or violent offender's presence.** When a facility subject to the provisions of this Chapter is notified, or has determined, that an individual who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act is residing or participating at such facility, *the facility shall immediately, in writing, notify the State Department of Health.*[63 O.S. §1-1946(A)(3)]

(g) **Content of notice of sex or violent offender's presence.** Notice provided to the Department shall include the name, and identifying information used to make the determination in 310:675-7-21(b)(regarding determination of status).

(h) **Notification through other means.** Where a facility subject to the provisions of this Chapter determines through other means, excepting written notification by the Department, of an employee, resident or participant required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act, the facility shall notify the Department and shall be subject to all other requirements within this section.

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-13.1. Food storage, supply and sanitation

(a) Food shall be stored, prepared and served in accordance with Chapter ~~255~~ 257 of this Title (relating to food service establishments) with the following additional requirements.

~~(1) All staff in the food service area shall use hair nets or caps.~~

~~(2) Hot foods shall be served at a palatable temperature range of 110° – 120° F. (43.3° – 48.8° C.).~~

~~(3) The facility shall provide appropriate utensils for consuming foods including assistive devices to promote resident independence.~~

(b) ~~All ice, used in food or drinks, shall be from a satisfactory source, and handled and dispensed in a sanitary manner.~~ Ice machines available to the residents, or the public, shall be a dispenser type, or have a locking enclosure.

(c) ~~All food supplies shall be from approved sources. Damaged merchandise or home processed foods shall not be used.~~ A whole, intact, fruit or vegetable is an approved food source. The food supply shall be sufficient in quantity and variety to prepare menus for three (3) days ~~menu~~. Leftovers that are potentially hazardous foods shall be used, or disposed of, within twenty-four (24) hours. Non-potentially hazardous leftovers that have been heated or cooked may be refrigerated for up to forty-eight (48) hours.

(d) **Milk, milk products and eggs.**

(1) Only grade A pasteurized fluid milk, as defined by the Oklahoma Grade A Milk and Milk Products Act, Title 2 O.S. §7-401 through 2 O.S. §7-421, shall be used for beverage and shall be served directly into a glass from a milk dispenser or container.

(2) Powdered or evaporated milk products approved ~~by~~ under the U.S. Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance (2003 Revision), may be used only as additives in cooked foods. This does not include the addition of powdered or evaporated milk products to milk or water as a milk for drinking purposes. Powdered or evaporated milk products may be used in instant desserts and whipped products, or for cooking. When foods, in which powdered or evaporated milk has been added, are not cooked, the foods shall be consumed within twenty-four (24) hours.

(3) Milk for drinking shall be stored at a temperature of ~~35° F. (1.6° C.) to 40° F. (4.4° C.)~~ 41° or below and shall not be stored in a frozen state.

(4) Only clean, whole eggs with shell intact, pasteurized liquid, frozen, dry eggs, egg products and commercially prepared and packaged hard boiled eggs may be used. All eggs shall be thoroughly cooked except pasteurized egg products or pasteurized in-shell eggs may be used in place of pooled eggs or raw or undercooked eggs.

~~(e) **Dishwashing and handwashing**~~

~~(1) The dishwashing system and procedures shall be approved by the Department.~~

~~(2) Hands shall be properly washed or sanitized before handling clean dishes or equipment. In new or remodeled facilities, handwashing facilities, including soap and paper towels, shall be conveniently located in the kitchen to facilitate good handwashing techniques.~~

~~(f) **Kitchen room temperature.** The maximum room temperature in the food preparation area shall not exceed 90° F. (32.2° C.)~~

(e) **Applicability.** This section shall only apply to food prepared or served by the facility, within the licensed facility.

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-7. Food service staff

(a) **Food service supervisor.**

(1) The food service supervisor shall be responsible for all aspects of food service preparation and delivery. The food service supervisor may serve only one facility. The food service supervisor hours shall be sufficient to meet the residents' needs.

(2) ~~A~~The food service supervisor ~~hired after January 1, 1993,~~ shall complete~~, or be enrolled in, the first available Department approved course in dietary management~~ certification as a dietary manager within three (3) years of beginning employment.

(3) The food service supervisor shall complete, and maintain continuous, ServeSafe food safety certification, or a Department approved alternative, within ninety (90) days of beginning employment.

(b) **Food service staff.**

(1) The facility shall have food service staff on duty sufficient to meet the residents' needs. There shall be at least one (1) hour of food service staff per three (3) residents, a day based on the daily census.

(2) The food service staff shall complete a basic orientation program before working in the food service area. This orientation shall include, but not be limited to~~,~~: fire and safety precautions, infection control, and ~~basic dietary guidelines~~ sanitary food handling practices.

~~(3) The facility shall provide each food service staff person with at least one hour of inservice training by a qualified staff/professional each month.~~

(3) Each food service staff member shall successfully complete a food service training program offered or approved by the Department within ninety (90) days of beginning employment. Food service training shall be renewed as required by the authorized training program.

SUBCHAPTER 21. ENFORCEMENT AND REGISTRY HEARINGS FOR NONTECHNICAL SERVICES WORKERS

310:675-21-1. Purpose

The purpose of this Subchapter is to implement the Nontechnical Services Workers Abuse Registry, 63 O.S. Section 1-1950.6 through 1-1950.9. For the purposes of this subchapter, abuse, verbal abuse, and exploitation, shall have the meaning assigned in Section 10-103 of Title 43A of the Oklahoma Statutes.

310:675-21-2. Complaint investigation

(a) Process. Upon receipt of a complaint against a non-technical service worker alleging abuse, verbal abuse, or exploitation of a resident within a nursing facility, or upon completion of a survey of a nursing facility by the Department with a finding that a non-technical service worker abused, verbally abused, or exploited a resident, the Department shall conduct

an investigation. Upon completion of the investigation, a written report will be prepared. If sufficient evidence exists to initiate an individual proceeding, notice of the investigative findings and an opportunity for hearing will be prepared and served upon the nontechnical services worker.

(b) Timeline for reporting. The facility shall report to the Department allegations and incidents of abuse, verbal abuse, or exploitation by a non-technical service worker within twenty-four (24) hours.

(c) Reporting non-technical service workers. The facility shall report to the Department allegations and incidents of abuse, verbal abuse, or exploitation by a non-technical service worker by submitting the following:

(1) facility name, address, and telephone;
(2) facility type;
(3) date;
(4) reporting party name or administrator name;
(5) employee name and address;
(6) employee certification number;
(7) employee social security number;
(8) employee telephone number;
(9) termination action and date, if any;
(10) other contact person name and address; and
(11) facts of resident abuse, verbal abuse, or exploitation.

310:675-21-3. Right to a hearing

Before the registry is notified that a finding of resident abuse, verbal abuse, or exploitation of a resident in a nursing facility has been made against a nontechnical services worker, the Department shall offer the nontechnical services worker an opportunity for a hearing. If the nontechnical services worker fails to request a hearing in writing within thirty (30) days from the date of the notice, the Department shall include on the registry a finding of resident abuse, verbal abuse, or exploitation of a resident in a nursing facility against the nontechnical services worker.

310:675-21-4. Petition and hearing

(a) **Petition.** If the nontechnical services worker requests a hearing, the Department shall commence an individual proceeding by filing a petition against the nontechnical services worker that states the facts supporting the allegation.

(b) **Notice of hearing.** All parties shall be given notice of the date, time and place of the hearing. The notice of hearing served upon the non-technical service worker shall include a copy of the petition.

(c) **Time.** The hearing shall be scheduled at least fifteen (15) working days after the nontechnical services worker has received notice of the hearing.

(d) The hearing shall be conducted in accord with the Oklahoma Administrative Procedures Act and Chapter 2 of this Title.

310:675-21-5. Orders

(a) **Authority.** The Administrative Law Judge shall issue a decision within fifteen (15) working days following the close of the hearing record. The decision shall include Findings of Fact and Conclusions of Law separately stated.

(b) **Delegation.** The Commissioner of Health may delegate the authority to issue a final decision in these matters as specified in 75 O.S. Section 311.1 and OAC 310:002.

(c) **Registry notification.** The decision shall direct the nontechnical services worker registry to include the findings as they relate to the nontechnical services worker. The decision shall direct the nontechnical services worker registry to include a statement by the nontechnical services worker disputing the decision if the nontechnical services worker chooses to submit such statement. If such a statement is submitted the statement of the nontechnical services worker shall be submitted to the nontechnical services worker registry within thirty (30) days after the decision is issued.

(d) **Notice.** Each party and attorney of record shall be mailed a copy of the Final Order. The Department shall transmit a copy of the Final Order to the nontechnical services worker registry when the Order is mailed.

(e) **Appeal.** An appeal of the Final Order shall be perfected pursuant to 75 O.S. Section 318 of the Administrative Procedures Act.

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [REVOKED]

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [NEW]

(Referring to OAC 310:675-1-2. Definitions: Standards of care)

"Physical Examination and Health Assessment" - Third Edition - Carolyn Jarvis

"Medical-Surgical Nursing Assessment and Management of Clinical Problems" - Fifth Edition - Lewis, Heitkemper and Dirksen (Mosby)

"Handbook of Geriatric Nursing" - Second Edition - Lippincott, Williams and Wilkins

"Clinical Nursing Skills - Basic To Advanced Skills" - Fifth Edition - Smith, Duell and Martin

Oklahoma Board of Nursing Guidelines and Position Statements:

"A Decision-Making Model for Determining RN/LPN Scope of Practice Model - Model for Scope of Nursing Practice Decisions"

"Abandonment Statement"

"Advanced Practice Nurses with Prescriptive Authority Exclusionary Formulary"

"Delegation of Nursing Functions to Unlicensed Persons"

"Guidelines for Employment of Individuals Enrolled in or Non-Licensed Graduates of Nursing Education Programs"

"Guidelines for the Registered Nurse in Administering, Managing and Monitoring Patients Receiving Analgesia/Anesthesia by Catheter Techniques"

"Issuance of Temporary Licenses for RNs and LPNs"

"Licensure Verification and Photocopying of Nursing Licenses"

"Patient Assessment Guidelines"

"Refresher Course Policy"

"Wound Debridement by Licensed Nurses Guideline"

Standards of the American Nurses Association and Specialty Nursing Organizations:

"Nursing: Scope and Standards of Practice" Pub# 03SSNP - 2004

"Scope and Standards for Nurse Administrators" (Second Edition); Pub#03SSNA - 2004

"Scope and Standards of Diabetes Nursing Practice" (2nd Edition); Pub# DNP23 - 2003

"Scope and Standards of Forensic Nursing Practice" Pub# ST-4 - 1997

"Scope and Standards of Gerontological Nursing Practice" 2nd Edition; Pub# GNP21 - 2001

"Scope and Standards of Hospice and Palliative Nursing Practice" Pub# HPN22 - 2002

"Scope and Standards of Neuroscience Nursing Practice" Pub# NNS22 - 2002

"Scope and Standards of Nursing Informatics Practice" Pub# NIP21 - 2001

"Scope and Standards of Psychiatric-Mental Health Nursing Practice" Pub# PMH-20 - 2000

"Statement on the Scope and Standards for the Nurse Who Specializes in Developmental Disabilities and/or Mental Retardation" Pub# 9802ST - 1998

"Statement on the Scope and Standards of Oncology Nursing Practice" Pub# MS-23 - 1996

[OAR Docket #08-1128; filed 6-3-08]

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

[OAR Docket #08-1106]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:20-1-3. Racing officials [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Comment Period:
February 15, 2008 through March 17, 2008
Public Hearing:
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Submitted to Governor:
April 1, 2008
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April 1, 2008
Submitted to Senate:
April 1, 2008
Gubernatorial approval:
May 6, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2008
Final Adoption:
May 23, 2008
Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATIONS BY REFERENCE:
Not Applicable
ANALYSIS:
Amendment was proposed to 325:20-1-3 by the Commission Executive Director to add another racetrack position, the Assistant Racing Secretary, to the list of Racing Officials.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

325:20-1-3. Racing officials

The Racing Officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the Stewards, the Associate Judge, the Placing Judges (if utilized), the Paddock Judge, the Patrol Judges (if utilized), the Starter, the Clerk of Scales, the Official Veterinarian, the Racing Veterinarian, the Timers, the Horse Identifier, ~~and~~ the Racing Secretary, and the Assistant Racing Secretary. No Racing Official may serve in that capacity during any race meeting at which is entered a horse owned by him/her or by a member of his/her family or in which s/he has any financial interest. Being the lessee or lessor of a horse shall be construed as having a financial interest. No person may serve as a Steward in a race where that person is the owner or part owner of the sire or dam of any horse in the race.

[OAR Docket #08-1106; filed 6-2-08]

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

[OAR Docket #08-1075]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:1-1-4 [AMENDED]
390:1-1-8 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311
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May 5, 2008
Legislative approval:
Failure of legislature to disapprove the rules resulted in inactive approval on May 22, 2008.
Final adoption:
May 22, 2008
Effective:
July 15, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amended rules would update the objectives of the Council with new legislative mandates, clarify cause for removal from the Advisory Committee for the Security Guard and Private Investigator Act to specify failure to be in good standing with their license and use of their appointment on the Committee for threats or perceived personal gain. 390:1-1-8 amendments would expand public access to forms to include availability of forms from the Council web site.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:1-1-4. Objectives of the Council

The objectives of the Council are:

(1) To raise the level of professional competence and integrity of law enforcement by:

(A) Establishing and administering minimum standards for the training and certification of law enforcement officers, to include physical, mental, and moral standards.

(B) Establishing and administering minimum curriculum and instructional standards for law enforcement training at a variety of levels.

(C) Providing these and other services to law enforcement officers as directed by law.

(D) Recommending legislation necessary to upgrade Oklahoma law enforcement to professional status.

(E) Appointing a larger Advisory Council.

(i) The Advisory Council shall be composed of seventeen (17) members who are certified full-time peace officers employed by a campus, city, county, state or federal law enforcement agency. At least one member shall be appointed from each of the ten (10) geographic CLEET training regions.

(ii) Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) An Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Council, the Advisory Council shall recommend an individual to the Council for the vacant position.

(F) Appointing a Drug Dog Advisory Council.

(i) The Drug Dog Advisory Council shall be composed of members as provided in 70 O.S. §3311(K).

(ii) Drug Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Drug Dog Advisory Council shall meet as the business of the Drug Dog Advisory Council demands.

(iv) A Drug Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Drug Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect controlled dangerous substances to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Drug Dog Advisory Council, the Drug Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(G) Appointing a Bomb Dog Advisory Council

(i) The Bomb Dog Advisory Council shall be composed of members as provided in 70 O.S. §3311(L).

(ii) Bomb Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Bomb Dog Advisory Council shall meet as the business of the Bomb Dog Advisory Council demands.

(iv) A Bomb Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Bomb Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect explosives, explosive materials, explosive devices, and materials which could be used to construct an explosive device to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Bomb Dog Advisory Council, the Bomb Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(H) Appointing a Curriculum Review Board as provided in 70 O.S., Section 3311(B)(16).

(2) To raise the level of professional competence and integrity of the private security industry by:

(A) Establishing and administering minimum standards for the employment of security guards and private investigators, and the establishment of private security and investigative agencies, through a licensing program based on physical, mental, and moral standards.

(B) Establishing and supervising a validated training program for security guards and private investigators.

(C) Enforcing the provisions for the Oklahoma Security Guard and Private Investigator Act (Title 59, Sections 1750.1 - 1750.13).

(D) Appointing an Advisory Committee comprised of representatives from security guard and investigative agencies.

(i) The Committee shall be comprised of seven (7) representatives from licensed security guard and private investigative agencies as follows: One (1) from each quadrant of the state, one (1) at large, one (1) selected by the American Society for Industrial Security (ASIS) and one (1)

selected by the Oklahoma Private Investigators Association (OPIA).

(ii) Committee representatives shall serve for a term of three years and may be reappointed for additional terms unless removed by the Council.

(iii) A Committee representative may be removed and that position declared vacant by the Council for any reason including but not limited to the following:

(I) Failure to be in good standing with their license;

(II) Use of their appointment on the Committee for threats or perceived personal gain; or

(III) Repeated absences.

(iv) When a vacancy occurs on the Advisory Committee, the Advisory Committee shall recommend an individual to the Council for the vacant position.

(v) Committee representatives shall meet at least quarterly or more often as the business of the Committee demands.

(vi) The Committee shall report research, recommendations and other matters related to licensure of security guards, security agencies, private investigators and private investigative agencies to the Advisory Council for review prior to submission to the Council for final action.

390:1-1-8. Forms

In order to maintain efficiency and uniformity in the administration of CLEET's duties, CLEET will devise and maintain forms for use by any party. The forms may be revised periodically to insure uniformity, efficiency, and expediency. The prescribed forms must be used by affected party unless another form is approved by CLEET prior to its submission. Forms may be acquired from the CLEET website, electronically, or by writing CLEET.

[OAR Docket #08-1075; filed 5-29-08]

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

[OAR Docket #08-1076]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:2-1-2 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311(K); 70 O.S., Section 3311.4; 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.7; 21 O.S., Section 1289.8(B); 21 O.S., Section 1290.14(B) and 21 O.S., Section 1289.23(I)(4).
DATES:
Comment period:
February 15 - March 19, 2008
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Failure of legislature to disapprove the rules resulted in inactive approval on May 22, 2008.
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July 15, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amended rules would allow the Council to send an individual notice of disciplinary action addressed to the individual at the employing department or agency address if a residential address is unknown.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines

(a) **Persons affected by individual actions.** Under the authority of 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.1 et seq.; 59 O.S., Sections 1451-1476; 20 O.S., Section 1313.2, 21 O.S., Section 1289.9 and 21 O.S. Section 1290.1 et seq., CLEET may take Administrative Actions against the following parties for violations of said statutes and the Rules and Regulations of CLEET:

(1) Certified peace officers and applicants;

(2) Basic Peace Officer Academy students and applicants;

(3) Private security training schools and applicants;

(4) Armed and unarmed security guards, private investigators, security agencies, nvestigative agencies and applicants;

(5) Certified drug detector dogs, handlers and applicants;

(6) CLEET certified instructors for Law Enforcement;

(7) Counties, cities and towns involved in the penalty assessment program;

(8) Private security training instructors and applicants;

(9) pproved SDA Firearms Instructors;

(10) Retired municipal, county, state and federal peace officers;

(11) Certified Reserve Peace Officers and applicants; and

(12) any other parties for which CLEET has statutory responsibility.

(b) **Type of sanctions.** CLEET may take the following actions against the parties mentioned in (a) of this section:

(1) Oral Reprimand
(2) Written Reprimand
(3) Denial
(4) Suspensions
(5) Revocation and/or
(6) Disciplinary penalty or fine.

(c) **Disciplinary procedures.** In the event CLEET, or its designated agent, has determined that an action will be taken, the following procedures shall apply in accordance with the Administrative Procedures Act, Section 301, et. seq. Title 75 of the Oklahoma Statutes.

(1) The issuance or denial of a new license or new certification is not an individual proceeding, and is not subject to review by the administrative hearing process set forth below.

(2) CLEET or its designated agent shall serve by certified mail, return receipt requested, or by personal delivery by ~~one~~an individual authorized by CLEET, a "Notice of Council Action" containing information required by 75 O.S. Section 309 et. seq., to the party at his last known residential address as reflected by the records of CLEET or current employing department or agency address if the personal address is unknown. If said letter is returned and notation of U.S. Postal Service indicates "unclaimed", "moved","refused" or any non-delivery markings and the Council's records indicate no change of address as required by rule 390:35-5-13, the notice and any subsequent order shall be deemed served. Any order issued shall be deemed valid as if said individual or agency had been served.

(3) The notice shall provide that CLEET action shall commence and become effective fifteen (15) days after receipt of said notice by the party, unless the party timely files a written request for a hearing with CLEET except as follows:

(A) When CLEET determines that an allegation warrants immediate action, the commencement and effective date of fifteen (15) days will be waived and the action will be effective upon receipt of said notice.

(B) A request for hearing will be timely filed if said request is in writing and received by CLEET, its Director, or designated agent within ten (10) days of the date the party received notice.

(C) If a timely written request for a hearing is not received by CLEET, the allegations shall be deemed confessed by the party and the action will become final.

(D) If the written request for hearings is timely received by CLEET, such hearings shall be scheduled within sixty (60) days from the date said request is received.

(4) The timely filing of a written request for a hearing will stay CLEET's action pending disposition of the hearing, unless the notice and allegations fall within the purview of (2)(A) of this subsection.

(5) The hearings will be held at a location designated by the Council.

(6) The hearing officer will be designated by CLEET or the Director thereof, and each party shall be afforded an opportunity to be heard and present evidence.

(7) The hearing will be electronically recorded and the tapes of said hearing will be preserved until all avenues of appeal have expired or been exhausted. If a party desires a court reporter, or certified stenographer, it shall be the party's burden to provide and bear the cost of said services and subsequent transcription.

(8) If a party fails to appear at the scheduled hearings without prior notification or good cause, the hearing officer shall default the party, and enter an order sustaining the allegations set forth in the notice and imposing the sanctions set forth therein; or if the State sustains its burden, the hearing examiner shall rule accordingly.

(9) If the complaining party fails to show or the state otherwise fails to prove the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.

(10) The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.

(11) Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.

(12) A party may appeal the hearing officer's decision as set forth in 75 O.S. Section 301 et. seq. of the Administrative Procedures Act.

[OAR Docket #08-1076; filed 5-29-08]

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

[OAR Docket #08-1077]

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390:10-1-5 [AMENDED]
390:10-1-6 [AMENDED]
390:10-1-7 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311(B)(2); 70 O.S., Section 3311.4(1)(B); 70 O.S., Section 3311(E)(3) and 70 O.S., Section 3311(E)(5).
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ANALYSIS:
Changes to this chapter would correct statute and rule references as a result of new legislation and rule changes, modify the time requirements for completing training, add a provision for extending time to complete training in certain circumstances, remove specific examination passing scores and replace with a standard established by CLEET. Amendments to this chapter would also remove the reference to Legal Block of instruction and Legal refresher course and replace with training specified by CLEET. Other amendments would replace language requiring notification on forms provided by CLEET to allow written notification for voluntary withdrawal of certification and requests for reinstatement. Language would be amended to include notification to any other entity required by law of the suspension, withdrawal or revocation of peace officer certification.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:10-1-2. Minimum certification and employment standards

(a) For the purposes of the rules of this Chapter and 70 O.S. Section 3311, a peace officer is defined as a duly appointed or elected law enforcement officer who is paid for working more than twenty-five (25) hours per week and whose duties minimally include all of the following on a full-time basis:

(1) Preserving the public peace;
(2) Preventing crime;
(3) Protecting life and property;
(4) Enforcing laws and ordinances of this state and its political subdivisions; and
(5) Executing arrest warrants and search warrants.

(b) All persons hired or elected as peace officers shall meet the employment and training standards set forth in this chapter as set forth in Section 3311 of Title 70 of the Oklahoma Statutes. Calculation of said employment shall be based on cumulative periods of employment.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee.

(d) In the event any officer so appointed or elected fails to comply with the employment and training standards and an extension of time is not granted, the employing agency shall comply with 70 O.S., Section 3311(~~D~~E)(3) at the first opportunity made available by CLEET.

(e) Students are expected to complete the first basic academy in which they are enrolled. In the event a student cannot complete their initial academy, the student can complete the course work in another academy if such work can be completed within a ~~two~~one year period from the date of hiring or appointment as a peace officer. If reentry exceeds ~~two years~~one year, students will be required to start the academy over again without regard to previous classwork completed unless reentry was delayed by a documented medical condition or military orders prohibiting participation. Exceptions may be made by the Director, or Director designee, for students who have been granted extensions of time as authorized by ~~Section 3311, Paragraph D, 3 of Title 70 of the Oklahoma Statutes~~70 O.S., Section 3311 (E)(3).

(f) The Council may provide options for remedial or make-up training for students attending approved academy or CLEET basic academy programs.

390:10-1-4. Peace officer employment standards

(a) A person shall comply with the requirements of 70 O.S., Section 3311~~(D)~~(E)(F)(G) in order to be employed as a peace officer.

(b) Nothing herein shall preclude any law enforcement agency from establishing and implementing minimum employment standards in addition to those set forth by law and the rules of this chapter.

390:10-1-5. Requirements for certification

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S., Section 3311~~(D)~~(E)(F)(G)(J) have been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officers's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

(5) Every full-time peace officer, certified by the Council, who has been inactive for five (5) or more years, upon re-entry to full-time status, must complete ~~legal~~ refresher training as prescribed by CLEET and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.

(A) Trainees must achieve a ~~score of seventy per cent (70%) or higher~~passing score as determined by CLEET on the examination.

(B) Any trainee that fails the examination will be permitted to retake that examination within five (5) business days of the first examination.

(C) If the trainee fails the retake examination, the trainee's agency head must petition the Director in writing, to receive additional training and examination opportunities.

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans With Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

390:10-1-6. Certification by reciprocity

Any officer seeking Oklahoma Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer for at least three (3) months within the two (2) year period immediately preceding the request for Oklahoma certification.

(3) The officer must attend ~~the Legal Block of the CLEET Basic Academy and successfully pass the Legal Block examination~~training as specified by CLEET.

(4) The officer must successfully pass a certification examination which is designed to be scored by functional area blocks, with the exception of skills training functional areas which shall not be tested. Officers must pass every functional area block tested at a standard prescribed by the Council. Officers may have one retest for each functional area block which they fail.

(5) If an officer fails both a block test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Academy, to include successfully passing the block examination(s). Any retest would follow the guidelines listed in OAC 390:15-1-13.

390:10-1-7. Withdrawal, suspension and reinstatement of certification

(a) **"Withdrawal" defined.** A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70 O.S. 3311 et seq.

(1) An officer requesting a withdrawal of certification must notify CLEET of his intent in writing to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers.~~ The notification shall be on forms provided by CLEET.~~

(2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.

(3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.

(4) CLEET will enter a Final Order of Withdrawal which must be signed by the officer requesting the voluntary surrender of peace officer certification and the Director. The Final Order of Withdrawal must include:

(A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and

(B) Acknowledgment of the underlying facts for the withdrawal; and

(C) Acknowledgment that the information gathered during the investigation of the request for withdrawal may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;

(b) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. §3311 et seq.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(c) **Reinstatement.**

(1) After five years, an officer who has had peace officer certification suspended or who has voluntarily withdrawn his certification, may have peace officer certification reinstated through the following procedures:

(A) The officer shall file ~~an application~~a request for reinstatement ~~on forms provided by CLEET, submitted~~ in writing, under oath.

(B) The ~~application~~request shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The ~~application~~request for reinstatement shall be referred to the ~~Standards Division~~ Assistant Director for processing of the ~~application~~request.

(3) The ~~application~~request will be reviewed by the Assistant Director~~, Standards Division Manager~~ and General Counsel to approve or deny the request. The following factors will be considered during the review:

(A) Circumstances surrounding the suspension or voluntary withdrawal of certification;

(B) Successful completion of the terms for suspension or voluntary withdrawal of certification;

(C) Any pending charges or actions in this state or any other state; and

(D) Activities of applicant during the period of suspension.

(4) If a request is denied, the Administrative Procedures found in OAC 390:2-1 et. seq. will govern the hearing.

(5) Individuals who have had their certification reinstated must meet the continuing education requirements described in 70 O.S. 3311.4.

(d) **Notification.** Upon the suspension, withdrawal or revocation of peace officer certification pursuant to 70 O.S. 3311 et seq. or these rules, CLEET shall provide written notification of such action to the head of the employing law enforcement agency and the district attorney in the jurisdiction where the officer is or was last employed, and to any other entity required by law.

[OAR Docket #08-1077; filed 5-29-08]

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

[OAR Docket #08-1078]

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Subchapter 1. Basic Academy Programs
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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]
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ANALYSIS:
Subchapter one amendments would correct the reference to "Academy cities", add provisions for modifications to curriculum and courses of study as required by state statute, add DWI Detection and Standardized Field Sobriety Test (SFST) Training and Radar Training to the functional areas of the basic academy, incorporate national standards for SFST training as established by the International Association of Chiefs of Police (IACP) and the National Highway Traffic Safety Administration (NHTSA). Amendments would remove specific examination scores and replace with a standard established by CLEET, add a provision that practical application exercises may be evaluated, replace the reference to sex with gender, and clarify provisions for remedial firearms training. 390:15-1-9 proposed changes would implement statutory changes regarding municipalities and counties authorized to operate a basic law enforcement academy. Amendments would remove certain restrictions for academy approval, change the requirement for an application form to a written request, add language to include identified instructional objectives and remove language to revoke academy status if the Council deems it can meet the agency's training needs.

Subchapter three proposed amendments would clarify peace officer certification through the Collegiate Officer Program to include Reserve Peace Officer Certification, add DWI Detection and Standardized Field Sobriety Test (SFST) Training and Radar Training to the instructional areas of the Collegiate Officer Program (COP) courses, and incorporate national standards for SFST training as established by the International Association of Chiefs of Police (IACP) and the National Highway Traffic Safety Administration (NHTSA). Amendments would update description of course materials available to institutions.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-1. Purpose

(a) This chapter is devoted to basic peace officer certification training. Basic peace officer certification requires curriculum and courses of study validation through testing, course file maintenance, academy participation and academy rules.

(b) Further, this chapter outlines procedures for CLEET academies and for ~~"academy cities"~~approved academies providing basic peace officer training to their own officers.

(c) This chapter also provides the employment, attendance and academic requirements for those enrolled in the Council's basic peace officer training.

390:15-1-2. Curriculum and courses of study

(a) The Council shall formulate and promulgate a program of instruction for peace officer certification, comprised of fundamental law enforcement skills and knowledge, which shall be designated as the Basic Peace Officer Certification Academy, known herein as the Basic Academy.

(b) Major block curriculum changes, and/or changes in the total number of hours of the Basic Academy, shall only be made upon the consideration of public input, ~~and~~ CLEET's constituency's opinion or by state statute. CLEET shall seek constituency opinion for major block changes, and/or changes in the total number of Basic Academy hours by requesting input from the Council via an agenda item at a regular or special Council meeting and through one or more of the following: 1) written or oral communication requesting input from local law enforcement chiefs, sheriffs, and agency heads; 2) requesting input from local law enforcement chiefs, sheriffs, and agency heads, at CLEET Regional Meetings; 3) requesting input from the Advisory Council to the Council on Law Enforcement Education and Training via an agenda item at a regular or special meeting.

(c) The curriculum of the Basic Academy was established upon a job-task analysis conducted in 1987 as a joint project of CLEET and the University of Oklahoma. The curriculum shall include functional areas as prescribed by the Council. Functional areas shall include, but shall not be limited to the following:

(1) Orientation/Legal Matters
(2) First Aid
(3) Firearms
(4) Criminal Investigation
(5) Custody Control and Arrest
(6) Traffic
(7) Patrol
(8) Community Relations
(9) Law Enforcement Driver Training
(10) DWI Detection and Standardized Field Sobriety Testing (SFST)
(11) Radar

(d) The Basic Academy shall meet the hourly and course of study requirements as provided by O.S. 70 Section 3311 et seq.

(e) Each topic of instruction to be taught as a separate unit within the functional area shall have specifically defined performance objectives. A performance objective shall be defined as a task to be performed, or knowledge to be gained, by a trainee as part of the training process. Performance objectives shall serve as a foundation for student performance expectations and shall be the primary gauge against which the progress and achievement of each trainee is measured and tested.

(f) Additional hours of independent study may be required to fulfill one or more functional area requirements.

(g) Approved academy entities must meet instructional objectives established by CLEET but they may establish an hourly schedule that meets their needs.

390:15-1-3. Examinations and testing; remedial training; missed time

(a) For objectives that demand performance of observable behavior by a trainee, the test method, where appropriate, shall be performance oriented and shall duplicate, to the extent possible, realistic job situations.

(b) For objectives that demand mastery of cognitive material, the test method shall involve a written examination and, wherever possible, the written examination should test a trainee's ability to apply methods, concepts, and techniques taught in the classroom.

(c) Examinations shall be given at designated intervals during the Basic Academy to determine trainee achievement of objectives.

(d) Successful achievement on each cognitive examination or performance test shall be ~~70% or higher with the exceptions of the First Aid Test which requires a score of 80% or higher~~at a standard established by CLEET or a higher standard if so required by an approved academy entity.

(e) Re-examination scores will be recorded on individual profile forms of peace officers.

(f) Practical application exercises may be evaluated at a standard established by CLEET.

(g) Approved academy entities shall establish their own procedures for testing and retesting except that CLEET shall administer the certification examination for purposes of certification.

390:15-1-11. General rules of Academy conduct

(a) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

(b) Trainees shall conscientiously, and in a timely manner, carry out all proper and lawful instructions of authorized personnel while enrolled in the Basic Academy. Violations of any general rules of academy conduct or basic academy rules may result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(c) Trainees shall bring no firearms or ammunition into the basic training facility or its associated parts, unless directed by the instructional staff.

(d) Reckless handling, unauthorized brandishing, or other unauthorized display of any firearms will not be tolerated.

(e) Trainees who are lodging or visiting facilities owned, operated, or rented by CLEET may not use or bring any alcoholic beverages, intoxicants, or any controlled dangerous substances, onto the property, grounds, or into the facilities.

(1) It shall be prohibited for any trainee to attend any training session while under the influence of any of the above named substances.

(2) Trainees who arrive at lodging, eating, classroom, or training facilities, who appear impaired, may be subject to standard field sobriety testing, or other tests, and to disciplinary action. Refusal to submit to any such tests requested by CLEET staff shall result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(f) Trainees who are taking medications or controlled substances as prescribed by a physician shall advise the Basic Academy Coordinator immediately as to the type of medication, the prescribing physician, and purpose of the medication. All such substances shall be kept in the prescribed container. Trainees who appear to be impaired by prescribed substances may be subject to disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1

(g) The use of tobacco in any form shall be in accordance with State law, local rules, facility rules or as directed by CLEET staff.

(h) Trainees shall avoid the excessive use of profanity.

(i) Trainees shall not gamble in or around training, housing, or eating facilities provided by CLEET.

(j) Trainees shall avoid intentionally marking, defacing, or damaging any state property, the property of the owner of any state-provided facility, or the property of another.

(k) Trainees shall avoid the continual disruption of instructional activities, by conversation or otherwise, in and around any training classroom or facility.

(l) Cheating on examinations, or any other manner of dishonest conduct will not be tolerated.

(m) Trainees will exhibit behavior which is in keeping with the Law Enforcement Code of Ethics, CLEET guidelines and departmental guidelines when working with and socializing with officers of the same or opposite ~~sex~~gender. Situations involving issues of moral turpitude may result in administrative discipline.

(n) Trainees shall avoid any disruptive behavior at any CLEET provided facility that may be injurious or distracting to other trainees or people in close proximity.

(o) The Council on Law Enforcement Education and Training will not tolerate harassment of students, trainees, staff or participants, on the basis of race, color, creed, national origin, or ~~sex~~gender.

(p) Approved academy entities shall establish their own rules of academy conduct.

390:15-1-13. Academic requirements

(a) In order to successfully complete the basic academy program, trainees must achieve a minimum passing score ~~of seventy percent (70%), or higher, in all examinations and proficiency tests, except that First Aid requires a score of Eighty percent (80%) or higher~~as designated by CLEET or a higher standard if so required by an approved academy entity.

(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within ~~five (5) business days of the first examination~~a time frame established by CLEET.

(c) If the trainee fails the retake examination the trainee will be required to repeat the entire block of instruction and pass the block examination (third test).

(d) If the trainee fails the block examination a third time, the trainee's agency head may petition the Director to request that the trainee repeat the block of instruction for a third time and take the examination for a fourth time.

(e) If a trainee successfully completes all academic blocks but still needs to complete a proficiency block, the trainee may take the certification examination. However, the examination will be maintained in CLEET files until the required proficiency blocks are successfully completed.

(f) If a trainee fails to complete an academic block of instruction the trainee will not be allowed to take the certification examination until the academic block is successfully completed.

(g) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) business days. If a trainee fails the certification examination a second time, the trainee's agency head must petition the Director in writing, to request a third attempt. A third failure will necessitate reenrollment into a basic academy.

(h) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training courses at a later time. If the trainee does not successfully complete remedial training, the trainee's agency head must petition the Director in writing, to request any further training.

(i) Petitions for further remedial testing or training, except for the Firearms Block, shall be made immediately upon notification by CLEET of the trainee's academic or proficiency failure. Such petitions should be addressed to the CLEET Director and should articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(j) If the trainee fails a proficiency test in the Firearms Block, and cannot be remediated within that academy, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, in writing, notify the Director of CLEET that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. Should the trainee not attain the required proficiency, the employing agency administrator must, within fifteen (15) business days of such failure, petition the Director of CLEET for further testing or training. Such petitions must articulate the reasons for allowing the trainee

to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.

(k) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(l) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed, the impact upon the instructional staff and class to remediate the trainee, and options for the student to make up the missed time. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc.

(m) Unexcused absences or repeated tardiness may require makeup work during a current or future academy, and may result in administrative discipline.

(n) Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

(o) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

(p) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Lost time due to unexcused tardiness or absenteeism must be made up in a subsequent academy to complete the requirements for certification.

(q) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed and notarized release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(r) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited. In that event, peace officer certification will not be granted until such time that the trainee is physically or medically able to satisfy all certification requirements.

(s) Extensions of time to complete the requirements for certification may be granted at the Director or designee's discretion.

(t) Approved academy entities shall establish their own requirements for academy testing, retesting, and attendance except that no academic standards shall be less than those established by CLEET in 390:15-1-13.

390:15-1-18. Administrative discipline

(a) In the event that a trainee's personal conduct or academic performance falls below accepted standards, appropriate reports shall be submitted by the academy coordinator to the Training Division Manager. Reports shall outline the nature and scope of the trainee's substandard performance or conduct, the nature of any counseling or remedial action taken by coordinator/instructors, and recommendations for resolution of the matter. A copy of these reports shall be retained in the trainee's file.

(b) The Training Division Manager shall make every effort to resolve the matter in the best interest of the trainee, the sponsoring agency, and CLEET. Should it become necessary, matters may be referred to the Assistant Director, and the trainee's agency head may be notified.

(c) Trainees who wish to register a complaint regarding some aspect of his or her treatment at the academy, shall make every effort to resolve the matter with the class coordinator. In the event this is not possible, the class coordinator shall consult with the Training Division Manager on the matter. If necessary, arrangements shall be made for the trainee to discuss the complaint with the manager. If the matter cannot be resolved, the manager shall consult with the Assistant Director. Students wishing to appeal the decision of the Assistant Director may submit a request for appeal in writing to the Director.

(d) Approved academy entities shall establish their own requirements for administrative discipline.

390:15-1-19. Council-approved Basic Peace Officer Certification training

(a) Municipalities and counties who obtain Council approval to conduct Basic Peace Officer Certification training for their own personnel are only authorized to retain monies pursuant to provisions in 70 O.S., Section 3311.5(D)(E)(Version 2 as amended by Laws 2007, SB920, c. 360 Section 8, effective November 1, 2007) and 20 O.S., Section 1313.2.

(b) Any municipal or county law enforcement agency that desires to obtain Council approval of said agency's Basic Peace Officer Certification training program must make written ~~application~~request to the Council, providing satisfactory evidence that the agency will conduct such training in accordance with the Council's prescribed minimum training standards, and utilize hiring practices in accordance with minimum employment standards designated by law, and in accordance with the rules of this chapter; that the agency maintains adequate training facilities and equipment; and that the agency will provide qualified instructors.

(c) This ~~application~~request shall be submitted to the Council. The Director shall make written notification of the Council's approval or denial of the ~~application~~request. If approved, the notification shall include an agreement between the Council and the agency making ~~application~~the request. This agreement shall set forth the responsibilities of each party to the agreement, pursuant to 70 O.S. Section 3311 and 20 O.S. Section 1313.2 if applicable.

(d) ~~Applications~~Requests for Council approval to conduct Basic Peace Officer Certification training as authorized by 70 O.S., Section 3311.5(D)(Version 2 as amended by Laws 2007, SB920, c. 360 Section 8, effective November 1, 2007) shall minimally include the following information:

(1) **Justification.** The agency making ~~applications~~the request must demonstrate to the Council that ~~there is significant need for that agency to conduct its own basic training program. Such need shall be based on a local training demand that is beyond the scope and capacity of the Council's Basic Academy Program, as demonstrated through local turnover rates, complexities of local training needs, or other justifying factors. No agency shall~~

~~receive Council approval to conduct its own basic law enforcement certification training, unless it can attest that it will conduct at least one (1) Basic Peace Officer Certification Class, consisting of not less than ten (10) trainees, annually~~it meets criteria set forth in 70 O.S., Section 3311.5(D)(Version 2 as amended by Laws 2007, SB920, c. 360 Section 8, effective November 1, 2007).

(2) **Employment standards.** The agency making ~~application~~the request shall report to CLEET, under oath, that all persons to be trained have satisfactorily met the peace officer employment standards set forth by 70 O.S. Section 3311, and in accordance with rules set forth by the Council, ~~on forms to be provided~~in a format approved by the Council.

(3) **Program documentation.** The agency making ~~application~~the request shall submit the following information not less than thirty (30) calendar days prior to the beginning of each Basic Peace Officer Certification Academy to be conducted:

(A) The name of the person designated as the Director or coordinator of that agency's Basic Peace Officer Certification training program;

(B) The proposed course schedule, clearly indicating the inclusion of CLEET mandated functional areas and units of instruction to include identified instructional objectives;

(C) The instructors for each unit of instruction;

(D) A statement as to the process of examination and testing to be used, and the process of evaluating instructors.

(E) Upon timely notification, CLEET shall administer the Basic Peace Officer Certification Examination to trainees of CLEET-approved Basic Peace Officer Certification Academies who are otherwise qualified to take the examination.

(e) Agencies conducting Council approved Basic Peace Officer Certification Training shall submit the following documentation to CLEET within fifteen (15) calendar days following the completion of each basic academy class:

(1) A final roster of graduates and their social security numbers;

(2) Trainee Academic and proficiency scores from all examinations and proficiency tests, including the Peace Officer Certification Examination.

(3) A final course schedule clearly indicating the actual instructors of each unit of instruction.

(4) A formal request that all trainees who successfully completed the Basic Academy class be granted full-time peace officer certification.

(f) Instructors who teach in Council approved Basic Peace Officer Academies shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in their assigned area of instruction.

(g) CLEET shall issue identification cards and certificates as evidence of peace officer certification to trainees who successfully complete Council-approved Basic Peace Officer Academies, and who have been certified by their employing agency to be otherwise qualified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes.

(h) The Council may revoke academy status for failure to adhere to the CLEET rules~~ and if the Council deems it can meet the agency's training needs~~.

SUBCHAPTER 3. COLLEGIATE OFFICER PROGRAM

390:15-3-1. Purpose

The Collegiate Officer Program provides an alternative route to full time and reserve peace officer certification via degree granting institutions of higher education. It supplements the two other routes available, i.e., through the completion of a Council on Law Enforcement Education and Training Basic Peace Officer Certification Academy, or through the completion of a CLEET approved academy city/agency basic academy.

390:15-3-6. Curriculum mandates

(a) COP courses shall include, but are not limited to, instruction in the following topical areas:

(1) Orientation/Legal Matters
(2) First Aid
(3) Firearms
(4) Criminal Investigation
(5) Traffic
(6) Custody Control
(7) Patrol
(8) Community Relations
(9) Law Enforcement Drivers Training
(10) DWI Detection and Standarized Field Sobriety Testing (SFST)
(11) Radar

(b) CLEET shall make ~~such course goals and~~functional area instructional objectives, as well as current Basic Academy lesson plans, available to all COP institutions. COP institutions may utilize a collegiate accredited First Aid course and a collegiate accredited CPR course as a substitute for CLEET's First Aid course.

390:15-3-7. Course testing

(a) All academic COP course testing shall be subject to the higher education institution's testing and grading system with the exception that under no circumstances shall a course grade of less than 80 percent for First Aid, and no less than 70 percent for other course offerings, be considered a passing score for a course offering which contains a portion of the CLEET basic Academy instructional goals and objectives.

(b) COP skills training courses shall meet the minimum grading standards set forth for the CLEET Basic Academy skills training programs.

(c) Practical application exercises may be evaluated at a standard established by the COP institution.

[OAR Docket #08-1078; filed 5-29-08]

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

[OAR Docket #08-1079]

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390:20-1-2 [AMENDED]
390:20-1-3 [AMENDED]
390:20-1-7 [AMENDED]
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Proposed rule changes are needed to update the definition of reserve officer to match current statute, change the reference to curriculum to lesson plans, and correct statutory and rule references.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:20-1-2. Reserve officer defined; employment standards

(a) For the purposes of this Chapter, and pursuant to 70 O.S., Section 3311, a reserve peace officer shall mean a law enforcement officer who:

(1) May be appointed by a municipality [11 O.S. 34-101], a duly elected sheriff [19 O.S. 547], or any other agency authorized by statute to appoint such reserve peace officers.

(2) May not work as a reserve peace officer more than twenty-five (25) hours per week unless authorized by 11 O.S. 34-101 or 19 O.S. 547.

(3) May be paid a wage or salary, or may serve as a volunteer for the appointing agency.

(4) May be appointed by any political subdivision of this state to serve as an auxiliary police or peace officer pursuant to the Oklahoma Civil Defense Act [63 O.S. 683.1 et. seq].

(5) May have the same powers, duties, and functions as regular full-time peace officers, or as prescribed by state laws, or the ordinances of the appointing municipality.

(b) Employment standards for reserve peace officer certification shall be the same as the employment standards for full-time peace officers, as set forth in 70 O.S. Section 3311, and in 390:10-1-4.

390:20-1-3. Reserve peace officer certification training

(a) The Council shall formulate a program of instruction for reserve peace officer certification, which shall be based on the Basic Peace Officer Academy, and which shall be known herein as the Reserve Academy.

(b) The ~~curriculum~~lesson plans of each Reserve Academy shall be based ~~entirely~~ upon the functional areas of the CLEET Reserve Academy curriculum. The total number of hours for all functional areas combined shall meet or exceed the number of hours required by 70 O.S., Section 3311 ~~(D)~~(E)(2) for Reserve certification.

(c) Trainee attendance is critical. One-hundred percent (100%) attendance is required in all blocks of instruction.

(d) Remedial training may be accomplished under the following conditions:

(1) The trainee attends remedial training taught by the same instructor who taught the original academy class.

(2) The training is conducted in an academy setting and monitored by the academy coordinator.

~~(3) Remedial training must be completed by the end of the original academy.~~

(~~4~~3) Trainees failing to successfully complete remedial training in the original academy shall be required to successfully complete remedial training in another academy in a time frame established by CLEET.

(e) Trainees must successfully complete required classroom and/or skills proficiency testing prior to being administered the required progress or certification examinations.

(f) Trainees who fail to successfully complete any skills proficiency portion(s) of the academy may be administered

progress and certification examinations, however, certification will be withheld until all requirements have been fulfilled.

(g) Any officer seeking Oklahoma Reserve Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a **full-time** peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain reserve certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer within the two (2) year period immediately preceding the request for Oklahoma Reserve Peace Officer Certification.

(3) The officer must attend the Legal Matters block of instruction and successfully pass all Progress and Certification examinations at a standard prescribed by the Council. Skills training functional areas shall not be tested. Officers may have one retest for each functional examination which they fail.

(4) If an officer fails both a test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Reserve Academy, to include successfully passing the functional area examination(s).

390:20-1-7. Review and notification

CLEET shall review the materials listed in ~~390:20-1-5~~390:20-1-6 for completeness and shall notify the Reserve Academy Coordinator in writing as to the approval, denial, or material deficiencies in the original request.

[OAR Docket #08-1079; filed 5-29-08]

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

[OAR Docket #08-1080]

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390:25-1-7 [AMENDED]
390:25-1-8 [AMENDED]
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ANALYSIS:
Proposed rule changes are needed to expand electronic distribution and acceptance of documents, correct a rule reference, clarify documentation required for training entries to be added to peace officer files, and implement rules to enforce compliance of the state law requiring that all active peace officers complete sexual assault and sexual violence training by January 1, 2012.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:25-1-6. Certificates issued

For successful completion of Continuing Education Schools that require a test for mastery of cognitive material or of skills proficiency, attendees shall be issued "CERTIFICATES OF SUCCESSFUL COMPLETION". For satisfactory attendance at schools that do not require such tests, ~~"CERTIFICATES OF ATTENDANCE" shall be issued~~proof of attendance may be issued in a format approved by CLEET.

390:25-1-7. Training records

(a) CLEET may provide paper or electronic copies of individual officers' training records upon written request, pursuant to the Oklahoma Open Records Act.

(b) Recognizing that law enforcement agencies must bear the ultimate responsibility for maintaining comprehensive training records for their own personnel, nothing in these rules shall be construed to mean that CLEET assumes such responsibilities.

390:25-1-8. Outside law enforcement schools and seminars

(a) **Centralized peace officer training records.**

(1) CLEET shall maintain a centralized depository of training records for each full-time, certified peace officer in the State of Oklahoma. Schools and Seminars attended

by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) ~~Such requests~~Requests for training entries shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster or electronic roster, showing the name, ~~Social Security number~~CLEET number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, ~~Social Security number~~CLEET number, and employing agency.

(D) Training may not be recorded when names provided on the roster or electronic record cannot be matched to CLEET records by the CLEET number or name until additional identifying information is provided.

(E) Agencies or individuals submitting rosters or electronic records shall maintain a file copy, subject to inspection, for a period of two years.

(b) **Local training incentive accreditation.**

(1) For the purposes of this sub-section, "ACCREDITATION" means that CLEET will assign a course accreditation number and send a confirmation letter to the agency requesting such accreditation for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting accreditation to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting an accreditation number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed or implied, that "accreditation" indicates or in an way conveys "CLEET approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET accreditation is a requisite, the rules and procedures set forth in (3) and (4) of this subsection shall apply.

(3) Requests for local training incentive accreditation for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

(A) A description of the subject of the school or seminar;

(B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

390:25-1-14. Mandatory Continuing Education

(a) All full-time, certified, active peace officers shall successfully complete the minimum amount of hours of mandatory continuing education as set forth in 70 O.S., Section 3311.4, per year. The Council shall grant credit only for courses conducted by the Council or for courses accredited pursuant to OAC 390:25-1-8.

(b) Failure to meet annual training requirements shall subject the officer to suspension of their certification in accordance with Chapter ~~8~~2 of the Rules Governing the Council and 70 O.S., Section 3311.4.

(1) A reasonable time as set forth in 70 O.S., Section 3311.4(c) shall mean no more than thirty (30) calendar days after the notice of intent to suspend certification has been received, except in situations of documented medical or military leave. Training rosters for mandated training should be submitted as soon as training is conducted. Intent notices will be generated based upon training rosters submitted by the first working day in January.

(2) Travel, Food and Lodging Expenses. The Council will not be responsible for travel, food and lodging expenses incurred by officers attending the mandatory training pursuant to 70 O.S., Section 3311.4. These expenses shall be the responsibility of the employing agency or the individual officer.

(c) Any full time certified active peace officer who fails to complete evidence-based sexual assault and sexual violence training by January 1, 2012, shall be subject to suspension of their certification in accordance with Chapter 2 of the rules governing the Council.

[OAR Docket #08-1080; filed 5-29-08]

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

[OAR Docket #08-1081]

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Subchapter 5. License Requirements
390:35-5-4 [AMENDED]
390:35-5-5 [AMENDED]
390:35-5-12 [AMENDED]

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Council on Law Enforcement Education and Training; 59 O.S., Section 1750.3(B); 59 O.S., Section 1750.9(A), 59 O.S., Section 1750.2(7)(b) and 59 O.S., Section 1750.10.

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ANALYSIS:
The reference to sex would be changed to gender. Amendments would implement statutory changes last session removing the requirement of active full-time peace officers to obtain an individual security guard or private investigator license. Amendments are needed to clarify prohibitions for security patrol vehicle markings.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-4. Special Event Licenses

(a) Special Event Licenses may be issued only to employees of security agencies.

(b) Applications for Special Event Status shall be made only by the security agency which has contracted to provide security guards for a particular event.

(c) Such applications shall be submitted on forms to be provided by CLEET, and not less than forty-eight (48) hours prior to the event. Exceptions may be granted when good cause is shown that a timely request could not be made.

(d) Applications for Special Event Status shall contain information as prescribed by CLEET, but shall contain at least the following:

(1) The name and location of the event;

(2) The dates for which security guards will be provided at the event;

(3) The nature of the event;

(4) Justification for Special Event Status including an explanation as to why regularly licensed guards may not be used;

(5) Examples of duties to be performed by the licensees; and

(6) The projected number of guards to be licensed.

(e) When an application for Special Event Status has been approved, the contracting agency shall apply in writing, to CLEET, for individual licenses. Such applications for individual licenses shall contain information as prescribed by CLEET, but shall contain at least the following:

(1) Each applicant's name, race, ~~sex~~gender, date of birth, social security number, home address, citizenship status;

(2) Certification that the employing agency has conducted a criminal history check with the sheriff in the county of residence of each applicant, and that such criminal history check was conducted within thirty (30) days prior to the date of the event to be licensed;

(3) Certification that each applicant is covered by the employing agency's bond or liability insurance, pursuant to the Act;

(4) Proper fee payment, which shall be seven dollars ($7.00) per individual applicant.

(f) Regularly licensed and conditionally licensed guards shall be exempt from the provisions of this section.

(g) No person shall be issued more than two (2) Special Event Licenses in any calendar year.

390:35-5-5. Peace officer exemptions and non-exemptions

(a) If a peace officer who is ordinarily exempt from licensing chooses to become licensed as a security guard or private investigator shall comply with 59 O.S. Section 1750.1 et seq., and these rules in all respects.

(b) The peace officer exemption shall not apply in the following applications of the Act:

(1) When a peace officer contracts with an employer to provide other guards;

~~(2) When a peace officer is employed to provide security services through a "contractor";~~

~~(3) When a peace officer is employed as a private investigator, as defined by the Act;~~

(~~4~~2) No peace officer or reserve peace officer may wear his official police uniform and insignia while working in a capacity of a licensed security guard, except when the policies of his employing law enforcement agency, and the agency in whose jurisdiction he is so privately employed, allow him to do so;

(~~5~~3) CLEET certified peace officers, whether full-time or reserve, may be given comparable training credit for successful completion of their CLEET basic peace officer or basic reserve officer certification training, when applying for a private security license;

(~~6~~4) Active, full-time peace officers are exempt from the psychological evaluation that is required for armed security guard applicants. Retired, full-time peace officers are exempt from the psychological evaluation for a period of one (1) year from the date of their retirement. This exemption shall apply to any person who possesses

CLEET peace officer certification, except when such person has been terminated from a law enforcement agency for failure to exercise appropriate judgement, restraint, and self-control in the use of force, or when there exists clear and convincing evidence of such;

(~~7~~5) Reserve peace officers are not exempt from the psychological evaluation required for an armed security guard license, unless they are in the active service of a law enforcement agency as a reserve peace officer at the time of application.

(~~8~~6) Reserve peace officers are not exempt from security guard, armed security guard, or private investigator licenses, and must be licensed while employed as such;

(~~9~~7) When working as a licensed security guard, armed security guard, or private investigator, peace officers and reserve peace officers may possess firearms only to the extent of the authority allowed under law, as applied to licensed armed security guards.

390:35-5-12. Use of certain emblems and statements

(a) Licensees may use the phrase "Licensed by the State of Oklahoma" on stationary, business cards, and in advertisements, but no person or licensee shall use any facsimile reproduction or pictorial portion of the Great Seal of the State of Oklahoma on any badge, credentials, identification card, or other means of identification used in connection with any activities regulated under the Act.

(b) Every marked security vehicle shall conform to the following requirements:

(1) The agency's state license number, or in the event of an individual security guard, the individual's license number shall be displayed on the rear of the vehicle or on both sides of the vehicle displayed in characters of no less than three (3) inches in height and clearly readable.

(2) The word "Security", either alone or in conjunction with the Company name, shall appear on each side and the rear of the vehicle in letters of no less than three (3) inches in height, and readable from a reasonable distance.

(3) A security vehicle shall not ~~be any color(s)~~bear any similar color or markings to authorized law enforcement vehicles in the locale of the security company's business. For the purpose of subsection (3) markings shall mean any emblem, sticker, seal, paint, etc., used to decorate the exterior of the vehicle.

(4) Licensed security guards who are also full-time or reserve peace officers shall not use a police vehicle to patrol private security accounts while outside the peace officer's official peace officer jurisdiction.

(c) For the purpose of this Chapter and other applicable section, a marked security vehicle shall be considered marked if said vehicle falls within the following:

(1) Has any non-factory lighting such as spotlights (attached), overhead revolving or strobe lights, rear amber deck lights, dashboard revolving or strobe lights,

(2) Is used in private security as transportation; and

(3) Does not fall within the definition of armored car listed in 390:35-1-3.

(d) All uniformed, licensed security personnel and agencies shall conform to the following requirements regarding the security uniform:

(1) The name of the security agency, or in the event the guard is not employed by an agency, the words "Private Security", "Security Guards", "Private Guard", "Security" or "Guard", shall be visibly displayed on the uniform and jacket in a prominent manner.

(2) In all other respects, Uniforms shall comply with Title 59 O.S., Section 1750.9 and Title 59 O.S., Section 1750.10.

(3) Licensees shall not wear a uniform, insignia, badge, etc., that would lead a reasonable person to believe that he is connected with federal, state or local government, unless authorized by proper authorities to do so.

(4) The following options are acceptable attire for plain clothes assignments:

(A) Client logo patch with word "Security" on it with officer's name.

(B) No patch, with security officers name tag only.

(C) No patch, security officer's name and company name or logo on name tag.

(D) Combination company patch - name tag, company name or logo.

(E) No identification at all, just trousers and blazer.

[OAR Docket #08-1081; filed 5-29-08]

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

[OAR Docket #08-1082]

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Amended language is needed to allow securing a reservation with a purchase order, reducing the number of days of advance notice required for lodging reservations, and providing authority for the Director to waive charges for failure to cancel reservations in advance due to unforseen circumstances such as inclement weather or a documented illness.
CONTACT PERSON:
Janet Ingram, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5158.

PURSUANT TO THE ACTIONS DESCRIBED 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 15, 2008:

390:55-1-10. Reservation requests

(a) All events of the complex, whether for a public or private purpose, require prior written approval of CLEET.

(1) A sponsor shall submit an application for a reservation on a form designated by CLEET together with a check or purchase order for any applicable fees (Reference OAC 390:55-1-11) to CLEET at least ten (10) working days but no more than six (6) months prior to the beginning date of the proposed event or exhibit. Requests for individual lodging reservations shall be made at least five (5) working days in advance on a form designated by CLEET. Individual lodging reservations for CLEET sponsored events will not require advance payment or deposit. The application must be submitted during CLEET's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall include information regarding the desired date, time period, area of use, a description of the event and estimated number of participants.

(3) CLEET may restrict use of the skills training facilities for firearms, driving and defensive tactics.

(4) A member of CLEET shall be available at the complex during any event. Reservations shall be subject to the availability of CLEET staff to schedule functions after hours, on weekends or during a period that extends the staff beyond its normal capacity. Use of the skills training facilities shall require a staff member with knowledge in the area of operation to be available to ensure safety regulations are followed.

(5) If CLEET denies a request for a reservation, CLEET will ~~issue written notice to~~notify the requesting sponsor or individual making the reservation ~~indicating~~of the reasons for denial.

(b) Prioritization of reservations. The training activities and events conducted or sponsored by CLEET shall take precedence over use of the complex by other organizations or businesses. Law enforcement activities shall receive priority over public activities when scheduling events.

(c) Cancellation of reservations. Facility reservations must be cancelled three days in advance. Lodging room reservations must be cancelled 24 hours in advance. Reservations not cancelled will be charged the full fee amount.

(d) The full fee amount for a reservation will be refunded in the event of a cancellation of a reservation by CLEET due to unforseen circumstances or at the request of the Director.

[OAR Docket #08-1082; filed 5-29-08]

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

[OAR Docket #08-1107]

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SUPERSEDED EMERGENCY ACTIONS:
n/a.
INCORPORATIONS BY REFERENCE:
n/a.
ANALYSIS:
The proposed amendment in Section 422:1-1-2 would correct the spelling of a word. The proposed amendment in Section 422:1-1-4 would bring the language in line with the statutes. (Related Statute Ref. - Title 52, Chapter 8, Section 420.27) The proposed amendment in Section 422:1-1-6 would change the physical street address of the Commission.
CONTACT PERSON:
Daniel Fitzpatrick, Associate Director, (405) 879-9828

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

422:1-1-2. Definitions

Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Act shall have the meanings set forth in such act. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the most recent codification of the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Act, 52 O.S. Sections 420.20 through 420.30.

"Assessment" means the one-half cent ($0.005) levied on each gallon of odorized LP Gas which is collected by the operator of a loading rack upon delivery into any cargo container in the State of Oklahoma except for odorized LP gas destined for export out of the state if the LP gas is in ~~continuos~~ continuous movement to a destination outside of Oklahoma.

"Commission" means the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission.

"Refund" means the refund of the assessment authorized by Section 420.29 of the Act.

"LP gas" means liquefied petroleum gas (propane).

"Revolving Fund" means the fund created in the State Treasury for the Commission to be designated the "Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Revolving Fund."

422:1-1-4. Funding

(a) The activities of the Commission are funded through a one-half cent ($0.005) per gallon assessment on the first sale of odorized LP gas or at the time of import of odorized LP gas ~~in~~ into the State of Oklahoma. The assessment is voluntary inasmuch as any party subject to the assessment may apply for a Refund for the amount of the assessment paid by or on behalf of such person during the preceding calendar year.

(b) The Commission may expend Revolving Fund revenues as provided by law.

(c) Expenditures against claims filed as prescribed by law with the Director of Finance for approval and payment.

422:1-1-6. Location, office hours

(a) Any member of the public may obtain information or make submission and requests to the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission, ~~601 W. I-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032.~~ 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111. Office hours from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

(b) Any person seeking information, making submissions or requests shall contact the Director who shall act on behalf of the Commission.

[OAR Docket #08-1107; filed 6-2-08]

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

[OAR Docket #08-1108]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission; Pursuant to O.S. 52, Section 420.24.

DATES:
Comment period:
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SUPERSEDED EMERGENCY ACTIONS:
n/a.

INCORPORATIONS BY REFERENCE:
Incorporated standards:
Standards of the federal Energy Policy and Conservation Act, as amended (42 United States Code S6291 et seq.) and regulations adopted thereunder (10 Code of Federal Regulations S430.32(d).

Oklahoma Liquefied Petroleum Gas Board rules & regulations (Title 52, Section 420:10-1-15).

Incorporating rules:

422:10-1-2
422:10-5-2
422:10-10-2
422:10-20-2

Availability:

8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission, 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111.

ANALYSIS:

The proposed rule amendments to Subchapter 1, the Water Heater Rebate Program; Subchapter 5, the Regulator Rebate Program; and Subchapter 20, Central Furnace Rebate Program, are essentially the same changes. The Commission felt it necessary to add the definition of Installation Date, as there has been some confusion among applicants as to when a water heater, central furnace or regulator were actually installed. This definition will allow the Commission to be able to better determine when a rebate application is within the 120 day timeframe in order to be eligible for a rebate. The proposed amendments add that a safety inspection of an eligible installation must be documented with a Form 4. This is currently required by Oklahoma law, but will help the consumer realize that a Form 4 is needed to properly document that the safety inspection was completed. The physical street address of the Commission has changed since the rules were promulgated last. The proposed amendments reflect the new address of the Commission. The proposed amendments state that the Commission may, instead of shall, establish the rebate amount and the minimum energy efficiency factor for an eligible installation. The Commission will always establish a rebate amount, but energy efficiency factors may or may not be a requirement under the program. Regulators do not have an energy efficiency factor and the stricken language in Section 422:10-5-9 is therefore unnecessary.

The rules in Subchapter 15, Manufactured Housing Incentive Program, would be revoked. This program was not effective and this has not been an active program for several years. The Commission is therefore proposing to revoke the entire subchapter.

The rules in Subchapter 22, Media Rebate Program, would be amended to reflect the current, physical street address of the Commission office. As stated previously, the Commission office has moved since the last promulgation of the rules.

CONTACT PERSON:

Daniel Fitzpatrick, Associate Director, (405) 879-9828

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. WATER HEATER REBATE PROGRAM

422:10-1-2. Definitions

The following words and terms used in these rules shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means a consumer who has submitted a complete and timely application.

"Application" means the set of forms prescribed by the Commission for the purpose of applying for and/or assigning a rebate and participating in the rebate program as a propane dealer, including all required supporting documentation.

"Available funds" means the Money available in the Oklahoma LP Gas Research, Marketing and Safety Revolving Fund in the state treasury, consisting of fees charged under O.S. 52 Sec. 420.22 and penalties for the late payment of the fee charged under O.S. 52 Sec. 420.28.

"Commission" means the Oklahoma LP Gas Research, Marketing and Safety Commission.

"Consumer" means a person who is the legal owner of eligible equipment installed in an eligible installation.

"Delivery date" means the date of postmark of a mailed complete and correct application or the date that a hand-delivered complete and correct application is stamped in at the Oklahoma City offices of the Commission.

"Eligible equipment" means a propane-fueled water heater, either a storage-type water heater rated by its manufacturer at not less than 30 gallons water capacity or an instantaneous-type water heater rated by its manufacturer at not less than 50,000 BTU/hour input, that meets the applicable standards of the federal Energy Policy and Conservation Act, as amended (42 United State Code S6291 et seq.) and regulations adopted thereunder (10 Code of Federal Regulations S430.32(d)), is approved and listed by the American Gas Association, and is listed in the most recent edition of the Gas Appliance Manufacturers Association's (GAMA) "Consumer Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment.

"Eligible installation" means an installation of eligible equipment that takes place on real property owned by the applicant and located in this state and that occurs no earlier than the effective date of this rule and no later than the date of termination of the program established under this rule.

"Installation date" means the date on which a Safety Inspection (Form 4) is performed per Oklahoma Liquefied Petroleum Gas Board rules and regulations (Title 420:10-1-15).

"Person" means an individual, sole proprietorship, partnership, corporation or other legal entity.

"Propane" means Liquefied petroleum gas (LPG), as that term is defined in O.S. 52 Sec. 420.21.

"Propane dealer" means a person who:

(A) has been issued a current Class I permit from the Oklahoma LP Gas Administration; or

(B) has been issued a Class X Manager's permit to operate or manage a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and

(C) is a regular supplier or a potential regular supplier of propane to an applicant.

"Safety inspection" means an on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer or a propane dealer's designated agent, for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with the propane water heater rebate program rules and with all applicable LP Gas Administration rules, including Form 4 requirements, and is in safe operating condition.

422:10-1-5. Eligibility

(a) To be eligible for a rebate under this program, a consumer must document, using forms prescribed by the Commission for the purpose, that:

(1) an eligible installation has been performed;

(2) the eligible installation for which application is made either replaced an existing water heater or occurred in new construction; and

(3) a safety inspection of the eligible installation has been performed and documented with a Form 4.

(b) Installations performed on motor vehicles, travel trailers, mobile homes or manufactured homes are not eligible for rebates under this program, except when the installation replaces an existing water heater in a mobile home or manufactured home that is already in permanent residential or commercial use in this state;

(c) No more than one rebate may be paid for each eligible installation.

(d) An applicant may apply for a rebate for any number of eligible installations.

(e) The Commission may limit the total amount of rebates that may be paid to any applicant.

422:10-1-6. Applications

(a) **Forms.** Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the Commission.

(b) **Payment.** The Commission may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind the Commission to approve payment of a rebate to any applicant.

(c) **Priority.** Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications.

(d) **Acceptance.** Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received at the Commission no later than 120 days following the installation date of the eligible installation to be eligible for rebates. Applications may be mailed or hand-delivered to the Oklahoma LP Gas Research, Marketing and Safety Commission, ~~601 W. I-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032~~. 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111. Applications may not be submitted electronically or by facsimile transmission (FAX).

(e) **Installation date.** The date on which a Safety Inspection (Form 4) is performed. Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date.

(f) **Completeness.** Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the commission.

(g) **Incomplete applications.** Applicants have 30 days from the date the Commission sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by the commission within 30 days after notice has been sent, the application shall be void.

422:10-1-9. Rebate amount; minimum efficiency factor

(a) The Commission ~~shall~~ may establish the rebate amount and the minimum energy efficiency factor for an eligible installation. The Commission may change this amount and efficiency factor at any time. If the Commission changes the rebate amount or the minimum energy efficiency factor, an applicant whose application is approved shall receive the amount that is in effect on the delivery date.

(b) In setting the amount of the rebate or the energy efficiency factor, the Commission may consider any or all of the following:

(1) availability of funds;

(2) the effectiveness of the program in increasing propane use;

(3) dealer participation;

(4) consumer acceptance;

(5) administrative cost; and

(6) energy-conservation, energy efficiency, or air-quality benefits.

SUBCHAPTER 5. REGULATOR REBATE PROGRAM

422:10-5-2. Definitions

The following words and terms used in these rules shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means a consumer who has submitted a complete and timely application.

"Application" means the set of forms prescribed by the Commission for the purpose of applying for and/or assigning a rebate and participating in the rebate program as a propane dealer, including all required supporting documentation.

"Available funds" - Money available in the Oklahoma LP Gas Research, Marketing and Safety Revolving Fund in the state treasury, consisting of fees charged under O.S. 52 Sec. 420.27 and penalties for the late payment of the fee charged under O.S. 52 Sec. 420.28.

"Commission" means the Oklahoma LP Gas Research, Marketing and Safety Commission.

"Consumer" means a person who is the legal owner of an eligible regulator installed in an eligible installation.

"Delivery date" means the date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Oklahoma City offices of the Commission.

"Eligible regulator" means a regulator that is U.L. listed and meets all National Fire Protection Association (NFPA) pamphlet No. #58 requirements, including the current and any subsequent editions and any subsequent changes and/or additions to the pamphlet.

"Eligible installation" means an installation of an eligible regulator that takes place on real property owned or rented by the applicant and located in this state and that occurs no earlier than the effective date of this rule and no later than the date of termination of the program established under this rule.

"Installation date" means the date on which a Safety Inspection (Form 4) is performed per Oklahoma Liquefied Petroleum Gas Board rules and regulations (Title 420:10-1-15).

"Person" means an individual, sole proprietorship, partnership, corporation or other legal entity.

"Propane" means Liquefied petroleum gas (LPG), as that term is defined in O.S. 52 Sec. 420.21.

"Propane dealer" means A person who:

(A) has been issued a current Class I permit from the Oklahoma LP Gas Administration; or

(B) has been issued a Class X Manager's permit to operate or manage a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and

(C) is a regular supplier or a potential regular supplier of propane to an applicant.

"Safety inspection" means an on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer or a propane dealer's designated agent, for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with the regulator rebate program rules and with all applicable LP-gas Administration rules, including Form 4 requirements, and is in safe operating condition.

422:10-5-5. Eligibility

(a) To be eligible for a rebate under this program, a consumer must document, using forms prescribed by the Commission for the purpose, that:

(1) an eligible installation has been performed;

(2) the eligible installation for which application is made either replaced an existing regulator that was at least 15 years old, or replaced an unsafe regulator; and

(3) a safety inspection of the eligible installation has been performed and documented with a Form 4.

(b) Installations performed on motor vehicles, motor homes, travel trailers, that are not in permanent residential or commercial use in this state are not eligible for rebates under this program.

(c) No more than one rebate may be paid for each eligible installation.

(d) An applicant may apply for a rebate for any number of eligible installations.

(e) The Commission may limit the total amount of rebates that may be paid to any applicant.

422:10-5-6. Applications

(a) **Forms.** Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the Commission.

(b) **Payment.** The Commission may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind the Commission to approve payment of a rebate to any applicant.

(c) **Priority.** Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications.

(d) **Acceptance.** Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received at the Commission no later than 120 days following the installation date of the eligible installation to be eligible for rebates. Applications may be mailed or hand-delivered to the Oklahoma LP Gas Research, Marketing and Safety Commission, ~~601 W. I-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032~~ 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111. Applications may not be submitted electronically or by facsimile transmission (FAX).

(e) **Installation date.** The date on which a Safety Inspection (Form 4) is performed. Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date.

(f) **Completeness.** Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the commission.

(g) **Incomplete applications.** Applicants have 30 days from the date the commission sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by the commission within 30 days after notice has been sent, the application shall be void.

422:10-5-9. Rebate amount~~; minimum efficiency factor~~

(a) The Commission shall establish the rebate amount for an eligible installation. The Commission may change this amount at any time. If the Commission changes the rebate amount, an applicant whose application is approved will receive the amount that is in effect for the eligible installation at the time of approval of the application.

(b) In setting the amount of the rebate, the Commission may consider any or all of the following:

(1) availability of funds;

(2) the effectiveness of the program in increasing propane use;

(3) dealer participation;

(4) consumer acceptance;

(5) administrative cost; and

(6) public safety awareness

SUBCHAPTER 15. MANUFACTURED HOUSING INCENTIVE PROGRAM [REVOKED]

422:10-15-1. Definitions [REVOKED]

~~The following words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.~~

~~**"Applicant"** means either a manufactured housing retailer or a manufactured housing salesperson who has~~

~~submitted a complete and timely incentive application to the commission.~~

~~**"Application"** means the set of forms prescribed by the commission for the purpose of applying for and participating in the manufactured housing incentive program, including all required supporting documentation.~~

~~**"Assignment"** means the manufactured housing retailer's or salesperson's authorization of the commission to pay an incentive to a propane dealer, as evidenced by completion of the assignment portion of the application.~~

~~**"Commission"** means the Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission.~~

~~**"Date of purchase"** means the date of closing the purchase of an eligible manufactured housing unit, which is the date of the last signature on the purchase contract.~~

~~**"Delivery date"** means the date of postmark of a mailed complete and correct application or the date that a hand delivered complete and correct application is stamped in at the Oklahoma City offices of the Commission.~~

~~**"Eligible equipment"** means propane fueled equipment approved by the Commission which achieves energy conservation and efficiency or improves air quality.~~

~~**"Eligible installation"** means an installation occurring no earlier than the effective date of this rule and no later than the program termination date established under this rule of an eligible manufactured housing unit on real property located in this state.~~

~~**"Eligible manufactured housing unit"** means a new HUD code manufactured home, that is equipped with both a propane fueled central furnace and a propane fueled water heater.~~

~~**"Manufactured housing retailer or salesperson"** means a person who:~~

~~(A) meets the requirements of the Oklahoma Used Motor Vehicle and Parts Act, as specified in O.S. 47, Section 581, as a retailer or salesperson;~~

~~(B) possesses a currently valid certificate of registration from the Oklahoma Used Motor Vehicle and Parts Commission or its successor and any other certification or license required; and~~

~~(C) has completed and submitted the application prescribed by the commission for participation in the manufactured housing incentive program.~~

~~**"Person"** means an individual, sole proprietorship, partnership, corporation or other legal entity.~~

~~**"Program year"** means twelve consecutive calendar months beginning on July 1st.~~

~~**"Propane"** means Liquefied petroleum gas (LPG), as that term is defined in O.S. 52 Sec. 420.21.~~

~~**"Propane dealer"** means a person who:~~

~~(A) has been issued a current Class I permit from the Oklahoma LP Gas Administration; or~~

~~(B) has been issued a Class X Manager's permit to operate or manage a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and~~

~~(C) is a regular supplier or a potential regular supplier of propane to a purchaser of an eligible manufactured housing unit.~~

~~**"Safety inspection"** means an on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer or a propane dealer's designated agent, to verify compliance with all applicable safety requirements, as specified in OAC 422:10-1-2 (relating to Definitions).~~

422:10-15-2. Establishment; duration [REVOKED]

~~The manufactured housing incentive program is hereby established on the effective date of this rule. The Commission may terminate this incentive program at any time.~~

422:10-15-3. Incentive amount; limitation [REVOKED]

~~(a) The commission shall establish the manufactured housing incentive amount. The commission may change this amount at any time. If the commission changes the incentive amount, an applicant whose application is approved shall receive the amount that is in effect on the delivery date.~~

~~(b) In setting the amount of the incentive, the commission may consider any or all of the following:~~

~~(1) availability of funds;~~

~~(2) the effectiveness of the program in increasing propane use;~~

~~(3) manufactured housing retailer and salesperson participation;~~

~~(4) administrative cost; and~~

~~(5) increased public awareness of energy conservation, energy efficiency, or air quality benefits.~~

~~(c) The commission shall pay no more than one manufactured housing incentive for each eligible manufactured housing unit.~~

~~(d) The commission may limit either the number of incentives or the total dollar amount of incentives, or both, that may be paid to any applicant.~~

422:10-15-4. Eligibility [REVOKED]

~~(a) To be eligible for an incentive under this program, a manufactured housing retailer or salesperson must document, using forms prescribed by the commission for the purpose, that there has been a purchase of an eligible manufactured housing unit, that a propane fueled water heater and furnace have been installed, and that a safety inspection has been completed on the eligible installation.~~

~~(b) No applicant shall be eligible for an incentive unless the delivery date of the application is no later than 120 days following the date of purchase of the manufactured housing unit.~~

422:10-15-5. Application procedure [REVOKED]

~~(a) A manufactured housing retailer or salesperson shall apply for incentives on forms prescribed for that purpose by the commission.~~

~~(b) Applicants shall file a separate application for incentive for each eligible manufactured housing unit.~~

~~(c) The commission shall consider applications on a first-come, first-served basis according to the delivery date of each application received. If the commission receives more than one application for incentive for the same eligible manufactured housing unit, any incentive paid shall be paid based on the earliest delivery date.~~

~~(d) The commission shall accept applications no earlier than October 1, 1998, and no later than the date the program is terminated by order of the commission. Applicants shall mail or hand-deliver applications to the Oklahoma LP Gas Research, Marketing and Safety Commission, 601 W 1-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032. Applicants shall not submit applications electronically or by facsimile transmission (FAX).~~

~~(e) Applications shall pertain to purchases of eligible manufactured housing units made no earlier than October 1, 1998, and no later than the program termination date.~~

~~(f) Applicants shall furnish completely and correctly all information required on the official manufactured housing incentive application. The commission shall not consider an application complete until the commission has received all forms and all required supporting documentation, including documentation of the safety inspection.~~

~~(g) The commission shall notify an applicant in writing that the applicant's application is incomplete or incorrect. Applicants shall have 30 days from the date of the postmark on the commission's notice to correct any errors or omissions on the application. If the applicant fails to file the requested information with the commission within this 30-day period, the application shall be void.~~

~~(h) The safety inspection required in 422:10-15-4(a) shall occur no earlier than the effective date of this rule and no later than the program termination date. The safety inspection shall occur before an incentive can be issued.~~

422:10-15-6. Payment of rebate [REVOKED]

~~(a) The commission may approve payment of an incentive to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive incentives under this program, and the commission's receipt of a complete and correct application does not bind the commission to approve or the commission to make payment of an incentive to any applicants.~~

~~(b) Incentive amounts assigned shall be those in effect on the delivery date of each application.~~

422:10-15-7. Conditions of Receipt of Rebate [REVOKED]

~~The application forms prescribed by the Commission shall include conditions that the consumer agrees:~~

~~(1) to practice environmentally sound operating principles;~~

~~(2) not to modify the equipment for a period of five years from the date of installation in any way that would materially impair the equipment's performance with respect to energy conservation, energy efficiency or air quality;~~

~~(3) not to remove the equipment from this state, and~~

~~(4) not to remove the eligible equipment permanently from service for a period of five years from the date of installation; and~~

~~(5) to allow Commission inspection of the installation pursuant to Sec. 422:10-15-9 (relating to Compliance)~~

422:10-15-8. Assignment of incentive [REVOKED]

~~(a) The commission may authorize payment of an incentive to a propane dealer only by assignment from a manufactured housing retailer or salesperson.~~

~~(b) A manufactured housing retailer or salesperson may apply to assign an incentive to a propane dealer by completing and submitting to the commission the portion of the application form relating to that purpose.~~

422:10-15-9. Compliance [REVOKED]

~~(a) Participating manufactured housing retailers and salespersons shall comply with the following requirements for sales under this program:~~

~~(1) Selection of a propane dealer or propane equipment installer shall be solely the responsibility of the purchaser of an eligible manufactured housing unit, and shall be made solely at the discretion of the purchaser.~~

~~(2) A participating manufactured housing retailer or salesperson shall not recommend or endorse or agree to recommend or endorse any particular propane dealer in exchange for any form of consideration from either the participant or the propane dealer or any other person.~~

~~(3) A participating manufactured housing retailer or salesperson shall not recommend or require, directly or indirectly, that a purchaser engage or employ a particular propane dealer or a propane equipment installer.~~

~~(4) A participating manufactured housing retailer or salesperson shall not submit false information or otherwise violate any manufactured housing incentive program rule.~~

~~(b) Participating propane dealers shall comply with the following requirements for sales under this program.~~

~~(1) Selection of a propane dealer or propane equipment installer shall be solely the responsibility of the purchaser of an eligible manufactured housing unit, and shall be made solely at the discretion of the purchaser.~~

~~(2) A participating propane dealer shall not agree to any contract with any manufactured housing retailer or salesperson to provide exclusive installation of propane fuel systems or appliances to purchasers from that retailer or salesperson.~~

~~(3) A participating propane dealer shall not agree with any manufactured housing retailer or salesperson to attempt to restrict other propane dealers in the area from participating in the market for providing fuel systems or appliance installation and service for purchasers of eligible manufactured housing units.~~

~~(4) A participant propane dealer shall not submit false information on any documentation relating to the manufactured housing incentive program, or pertaining to the assignment of a manufactured housing incentive, or otherwise violate any manufactured housing incentive program rule.~~

~~(c) The commission may perform periodic inspections of the premises of any participating manufactured housing retailer or salesperson who has applied for an incentive and any participating propane dealer who has installed an eligible installation that has been the subject of an application, to ensure that such participants and dealers are in compliance with the provisions of the manufactured housing incentive program rules.~~

~~(d) Upon reasonable notice and at any reasonable time, an inspector, employee or agent of the commission may enter premises where an eligible installation has taken place, to verify compliance with the requirements of the manufactured housing incentive program, the consumer rebate program, and/or commission LP gas safety rules. The commission may perform such inspection prior to the payment of an incentive.~~

~~(e) If the commission verification inspection of the installation indicates that the installation is not an eligible installation, the commission has the authority to disallow an incentive or order that an incentive be refunded.~~

422:10-15-10. Complaints [REVOKED]

~~(a) Subject to the limitation set forth in subsection (b) of this section, any person may file a complaint alleging violations of the manufactured housing incentive program rules by a manufactured housing retailer, salesperson, propane dealer or another person. Complaints shall be in writing, shall set forth the specific facts alleged to constitute the violation, and shall be mailed or hand-delivered to the Commission at the address set forth in 422:10-15-5 (relating to Application Procedure) of this title.~~

~~(b) The commission shall not entertain complaints or resolve disputes concerning competing applications for the same eligible manufactured housing unit or disputes between manufactured housing retailers and salespeople concerning the person to whom the incentive should be paid.~~

422:10-15-11. Penalties [REVOKED]

~~(a) Any person who violates manufactured housing incentive program rules is subject to civil penalties prescribed under O.S. 52, Section 420.8. Violation of any of the listed prohibitions could result in the participant's being barred from the incentive program for the remainder of the program.~~

~~(b) Violations of any rule in this chapter by a manufactured housing retailer or salesperson may result in a referral by the commission to the Oklahoma Used Motor Vehicle and Parts Commission or its successor for disciplinary action against the certification held by the violator.~~

~~(c) Violation of any of the manufactured housing incentive program rules may be considered cause for disciplinary action against a licensed propane dealer.~~

~~(d) The commission director may suspend or exclude any person from participation in the manufactured housing incentive program if the commission director finds that person to have violated any commission rule or provisions.~~

~~(e) The commission director shall inform any participant of a decision to suspend or exclude the participant from the program. (f) An applicant has 30 days from the date of postmark on the commission director's notice of suspension or ineligibility to file a written appeal of the suspension or declaration of ineligibility to the commission. The commission's decisions with respect to such appeals are final.~~

SUBCHAPTER 20. CENTRAL FURNACE REBATE PROGRAM

422:10-20-2. Definitions

The following words and terms used in these rules shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means a consumer who has submitted a complete and timely application.

"Application" means the set of forms prescribed by the Commission for the purpose of applying for and/or assigning a rebate and participating in the rebate program as a propane dealer, including all required supporting documentation.

"Available funds" means the money available in the Oklahoma LP Gas Research, Marketing and Safety Revolving Fund in the state treasury, consisting of fees charged under O.S. 52 Sec. 420.22 and penalties for the late payment of the fee charged under O.S. 52 Sec. 420.28.

"Commission" means the Oklahoma LP Gas Research, Marketing and Safety Commission.

"Consumer" means a person who is the legal owner of eligible equipment installed in an eligible installation.

"Delivery date" means the date of postmark of a mailed complete and correct application or the date that a hand-delivered complete and correct application is stamped in at the Oklahoma City offices of the Commission.

"Eligible equipment" means a self-contained, propane gas burning appliance for heating air by transfer of heat of combustion through metal to the air and designed to supply heated air through ducts to spaces remote from or adjacent to the appliance location.

"Eligible installation" means an installation of eligible equipment that takes place on real property owned by the applicant and located in this state and that occurs no earlier than the effective date of this rule and no later than the date of termination of the program established under this rule.

"Installation Date" means the date on which a Safety Inspection (Form 4) is performed per Oklahoma Liquefied Petroleum Gas Board rules and regulations (Title 420:10-1-15).

"Person" means an individual, sole proprietorship, partnership, corporation or other legal entity.

"Propane" means Liquefied petroleum gas (LPG), as that term is defined in O.S. 52 Sec. 420.21.

"Propane dealer" means a person who:

(A) has been issued a current Class I permit from the Oklahoma LP Gas Administration; or

(B) has been issued a Class X Manager's permit to operate or manage a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and

(C) is a regular supplier or a potential regular supplier of propane to an applicant.

"Safety inspection" means an on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer or a propane dealer's designated agent, for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with the central furnace rebate program rules and with all applicable LP Gas Administration rules, including Form 4 requirements, and is in safe operating condition.

422:10-20-5. Eligibility

(a) To be eligible for a rebate under this program, a consumer must document, using forms prescribed by the Commission for the purpose, that:

(1) an eligible installation has been performed;

(2) the eligible installation for which application is made either replaced an existing central furnace or occurred in new construction; and

(3) a safety inspection of the eligible installation has been performed and documented with a Form 4.

(b) Installations performed on motor vehicles, travel trailers, mobile homes or manufactured homes are not eligible for a rebate under this program, except when the installation replaces an existing central furnace in a mobile home or manufactured home that is already in permanent residential or commercial use in this state;

(c) No more than one rebate may be paid for each eligible installation.

(d) An applicant may apply for a rebate for any number of eligible installations.

(e) The Commission may limit the total amount of rebates that may be paid to any applicant.

422:10-20-6. Applications

(a) **Forms.** Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the Commission.

(b) **Payment.** The Commission may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind the Commission to approve payment of a rebate to any applicant.

(c) **Priority.** Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications.

(d) **Acceptance.** Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received at the Commission no later than 120 days following the installation date of the eligible installation to be eligible for rebates. Applications may be mailed or hand-delivered to the Oklahoma LP Gas Research, Marketing and Safety Commission, ~~601 W. I-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032.~~ 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111. Applications may not be submitted electronically or by facsimile transmission (FAX).

(e) **Installation date.** The date on which a Safety Inspection (Form 4) is performed. Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date.

(f) **Completeness.** Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the commission.

(g) **Incomplete applications.** Applicants have 30 days from the date the Commission sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by the commission within 30 days after notice has been sent, the application shall be void.

422:10-20-9. Rebate amount; minimum efficiency factor

(a) The Commission ~~shall~~ may establish the rebate amount and the minimum energy efficiency factor for an eligible installation. The Commission may change this amount and efficiency factor at any time. If the Commission changes the rebate amount or the minimum energy efficiency factor, an applicant whose application is approved shall receive the amount that is in effect on the delivery date.

(b) In setting the amount of the rebate or the energy efficiency factor, the Commission may consider any or all of the following:

(1) availability of funds;

(2) the effectiveness of the program in increasing propane use;

(3) dealer participation;

(4) consumer acceptance;

(5) administrative cost; and

(6) energy-conservation, energy efficiency, or air-quality benefits.

SUBCHAPTER 22. MEDIA REBATE PROGRAM

422:10-22-5. Application

(a) **Forms.** Application for a rebate shall be made by a propane dealer on forms prescribed for that purpose by the Commission.

(b) **Payment.** The Commission may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind the Commission to approve payment of a rebate to any applicant.

(c) **Priority.** Applications shall be considered on a first-come, first-served basis according to the date of receipt of complete and correct applications.

(d) **Acceptance.** Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received at the Commission no later than 60 days following the date of the eligible media purchase to be eligible for rebates. Applications may be mailed or hand-delivered to the Oklahoma LP Gas Research, Marketing and Safety Commission, ~~601 W. I-44 Service Road, Suite C, Oklahoma City, Oklahoma 73118-6032~~ 6412 N. Santa Fe Ave., Suite C, Oklahoma City, Oklahoma 73116-9111. Applications may not be submitted electronically or by facsimile transmission (FAX).

(e) **Media purchase date.** Applications must pertain to eligible media purchases made no earlier than the effective date of this rule and not later than the program termination date.

(f) **Completeness.** Applicants must furnish completely and correctly all information required on the official media rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the commission.

(g) **Incomplete applications.** Applicants have 30 days from the date the Commission sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by the commission within 30 days after notice has been sent, the application shall be void.

[OAR Docket #08-1108; filed 6-2-08]

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

[OAR Docket #08-1109]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission; Pursuant to O.S. 52, Section 420.24.
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SUPERSEDED EMERGENCY ACTIONS:
n/a.
INCORPORATIONS BY REFERENCE:
n/a.
ANALYSIS:
The proposed amendments in this Chapter would correct the spelling of a word to comply with the statutes. The proposed rule amendment would also add the language "or his or her designee" following Executive Director, which would allow the Executive Director to designate a person in his/her absence to perform the particular function as stated.
CONTACT PERSON:
Daniel Fitzpatrick, Associate Director, (405) 879-9828

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 3. AUDITS AND INVESTIGATIONS

422:15-3-1. Inspection of records

(a) Upon written request from the Commission, a ~~load~~ loading rack operator or importer shall make available for inspection records of LP Gas operations necessary to determine whether the ~~load~~ loading rack operator or importer has remitted the assessment due to the Commission. Such written request shall identify the records sought, shall designate a time and place for production of the records, and shall be served by certified mail or as otherwise allowed by law.

(b) If a ~~load~~ loading rack operator or importer fails to comply with a request for inspection of records or if circumstances otherwise warrant, the Executive Director, or his or her designee, with the assistance of staff, shall apply to the Commission for an Order of Audit and Investigation and shall present to the Commission evidence in support thereof.

(c) After review of the application and supporting evidence, the Commission shall issue an Order of Audit and Investigation upon a determination by a majority of the Commission that just cause exists.

(d) The Order of Audit and Investigation shall set forth a summary of the evidence in support of the determination of just cause. The Order shall command the person or entity to whom it is directed to make available for inspection, examination, and copying the records of LP gas operations maintained pursuant to the Act and shall authorize a representative of the Commission to enter an office, premises or place of business of a loading rack operator or importer to inspect, examine, and obtain copies of the LP gas operation records.

SUBCHAPTER 5. ASSESSMENT HEARINGS

422:15-5-1. Petition and notice

The Executive Director, or his or her designee, with the assistance of staff, shall petition the Commission for an Order of Assessment. The petition shall include a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. The petition shall satisfy the requirements of the APA. The petition shall be served on the parties by certified mail, personal service, or other such means as may be permitted in the Oklahoma Pleading Code. The parties shall be provided thirty (30) days notice of an Assessment Hearing.

422:15-5-3. Subpoenas

(a) Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Executive Director, or his or her designee, upon request by a party. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.

(b) A party may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Commission may, in its discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) Motions to quash subpoenas may be filed with the Commission and will be ruled on by the Commission.

[OAR Docket #08-1109; filed 6-2-08]

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

[OAR Docket #08-1063]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:15-1-2. Definitions [AMENDED]
Subchapter 3. Consumer Rights
450:15-3-20.1. Consumer rights regarding confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
450:15-3-20.2. Validity of written consent [NEW]
450:15-3-60. Right to access designated record set from facilities operated by ODMHSAS [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-108 and 2-109.
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 15 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, conducts investigations and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts.

"Consumer committee" or **" Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse services.

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports or peer review documents; and

(ii) Information compiled in anticipation of litigation.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contracts to provide the physical custody, detention or treatment of consumers.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person. 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.

"Licensed mental health professional" or **"LMHP"** means:

(A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;

(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violation.

"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 who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that:

(A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(B) results in or creates the risk of injury to a consumer; or

(C) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and which meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§ 1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, which is certified pursuant to 43 O.S. § 3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" refers to manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sexual abuse" includes:

(A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;

(B) oral, anal or vaginal penetration of a consumer by staff;

(C) the anal or vaginal penetration of a consumer by staff with any other object; or

(D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or

(E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer includes:

(A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or

(B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Treatment Advocate" is a family member or other concerned individual designated by a consumer to participate in

treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-20.1. Consumer rights regarding confidentiality of mental health and drug or alcohol abuse treatment information

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the consumer shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release. Nothing in this section shall prohibit disclosure of information as required in 22 O.S. § 1175.

(b) A consumer or his or her legally authorized representative shall have the right to request access to the consumer's own mental health and drug or alcohol abuse treatment information as provided for in 450:15-3-60.

(c) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:

(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative except as otherwise permitted by state and federal law;

(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and

(6) a procedure by which to notify a consumer of his or her right to confidentiality.

(d) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:

(1) the name of the person, program or entity permitted to make the disclosure;

(2) the name or title of the person or the name of the organization to which disclosure is to be made;

(3) the name of the consumer whose records are to be released;

(4) a description of the information to be disclosed;

(5) the purpose for the disclosure;

(6) the signature of the consumer or the consumer's legally authorized representative;

(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;

(8) a statement indicating that treatment services are not contingent upon or influenced by the consumer's decision to permit the information release;

(9) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;

(10) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;

(11) a confidentiality notice which complies with state and federal law; and

(12) a statement in bold type stating "The information authorized for release may include records which may indicate the presence of a communicable or non-communicable disease."

(e~~c~~) Unless an exception applies, all facilities operated by ODMHSAS will provide consumers with a copy of the ODMHSAS Notice of Privacy Practices.

(f) Compliance with 450:15-3-20.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

450:15-3-20.2. Validity of written consent

(a) A consumer's written consent for the release of information shall be considered valid only if the following conditions have been met and documented in writing:

(1) The consumer is informed, in a manner that assures his or her understanding, of the specific type(s) of information that has been requested, and the period of time for which the information has been requested;

(2) The consumer is informed of the purpose or need for the information;

(3) Services are not contingent upon the consumer's decision concerning authorization for the release of information; and

(4) The consumer gives his or her consent freely and voluntarily.

(b) Compliance with 450:15-3-20.2 shall be determined by a review of the consent for disclosure; and consumer interviews.

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION, FACILITIES OPERATED BY ODMHSAS

450:15-3-60. Right to access designated record set from facilities operated by ODMHSAS

~~(a) A consumer has a right to access his or her health information in the designated record set from facilities operated by ODMHSAS.~~

~~(b)~~ The process for requesting access to read or request copies of the designated record set from ODMHSAS facilities is as follows:

(1) The consumer shall obtain a Consent for Release of Confidential Information form from the facility's health information department, complete it and submit it to the facility's health information department director or designee. If the consumer requests a copy from the designated record set, the facility may charge the consumer a fee of twenty-five cents ($0.25) per page for copying the information and the actual mailing expenses when applicable.

(2) If the facility does not possess the information the consumer requests but knows where it is maintained, the health information department shall inform the consumer where to direct the request.

(3) The health information department shall coordinate the request for access to the designated record set with the person in charge of the care and treatment of the consumer.

[OAR Docket #08-1063; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 16. STANDARDS AND CRITERIA FOR COMMUNITY RESIDENTIAL MENTAL HEALTH FACILITIES

[OAR Docket #08-1064]

RULEMAKING ACTION:
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RULES:
Subchapter 1. General Provisions
450:16-1-2. Definitions [AMENDED]
450:16-1-4, Annual review of standards and criteria [REVOKED]
Subchapter 5. Services
Subchapter 17. Security and Disclosure of Resident Information
450:16-17-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
450:16-17-4. Validity of written consent [REVOKED]
Subchapter 21. Personnel, Staffing and Training
450:16-21-4. Residential care staff training requirement, administrator [AMENDED]
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Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101 and 3-315.
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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 16 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:16-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a caretaker responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a caretaker responsible for providing these services to a resident.

"ADL" means activities of daily living.

"Administrator" means the person who is in charge of a community residential mental health facility and who devotes at least one-third (1/3) of his or her full working time to on-the-job supervision of the community residential mental health facility.

"Adults who have a serious mental illness" are persons eighteen (18) years of age or older who meet the following criteria:

(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; AND

(B) Based on a client assessment scale, has at least moderate to severe impairment in the following areas:

(i) Feeling, mood and affect,
(ii) Thinking,
(iii) Family relationships,
(iv) Interpersonal skills,
(v) Role performance,
(vi) Socio-legal, or
(vii) Self care/basic needs.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"CMHC" means community mental health center.

"Continuity of care agreements" means an agreement between the community residential mental health facility and providers of critical and comprehensive community based behavioral health services, including but not limited to a provider of inpatient behavioral health care and a local provider of community-based behavioral health services. Continuity of care agreements shall specify the responsibility of each entity related to assuring continuous and coordinated care on behalf the residents.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnosis in a resident.

"Corporal punishment" means any physical punishment including, but not limited to punching, slapping, kicking, spanking, or whipping.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the community residential mental health facility or the routine care of a resident. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to residents, staff and visitors; medication errors; residents that are absent without leave (AWOL); neglect or abuse of a resident; fire; unauthorized disclosure of information; damage to or theft of property belonging to a resident or the community residential mental health facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct care staff" means any staff member who, in the performance of his or her routine duties has contact with residents and is required to meet the training requirements for community residential mental health staff as listed in the "Standards and Criteria for Community Mental Health Residential Facilities".

"Enhanced residential care facility" means a community residential mental health facility meeting all statutory and regulatory requirements of the ODMHSAS and OSDH and which specifically serves only "Adults who have a serious mental illness" who cannot be accommodated in a non-enhanced community residential mental health facility.

"General psychosocial rehabilitation program" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychosocial rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Health care services" means services provided by health care professionals and includes, but is not limited to dentists, optometrists, and podiatrists.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, client profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and clients that provide the ability to monitor the course of client services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, community residential mental health facilities, prevention

programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Medication administration technician course" is an educational program from an institute of higher learning which has been reviewed and approved by the OSDH pursuant to 310:680-11-1 and affords the student a certificate of training in the administration of medication and measuring and documenting vital signs.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means Oklahoma State Department of Health.

"Personal care" means assistance with meals, dressing, movement, bathing, or other personal needs, or general supervision of the physical and mental well-being of a person who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his or her person, whether or not a guardian has been appointed for such person.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§ 1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, is certified pursuant to 43 O.S. § 3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Socialization activities" means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills, and can include client education.

"Special need (persons with)" means any 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 or hard of hearing, 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.

"Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident prepared with the participation of the resident, the mental health or drug or alcohol services case manager assigned to the resident and the administrator of facility, or his or her designee. Supportive assistance shall not include medical service.

"Volunteer" means any individual providing direct services to residents, and who is not on the facility's payroll, but fulfills a defined role within the facility. This definition does not include special entertainment/visiting groups.

450:16-1-4. Annual review of standards and criteria [REVOKED]

~~The standards and criteria shall be reviewed on an annual basis.~~

SUBCHAPTER 17. SECURITY AND DISCLOSURE OF RESIDENT INFORMATION

450:16-17-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60.

~~(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or~~

~~drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:~~

~~(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:~~

~~(1) the name of the person or program permitted to make the disclosure;~~

~~(2) the name or title of the person or the name of the organization to which disclosure is to be made;~~

~~(3) the name of the consumer whose records are to be released;~~

~~(4) a description of the information to be disclosed;~~

~~(5) the specific reason for the disclosure;~~

~~(6) the signature of the consumer or the consumer's legally authorized representative;~~

~~(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;~~

~~(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;~~

~~(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;~~

~~(10) a confidentiality notice which complies with state and federal law; and~~

~~(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."~~

~~(d) Compliance with 450:16-17-3.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.~~

450:16-17-4. Validity of written consent [REVOKED]

~~(a) A resident's written consent for the release of information shall be considered valid only if the following conditions have been met and documented in writing:~~

~~(1) The resident is informed, in a manner that assures his or her understanding, of the specific type(s) of information that has been requested, and the period of time for which the information has been requested;~~

~~(2) The resident is informed of the purpose or need for the information;~~

~~(3) Services are not contingent upon the resident's decision concerning authorization for the release of information; and~~

~~(4) The resident gives his or her consent freely and voluntarily.~~

~~(b) Compliance with 450:16-17-4 shall be determined by a review of the consent for disclosure; and resident interviews.~~

SUBCHAPTER 21. PERSONNEL, STAFFING AND TRAINING

450:16-21-4. Residential care staff training requirements, administrator

(a) The administrator of the RCF shall ~~annually~~ receive a total of twenty-four (24) hours of training credit annually, provided by an Oklahoma institution of higher learning or ODMHSAS. This training will consist of eight (8) hours of mental health-related subjects, including at least one (1) hour of training regarding co-occurring substance use disorders and intervention strategies; three (3) of the eight (8) hours of mental-health related training must be in techniques and philosophies within a training curriculum that has been pre-approved by the Director of DMHSAS Provider Certification which addresses appropriate non-violent intervention and potentially aggressive interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention; and, sixteen (16) hours

required by the OSDH, in addition to CPR (cardiopulmonary resuscitation), and first aid provided by certified instructors.
(b) Compliance with 450:16-21-4 shall be determined by a review of the administrator's personnel file.

[OAR Docket #08-1064; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

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RULES:
Subchapter 1. General Provisions
450:17-1-2. Definitions [AMENDED]
450:17-1-4. Annual review of standards and criteria [REVOKED]
Subchapter 7. Facility Clinical Records
450:17-7-10. Progress Notes [AMENDED]
Subchapter 9. Consumer Records and Confidentiality
450:17-9-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
Subchapter 21. Staff Development and Training
450:17-21-3. Annually required in-service training for all employees [AMENDED]
450:17-21-5. CAPE training [REVOKED]
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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 17 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.

CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

"Adults who have a serious mental illness" are persons eighteen (18) years of age or older who meet the following criteria:

(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; and

(B) Based on a client assessment scale, has moderate impairment in at least four, severe impairment in two or extreme impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Family relationships;
(iv) Interpersonal skills;
(v) Role performance;
(vi) Socio-legal; or
(vii) Self care and basic needs; or

(C) Has duration of illness of at least one year and at least moderate impairment in two, or severe impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Family relationships;
(iv) Interpersonal skills;
(v) Role performance;
(vi) Socio-legal; or

(vii) Self care and basic needs.

"Case management services" means planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a treatment plan developed with and approved by the consumer and qualified staff. "Children who have a serious emotional disturbance" are persons under eighteen (18) years of age who meet the following criteria:

(A) Possess a diagnosable, serious disorder under DSM-IV such as pervasive developmental disorder, childhood schizophrenia, schizophrenia of adult-type manifesting in adolescence, conduct disorder, affective disorder, other disruptive behaviors, or other disorders with serious medical implications such as eating disorders, or persistent involvement with alcohol or drugs; and

(B) Based on a client assessment scale, has moderate impairment in at least four, severe impairment in two, or extreme impairment in one in the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Substance use;
(iv) Family relationships;
(v) Interpersonal skills;
(vi) Role performance;
(vii) Socio-legal;
(viii) Self care and basic needs; or
(ix) Caregiver resources; or

(C) Has duration of illness for at least one year and has a functioning level of moderate impairment in at least two, or severe impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Family relationships;
(iv) Interpersonal skills;
(v) Role performance;
(vi) Socio-legal; or
(vii) Self care and basic needs.

"Chronic Homelessness" refers to an individual with a disabling condition who has either: (a) been continuously homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Creating A Positive Environment" or **"CAPE"** means a specific curriculum designed by ODMHSAS to train staff in verbal and non-verbal communication techniques in the management of selected and potentially problematic behaviors and to foster attitudes that promote the consumer's dignity and self-esteem in facility treatment settings.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnoses in a consumer.

"Co-occurring disorder capability' means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are mentally ill.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral ~~provided in a~~ to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Facility" means community mental health center.

"General psychiatric rehabilitation" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Hard of hearing" is any degree of hearing loss which interferes with the individual's ability to communicate without some form of specialized accommodation which may include, but not be limited to: hearing aids, sign language interpreters, assistive listening devices, or communication through speech reading. The hearing loss of those individuals needing special services may range from mild, 25 to 45 decibels in the better functioning ear, to profound, 90 decibels or more.

"Historical timeline" means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Homebased services to children and adolescents" means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Licensed mental health professional" or **"LMHP"** means:

(A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;

(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means a physician who is a graduate of a school of medicine or osteopathy and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer and documentation of the consumer's response related to the intervention plan.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Screening"means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Serious Emotional Disturbance" or **"SED"** means a child from birth to eighteen years of age who does not have a primary diagnosis of a developmental disorder(s) and meets the following criteria:

(A) possesses a diagnosable, serious disorder under DSM-IV such as pervasive developmental disorder, childhood schizophrenia, schizophrenia of adult-type manifesting in adolescence, conduct disorder, affective disorder, other disruptive behaviors, or other disorders with serious medical implications such as eating disorders, or persistent involvement with alcohol or drugs; and

(B) has a functioning level which includes: a moderate impairment in at least four; severe impairment in two; or extreme impairment in one of the following areas; OR has an illness with a duration of at least one year and has a functioning level of moderate impairment in at least two; or a severe impairment in one of the following areas:

(i) Feeling, mood and affect include: an uncontrolled emotion that is clearly disruptive in its effects on other aspects of a child's life; frustration, anger, loneliness and boredom persist beyond the precipitating situation; and symptoms of distress are pervasive and do not respond to encouragement or reassurance;

(ii) Thinking processes include: daily life is disrupted due to impaired thoughts and thinking

process; an inability to distinguish between fantasy and reality exists; and unusual thoughts or attachments to objects are present;

(iii) Substance use includes: frequent difficulties due to substance use and repeated use of substances causing difficulty at home or in school;

(iv) Family situation includes: disruption of family relationships or family does not function as a unit and experiences frequent turbulence; relationships that exist are psychologically devastating; the child does not have family support and is abused or neglected;

(v) Interpersonally the child will: have a severe inability to establish or maintain a personal social support system; lacks close friends or group affiliations; is socially isolated; and lacks age appropriate social skills;

(vi) Role performance consists of: frequent disruption of role performance and the individual is unable to meet usual expectations; has persistent behavior problems; and has failure, or been suspended or expelled from school;

(vii) Socio-legal issues include: inability to maintain conduct within the limits prescribed by law, rules and strong mores; shows little concern for consequences of actions; and delinquent acts or frequent contact with law enforcement exists;

(viii) Self care and basic needs are such that the ability to care for self is considerably below expectation; or

(ix) Caregiver resources are: the caregiver has difficulties in providing for the child's basic needs; or the developmental needs are such that there is a negative impact on the child's level of functioning.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S. § 3-302(1)].

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"Special need, persons with" means any 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 or hard of hearing, 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.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

"Trauma informed " means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides direct services and fulfills a defined role within the program and includes interns and practicum students.

450:17-1-4. Annual review of standards and criteria [REVOKED]

~~This chapter shall be reviewed annually by the ODMH SAS.~~

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:17-7-10. Progress Notes

(a) Progress notes shall chronologically describe the services provided, the consumer's response to the services provided and the consumer's progress in treatment.

(b) Progress notes, except for in PSR programs, shall address the following:

(1) Date;

(2) Person(s) to whom services were rendered;

(3) Start and stop time for each timed treatment service;

(4) Integrated service plan ~~problems~~ needs, goals and/or objectives addressed;

(5) Type of Service provided;

(6) Progress or lack of progress made in treatment as it relates to service plan ~~problems~~ needs, goals and/or objectives;

(7) Consumer's response, and family's response when applicable, to the treatment services provided;

(8) Any new ~~problem~~ need(s), goals and/or objectives identified during the treatment service;

(9) Signature of the service provider; and

(10) Credentials of service provider.

(c) Progress notes for PSR programs shall address the following:

(1) Date(s) attended during the week;

(2) Start and stop time(s) for each day attended;

(3) Specific goal(s) and/or objectives addressed during the week (these must be identified on the service plan);

(4) Type of skills training provided during the week;

(5) Consumer satisfaction with staff intervention(s);

(6) Progress made toward goals and objectives;

(7) Any new needed supports identified during the week;

(8) Signature of the psychiatric rehabilitation practitioner; and

(9) Credentials of the psychiatric rehabilitation practitioner.

(d) Progress notes shall be documented according to the following time frames:

(1) Outpatient staff must document each visit or transaction including missed appointments;

(2) Community living program staff shall complete a summary note monthly identifying the name of the person served and the day(s) the person received the service;

(3) Inpatient: nursing service is to document on each shift. Each member of the treatment team shall write a weekly progress note for the first two months and monthly thereafter; and

(4) PSR staff must maintain a daily, member sign-in/sign-out record of member attendance, and shall write a progress note daily or a summary progress note weekly.

(e) Compliance with 450:17-7-10 shall be determined by a review of clinical records.

SUBCHAPTER 9. CONSUMER RECORDS AND CONFIDENTIALITY

450:17-9-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60.

~~(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:~~

~~(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:~~

~~(1) the name of the person or program permitted to make the disclosure;~~

~~(2) the name or title of the person or the name of the organization to which disclosure is to be made;~~

~~(3) the name of the consumer whose records are to be released;~~

~~(4) a description of the information to be disclosed;~~

~~(5) the specific reason for the disclosure;~~

~~(6) the signature of the consumer or the consumer's legally authorized representative;~~

~~(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;~~

~~(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;~~

~~(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the~~

~~consent to release in writing and a description of how the patient may do so;~~

~~(10) a confidentiality notice which complies with state and federal law; and~~

~~(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."~~

~~(d) Compliance with 450:17-9-1.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.~~

SUBCHAPTER 21. STAFF DEVELOPMENT AND TRAINING

450:17-21-3. Annually required in-service training for all employees

(a) In-service presentations shall be conducted each calendar year and are required for all employees on the following topics:

(1) Fire and safety;

(2) AIDS and HIV precautions and infection control;

(3) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;

(4) Confidentiality;

(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; and

(6) Facility policy and procedures;

(7) Cultural Competence; ~~and,~~

(8) Co-occurring disorder competency and treatment principles~~.~~ ;

(9) Trauma informed; and

(10) Age and developmentally appropriate trainings, where applicable.

(b) All clinical staff shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within three (3) months of being hired with annual updates thereafter.

(c) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. An employee shall not provide direct care services to consumers until completing this training.

(d) The training curriculum for 450:17-21-3 (b) and (c) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.

(e) Compliance with 450:17-21-3 shall be determined by a review of in-service training records; personnel records; and other supporting written information provided.

450:17-21-5. CAPE training [REVOKED]

~~(a) The CMHC shall require all persons providing direct clinical services have training in Creating A Positive Environment (CAPE) with annual updates within six (6) months of being hired.~~

~~(b) In lieu of CAPE, a CMHC may petition DMHSAS Provider Certification for approval to substitute CAPE with a different curriculum that must be published, have similar learning objectives, and incorporate similar number of hours required for staff training. Such petition will have to be approved in writing prior to conducting of any training pursuant to this provision.~~

~~(c) Compliance with 450:17-21-5 shall be determined by a review of staff training records and other supporting written information.~~

[OAR Docket #08-1065; filed 5-27-08]

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

[OAR Docket #08-1066]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:18-1-2. Definitions [AMENDED]
450:18-1-6. Annual review of standards and criteria [REVOKED]
Subchapter 5. Organizational and Facility Management
450:18-5-3.2. Standards for food service [AMENDED]
Subchapter 7. Consumer Records
450:18-7-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
Subchapter 13. Substance Abuse Treatment Services
450:18-13-21. Outpatient services [AMENDED]
450:18-13-42. ervice requirements [AMENDED]
450:18-13-141. Adult residential treatment for consumers with co-occurring disorders [AMENDED]
450:18-13-201. Halfway house services for persons with dependent children [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416.

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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-2. Definitions

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

"Acute intoxication or withdrawal potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts level of care decision making.

"Admission" means the acceptance of a consumer by a treatment program.

"Admission criteria" means those criteria which shall be met for admission of a consumer to substance abuse treatment according to the current American Society of Addiction Medicine Patient Placement Criteria (ASAM PPC).

"Adolescent" means any individual under eighteen years of age.

"Adolescent halfway house treatment" means low intensity substance abuse treatment, at least six (6) hours of structured substance abuse treatment or rehabilitation services weekly, to adolescents in a supportive environment usually following completion of primary treatment to facilitate the individual's reintegration into the home or community.

"Adolescent residential treatment" means a live-in facility which provides twenty-four (24) hour care for the treatment of adolescents with substance abuse problems. Corresponding ASAM Patient Placement Criteria treatment level: Level III.5 or III.7.

"Adult" means any individual 18 years of age or older.

"ASAM" means the American Society of Addiction Medicine.

"ASAM patient placement criteria" or **"ASAM PPC"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services and discharge.

"Assessment" means those procedures by which a program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Biomedical condition and complications" means one dimension to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning as it impacts level of care decision making.

"Biopsychsocial assessment" means face-to-face interviews conducted by a treatment professional designed to elicit historical and current information regarding the behaviors, experiences, and support systems of a consumer, and identify the consumer's strengths, needs, abilities, and preferences for the purpose of guiding the consumer's recovery plan.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

"Child" or **"Children"** means any individual between zero and eighteen years of age.

"Client" See "Consumer."

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on mental health, alcohol and other drugs, domestic violence, sexual assault and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Community mental health center" or **"CMHC"** as defined in 43A O.S. § 3-302(3), means a comprehensive array of community-based mental health services including, but not limited to, inpatient, outpatient, partial hospitalization, emergency care, and consultation and education; and offering the following services at the option of the center, including, but not limited to, prescreening services, rehabilitation services, precare and aftercare services, training programs, and research and evaluation programs.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of a specific problem(s). A documented process of interaction between staff member(s) or between facility staff and unrelated individuals, groups or agencies for the purpose of problem solving or enhancing their capacity to manage consumers or facilities.

"Consumer" means an individual, adult, adolescent, or child, with or without a co-occurring disorder, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary care to ongoing recovery.

"Contract" means a document adopted by the governing authority of an treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

"Co-occurring disorder" (COD) means any combination of mental health and substance abuse symptoms or diagnoses as determined by the current Diagnostic and Statistical Manual of Mental Disorders that affect a consumer.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders. Co-occurring disorder capable programs address co-occurring disorders diagnosis in policy and procedures, assessment, treatment planning, program content, and transition planning.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody include~~s~~ juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses or others awaiting charges or trial. Programs which are providing treatment services within a correctional facility may be exempt from certain services described in this chapter which cannot be provided due to circumstance.

"Counseling" means a method of using various commonly accepted clinical approaches provided face-to-face by a treatment professional with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, alcohol and drug related crises. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumer or a treatment facility; other unexpected occurrences or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"**Cultural competency**" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Day school" means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

"DHS" or **"OKDHS"** means the Oklahoma Department of Human Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria. It is suggested those who are unable to diagnose consult with a licensed clinician. In instances where consumer self-report information is inadequate or suspect, collateral reports, e.g., from family members, legal sources, etc., may be considered.

"Dietician" means a person who has received a baccalaureate degree with major studies in food and nutrition and has completed a dietetic internship in an institution approved by the American Dietetic Association, or who has the equivalent of such training in supervised experience.

"Discharge criteria" means general guidelines as specified in the current ASAM Patient Placement Criteria which shall be considered in order for the consumer to be appropriately discharged from a one level of care to another level of care or from a treatment program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge

planning may or may not include a document identified as a discharge plan

"Discharge summary " means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"DOC" or **"ODOC"** means the Oklahoma Department of Corrections.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

"Drug abuse" means the use of a drug in a manner inconsistent with or unrelated to acceptable medical practice.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health and substance abuse related problems and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitude or behaviors which may stimulate social action or community support of the program and its consumers.

"Educational group" means groups in which information focuses on topics that impact a consumer's recovery. Topics should be gender and age specific and should include, but not be limited to, information regarding alcohol and other drugs, parenting, communication skills, relationship skills, independent living skills, self care, spirituality, culture, twelve step programs, financial skills, and social skills to promote and support recovery.

"Efficiency" means a program's measure of cost-benefit or cost effectiveness through a comparison to some alternative method.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention and resolution of a consumer crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, detoxification, individual and group consultation and medical assessment.

"Emotional, behavioral or cognitive conditions and complications" means one dimension to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's historical and current emotional, behavioral or cognitive status including the presence and severity of any diagnosed mental illnesses, as well as the level of anxiety, depression, impulsivity, guilt and behavior that accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

"Evaluation" See "Assessment."

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, and director.

"Facility" as defined in the Mental Health Law at 43A O.S. § 1-103(7), means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug-or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites, or institutions provided that the facility shall not mean a child guidance center operated by the State Department of Health.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Group counseling" means a method of using various commonly accepted interactive treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumers' treatment goals and objectives, and does not include social or daily living skill development as described in educational group counseling.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Halfway house" means low intensity substance abuse treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Halfway house for persons with children" means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Infant" means any child from birth up to three years of age.

"Individual counseling" means a method of using various commonly accepted treatment approaches provided

face-to-face by a treatment professional with one consumer to promote positive emotional or behavioral change.

"Initial contact" means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

"Inpatient services" means the process of providing care to persons who require twenty-four (24 hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses and professional staff providing medical care according to a treatment plan based on documentation of need.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

"Integrated consumer information system" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Intensive outpatient services" means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the consumer participates in daytime treatment services but goes home at night. Corresponding ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

"Intervention" means a process or technique intended to facilitate behavior change.

"Length of stay" means the number of days or number of sessions attended by consumers in the course of treatment.

"Levels of care" means the different options for treatment as described in the current edition of the ASAM PPC that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Licensure" means the process by which an agency of government grants permission—to persons or health facilities meeting qualifications to engage in a given occupation or business or use a particular title.

"Life skills" means abilities and techniques necessary to function independently in society.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the facility is located, can only be provided or supervised by a licensed physician.

"Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A O.S. § 3-403(8)] It is an organized service delivered by medical and nursing professionals that provides for 24-hour medically directed evaluation and withdrawal management in an acute care inpatient setting. Services are delivered under a defined set of physician-approved policies and physician-managed procedures or medical protocols. Corresponding ASAM Patient Placement Criteria Treatment Level: Level IV-D, Medically managed Intensive Inpatient Detoxification.

"Medical services " means the administration of medical procedures, by a physician, registered nurse, nurse practitioner, physician assistant or dentist and in accordance with a documented treatment plan and medical supervision available, to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, detoxification from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

"Medically supervised detoxification" means detoxification outside of a medical setting, directed by a physician and has attendant medical personnel including nurses for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III, 7-D, Medically Monitored Inpatient Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"Medication" means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically or otherwise administered by staff or self administered by the consumer for the appropriate treatment or prevention of medical or psychiatric issues.

"Medication - self administration" means the consumers administer their own medication to themselves, or their children, with staff observation.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance abuse, and co-occurring disorders.

"Minutes" means a record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting.

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Non-medical detoxification" means detoxification services for intoxicated consumers and consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM PPC Treatment Level: Level III, 2-D, Clinically managed Residential Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"No wrong door" means an approach to service organization that provides individuals with or links them to appropriate service interventions regardless of where they enter the system of care. This principle commits all service agencies to respond to the individual's stated and assessed needs with appropriate treatment or supportive linkage with programs capable of meeting the consumer's needs.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic and time-limited.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. Corresponding ASAM Patient Placement Criteria Treatment Level: Level I, Outpatient Treatment.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree~~, a professional license or certification in the discipline,~~ related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"Personnel record of volunteer" means a record or file with documentation of volunteers', interns' or practicum students' orientation and training.

"Physician" means an individual who is a fully licensed Doctor of Medicine or Doctor of Osteopathy in the State of Oklahoma to practice medicine in all its phases.

"Play therapy" means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Prevention" means the assessment, development and implementation of strategies designed to prevent the adverse effects of mental illness, substance abuse, addiction, and trauma.

"Procedures" means the written methods by which policies are implemented.

"Process" means information about what a program is implementing and the extent to which the program is being implemented as planned.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program effectiveness -- outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Program or service component" means the category or level of care into which a specific group of interrelated services can be classified, e.g., outpatient services.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual delivering the services or an individual on the clinical team delivering the services.

"Psychiatrist" means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

"Psychiatric-Social Educational ~~Psychoeducational~~ group" means a group facilitated by a treatment professional in which information focuses on signs and symptoms of co-occurring disorders, medication, the effects of mental disorders on substance abuse problems and vice versa, recovery topics, symptom management, and coping skills.

"Readiness to change" means one dimension to be considered in consumer placement, continued stay and transition and is an evaluation of the consumer's current emotional and cognitive awareness of the need to change, coupled with a commitment to change.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self defined, individualized

and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Recovery/living environment" means one dimension to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's current recovery environment, current relationships and degree of support for recovery, current housing, employment situation, availability of alternatives and historical information, as it impacts on level of care decision making.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means a broad range of physical, mental, and social activities designed to restore a consumer to the highest possible functional capacity after an episode of illness or injury and may include physical therapy, speech therapy, family consultation, mental health and substance abuse counseling.

"Relapse" means the process which may result in the return to the use of substances after a period of abstinence.

"Relapse potential, continued use or continued problem potential" means one dimension to be considered in consumer placement, continued stay and discharge and is an evaluation of the consumer's attitudes, knowledge and coping skills, as well as the likelihood that the consumer will relapse from a previously achieved and maintained abstinence and/or stable and healthy mental health function. If an individual has not yet achieved abstinence and/or stable and healthy mental health function, this dimension assesses the likelihood that the individual will continue to use alcohol or other drugs and/or continue to have mental health problems.

"Residential treatment" means treatment for a consumer in a live-in setting which provides a regimen consisting of twenty-four (24) treatment hours per week. This level of care should correspond with the ASAM Patient Placement Criteria Treatment Level: Level III. 5, Clinically managed High-Intensity Residential Services.

"Residential treatment for persons with children" means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM Patient Placement Criteria Treatment Level (Parent Only): Level III.5 Clinically Managed High-Intensity Residential Services.

"Safety officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Social detoxification" See "Non-medical detoxification."

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substance abuse treatment services" means the coordination of treatment activities for consumers by a treatment professional that include, but are not limited to, the following:

(A) Intake including screening, diagnostic impression, and assessment.

(B) Treatment planning and revision, as necessary.

(C) Continuing care review to assure continuing stay and discharge criteria are met.

(D) Case management services.

(E) Reports and record keeping of consumer related data.

(F) Consultation that facilitates necessary communication in regard to consumers.

(G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.

(H) Group and individual counseling.

(I) Education, as necessary.

"Substance-use disorders" means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Therapeutic hour(s)" means the amount of time in which the consumer is engaged with a treatment professional identifying, addressing, and/or resolving issues that are related to the consumer's treatment plan.

"Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling. [43A O.S. § 3-403(14)].

"Treatment hours - residential" means the structured hours in which a consumer is involved in receiving professional services to assist in achieving recovery.

"Treatment planning" means the process by which a treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Treatment professional" means any clinician who is allowed to provide alcohol or drug counseling within the regulations of their certification or license. This includes those individuals under supervision for certification or licensure, or otherwise exempt by law.

"Treatment session - outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

450:18-1-6. Annual review of standards and criteria [REVOKED]

~~The standards and criteria in this chapter shall be annually reviewed by the ODMHSAS.~~

SUBCHAPTER 5. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:18-5-3.2. Standards for food service

The following shall be applicable to all residential facilities and to any outpatient facilities which provide an on-premise meal service.

(1) Storage, preparation and serving of food shall be in compliance with the requirements of the Oklahoma State Department of Health regulations governing public feeding establishments.

(2) Dishwashing may be accomplished by either mechanical dishwashers or by approved manual methods. If mechanical dishwashers are used, the final rinse shall be in clear water of 180 degrees Fahrenheit, or in compliance with the Oklahoma State Department of Health regulations. Manual procedures, if used, shall follow a written procedure which outlines the steps followed, temperature of cleaning and rinsing solutions, detergents and chemicals used, etc., and shall be specifically approved by the local or Oklahoma State Department of Health.

(3) Equipment used in the preparation and handling of food shall bear the seal of or document compliance with the National Sanitation Foundation (NSF) or equivalent, ~~or document compliance with the requirements of NSF~~ or with Oklahoma Department of Health standards or other appropriate regulatory body.

(4) Ice used in contact with food or drink shall come from a source approved by the Oklahoma State Department of Health. Transportation, storage, handling, and dispensing shall be in a sanitary manner approved by the Oklahoma State Department of Health.

SUBCHAPTER 7. CONSUMER RECORDS

PART 1. RECORD SYSTEM

450:18-7-3.1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60.

~~(a) The confidentiality of all mental health and substance abuse treatment information and records shall be kept, recorded, released, maintained, and provided to requesting parties in accordance with all applicable state and federal laws.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and substance abuse treatment information in compliance with state and federal law and which contain, at a minimum:~~

~~(1) an acknowledgment that all mental health and substance abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or substance abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to mental health and substance abuse treatment information to only those persons or agencies actively engaged in the treatment of the consumer and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and substance abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c)Compliance with 450:18-7-3.1 shall be determined by a review of facility policy and procedures, facility forms,~~

~~consumer record reviews, interviews with staff and consumers, and any other supporting facility documentation.~~

SUBCHAPTER 13. SUBSTANCE ABUSE TREATMENT SERVICES

PART 3. OUTPATIENT SERVICES

450:18-13-21. Outpatient services

(a) Outpatient services shall be organized non-residential services with scheduled treatment sessions that accommodate employed and parenting consumers' schedules, and offer treatment services during the day, evening, or weekends. Services shall be designed to provide a variety of professional diagnostic and primary alcohol and other drug abuse treatment services for consumers, their families, and significant others, whose emotional and physical status allows them to function in their usual environment.

(b) The program shall maintain written programmatic descriptions and operational methods that address the following:

(1) Environment:

(A) The facility shall be publicly accessible and accommodate office space, individual and group counseling space, secure record storage, protect consumer confidentiality, and provide a safe, welcoming, culturally and age appropriate environment.

(B) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(C) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(2) Support system:

(A) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be posted for use by staff; and

(B) The facility shall have available specialized professional consultation or professional supervision.

(3) Staff:

(A) The facility shall maintain documentation that treatment professionals are knowledgeable regarding biopsychsocial dimensions of substance abuse, evidenced based practices, and counseling theory and techniques.

(B) The facility shall maintain documentation that treatment professionals have received training in cultural-specific, age and gender-specific issues, co-occurring disorder capability, substance abuse and addiction, and related counseling techniques.

(C) Staff shall be, at least, eighteen (18) years of age.

(D)The facility shall document in personnel records all education, training and experience stated above prior to treatment professionals providing direct care services.

(4) Treatment services:

(A) Substance abuse treatment services shall be provided to assess and address the individual needs of each consumer. These services shall include, but not be limited to, individual counseling, group counseling, substance abuse education, psychiatric-social education ~~psycho-education~~, family services, and case management services;

(B) Crisis intervention and counseling services shall be available; and

(C) Frequency of services shall be determined by mutual agreement between the treatment professional and the consumer; and

(D) When appropriate, and with the consumer's consent, the treatment program coordinates with other treatment providers that the consumer is currently utilizing.

(c) Compliance with 450:18-13-21 may be determined by a review of the following:

(1) Policy and procedures;

(2) Licenses;

(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other supporting facility records.

PART 5. INTENSIVE OUTPATIENT SERVICES

450:18-13-42. Service requirements

(a) An intensive outpatient service shall maintain written programmatic descriptions and policy and procedures addressing the following:

(1) Environment:

(A) The facility shall be publicly accessible and accommodate office space, individual and group counseling space, secure records storage, protect consumer confidentiality, and provide a safe, welcoming, culturally and age appropriate environment;

(B) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday; and

(C) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the

hours shall be posted on the building directory or the facility's office door.

(2) Support system:

(A) The facility shall maintain written policy and procedures for handling medical emergencies; an emergency medical number shall be conspicuously posted for staff use; and

(B) Specialized professional consultation or professional supervision shall be available.

(3) Staff:

(A) Treatment professionals shall be knowledgeable regarding biopsychsocial dimensions of substance abuse, evidenced based practices and counseling theory and techniques.

(B) The facility shall maintain documentation that treatment professionals have received training in cultural-specific, age-specific and gender-specific issues, co-occurring disorder capability, and counseling techniques.

(C) Staff shall be at least eighteen (18) years of age.

(D) The facility shall document in personnel records all education, training and experience stated above prior to treatment professionals providing direct care services.

(4) Treatment services:

(A) The facility shall ensure scheduled treatment services to continually assess and address the individual needs of each consumer. Such treatment modalities include, but are not limited to, family counseling, individual and group counseling, educational groups, psychiatric-social educational ~~psycho-educational~~ groups, relapse prevention, and case management services;

(B) Crisis intervention and counseling services shall be available;

(C) Frequency of services shall be determined by mutual agreement between the treatment professional and the consumer; and

(D) When appropriate, and with the consumer's consent, the treatment program coordinates with other treatment providers that the consumer is currently utilizing.

(b) Compliance with 450:18-13-42 may be determined by a review of the following:

(1) Staff licenses and certifications;

(2) Policy and procedures;

(3) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);

(4) Treatment records;

(5) Interviews with staff and consumers; and

(6) Other facility documentation.

PART 15. RESIDENTIAL TREATMENT FOR ADULTS WITH CO-OCCURRING DISORDERS

450:18-13-141. Adult residential treatment for consumers with co-occurring disorders

(a) Substance abuse and mental health treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour structured evaluation, care, and treatment, under a defined set of policy and procedures, and shall have a permanent setting. Consumers shall participate in at least twenty-four (24) treatment hours of mental health or substance abuse services per week, including medication therapy, case management services that address medical and/or dental needs or any other service identified on the consumer's treatment plan, excluding community support groups. The facility shall provide beds, food service, and a safe, welcoming and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Support system:

(A) The facility shall maintain availability of a licensed physician(s), who is (are) knowledgeable in mental illness and substance abuse issues to provide evaluation, treatment and follow-up; and be available by telephone twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall make available medication evaluation, administration or monitoring; and

(C) The facility shall provide case management services.

(2) Staff:

(A) Treatment professionals shall be knowledgeable regarding substance abuse, mental health, evidenced based practices, and co-occurring issues as well as in counseling theory and techniques.

(B) All staff shall be knowledgeable regarding facility-required education, training, and policies;

(C) Staff shall be at least eighteen (18) years of age; and

(D) The facility shall document in personnel records, prior to the provision of treatment services, all education, training and experience stated above.

(3) Treatment services:

(A) Daily treatment service shall be provided to assess and address individual needs of each consumer;

(B) Psychiatric-social educational ~~Psychoeducational~~ and behavioral approaches shall be used to educate consumers about their disorders and symptoms; and

(C) Other services shall include, but are not limited to, family counseling, individual and group counseling, relapse prevention, medication management, life skills, case management services.

(4) Assessment:

(A) Psychiatric and/or Psychological and/or Mental health evaluations shall be completed on all consumers;

(B) Individual biopsychsocial assessments shall be completed on all consumers. In addition, there may also be consultation, screenings, and referral, if needed

(5) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problem(s), goals and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all treatment professionals providing treatment hours;

(viii) Signature and credentials of the treatment professional completing the documentation;

(ix) the consumer's name and unique identifier; and

(x) Consumer's medication and response to medication therapy, if used, shall be documented.

(6) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-13-141 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel record, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records;

(6) Interviews with staff; and

(7) Other facility documentation.

PART 21. HALFWAY HOUSE SERVICES FOR PERSONS WITH DEPENDENT CHILDREN

450:18-13-201. Halfway house services for persons with dependent children

(a) Halfway house services for persons with dependent children shall provide substance abuse treatment services in a residential setting and shall include a planned regimen of twenty-four (24) hour supervised living arrangements, to include professionally directed evaluation, care, and treatment, under a defined set of policy and procedures, in a permanent setting. Consumers shall participate in at least six (6) hours of treatment, supportive services, parenting, and child development services per week for adults, and six (6) therapeutic hours of services for children, excluding infants.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility providing family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational space. The facility shall provide materials and space appropriate for ages of children receiving services. The facility shall provide a safe, welcoming and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) The facility shall ensure children's access to the fullest possible range of medical services available, such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verification of immunization records;

(C) The facility shall have access to emergency health care provided as necessary;

(D) The facility shall have access to public schools for school age children, and facilitation of the child's receiving the benefits of Public Laws 99-142; and

(E) The facility staff shall document a liaison with the local DHS offices to:

(i) Promote preservation of families;

(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by DHS and with parental consent, provide daily observations of parent-child interaction;

(iii) Expedite investigations in a timely manner; and

(iv) Ensure prompt facility response to situations which require immediate intervention.

(3) Staff:

(A) Treatment professionals are knowledgeable regarding substance abuse, have received training in gender, cultural and age-specific issues, co-occurring disorder capability, and counseling techniques, evidenced based practices, services for infants, toddlers, preschool and school-age children.

(B) Treatment professionals are minimally trained in:

(i) The identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive and sexual abuse of children.

(ii) Child development and age appropriate behaviors.

(iii) Parenting skills appropriate to infants, toddlers, pre-school and school age children.

(iv) The impact of substances and substance abuse on parenting and family units.

(C) Staff working with children shall be knowledgeable and demonstrate job appropriate functional comprehension of:

(i) The impact of prenatal drug and alcohol exposure on child development.

(ii) The effect of substance abuse on parenting, children and families.

(iii) Parenting skills appropriate to infants, toddlers, pre-school and school age children.

(iv) Common child behavioral and developmental problems.

(v) Appropriate play activities according to developmental stage.

(vi) Recognition of sexual acting out behavior.

(vii)The substance abuse recovery process, especially as related to family units.

(D) The facility shall have staff members on site and awake twenty-four (24) hours per day, seven (7) days per week;

(E) Staff shall be knowledgeable regarding facility-required education and training requirements and policies.

(F) Staff shall be at least eighteen (18) years of age; and

(G) The facility shall document in personnel records all education, training and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance abuse services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to, family counseling, individual and group counseling, parenting, child development, and educational groups;

(B) Services for children shall be provided and include a minimum of six (6) hours per week of therapeutic units for each child consisting of, but not limited to, assessment, individual, family and group counseling via art and recreational activities, etc. according to the development of the child. Documentation of all needs identified for each child shall be identified on that child's case management service plan and/or treatment plan.

(C) Children's services, excluding infants, shall be provided which address the significant issues and needs documented in either or both the child's and the parent's assessment and shall utilize both structured and unstructured therapeutic activity. Services shall address the significant issues and needs documented in the parent's or child assessment and create and enhance positive self image and feelings of self-worth, promote family unity, teach personal body safety and positive school interactions, and to prevent alcohol, tobacco and other drug use;

(D) Infant services, ages birth to ~~two~~ three (0-~~2~~ 3) years of age, shall be provided and shall consist, at a minimum, of developmentally appropriate parent-child bonding (interactive) activities and play therapy as determined by mother's treatment plan; and

(E) Case management services for each adult and each child shall be provided, which include~~s~~ the assessment of and planning and arranging for recovery needs.

(5) Assessments, treatment plans, and review:

(A) Individual biopsychsocial assessments shall be completed on all consumers. In addition, there may also be consultation, screenings, and referrals, if needed;

(i) Assessments of children accompanying their parent into treatment, residential or halfway house levels of care, shall include, but not be limited to, the assessment of:

(I) mental health issues,

(II) parent-child relationships,

(III) developmental stage,

(IV) educational needs,

(V) parent related issues, and

(VI) family issues related to the child.

(ii) Assessments of the parent bringing their child(ren) into treatment, residential or halfway house levels of care, shall include, but not be limited to, assessments of:

(I) parenting skills (especially in consideration of the child's issues),

(II) knowledge of age appropriate behaviors,

(III) parental coping skills,

(IV) personal issues related to parenting, and

(V) family issues as related to the child.

(B) Individualized treatment plans, for both the parent and their child, shall be completed and shall minimally include parent-child issues and problem formulation, measurable treatment goals and objectives, and plans to meet recovery needs.

(6) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problem(s), goals and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all treatment professionals providing treatment hours;

(viii) Signature and credentials of the treatment professional completing the documentation; and

(ix) the consumer's name and unique identifier.

(B) Progress notes in consumer's and his or her children's records shall clearly reflect case management assessments, plans and implementation of plans, and implementation of the treatment plan and services provided, in addition to the consumer's, parent and child, response to treatment;

(C) Progress notes shall document observations of parent and child interactions especially those indicative of therapeutic need or progress; and

(D) Documentation shall reflect each consumer, adult and child, has received a minimum of six (6) hours of service each week addressing issues and needs indicated in the assessments (parent or child).

(c) Compliance with 450:18-13-201 may be determined by a review of the following:

(1) Licenses;

(2) Policy and procedures;

(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility documentation.

[OAR Docket #08-1066; filed 5-27-08]

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

[OAR Docket #08-1067]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Forensic Review Board
450:30-15-2. Definitions [AMENDED]
450:30-15-3. Composition, powers and duties [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-317, 3-403(1), 3-404, 3-406, 3-415 and 3-416.
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 30 are part of the Department's review of Title 450. The proposed rules clarify existing rules. Forensic Review Board reviews are expanded, strengthened and clarified.
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 11, 2008:

SUBCHAPTER 15. FORENSIC REVIEW BOARD

450:30-15-2. Definitions

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

"Conditional release" is a court approved release for those adjudicated not guilty by reason of insanity who are not believed to be presently dangerous to the public peace or safety, from the physical custody of ODMHSAS.

"Forensic Review Board" or **"Review Board"** is the three-member board appointed by the ODMHSAS Commissioner to review the cases of persons ordered to the custody of the Department through a "not guilty by reason of insanity" verdict.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Therapeutic visits" mean any ODMHSAS supervised ~~unsupervised~~ time ~~to be~~ spent off the campus of the Oklahoma Forensic Center or any other ODMHSAS operated facility to which the individual may be committed and includes the following types of off-campus time:

(A) **Day passes** mean off-grounds passes for a period of time not to exceed 12 hours between the hours of 8 am and ~~8~~ 10 pm;

(B) ~~**Overnight passes** mean off-grounds visits to a specific location for a specific date(s) or occasion that may include an overnight stay not to exceed 24 hours;~~

~~(C)~~ **Routine therapeutic visits** mean monthly off-grounds visits to a specific state operated enhanced residential care facility ~~location~~ for a designated period of time not to exceed three months ~~two weeks~~; and

(C~~D~~) **Emergency therapeutic visits** mean a situation that arises in the consumers family that may require them to leave the grounds of OFC under ODMHSAS staff supervision upon recommendation by the Board and with court approval.

450:30-15-3. Composition, powers and duties

(a) **Board Membership.** The Forensic Review Board shall be composed of three (3) members selected by the ODMHSAS Commissioner.

(1) Members shall be a licensed mental health professional whose training and experience enable him or her to form expert opinions regarding mental illness and dangerousness.

(2) One member shall be a licensed psychiatrist.

(3) One member shall be a licensed psychologist.

(4) Members shall be appointed to staggered terms not to exceed three (3) years. Members shall serve at the pleasure of the Commissioner.

(5) The Review Board shall select a chair who shall:

(A) Preside over each meeting; and

(B) Keep the members apprised of relevant information.

(b) **Commissioner or designee.** The Commissioner or the Commissioner's designee shall review each matter that comes before the Forensic Review Board and shall either approve or disapprove any recommendation made by the Board.

(c) **Meetings.** The Review Board shall meet at the Oklahoma Forensic Center at least quarterly.

(1) A quorum shall consist of two (2) members;

(2) In the event of a tie vote when only two members are conducting business, such results shall be forwarded to the Commissioner or designee for a determination;

(3) The agenda and materials for review shall be prepared and reviewed by the Board members in advance of the meeting. Review materials pertinent to each case may include, but are not limited to:

(A) Risk assessment;

(B) Recommendation and other relevant information from the consumer's treatment team;

(C) Progress Notes for the previous three months relevant to any critical incident report or any inappropriate behavior;

(D) Lab testing for medication compliance;

(E) Lab results for drug/alcohol screens upon return from previous visits, if any;

(F) Any critical incident forms involving the consumer during the previous twelve months;

(G) Input from family members or others involved in the plans for the Therapeutic Visit; and

(H) Other information the Review Board deems necessary.

(4) The person whose case is under review shall be given an opportunity to provide input via written documentation and in person. If the person chooses, he or she may have a representative accompany him or her to the Review Board meeting.

(5) These meetings shall not be considered opened to the public. Other than the Forensic Review Board members, the following individuals shall be permitted to attend the meetings and ask questions of the consumer whose case is being reviewed, the treatment team or any other person appearing before the Forensic Review Board:

(A) DMHSAS Commissioner or designee;

(B) DMHSAS Advocate General or designee;

(C) Oklahoma Forensic Center's Executive Director or designee;

(D) DMHSAS General Counsel or designee; and

(E) DMHSAS Deputy Commissioner for Mental Health Services or designee.

(F) Any other persons wishing to attend the meeting must first obtain approval by the Forensic Review Board's Chairperson or the DMHSAS Commissioner.

(d) **Reviews.** Following the review of the information submitted, the Review Board shall render a determination at the conclusion of each meeting. The determination for each case is limited to the following:

(1) Whether or not therapeutic visits will be recommended to the court by the Forensic Review Board;

(2) If a therapeutic visit is recommended, the location of the visit. ~~If such visits are to be recommended, what level of supervision is to be required.~~

(3) The date and time the visit will begin and the duration of the visit. ~~The location of the visit recommended and the individual responsible for supervision; and~~

(4) Any other parameters to be recommended to the court reviewing the Therapeutic Visit.

(5) If a conditional release will be recommended to the Oklahoma Forensic Center.

(6) If a conditional release will be recommended to the Oklahoma Forensic Center, the Forensic Review Board shall make recommendation regarding the plan for continued outpatient services and any other terms of the conditional release.

(7) If a discharge from a conditional release will be recommended to the Oklahoma Forensic Center.

(e) Before being eligible for consideration for a ~~day pass~~ therapeutic visit~~s~~ the individual must have been successful in managing unsupervised ground freedom on campus for at least five (5) months. Successful management of ground freedom is defined as being compliant with treatment, including being accountable for his or her whereabouts.

(f) The following risk assessment scores for each consumer will be reported to the FRB and will be considered in determining therapeutic visits, conditional release or discharge: ~~In order to be considered for therapeutic visits beyond the day pass level, consumers must have acceptable scores as noted on the following risk assessment instruments:~~

(1) ~~score 29 or less on~~ the PCL-R or

(2) ~~score in categories 1 through 6 on~~ the VRAG or

(3) ~~score 25 or lower on~~ the HCR20 for an outpatient setting.

~~(g) Before being considered for overnight visits the individual must have successfully completed at least nine (9) successful day passes spread over at least six (6) months~~.

~~(h) Before being considered for routine therapeutic visits the individual must have successfully completed at least five (5) overnight visits spread over at least a six (6) month period.~~

(g~~i~~) All individuals returning from any therapeutic visit may be subject to drug testing and searched for contraband.

(h~~j~~) Any individual who is noncompliant with the parameters or conditions placed on a recommendation for a ~~specific level of~~ therapeutic visit ~~will~~ may ~~automatically~~ have his or her therapeutic visits suspended. ~~and The treating psychiatrist or treatment team designee shall notify the Forensic Review Board chairperson of the infraction. The Forensic Review Board chairperson will render a decision if the therapeutic visits will be suspended. If therapeutic visits are suspended. his~~ His or her status will revert to on-campus level until the next scheduled Review Board meeting, at which time the Board will determine whether the individual should be allowed further therapeutic visits~~, and if so, what level of visits~~.

(i~~k~~) The Board shall develop a process for reviewing requests for therapeutic visits for unforeseen purposes such as death or serious illness of an immediate family member.

(j~~l~~) The Review Board shall apprise the individual whose case was reviewed, the Oklahoma Forensic Center Executive Director, the ODMHSAS General Counsel and the Consumer Advocate General of each determination made.

(k~~m~~) The ODMHSAS Office of Consumer Advocacy and the Director of Psychology of the Oklahoma Forensic Center shall provide support services to the Review Board and its Chair.

[OAR Docket #08-1067; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 55. STANDARDS AND CRITERIA FOR PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT

[OAR Docket #08-1068]

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Subchapter 1. General Provisions
450:55-1-2. Definitions [AMENDED]
Subchapter 3. Program Description and Pact Services
450:55-3-7. Staffing requirements [AMENDED]
Subchapter 7. Confidentiality
450:55-7-1. Confidentiality, mental health consumer information and records [AMENDED]
Subchapter 17. Staff Development and Training
450:55-17-3. Inservice [AMENDED]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 55 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:55-1-2. Definitions

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

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated

by the Department of Mental Health and Substance Abuse Services.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment and other credentials.

"Consumer" means an individual who has applied for, is receiving, or has received services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Credentialed Recovery Support Specialist" is a member of the PACT team who is working as a Recovery Support Specialist and has completed the ODMHSAS approved training and testing.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"FTE" means an employee, or more than one, who work(s) the time equivalent to the number of hours per week, month or year of one (1) employee working full-time.

"Governing Agency" means the facility or specific community based behavioral health provider under which the PACT program is operated.

"Historical time line" means a method by which a specialized form is used to gather, organize and evaluate historical information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Individual Treatment Team" or **"ITT"** means the primary case manager and a minimum of two other clinical staff on the PACT team who are responsible to keep the consumer's treatment coordinated, monitor their services, coordinate staff activities and provide information and feedback to the whole team.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Linkage services" means the communication and coordination with other service providers pursuant to a valid release that assure timely appropriate referrals between the PACT program and other providers.

"Longitudinal Face Sheet" means a process that is used to track a PACT consumer's specific demographic, personal contact, treatment history and other relevant information from the time of admission until discharge.

"Mental Health Professional" means:

(A) Physicians with a current license and board certification in psychiatry or board eligible, or a current resident in psychiatry, where the services provided to a DMHSAS funded program are within the scope of the supervised residency program. Other licensed physicians experienced in behavior health counseling practices may be considered, if the facility has verified sufficient training and experience in the areas of practice for which the ICIS service is being reported; or

(B) Practitioners with a license to practice or those actively and regularly receiving board approved supervision to become licensed by one of the following licensing boards: Psychology, Social Work (clinical specialty), Professional Counselor; Marriage and Family Therapist; Licensed Behavioral Practitioner; or Licensed Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in psychiatric mental health specialty) licensed as a registered nurse with a current certification of recognition by the Oklahoma State Board of Nursing.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any person 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 and 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.

"Primary Case Manager" is a certified behavioral health case manager assigned by the team leader to coordinate and monitor activities of the ITT, has primary responsibility to write the treatment plan and make revisions to the treatment plan and weekly schedules.

"Program Assistant" is a member of the PACT team providing duties supportive of the Team and may include organizing, coordinating, and monitoring non-clinical operations of the PACT, providing receptionist activities and coordinating communication between the team and consumers

"Program of Assertive Community Treatment" or **"PACT"** means a clinical program that provides continuous treatment, rehabilitation and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"Recovery Support Specialist" is a member of the PACT team who is or has been a recipient of mental health services for a serious mental illness and is willing to use and share his or her personal, practical experience, knowledge, and first-hand insight to benefit the team and consumers ~~and has completed the ODMHSAS approved training and testing~~.

"Team Leader" is the clinical and administrative supervisor of the PACT team who also functions as a practicing clinician. The team leader is responsible for monitoring each consumer's clinical status and response to treatment as well as supervising all staff and their duties as specified by their job descriptions.

"Trauma informed " means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

SUBCHAPTER 3. PROGRAM DESCRIPTION AND PACT SERVICES

450:55-3-7. Staffing requirements

(a) The PACT team shall include individuals qualified to provide the required services while closely adhering to job descriptions as defined in the "PACT Start-up Manual, most recent edition as published by the National Alliance for the Mentally Ill."

(b) Each PACT team shall have the following minimum staffing configuration:

(1) One (1) full-time team leader who is the clinical and administrative supervisor of the team and also functions as a practicing clinician in the PACT team. The team leader shall be a Mental Health Professional.

(2) A Board Certified or Board Eligible psychiatrist providing a minimum of 16 hours per week of direct care to minimally include: initial and psychiatric assessments, daily organizational staff meetings, treatment planning, home visits, pharmacological management, collaboration with nurses, crisis intervention, and liaison with inpatient facilities. In the initial build-up phase, a minimum of 8 hours per week shall be provided until the team is serving ten or more clients. For teams serving over 50 consumers, the Psychiatrist shall provide an additional three (3) hours per week for every fifteen (15) additional consumers admitted to the program. On-call time is not included.

(3) At least two (2) full-time registered nurses. Each nurse shall have at least one (1) year of mental health experience or work a total of forty (40) hours at a psychiatric medication clinic within the first three (3) months of employment.

(4) At least one (1) additional full-time Mental Health Professional.

(5) At least two (2) full-time bachelor's level or higher degree behavioral health case managers.

(6) At least one (1) staff member on the team, excluding the psychiatrist, team leader and program assistant shall be qualified as a substance abuse treatment specialist, and at least one (1) staff member on the team, excluding the psychiatrist, team leader and program assistant, shall be qualified as an employment specialist.

(7) A minimum of one (1) full-time or two (2) -half time (0.5 FTE) Recovery Support Specialist(s) or Credentialed Recovery Support Specialist(s). The Recovery Support Specialist(s) is/are to complete all qualifications to become a Credentialed Recovery Support Specialist within one (1) year of employment to the PACT team. ~~The Recovery Support Specialist shall be a fully integrated team member.~~

(8) A minimum of one (1) program assistant.

(c) Teams serving greater than 65 consumers shall include the following additional staff:

(1) A full-time assistant team leader who is the back-up clinical and administrative supervisor of the team and also functions as a practicing clinician in the PACT team. The assistant team leader shall be a Mental Health Professional.

(2) One (1) additional full-time registered nurse.

(3) One (1) additional full-time Mental Health Professional.

(4) One (1) additional full-time bachelor level behavioral health case manager, when serving greater than 85 consumers on the team.

(d) The PACT program shall have policies and procedures addressing the use of students, medical residents, osteopathic residents, psychiatric residents and volunteers on the team.

(1) Psychiatric residents shall not replace the clinical work of the PACT psychiatrist such as on-call coverage, pharmacological management, treatment planning or crisis intervention.

(2) The hours a psychiatric resident works on a PACT team shall not be counted towards the standard hours of the PACT psychiatrist.

(e) Compliance with 450:55-3-6 shall be determined by on-site observation; and a review of the following: clinical records; ICIS information; and the PACT policy and procedures.

SUBCHAPTER 7. CONFIDENTIALITY

450:55-7-1. Confidentiality, mental health consumer information and records

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60.

~~(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:~~

~~(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the consumer and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:~~

~~(1) the name of the person or program permitted to make the disclosure;~~

~~(2) the name or title of the person or the name of the organization to which disclosure is to be made;~~

~~(3) the name of the consumer whose records are to be released;~~

~~(4) a description of the information to be disclosed;~~

~~(5) the specific reason for the disclosure;~~

~~(6) the signature of the consumer or the consumer's legally authorized representative;~~

~~(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;~~

~~(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;~~

~~(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;~~

~~(10) a confidentiality notice which complies with state and federal law; and~~

~~(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."~~

~~(d) Compliance with 450:55-7-1 shall be determined by a review of facility policy and procedures, facility forms, consumer record reviews, interviews with staff and consumers and any other supporting facility documentation.~~

SUBCHAPTER 17. STAFF DEVELOPMENT AND TRAINING

450:55-17-3. In-service

(a) In-service presentations shall be conducted yearly and shall be required for all employees on the following topics:

(1) Fire and safety;

(2) Infection Control and universal precautions;

(3) ~~Creating A Positive Environment (CAPE) training or similar programs~~ Techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention;

(4) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;

(5) Confidentiality;

(6) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101 et seq. and Protective Services for the Elderly and for Incapacitated Adults Act, 43A O.S. §§ 10-101 et seq;

(7) Facility policy and procedures;

(8) Cultural competency; ~~and~~

(9) Co-occurring disorder competency and treatment principles;

(10) Trauma informed; and

(11) Age and developmentally appropriate trainings, where applicable.

(b) Staff providing clinical services shall have a current cardiopulmonary resuscitation certification.

(c) Compliance with 450:55-17-3 shall be determined by a review of in-service training records, personnel records and other supporting written information provided.

[OAR Docket #08-1068; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 60. STANDARDS AND CRITERIA FOR CERTIFIED EATING DISORDER TREATMENT PROGRAMS

[OAR Docket #08-1069]

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450:60-1-4. Annual review of standards and criteria [REVOKED]
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450:60-9-1. Confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 60 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:60-1-4. Annual review of standards and criteria [REVOKED]

~~This chapter shall be reviewed annually by the ODMHSAS.~~

SUBCHAPTER 9. CONSUMER RECORDS AND CONFIDENTIALITY

450:60-9-1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60.

~~(a) The CEDT shall comply with confidentiality requirements as set forth in 43A O.S. Sec. 1-109, and federal law.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of clinical and treatment information in compliance with state and federal law and which contain at a minimum:~~

~~(1) an acknowledgment that all clinical and treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be~~

~~released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving clinical and treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to clinical and treatment information to only those persons or agencies actively engaged in the treatment of the consumer and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's clinical and treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of clinical and treatment information without the written consent of the consumer or the consumer's legally authorized representative.~~

[OAR Docket #08-1069; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 65. STANDARDS AND CRITERIA FOR GAMBLING TREATMENT PROGRAMS

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450:65-1-5. Annual review of standards and criteria [REVOKED]
Subchapter 3. Gambling Treatment Services and Documentation
450:65-3-1. Gambling treatment professional requirements and privileging [AMENDED]
450:65-3-2. Treatment Services [AMENDED]
450:65-3-3. Assessment and diagnostic services [AMENDED]
450:65-3-5. Individual, group and family counseling services [AMENDED]
450:65-3-9. Unplanned discharges [AMENDED]
450:65-3-10. Consumer records, basic requirement [AMENDED]
450:65-3-11. Consumer record system [AMENDED]
450:65-3-12. Confidentiality of gambling ~~addiction~~ treatment information [AMENDED]
Subchapter 5. Certified Gambling ~~Addiction~~ Treatment Programs
450:65-5-1. Level of Care [AMENDED]
450:65-5-2. Gambling ~~addiction~~ treatment services [AMENDED]
450:65-5-3. Admission criteria [AMENDED]
450:65-5-4. Discharge criteria [AMENDED]
450:65-5-5. Consumer rights [AMENDED]
Subchapter 7. Organizational and Facility Management
450:65-7-2. Hygiene and sanitation [AMENDED]
450:65-7-3. Standards for food service [AMENDED]
450:65-7-5. Critical incidents [AMENDED]
450:65-7-6. Organizational and facility description [AMENDED]
450:65-7-8. Performance improvement program [AMENDED]
450:65-7-9. Community information, consultation, outreach and street outreach [AMENDED]

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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 65 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Gambling treatment professional qualifications are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:65-1-2. Definitions

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

"Admission" means the acceptance of a consumer by a treatment program.

"Admission criteria" means those criteria which shall be met for admission of a consumer to gambling treatment.

"Assessment" means those procedures by which a gambling treatment program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency

and community tenure and may occur in the consumer's home, in the community, or in the facility.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a problem gambling disorder.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on problem gambling and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Consumer" means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19, 23, and 65 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary treatment services to ongoing recovery.

"Contact" means any encounter with a consumer who is inquiring about or seeking services.

"Contract" means a document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

"Counseling" means a method of using various commonly accepted clinical approaches provided face-to-face by a treatment professional with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, problem gambling, and substance abuse related crisis. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumer or a treatment facility; other unexpected occurrences or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communication, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria.

"Discharge criteria" means general guidelines to inform the judgment of the gambling treatment professional which shall be considered in order for the consumer to be appropriately discharged from a treatment program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

"Discharge summary" means a clinical document in the gambling treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with CGAT standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"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 gambling issues and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitudes or behaviors which may stimulate social action or community support of the program and the consumers.

"Educational group" means groups in which information focuses on topics that impact a consumer's recovery from problem and pathological gambling. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on

their treatment plan. This service may involve teaching skills ~~to assist the consumer in how to live independently in the community,~~ in communication, relapse prevention, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate educational groups.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family counseling;
(D) Case management;
(E) Discharge planning.

"Gambling treatment professional" means ~~an individual providing direct counseling to consumers who meet the requirements as delineated in OAC 450:65-3-1.~~

(A) an individual holding a valid NCGC I or II certification;
(B) any clinician licensed in a behavioral health field with documented completion of at least thirty (30) hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve (12) hours of problem gambling specific continuing education every twelve (12) months;
(C) any licensed or certified alcohol and drug counselor with documented completion of at least thirty (30) hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve (12) hours of problem gambling specific training; or
(D) any individual under supervision for licensure by an individual who otherwise meets this definition.

"Gambling related disorders/problems" means gambling related issues or problems which impact the normal functioning of an individual.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

"Individual counseling" means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a gambling treatment professional with one consumer to promote positive emotional or behavioral change.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Intervention" means a process or technique intended to facilitate behavior change.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed Alcohol/Drug Abuse Counselor" or **"LADC"** means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

"Licensed mental health professional" or "**LMHP**" means:

(A) a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology;
(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
(C) a licensed clinical psychologist;
(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;
(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;
(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;
(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or
(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Linkage" refers to the communication and coordination with consumers and other service providers to assure timely and appropriate referrals between the **CGAT** ~~gambling treatment~~ program and other providers.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, and other mental disorders including substance abuse.

~~**"NCGC II"** means Nationally Certified Gambling Counselor II; certification level offered by the National Council on Problem Gambling.~~ **"NCGC"** means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Pathological gambling diagnosis" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits, as defined by the most recent edition of the DSM.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of gambling treatment services.

"Procedures" means the methods by which policies are implemented.

"Problem Gambling" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program effectiveness - outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual or clinical team delivering the gambling treatment services.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Safety Officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further assessment for problem or pathological gambling.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Staff privileging" means an organized method for CGAT facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Treatment planning" means the process by which a gambling treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

~~**"Treatment professional"** means any licensed clinician or individual possessing a master's degree in the behavioral health field with documented completion of 60 hours of the ODMHSAS recognized core training requirements and documented completion of 12 hours of problem gambling specific continuing education hours every 12 months; or an individual holding a valid NCGC II certification.~~

"Treatment session - outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Update" means a dated and signed review of a report, plan or document with or without revision.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

"Walk through" means an exercise in which staff members of a facility walk through the CGAT program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

450:65-1-4. Applicability

This chapter is applicable to all CGAT programs ~~gambling treatment facilities and organizations providing treatment, counseling, and rehabilitation services~~ which are statutorily required to be certified by the ODMHSAS.

450:65-1-5. Annual review of standards and criteria [REVOKED]

~~The standards and criteria in this chapter shall be annually reviewed by the ODMHSAS.~~

SUBCHAPTER 3. GAMBLING TREATMENT SERVICES AND DOCUMENTATION

450:65-3-1. Gambling treatment professional requirements and privileging

(a) Each CGAT ~~gambling treatment~~ provider shall use clinical privileging to identify gambling treatment professionals.

(b) Each CGAT ~~gambling treatment~~ provider shall have written policies and procedures to evaluate the professional qualifications of treatment professionals providing gambling treatment services.

(c) All gambling treatment services must be provided by gambling treatment professionals as defined in this chapter.

450:65-3-2. Treatment Services

Facilities providing gambling treatment services shall have a group of services herein designated as core services. CGAT ~~Gambling treatment~~ programs may have specific additional services herein designated as optional services. Required services include, but are not necessarily limited to:

(1) Screening;
(2) Assessment and diagnostic impression, ongoing;
(3) Treatment planning and revision, as necessary;
(4) Group, individual and family counseling;
(5) Case management;
(6) Education regarding gambling addiction, pathological gambling and related problems; and
(7) Discharge planning.

450:65-3-3. Assessment and diagnostic services

(a) CGAT ~~Gambling treatment service~~ providers' policies and procedures shall require that an assessment of each consumer's service needs is completed within four (4) sessions of initiation of services.

(b) The following information shall be collected by the CGAT ~~gambling treatment~~ provider and recorded in each consumer's assessment, to be completed prior to implementation of the treatment plan. This shall include, but not be limited to, an assessment of the following areas and needs:

(1) Presenting problems;
(2) Medical health history including past and current medical problems and medication use;
(3) Mental health history, psychiatric medications (name, strength and dosage), and current mental health status;
(4) ~~Current financial status, including economic resources~~; A financial evaluation and information, including current financial status, gambling debt, and any previous bankruptcy or repayment plans;
(5) Gambling history, including type, amount, frequency and duration of gambling activity, and ~~including~~ family history of gambling problems or addiction;
(6) History of substance use, including past treatment, and history of other behavioral addictions and past treatment;
(7) Cultural and religious orientation;
(8) Social/relationship history;
(9) Educational/vocational history;
(10) Legal history;
(11) Recovery environment, including current present living arrangement and support system;
(12) Strengths, needs, abilities, and preferences;
(13) Diagnostic impression(s);
(14) Consumer's expectations in terms of service; and
(15) Recommendations for the type and intensity of treatment, including referrals to another treatment provider if necessary.

(c) The consumer and family member(s), when appropriate, shall be an active participant(s) in the intake and assessment process.

(d) Assessments shall be on-going and performed by staff meeting the requirements for gambling treatment professionals.

(e) Compliance with 450:65-3-1, 450:65-3-2, and 450:65-3-3 may be determined by a review of the following:

(1) Policy and procedures;
(2) Consumer records;
(3) Interviews with staff and consumers;
(4) Other facility documentation.

450:65-3-5. Individual, group and family counseling services

(a) ~~Facilities that provide gambling treatment services~~ CGAT programs shall offer a range of services to consumers based on their needs regarding emotional, social and behavioral problems. Outpatient counseling services shall be provided and shall include, but not be limited to, the following:

(1) Individual counseling shall consist of a goal-oriented process in which the consumer is counseled by and in the presence of a gambling treatment ~~counselor~~ professional, in accordance with the treatment plan, to relieve symptoms and resolve problems related to gambling disorders or problems.

(2) Group counseling shall consist of activities, directly related to the attainment of objectives as defined in the written treatment plan that the gambling treatment ~~counselor~~ professional provides to a minimum of two consumers, non-related.

(3) Family counseling shall consist of sessions in which the identified gambler and a minimum of one other person in a committed relationship with the identified gambler, is counseled by a gambling treatment ~~counselor~~ professional in accordance with the identified consumer's treatment plan.

(b) Compliance with 450:65-3-5 may be determined by a review of the following:

(1) Consumer records;
(2) Progress notes;
(3) Interviews with staff; and
(4) Other facility documentation.

450:65-3-9. Unplanned discharges

Unplanned discharges may occur within the CGAT program ~~treatment facility~~ for a variety of reasons. Upon an unplanned discharge, a staff member shall be identified to be responsible for follow-up and the facility should attempt to ensure the following:

(1) Linkage to appropriate care;

(2) Referral for other needed services, when possible; and

(3) Follow-up should be documented in the consumer's record.

450:65-3-10. Consumer records, basic requirement

(a) CGAT ~~Consumer~~ consumer records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the consumer. The consumer record shall communicate information in a manner that is organized, clear, complete, current, and legible. All consumer records shall contain the following:

(1) Entries in consumer records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;

(2) The consumer shall be identified by name and unique identifier on each sheet in the consumer record, on both sides of each page if both sides are used;

(3) A signed consent for treatment shall be obtained before any person can be admitted into treatment at a facility, unless the admission was on an involuntary basis;

(4) A signed consent for follow-up shall be obtained before any contact after discharge can be made;

(5) An intake and admission assessment;

(6) Documentation of screening to determine the priority of needs to be addressed through case management services;

(7) Treatment plans;

(8) Progress notes documenting the following:

(A) date, start and stop time for each timed treatment session;

(B) signature and credentials of the staff person providing the service;

(C) specific problem(s), goals and objectives addressed;

(D) interventions used to address problem(s), goals and objectives;

(E) progress made toward goals and objectives, or lack of;

(F) consumer response to the session or intervention;

(G) any new problem(s), goals and objectives identified during the session; and

(H) consumer's name and unique identifier.

(9) A continuing care plan;
(10) Consultation reports;
(11) Psychological or psychometric testing;
(12) Records and reports from other entities; and
(13) A discharge summary.

(b) In the event the consumer is not admitted and no case record is developed, a policy shall specify how screening and assessment information is maintained and stored.

(c) Compliance may be determined by a review of the following:

(1) Consumer records;
(2) Policy and procedures; and
(3) Other facility documentation.

450:65-3-11. Consumer record system

(a) Each CGAT program ~~facility~~ shall maintain an organized system for the content, confidentiality, storage retention and disposition of consumer case records.

(b) The CGAT program ~~facility~~ shall have written policy and procedures concerning consumer records which define required documentation within the case record.

(c) Consumer records shall be contained within equipment which shall be maintained under locked and secure measures.

(d) The facility shall maintain identification and filing systems which enable prompt record location and accessibility by treatment professionals.

(e) Consumer records shall be maintained in the facility where the individual is being treated or served. In the case of temporary office space and in-home treatment services, records may be maintained in the main (permanent) office and transported in secured lock boxes or vehicle trunks to and

from temporary offices and homes, when necessary. Consumer records may be permanently maintained at the facility's administrative offices; however, a working copy of the consumer record for the purposes of documentation and review of services provided must be maintained at the site in which the consumer is receiving treatment.

(f) Each facility shall have written policies and procedure which:

(1) Limit access to consumer records to persons with a need to know.

(2) Require consumer records be stored under lock and key.

(3) With regard to closed consumer records, require:

(A) Confidential storage under lock and key;

(B) A stated period of retention; and

(C) Records disposition and destruction under confidential conditions.

(g) EXCEPTION: With regard to 450:65-3-11 (f)(3)(B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

(h) Compliance with 450:65-3-11 may be determined by a review of:

(1) policy and procedures;

(2) treatment records;

(3) performance improvement guidelines;

(4) interviews with staff; and

(5) other facility documentation.

450:65-3-12. Confidentiality of gambling ~~addiction~~ treatment information

(a) The confidentiality of all gambling ~~addiction~~ treatment information and records shall be kept, recorded, released, maintained, and provided to requesting parties in accordance with all applicable state and federal laws.

(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of gambling ~~addiction~~ treatment information in compliance with state and federal law and which contain, at a minimum:

(1) an acknowledgment that all gambling ~~addiction~~ treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) an acknowledgment that the identity of a consumer who has received or is receiving gambling ~~addiction~~ treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) a procedure to limit access to gambling ~~addiction~~ treatment information to only those persons or agencies actively engaged in the treatment of the consumer and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's gambling ~~addiction~~ treatment information;

(5) an acknowledgement that certain state and federal law exceptions to disclosure of gambling ~~addiction~~ treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws; and

(6) a procedure by which to notify a consumer of his or her right to confidentiality.

(c) Compliance with 450:65-3-12 may be determined by a review of:

(1) facility policy and procedures;

(2) facility forms;

(3) consumer record reviews;

(4) interviews with staff and consumers; and

(5) any other supporting facility documentation.

SUBCHAPTER 5. CERTIFIED GAMBLING ~~ADDICTION~~ TREATMENT PROGRAMS

450:65-5-1. Level of Care

CGAT programs ~~Facilities~~ shall document the provision of gambling ~~addiction~~ treatment services at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the mandates in Subchapter 3 of this Chapter.

450:65-5-2. Gambling ~~addiction~~ treatment services

(a) Gambling ~~addiction~~ treatment services shall be organized non-residential services with scheduled treatment sessions that accommodate employed and parenting consumers' schedules, offer treatment services during the day, evening, and weekends.

(b) The program shall be publicly accessible and accommodate office space, individual and group counseling space, secure records storage, protect consumer confidentiality and provide a safe environment. The gambling ~~addiction~~ treatment program shall maintain written programmatic descriptions and policies and procedure that address these provisions.

(c) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(d) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(e) The facility shall maintain written policy and procedures for handling medical emergencies and an emergency medical number shall be posted for use by staff.

(f) The facility shall have available specialized professional consultation or professional supervision.

(g) The facility shall maintain documentation that gambling treatment professionals are knowledgeable regarding problem and pathological gambling, ~~gambling addiction~~, evidenced based practices, and counseling theory and techniques.
(h) The facility shall maintain documentation that gambling treatment professionals have received training in cultural-specific, age and gender-specific issues, and related counseling techniques.
(i) Staff shall be, at least, eighteen (18) years of age.
(j) The facility shall document in personnel records all education, training and experience stated above prior to providing direct care services.
(k) Compliance with 450:65-5-2 may be determined by a review of the following:
(1) Policy and procedures;
(2) Licenses;
(3) Treatment records;
(4) Interviews with staff and consumers; and
(5) Other supporting facility records.

450:65-5-3. Admission criteria
(a) Admission to a CGAT ~~certified gambling addiction treatment~~ program shall be determined by the gambling treatment professional in partnership with the consumer based on the problem gambling issues of the consumer.
(b) Compliance with 450:65-5-3 may be determined by a review of the following:
(1) Policy and procedures;
(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:65-5-4. Discharge criteria
(a) Discharge from a CGAT program ~~certified gambling addiction treatment program~~ shall be determined by the following:
(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services;
(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and
(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.
(b) Compliance may be determined by a review of the following:
(1) Policy and procedures;
(2) Continuing Care Plans;
(3) Discharge assessments;
(4) Discharge summaries;
(5) Progress notes;
(6) Consumer Records:
(7) Interviews with staff and consumers; and
(8) Other facility documentation.

450:65-5-5. Consumer rights
All CGAT ~~certified gambling addiction treatment~~ programs shall comply with applicable rules in Title 450, Chapter 15, Consumer Rights.

SUBCHAPTER 7. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:65-7-2. Hygiene and sanitation
CGAT ~~Certified gambling addiction treatment~~ programs shall provide:
(1) Lavatories and toilet facilities in a minimum ratio of one per twenty persons;
(2) Water obtained from an approved public water supply or tested at least quarterly and treated as necessary, thereby maintaining a determination as an approved water supply by the authority having jurisdiction and the Oklahoma State Department of Health or Department of Environmental Quality, as necessary;
(3) House-keeping services so that a hygienic environment is maintained in the facility;
(4) Solid waste disposal through public systems or in a manner approved by the local agency having jurisdiction and the Oklahoma State Department of Health or Department of Environmental Quality, as necessary; and
(5) Sewage discharged into a municipal sewerage system or collected, treated and disposed of in an independent sewerage system.

450:65-7-3. Standards for food service
The following shall be applicable to CGAT ~~Certified gambling addiction treatment programs~~ which provide an on-premise meal service:
(1) Storage, preparation and serving of food shall be in compliance with the requirements of the Oklahoma State Department of Health, regulations governing public feeding establishments.
(2) Dishwashing may be accomplished by either mechanical dishwashers or by approved manual methods. If mechanical dishwashers are used, the final rinse shall be in clear water of 180 degrees Fahrenheit, or in compliance with the Oklahoma State Department of Health regulations. Manual procedures, if used, shall follow a written procedure which outlines the steps followed, temperature of cleaning and rinsing solutions, detergents and chemicals used, etc., and shall be specifically approved by the local or Oklahoma State Department of Health.
(3) Equipment used in the preparation and handling of food shall bear the seal of or document compliance with the National Sanitation Foundation (NSF) or equivalent, ~~or document compliance with the requirements of NSF~~ or with Oklahoma Department of Health standards or other appropriate regulatory body.
(4) Ice used in contact with food or drink shall come from a source approved by the Oklahoma State Department of Health. Transportation, storage, handling, and

dispensing shall be in a sanitary manner approved by the Oklahoma State Department.

450:65-7-5. Critical incidents

(a) The CGAT program ~~facility~~ shall have written policy and procedures for the reporting of every critical incident. Documentation of critical incidents shall minimally include:

(1) The facility name, and signature of the person(s) reporting the incident;

(2) The name(s) of the consumer(s), staff member(s) or property involved;

(3) The time, date and physical location of the incident;

(4) The time and date the incident was reported and the name of the staff person within the facility to whom it was reported;

(5) A description of the incident;

(6) Resolution or action taken, date action was taken, and signature of appropriate staff member(s); and

(7) Severity of each injury, if applicable. Severity shall be indicated as follows:

(A) No off-site medical care required or first aid care administered on-site;

(B) Medical care by a physician or nurse or follow-up attention required; or

(C) Hospitalization or immediate off-site medical attention was required.

(b) Critical incidents shall be reported to ODMHSAS as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS provider Certification within twenty-four (24) hours of the incident being documented.

(2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours after the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.

(c) Compliance with 450:65-7-5 may be determined by a review of:

(1) policy and procedures;

(2) critical incident reports at the facility and those submitted to ODMHSAS;

(3) performance improvement program documents and reports;

(4) staff interviews; and

(5) any other relevant documentation of the facility or ODMHSAS.

450:65-7-6. Organizational and facility description

(a) The facility shall have a written organizational description, which is reviewed annually and incorporates the following guidelines:

(1) Target population to be served;

(2) The overall mission statement of the program which shall address the manner in which the facility welcomes all consumers;

(3) The annual program goals and objectives;

(4) A description of each CGAT ~~gambling treatment program~~ offered;

(5) Identification or a description of special populations and mechanisms to address their needs; and

(6) Program admission and exclusionary criteria.

(b) There shall be documentation that items (a) (1)-(6) have been approved by the facility's governing authority.

(c) The facility shall have documentation demonstrating these documents are available and communicated to staff.

(d) The facility shall have documentation demonstrating these documents are available to the general public upon request.

(e) The facility shall have written plans for attaining the program's goals and objectives. These plans should define specific tasks, set target dates and designate staff responsible for carrying out the plans.

(f) Compliance with 450:65-7-6 may be determined by a review of:

(1) policy and procedures;

(2) performance improvement program documents and reports;

(3) staff interviews; and

(4) any other relevant documentation of the facility or ODMHSAS.

450:65-7-8. Performance improvement program

(a) The facility shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care in which the following is addressed:

(1) Fiscal management of the facility;

(2) Identity of a performance improvement officer; and

(3) Cultural competency.

(b) The facility shall document performance improvement activities. These activities shall include, but not be limited to:

(1) Outcomes management specific to each program;

(2) A quarterly quality record review to evaluate the quality of service delivery as evidenced by the consumer's record;

(3) Staff Privileging;

(4) Review of critical and unusual incidents and consumer grievances and complaints; ~~and~~

(5) Review of policy related to cultural competence; and

(6) Activities to improve access and retention within the treatment program. The activities shall include an annual "walk through" of the intake and admission process. Steps of the "walk through" include, but are not limited to:

(A) Select two staff from the facility, including one member of management, to play the roles of "consumer" and "family member";

(B) Notify all staff prior to doing the "walk-through" exercise;

(C) Complete the intake and admission process as defined by facility policy as a typical consumer and family member would experience;

(D) At each step, ask the staff what changes (other than hiring new staff) would make it better for the consumer and what changes would make it better for the staff. Write all ideas of the staff and participant(s) in the exercise;

(E) Documentation of the annual "walk through" process includes, but is not limited to:

(i) The observations and feelings of participants in this exercise;

(ii) A list of the process barriers and the improvements that could be made to address these barriers;

(iii) Address the needs from both the consumer and staff perspectives; and

(iv) Identification of an area(s) for change and a description for implementing the change(s).

(c) The facility shall monitor the implementation of the performance improvement plan on an annual basis and shall make adjustments as needed.

(d) Performance improvement findings shall be communicated and made available to, among others:

(1) the governing authority,
(2) facility staff,
(3) consumers,
(4) stakeholders, and
(5) ODMHSAS, as requested.

(e) Compliance with 450:65-7-8 may be determined by a review of:

(1) policy and procedures;
(2) performance improvement program documents and reports;
(3) staff interviews; and
(4) any other relevant documentation of the facility.

450:65-7-9. Community information, consultation, outreach and street outreach

(a) Each facility shall, as a regular part of consumer-based planning and services provision, provide the community with information, consultation and outreach services to aid in reaching and attracting their specified target population(s). These outreach efforts shall be conducted by staff members or program approved volunteers.

(b) These services shall be designed to:

(1) Reach and attract the facility's target population;

(2) Provide information on problem and pathological gambling ~~gambling addiction~~ and related issues to the public; and

(3) Provide information to the public regarding the facility's services.

(c) These services include, but are not limited to, presentations or outreach efforts to community groups, organizations, and individuals.

(d) Written documentation of all community information, consultation, and outreach services shall be maintained~~,~~ and shall include the following:

(1) Name of person(s) or organization(s) receiving the services;
(2) Name of person(s) providing the service;
(3) Number of persons attending;
(4) Location at which the services were provided;
(5) Date services were provided; and
(6) Description of the services provided.

(e) Facilities providing street outreach services shall have written policy and procedures describing the processes for systematically reaching a community for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the treatment services system.

(f) Compliance with 450:65-7-9 may be determined by a review of

(1) facility policy and procedures;
(2) documentation of community information, consultation, and outreach services; and
(3) any other supporting facility documentation.

[OAR Docket #08-1070; filed 5-27-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOD SUBSTITUTION TREATMENT PROGRAMS

[OAR Docket #08-1070A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:70-1-2. Definitions [AMENDED]
Subchapter 3 Facility Record System
450:70-3-4. Confidentiality of drug or alcohol abuse or mental health treatment information [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-601 et seq.
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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 70 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes. Consumer rights regarding confidentiality are expanded, strengthened and clarified.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:70-1-2. Definitions

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

"Accreditation" means the process of review and acceptance by a nationally recognized accreditation body.

"Accreditation body" means a body that has been approved by SAMHSA to accredit opioid treatment programs using opioid agonist treatment medications.

"Administer" The direct application of a prescription drug by ingestion or any other means to the body of a patient by a licensed practitioner, or the patient at the direction of, or in the presence of, a practitioner.

"Administrative withdrawal" means a patient's medically supervised withdrawal involving the gradual tapering of dose of medication over time, coinciding with the patient's usually involuntary discharge from medication assisted treatment. Administrative withdrawal typically results from non-payment of fees, violent or disruptive behavior, incarceration or other confinement.

"Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance and/or detoxification of a person physiologically addicted to opioid drugs.

"American Society of Addiction Medicine Patient Placement Criteria" or **"ASAM PPC"** means the most recent clinical guide published by the American Society of Addiction Medicine to be used in matching patients to appropriate levels of care.

"Biopsychsocial assessment" means in-person interviews conducted by a treatment professional designed to elicit historical and current information regarding the behavior and experiences of a patient, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance abuse-related treatment and service planning.

"Buprenorphine" means a partial agonist, Schedule III narcotic approved for use in opioid addiction treatment, marketed as Subutex or Suboxone when combined with naloxone.

"Central registry" A document or database to which an OSTP shall report patient identifying information about individuals who are applying for or undergoing medically supervised withdrawal or maintenance treatment on an approved opioid agonist to a central record system approved by the Commissioner or designee.

"Certification" means the process by which ODMHSAS or SAMHSA determine that an OSTP is qualified to provide opioid treatment under applicable State and Federal standards.

"Certified opioid substitution treatment program" means an opioid substitution treatment program with all current, required state and federal, current, valid certifications.

"Chain of custody" means the process of protecting items so that movement, possession and location are secure and documented and there is no possibility for altering or otherwise tampering with the item.

"Chronic pain disorder" means an ongoing condition or disorder consisting of chronic anxiety, depression, anger and changed lifestyle, all with a variable but significant level of genuine neurologically based pain. The pain becomes the main focus of the patient's attention, and results in significant distress and dysfunction.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance.

"Comprehensive maintenance treatment" is:

(A) Dispensing or administering an approved opioid agonist medication at stable dosage levels for a period in excess of 21 days to a patient for opioid addiction, and

(B) Providing medical, clinical and educational services to the patient with opioid addiction.

"Continuing care plan" means a written plan of recommendations and specific referrals for implementation of continuing care services, including medications, shall be prepared for each patient meeting the ASAM Patient Placement Criteria dimensional continued service criteria. Continuing care plans shall be developed with the knowledge and cooperation of the patient. This continuing care plan may be included in the discharge summary. The patient's response to the continuing care plan shall be noted in the plan, or a note shall be made that the patient was not available and why. In the event of the death of a patient, a summary statement including this information shall be documented in the record.

"Co-occurring disorder" or **"COD"** means any combination of mental health and substance abuse symptoms or diagnoses as determined by the current Diagnostic and Statistical Manual of Mental Disorders that affect a patient.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to patients with co-occurring disorders. Co-occurring disorder capable programs address co-occurring disorders diagnosis

in policy and procedures, assessment, treatment planning, program content, and transition planning.

"Clinical Opioid Withdrawal Scale" or **"COWS"** means a well validated, standardized assessment instrument for evaluating the severity of a patients withdrawal through the identification of objective and subjective symptoms and the severity of these symptoms.

"Courtesy Dosing" means the act of dosing a methadone patient from another clinic on a short term basis due to emergency or other extra ordinary circumstance.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved treatment facility, or the routine care of a patient. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self destructive behavior; deaths and injuries (including automobile accidents) to the patient, patient family, staff and visitors; medication errors; neglect or abuse of a patient; fire; unauthorized disclosure of information; damage to or theft of property belonging to a patient or an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"CSAT" means Center for Substance Abuse Treatment.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DEA" means Drug Enforcement Administration.

~~**"Methadone detoxification treatment"** means the process of dispensing or administering of an opioid agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects related to withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.~~

"Discharge planning" means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.

"Diskette" means a compressed wafer form of methadone intended to be dissolved in water for consumption. For the purposes of this chapter methadone diskettes will not be considered to be the same as tablet methadone.

"Dispense" means preparing, packaging, compounding and labeling for delivery, a prescription drug in the course of professional practice to an ultimate user by the lawful order of a physician.

"Diversion" means the unauthorized or illegal transfer of an opioid agonist treatment medication.

"Diversion control plan" or **"DCP"** means documented procedures to reduce the possibility that controlled substances are used for any purpose other than legitimate use.

"Drug dispensing area" means the specified and secured location established by the OSTP for dispensing opioid agonist drugs to the patients. The area shall be secure, meet all appropriate standards and be the only location within the facility where drugs are dispensed.

"Drug stocks" means the inventory of drugs stored and secured by the clinic, available for use in opioid agonist treatment.

"Drug test" means the assessment of an individual to determine the presence or absence of illicit or nonprescribed drugs or alcohol or to confirm maintenance levels of treatment medication(s), by a methodology approved by the OSTP medical director based on informed medical judgment and conforming to State and Federal law. This may include blood testing, oral-fluid and urine testing.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Exception request process" means a process recording the justification of the need to make a change in treatment protocol for an opioid patient and submitted to SAMHSA using form SMA-168.

"Facility" means any program authority, hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug-or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites, institutions, organizations or agencies provided that the facility shall not mean a child guidance center operated by the State Department of Health.

"FDA" Federal Food and Drug Administration.

"Federal opioid treatment standards" means the established standards of SAMHSA, CSAT and the DEA that are used to determine whether an OSTP is qualified to engage in opioid treatment.

"HIPAA" means Healthcare Insurance Portability and Accountability Act.

"ICIS" means Integrated Client Information Services.

"Individualized treatment planning" means the ongoing process by which a clinician and the patient identify and rank problems, establish agreed upon goals, and decide on the treatment process and resources to be utilized.

"Interim maintenance treatment" means maintenance treatment provided in conjunction with appropriate medical services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.

"Liquid methadone" means a liquid concentrate of methadone meant to be mixed with water for ingestion.

"Lock box" means a container with a combination lock or key lock entry system for securing take home medications. The box must have the ability to lock and should be secure enough to thwart access by children.

"Long-term care facilities" means a facility or institution that is licensed, certified or otherwise qualified as a nursing home or long term care facility by the state in which methadone treatment services are rendered. This term includes skilled, intermediate, and custodial care facilities which operate within the terms of licensure.

"Long-term detoxification treatment" means detoxification treatment for a period of more than 30 days but less than 180 days.

"Medical and rehabilitative services" means services such as medical evaluations, counseling, and rehabilitative

and other social programs (e.g., vocational and educational guidance, employment placement), intended to help patients in an OSTP to become and/or remain productive members of society.

"Medical director" means a physician, licensed to practice medicine in Oklahoma, who assumes responsibility for the administration of all medical services performed by an OSTP, either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision, unless otherwise indicated in this chapter. This includes ensuring the program is in compliance with all federal, state, and local laws and regulations regarding the medical treatment of addiction to an opioid drug.

"Medical withdrawal" means a condition created by administering an opioid agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

"Medication unit" means a facility established as part of, but geographically separate from, an OSTP from which licensed private practitioners or community pharmacists dispense or administer an opioid agonist treatment medication or collect samples for drug testing or analysis.

"Methadone detoxification treatment" means the process of dispensing or administering of an opioid agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects related to withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

"Non-oral methadone" means an injectable form of methadone not allowed for use by an OSTP,

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Oklahoma state-issued identification card" means a photo identification card issued by the Oklahoma Department of Motor Vehicles for use in identification.

"Opiate drug" means any of a class of drugs also called narcotics derived from the opium poppy or containing opium and with analgesic or sedative effects that can form sustain or enhance addiction and physical dependency.

"Opioid addiction" means a cluster of cognitive, behavioral, and physiological symptoms in which an individual continues use of opioids despite significant opioid-induced problems. Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.

"Opioid agonist" means a drug that has an affinity for and stimulates physiologic activity at cell receptors in the central nervous system normally stimulated by opioids. Methadone is an opioid agonist.

"Opioid agonist treatment medication" means a prescription medication, such as methadone, buprenorphine or other substance scheduled as a narcotic under the Federal Controlled Substances Act (21 U.S.C. Section 811) that is approved by the U.S. Food and Drug Administration for use in the treatment of opiate addiction or dependence.

"Opioid antagonist" means a drug that binds to cell receptors in the central nervous system that normally are bound by opioid psychoactive substances and that blocks the activity of opioids at these receptors without producing the physiologic activity produced by opioid agonists. Naltrexone is an opioid antagonist.

"Opioid dependence" see opioid addiction.

"Opioid drug" means any of a class of drugs also called narcotics, having an addiction-forming or addiction-sustaining liability similar to morphine. Originally a term for synthetic narcotics only, but for the purposes of this chapter and unless otherwise specified, currently used to describe both opium based and synthetic narcotics. These drugs have analgesic or sedative effects.

"Opioid partial agonist" means a drug that binds to, but incompletely activates, opiate receptors in the central nervous system, producing effects similar to those of an opioid agonist but, at increasing doses, does not produce as great an agonist effect as do increased doses of an agonist. Buprenorphine is a partial opioid agonist.

"Opioid treatment" means the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid addiction. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment or comprehensive maintenance treatment, interim maintenance treatment and treatment provided in medication units, long term care facilities or hospitals.

"Opioid Substitution Treatment Program (OSTP)" An organization which has been certified by ODMHSAS to provide opioid treatment whose certification has not been suspended, revoked, or surrendered to the department.

"Pain management" means the successful management of chronic pain or a chronic pain disorder.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Patient-based planning" means an organized and systematic method of basing treatment and services on the needs of current and prospective patients.

"Patient record" or **"medical record"** means the collection of written information about a patient's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, medications as prescribed, continuing care plan, and discharge information on an individual patient.

"Parenteral" means injected, infused or implanted, used to describe drug administration other than oral or anal.

"Peak test" see Peak and Trough.

"Peak and trough test" means a therapeutic monitoring of serum methadone levels to determine the most appropriate dosing strategy for the individual patient, requiring at least two blood samples be drawn. The initial sample taken immediately prior to the daily dose and twenty four hours after the previous day's dose allowing the lowest level or "trough" to be identified. The second sample taken four hours after dosing allows the highest level or "peak" to be identified.

"Program physician" A licensed physician who provides medical treatment and counsel to the patients of an OSTP while under the supervision of the medical director.

"Program sponsor" A person named in the application for an OSTP permit who is responsible for the operation of the OSTP and who assumes responsibility for all its employees, including any practitioners, staff, or other persons providing medical, rehabilitative, or counseling services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for an immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events (including medication overdoses by patients and associates of patients) resulting in serious injury or death.

"Short-term detoxification treatment" means detoxification treatment for a period not in excess of 30 days.

"State Methadone Authority" or "SMA" is the agency designated by the Governor or other appropriate official designated by the Governor to exercise the responsibility and authority within the State or Territory for governing the treatment of opioid addiction with an opioid drug. For Oklahoma it is the The Oklahoma Department of Mental Health and Substance Abuse Services.

"STD" means sexually transmitted disease.

"Street outreach" means methods of direct intervention/prevention with high risk populations for HIV, HCV, tuberculosis and other infectious and communicable diseases.

"Tablet methadone" means methadone in a tablet form intended to be taken orally. For the purposes of this chapter diskettes will not be considered to be tablet methadone.

"Take-home privilege or take home medication" means one or more doses of an opioid agonist treatment medication dispensed to a patient for use off the premises.

"Therapeutic hour(s)" means the amount of time in which the patient was engaged with a treatment professional in identifying, addressing, and/or resolving those issues that have been identified in that patients treatment plan. This time frame can be no less than thirty (30) minutes. **"Transient consumer"** means a methadone patient from another geographic location requiring "courtesy dosing".

"Treatment professional" means any person allowed to provide alcohol and drug counseling, or is under supervision pursuant to the Licensed Alcohol and Drug Counselors Act, or otherwise exempt by law.

"Trough test" see Peak and Trough.

"Urine analysis or **UA"** means a urine sample taken to determine if metabolites are present indicating the use of drugs.

"Withdrawal treatment" means either administrative withdrawal, or medical titration and withdrawal from any drug or medication until the patient has achieved a drug free state.

SUBCHAPTER 3. FACILITY RECORD SYSTEM

PART 1. RECORD SYSTEM

450:70-3-4. Confidentiality of drug or alcohol abuse or mental health treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with OAC 450:15-3-20.1 and OAC 450:15-30-60. All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and substance abuse treatment information in compliance with state and federal law and which contain at a minimum:

(1) An acknowledgment that all mental health and substance abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(2) An acknowledgment that the identity of a consumer who has received or is receiving mental health or substance abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;

(3) A procedure to limit access to mental health and substance abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;

(4) A procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and substance abuse treatment information;

(5) An acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written

consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and

(6) A procedure by which to notify a consumer of his or her right to confidentiality.

(7) Compliance with 450:18-7-3.1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.

[OAR Docket #08-1070A; filed 5-27-08]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1141]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
490:1-1-2. Definitions [AMENDED]
Subchapter 3. Oklahoma State Board of Examiners for Long Term Care Administrators
490:1-3-9. Waiver of one administrator per facility rule [REVOKED]
Subchapter 5. Investigative Procedures
490:1-5-7. Hearing [AMENDED]
Subchapter 6. Administrator Registry
490:1-6-1. General provisions [AMENDED]
Subchapter 7. Fees And Deposits
490:1-7-2. Schedule of fees [AMENDED]
Subchapter 9. Continuing Education
490:1-9-4. Continuing education requirements [AMENDED]
AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators, Title 63 O.S. Section 330.51 et seq.
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SUPERSEDED EMERGENCY ACTIONS:
Not applicable
INCORPORATIONS BY REFERENCE:
Not applicable

ANALYSIS:
The purpose of this rulemaking action was to implement the provisions of Senate Bill 738 of the 2007 Regular Session and to update requirements for licensed long term care administrators in Oklahoma. Under Subchapter 1, the changes update and add definitions. Under Subchapter 3, the waiver of the one administrator per facility rule was removed. Under Subchapter 5, the rule governing respondent's written evidence and motions was amended. Under Subchapter 7, the definition for a 'late' fee was amended, and the fee was made time-sensitive; the fee for the State Standards Examination was amended to allow for a situation wherein the Examination would be administered by a third party; a convenience fee was added pursuant to proctoring an unscheduled State Standards Examination; a fee was added for Non-Sufficient Funds(NSF) related to transactions using Electronic Funds Transfer (EFT); a fee was added related to the Board's review in order to determination whether or not an individual met the minimum qualifications to be 'certified' as an "Assistant Administrator, Unlicensed"; and a Status change fee was added related to the Board's reinstatement of a license from 'inactive' to 'active' status. Under Subchapter 9, a clarification was made related to continuing education hours required while a license is on inactive status.
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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 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-2. Definitions

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

"Accredited college or university" means a college or university that is accredited by the North Central Association of Colleges and Secondary Schools, the Southwest Association of Colleges and Schools, the Western Association of Schools and Colleges, the Council on Higher Education Accreditation or an accrediting body approved by the Board.

"Administrator-In-Training" or "AIT" means a person serving a Board approved internship within a nursing or specialized facility under the supervision of a Board approved preceptor.

~~**"Administrator of Record"** means a Long Term Care Administrator, licensed by the State of Oklahoma, who is in charge of a facility and given essential and necessary authorization from the owner and/or governing body and responsibility to comply with all pertinent promulgated rules and state statutes, and who is responsible for hiring, maintaining, and directing a team of professionals whose goal is to attain and maintain the highest practicable level of physical, mental, and psychological well-being of each resident, client, or patient.~~

"Administrator, Administrator-of-Record, or Long Term Care Administrator" means an individual licensed by the Board who manages, supervises, and who is formally listed as being in charge of a long term care facility, whether or not his/her functions are delegated to other licensed or unlicensed individuals.

"Adverse action" means revocation or suspension of a license, reprimand, censure or probation; any other loss of the license, or the right to apply for, or renew a license; voluntary surrender in lieu of discipline, non-renewal (excluding nonrenewals due to non-payment of fees, retirement, or change to inactive status); administrative fines and any other negative action or finding by the Board.

"Assistant Administrator, Licensed" means an individual who holds a current, valid, unrestricted license granted by this Board and who serves in such a capacity with a licensed facility.

"Assistant Administrator, Unlicensed" means an individual who has met the minimum qualifications for employment established by the Board and who acts under the direction, supervision and license of a licensed administrator who is the "Administrator-of-Record" at two-or-more licensed facilities located within a 50-mile radius of each other and wherein the total occupied bed count does not exceed 120 beds pursuant to the provisions of S.B. 738 (2007).

"Assisted Living Center" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Board" means the Oklahoma State Board of Examiners for Long Term Care Administrators.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer or a potential consumer of a long term care facility served by a licensed long term care administrator or representative or affiliate.

"Complaint" means an allegation that an individual licensed as a nursing facility administrator has failed to comply with one or more of the established requirements for licensure as a long term care facility administrator.

"Continuum of Care Facility" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Inactive license" means the licensee has voluntarily relinquished his/her right privilege to function in the capacity as a long term care administrator. The licensee retains his/her license, but must meet the conditions for reinstatement and the Board must formally reinstate the license prior to him/her resuming practice as a long term care administrator.

"Intermediate Care Facilities for the Mentally Retarded (ICF-/MR)" means a facility whose primary purpose is to provide health and rehabilitative services for persons with mental retardation or a related condition, using a plan of care that includes professionally developed and supervised activities, experiences, or therapies. The objective of the services offered is to maintain the optimal physical, intellectual, social, and/or vocational level at which the individual is presently or potentially capable of functioning.

"Intermediate Care Facilities for the Mentally Retarded 16 Beds and Less (ICF/MR-16)" means small facilities serving persons with mental retardation which provide residential accommodations and transitional living training to aid residents in adapting to live in the general society. Resident accommodations are limited to not more than 16 residents, plus any required "live-in" staff.

"License" means the written authorization of the Board granting a person the privilege of serving as a long term care administrator for a specific period of time.

~~**"Long Term Care Administrator" or "Administrator"** means a person licensed by the State of Oklahoma under the provisions of 63 O.S. Sections 330.51 et seq. Administrator, Nursing Home Administrator, and Nursing Facility Administrator shall have the same meaning as such term is defined in Title 63 O.S. Section 330.51.~~

"Licensing Year" shall mean the specific period of time a license issued by the Board is valid. For purposes of these Rules, the term "licensing year" shall have the same meaning as "calendar year", the time period beginning at 12:01 a.m., January 1, and ending as of 12:00 midnight, the ensuing December 31.

"National Association of Board of Examiners of Long Term Care Administrators" or "(NAB)" is composed of state boards or agencies responsible for licensing long term care administrators. The basic objective of the Association is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure and re-licensure of long term care administrators. One of NAB's functions is the development of the national nursing home administrator examination.

"Nursing Home, Nursing Facility, Rest Home, Long Term Care Facility, Specialized Home, and Specialized Facility" shall have the same meanings as the term "Nursing Facility" as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Preceptor" means a person qualified by training and approved by the Board who is currently licensed as a long term care administrator in Oklahoma and is charged with coordinating the training of an Administrator-in-Training (AIT).

"Provisional license" means the temporary authority to serve as a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements prescribed by the Board.

"Referral" means an issue or concern regarding a long term care administrator that has been reduced to writing, duly signed, does not include a specific allegation(s) against the administrator, and is forwarded to the Board for a determination as to whether a violation has occurred.

"Residential Care Home" shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 et seq.

"Revocation" is a sanction imposed upon a licensee by the Board that results in a complete loss of license and all privileges attendant thereto.

"Specialized facility" shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Suspension" is a sanction imposed upon a licensee by the Board. The licensee retains his/her license, yet he/she shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist and requirements for restoration have been met.

"Uninvited Solicitation" means coercion or harassment of a client residing in a long term care facility for the purpose of attempting to persuade the client to change long term care facilities.

SUBCHAPTER 3. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS

490:1-3-9. Waiver of one administrator per facility rule [REVOKED]

~~(a) The Board may grant a waiver of OAC 490:10-13-2(b) after review of the required documentation.~~

~~(b) The owner of facilities requesting a waiver of the requirement that long term care administrators licensed by the Board shall not concurrently serve as the administrator of more than one nursing facility must show:~~

~~(1) an emergency and/or~~

~~(2) a public necessity and/or~~

~~(3) conditions evidencing undue burden upon the operations of the facility.~~

~~(c) The following conditions and requirements shall apply:~~

~~(1) Facilities named in the request must be in substantial compliance with state and federal requirements. Twenty (20) copies of all statement of deficiencies (CMS-2567) including Plans of Corrections issued within the last 15 months must be submitted for each of the facilities named in the request.~~

~~(2) Twenty (20) copies of the administrator's resume that includes details regarding current and previous positions held in a nursing or specialized facility must be provided.~~

~~(3) The request shall be submitted in writing to the Board office at least fourteen (14) days prior to the Board meeting at which the request will be presented.~~

~~(4) Location of the facilities in relation to each other named in the request will be reviewed and considered by the Board when rendering a decision.~~

~~(5) The administrator and the owner or owner representative must appear in person to present the waiver request to the full Board and to supply all appropriate documentation, such as financial information, efforts made to fill present position and any other information requested by the Board. Twenty (20) copies of all written documentation in the request must be submitted.~~

~~(6) The request must show the names and addresses of the facilities, the number of beds in each facility, the amount of time needed and justification for the requested time period.~~

~~(d) The following restrictions shall apply:~~

~~(1) The waiver shall be time limited and specific to the facilities and administrator.~~

~~(2) The Board shall determine the time limit for the waiver.~~

~~(3) The waiver shall be null and void:~~

~~(A) If the designated administrator changes positions; or~~

~~(B) If the facility changes ownership.~~

SUBCHAPTER 5. INVESTIGATIVE PROCEDURES

490:1-5-7. Hearing

(a) If a request for hearing is received by the Board within 10 days of the administrator's receipt of notification, the Board will set a date, time and place for the hearing and will inform the aggrieved licensee by registered mail, addressed to the licensee's address contained in the records of the Board, of the scheduling of such hearing. The formal Complaint will be a part of the notice.

(b) Individual proceedings shall be conducted by the Board according to the provisions established in 75 O.S. Section 309 et seq.

(1) All parties shall have an opportunity to respond and be represented by counsel at said hearings.

(2) All parties shall have a full opportunity to present evidence and argue all issues involved and to cross examine as may be required for a full and true disclosure of the facts.

(3) The respondent shall bring to the hearing ~~Twenty~~ twenty (20) copies of all documents that he/she intends to offer into evidence ~~and~~ as well as twenty (20) copies of all motions that he/she intends to ~~submitted by the Administrator~~ submit for Board consideration ~~shall be provided to the Board~~.

(4) The decision of the Board shall be based exclusively on the evidence and matters noticed at the hearing.

(5) An electronic recording of the proceeding shall be made by the Board, and a copy of the electronic recording shall be provided by the Board at the request of a party to the proceeding.

(6) The full proceedings of any hearing may be transcribed. The party requesting the services of a court reporter shall make the arrangements for the transcription with the court reporter and pay the reporter's fee. That party shall notify the Board in advance of the meeting of the expected presence of a court reporter.

(7) All final orders in any individual proceeding shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Any party aggrieved by a decision of the Board following a hearing may appeal directly to district court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma Statutes.

(d) The Board shall assess the costs of the hearing process, including attorney fees.

SUBCHAPTER 6. ADMINISTRATOR REGISTRY

490:1-6-1. General provisions

(a) A registry of administrators shall be created and maintained by the Board. The registry may include information

such as name, license number, date first licensed, current facility of employment, history of facility employment, history of complaints registered against the individual, history of other referrals, status as a preceptor or AIT, status of license, and any other information deemed necessary by the Board. The registry shall be created and maintained in both paper and electronic formats, and shall be available for public inspection.

(b) Complaints shall ~~be initially entered into the registry upon receipt~~ not be published on the Board's website unless there is a finding by the Board that a complaint has merit.

(c) Board decisions and other data required to keep the registry current shall be entered into the registry.

(d) The registry shall be organized in both chronological order by the date of the complaint or referral and by the name of the licensed administrator.

(e) The registry shall contain the nature of the complaint or referral; action, if any, taken by the Board; and the number of complaints and referrals made against an individual administrator.

SUBCHAPTER 7. FEES AND DEPOSITS

490:1-7-2. Schedule of fees

(a) Initial Long Term Care Administrator License - $200.00

(b) Annual Renewal License - $200.00

(c) Late Fee, ~~on~~ Renewal of ~~Annual Renewal~~ License - $100.00 for each thirty (30) days, or portion thereof, the renewal is late, beginning as of 12:01 a.m. on the 1st day of the licensing year for which the renewal was to have been effective

(d) Application Fee - $100.00

(e) Provisional License (per application) - $200.00

(f) Inactive ~~Status~~ License (annual) - $200.00

(g) Name Change (per request) - $25.00

(h) Endorsement Licensure Questionnaire (per request) - $50.00

(i) Replacement of Annual Card (per request) - $25.00

(j) Duplicate License (per request) - $25.00

(k) State Standards Review (per person) - $100.00

(l) State Standards Examination Packet - $50.00

(m) State Standards Examination – the greater of $100.00 per examinee or the fee determined and assessed by the Intermediary

(n) State Standards Examination, convenience fee, unscheduled examination - the greater of $200.00 per examinee or $500.00 for all examinees, assessed per examination proctored, or the fee per examinee determined and assessed by the Intermediary.

(~~n~~o) Board -Sponsored Educational Workshop (per day) - $60.00 - $~~85.00~~160.00

(~~o~~p) Photocopies (per page) - $0.25

(~~p~~q) Rules and Regulations (per copy) - $15.00

(~~q~~r) Administrator-In-Training (AIT) Program (per person) - $350.00

(~~r~~s) Continuing Education Program Approval Fee (per credit hour) - $55.00

(~~s~~t) Mailing List on Plain Paper (per page) - $0.50

(~~t~~u) Mailing List on Labels (per page) - $1.00

(~~u~~v) Electronic Mailing List - $10.00

(~~v~~w) Returned Check Fee or Fee related to Non-Sufficient Funds (NSF) to cover an Electronic Funds Transfer (EFT) - $30.00

(~~w~~x) Late Fee for Failure to Provide Current Contact Information - $75.00

(~~x~~y) Fee for Administrator University - Not to exceed $200.00 per day

(~~y~~z) Convenience Fee for Online Licensure Renewal - Determined by Intermediary

(aa) Review by Board in order to determine whether or not an individual applicant meets the minimum requirements to be able to serve as an "Assistant Administrator, Unlicensed" - $200.00

(bb) Status change fee, license on 'inactive' status reinstated to 'active' status - $100.00

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-4. Continuing education requirements

(a) Each licensee shall be responsible for identifying his/her own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those needs, and integrating new knowledge and skills into their duties.

(b) Individuals who are newly licensed or who are requesting reinstatement will be required to successfully complete continuing education hours equivalent to two (2) hours per month for each month the license is active from the month the license is issued to the renewal month.

(c) All other licensees shall be required to successfully complete twenty-four (24) clock hours of continuing education during each calendar year.

(d) Licensees are responsible for maintaining their own continuing education records.

(e) Carry-over of continuing education credit from one year to the next is not permitted.

(f) A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request shall explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis.

(g) In the event a licensee fails to provide the Board with documentation that the continuing education requirements have been met, the licensee will be subject to non-renewal.

(h) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements.

(i) Continuing education hours are not required for a licensee ~~who~~ whose license is on inactive status.

[OAR Docket #08-1141; filed 06-06-08]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS
CHAPTER 10. LONG TERM CARE ADMINISTRATORS

[OAR Docket #08-1142]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing of Long Term Care Administrators
490:10-1-2.1. General requirements that must be met by each applicant [NEW]
490:10-1-3. ~~Qualifications~~Requirements for initial licensure [AMENDED]
490:10-1-4. ~~Qualifications~~Requirements for licensure by reciprocity [AMENDED]
490:10-1-5. ~~Qualifications~~Requirements for a provisional license [AMENDED]
490:10-1-9. Inactive license [AMENDED]
490:10-1-10. Requirements for reinstatement from inactive status [AMENDED]
490:10-1-11. Requirements for restoration from suspended status [AMENDED]
Subchapter 3. Application for Licensure
490:10-3-1. Application for initial licensure, reciprocity, or provisional license [AMENDED]
490:10-3-1.1. Evidence requirements [NEW]
490:10-3-3. State standards examination [AMENDED]
490:10-3-5. Application for licensure renewal [AMENDED]
490:10-3-6. Licensure term [AMENDED]
Subchapter 5. Discipline
490:10-5-3. Disciplinary action [AMENDED]
Subchapter 8. Administrator-In-Training (AIT)
490:10-8-17. Supervision of ~~more than one AIT~~AITs ~~restricted~~ [AMENDED]
Subchapter 13. Standards for Administrators
490:10-13-2. Administrator Responsibilities [AMENDED]
490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two-or-more licensed long term care facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals are employed in Assistant Administrator, Unlicensed, capacities [NEW]
AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators, Title 63 O.S. Section 330.51 et seq.
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Final Adoption:
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Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
Not applicable
INCORPORATIONS BY REFERENCE:
Not applicable
ANALYSIS:
The purpose of this rulemaking action was to implement the provisions of Senate Bill 738 of the 2007 Regular Session and to update requirements for licensed long term care administrators in Oklahoma. Under Subchapter 1, a "general requirements" provision was added, applicable to applicants for initial licensure, for licensure by reciprocity, for provisional licensure, and for licensure restoration from suspended status; the word, "qualifications" was replaced by, "requirements" throughout; evidence requirements related to the attainment of a baccalaureate degree were refined; the rules governing licenses on inactive status were clarified as were the requirements for reinstatement of a license from inactive to active status; and the sample size of renewed licenses against which the Board would perform criminal background checks was clarified. Under Subchapter 3, evidence requirements related to the attainment of a baccalaureate degree were added; added language clarifying the Board's position with respect to license renewal and non-compliance with State income tax requirements; added language clarifying the processes by which the Board would address licenses that were not renewed (for reasons other than non-compliance with Oklahoma Income Tax Laws) during the annual renewal period; and added language clarifying the Board's position on expired licenses. Under Subchapter 5, language was added to better define reasons for disciplinary actions against licensed administrators. Under Subchapter 8, the Rule was amended to allow one preceptor to supervise not more than 2 AITs. Under Subchapter 13, the general responsibilities of administrators were amended, to include a new section specific to administrators who are in charge of two or more facilities wherein one or more individuals serve in "Assistant Administrator, Unlicensed" capacities.
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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 11, 2008:

SUBCHAPTER 1. LICENSING OF LONG TERM CARE ADMINISTRATORS

490:10-1-2.1. General requirements that must be met by each applicant

(a) Applicants shall not be less than twenty-one (21) years of age at the time the license is issued.
(b) Each applicant shall be a United States citizen, or be a qualified alien under the Federal Immigration and Naturalization Act and lawfully residing in the United States.
(c) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character.
(d) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.
(e) Each applicant shall report to the Board any adverse action taken by any licensing or certification entity in any jurisdiction. The Board shall examine the reasons for the action(s) and may consider this information in granting or denying a license.

(f) Each applicant shall be in compliance with State income tax requirements pursuant to 68 O.S., 238.1.
(g) Each applicant shall remit any and all required fees associated with obtaining a license, including any outstanding fees or fines.
(h) Each applicant shall meet any other appropriate conditions and requirements as may be prescribed by the Board.

490:10-1-3. ~~Qualifications~~ Requirements for initial licensure

~~(a) Applicants shall not be less than twenty-one (21) years of age at the time the license is issued.~~
~~(b) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character.~~
~~(c) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.~~
~~(d) Each applicant shall report any professional license revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a license.~~
(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure shall meet the requirements in this Section.
(~~e~~ b) ~~In order to qualify for a license, each~~ Each applicant ~~must~~ shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:
(1) "Official Proof" [see 490:10-3-1.1 (relating to evidence requirements)] of ~~Successful~~ successful completion of a four (4) year program of study and receipt of a bachelor's degree from an accredited college or university;
(2) Receipt of a passing score on the examination conducted by the National Association of Board of Examiners of Long Term Care Administrators;
(3) Receipt of a passing score on the current Oklahoma State Standards ~~test~~ examination;
(4) Successful completion of Administrator University~~;~~ and;
(5) Successful completion of the Administrator-in-Training program~~; and~~.
~~(6) Remittance of any and all required fees associated with obtaining a license.~~
(~~f~~ c) The Board, at its sole discretion, may waive the requirement for Administrator University or the Administrator-in-Training requirement if the applicant has been previously licensed in Oklahoma as a long term care administrator and has been active in long term care for at least two (2) of the last five (5) years.

490:10-1-4. ~~Qualifications~~ Requirements for licensure by reciprocity

(a) In addition to the general requirements found in this Chapter each applicant for licensure by reciprocity shall meet the requirements of this Section.
(~~a~~ b) The Board has entered into a licensure endorsement agreement with the National Association of Board of Examiners of Long Term Care Administrators that permits licensure for candidates from other jurisdictions who have met the following minimum requirements.
(1) Submission to the Board "Official Proof" [see 490:10-3-1.1 (relating to evidence requirements)], of ~~Successful~~ successful completion of a four (4) year program of study and receipt of a bachelor's degree from an accredited college or university;
(2) Submission to the Board of proof of initial licensure, including active NAB scores and proof that such license is in good standing;
(3) Receipt of a passing score on the current Oklahoma State Standards ~~test~~ examination;
(4) Submission to the Board of evidence of licensure as a nursing home administrator of record full time for the past two consecutive years in a jurisdiction regulated by a licensing authority, or submission to the Board of evidence of licensure as a nursing home administrator who has been active in long term care for at least two (2) of the last five (5) years; and
(5) Submission to the Board of proof that any other administrator license granted to the candidate by all other states or jurisdictions has not been suspended, revoked or otherwise restricted for any reason (other than nonrenewal or the failure to obtain the required continuing education credits in any states where the applicant is currently licensed but not engaged in the practice of nursing home/long term care facility administration), nor subject to any discipline or current investigation;
(A) The Board shall have discretion to assess the magnitude of any such discipline issued and determine the applicant's eligibility;
(B) The applicant shall report any professional license suspension or revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a license~~.~~; and
(C) Documentation shall be provided directly by the state- appointed authority~~; and~~
~~(6) Remittance of any and all required fees associated with obtaining a license~~.
~~(b) An applicant for reciprocity shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for reciprocity may be disapproved~~.

490:10-1-5. ~~Qualifications~~ Requirements for a provisional license

(a) To fill a position of long term care administrator that unexpectedly becomes vacant, the Board may ~~issue~~ grant one (1) provisional license for a single period not to exceed six (6) months. The Board shall not ~~issue~~ grant another provisional license to fill a vacancy at the same facility for a period of one year after the date the provisional license is ~~issued~~ granted. ~~The provisional license may be issued to a person who does not meet all of the licensing requirements established by the Board but who:~~

(b) In addition to the general requirements found in this Chapter each applicant for a provisional license shall meet the requirements of this Section.

(c) A provisional license may be granted to a person who does not meet all of the licensing requirements established by the Board, but who:

(1) Has successfully completed a four (4) year program and received a bachelor's degree from an accredited college or university;

(2) Has obtained the services of a currently licensed Oklahoma long term care administrator to act as an on-site consultant to the provisional licensee;

(3) Has ~~submitted~~ provided ~~to a criminal background check and been found to have no convictions or pleas of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude~~ the Board with evidence indicating he/she has at least two (2) years of experience in a long term care facility; and

(4) Has ~~reported any professional license revocation in any jurisdiction. The Board shall examine the reasons for revocation and may consider this information in granting or denying a provisional license~~ received a passing score on the current Oklahoma State Standards examination.

~~(5) Has remitted any and all required fees associated with obtaining a license; and~~

~~(6) Meets any other appropriate conditions and requirements as may be prescribed by the Board for issuance of a provisional long term care administrator's license.~~

(~~b~~ d) ~~A provisional licensee must successfully pass the Oklahoma State Standards test as soon as it is available, but no later than 60 days following the effective date of the provisional license.~~

~~(c)~~ The consultant administrator to a provisional licensee must have been employed in a comparable long term care facility in Oklahoma a minimum of two (2) years.

(~~d~~ e) The consultant administrator to a provisional licensee shall:

(1) Provide direct supervision of the provisional licensee for at least eight (8) hours per week with no more than 10 calendar days lapsing between consultant visits to the provisional licensee's facility; and

(2) Submit monthly evaluation reports on the provisional licensee to the Board no later than the tenth day of each month for the duration of the provisional license.

490:10-1-9. Inactive license

(a) A licensee may request, in writing, for the Board to place his/her license ~~be placed~~ on inactive status, ~~however~~ and, if the Board approves the requested change in license status from active to inactive, the licensee ~~may~~ shall not function in the capacity as a long term care administrator in Oklahoma until the license is reinstated by the Board to active status. Such requests must be received by the Board no less than fourteen (14) calendar days prior to the date of the Board Meeting at which the Board is to consider the request.

(1) For requests by licensees to place his/her license on inactive status on-or-after after July 1, 2008, such request shall be denied by the Board if the licensee's license has been on inactive status for any longer than one (1) licensing year during the two (2) licensing years preceding the year for which inactive status is being requested.

(2) If, on-or-after July 1, 2008, a licensee submits a request for the Board to place his/her license on inactive status, and such request is granted by the Board, the change would be effective the earlier of either:

(A) The date his/her current license is due to be renewed; or

(B) The specific date during the current licensing year the licensee requested the change to be effective; and further, either effective date shall be no earlier than the date of the Board Meeting at which the Board acts upon his/her request for the change in license status from active to inactive.

(b) A licensee ~~who~~ whose license is ~~in~~ on inactive status will remain on the Board's mailing list, and his/her license is eligible for reinstatement from inactive to active status ~~as a licensed administrator~~ as described in this Chapter.

(c) In order to place ~~a~~ an active license on inactive status, the licensee must, ~~prior to~~ in advance of the expiration date of the current license:

(1) submit a written request to the Board ~~for~~ to have his/her license placed on inactive status, and, if the Board grants the change in status,

(2) submit the annual inactive ~~status~~ license fee as prescribed by the Board at OAC 490:1-7-2.

(d) A ~~licensee~~ licensee's license may remain on inactive status for a period not to exceed two (2) consecutive licensing years.

(1) For licensees whose license was placed on inactive status on-or-before June 30, 2007, the two (2) consecutive licensing years time period does not apply, rather such individuals' licenses may remain on inactive status for a period not to exceed five (5) consecutive licensing years, beginning with the date on which his/her license was placed on inactive status, and provided that the licensee appropriately requests his/her license remain on inactive status each time the license is due for renewal and such request has been granted by the Board.

(2) For licensees whose license was placed on inactive status on-or-after July 1, 2007, the two (2) consecutive licensing years time period shall end on the last day of the licensing year following the licensing year in which his/her license was placed on inactive status, provided that

the licensee appropriately requests his/her license remain on inactive status when his/her license is due for renewal and such request has been granted by the Board.

(e) ~~A~~ When applicable, a written request ~~for~~ to continue a license on inactive status must be made each year during the annual license renewal period.

(f) The annual inactive license fee ~~is~~ shall be charged each time inactive license status is requested.

490:10-1-10. Requirements for reinstatement from inactive status

~~(a) A licensee who has been granted inactive status by the Board, and who otherwise meets the qualifications for active licensure, may apply for and be granted licensure as an active long term care administrator by providing evidence satisfactory to the Board of the following:~~

~~(1) Receipt of a passing score on the current Oklahoma State Standards test.~~

~~(2) Completion of continuing education hours and/or Administrator University modules as determined by the Board; and~~

~~(3) Payment of the current licensure fee as prescribed by the Board at OAC 490:1-7-2 and any unpaid fees or fines owed to the Board~~.

(a) In addition to the general requirements found in this Chapter each licensee who requests that his/her license be reinstated by the Board from inactive status to active status shall meet the requirements in this Section.

(b) A licensee who has been ~~on inactive status shall not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with state income tax requirements~~ granted inactive license status by the Board, and who otherwise meets the qualifications to be granted an active license, may apply to the Board, in writing, requesting that the Board reinstate his/her license from inactive status to active status. Such written request shall be received at the Board offices not later than fourteen (14) calendar days prior to the Board Meeting at which the Board would act on the request. Licensee shall supply or cause to be supplied with or in support of such written application for reinstatement written evidence satisfactory to the Board of the following:

(1) Receipt of a passing score on the current Oklahoma State Standards examination;

(2) Completion of twenty-four (24) clock hours of approved continuing education or completion of Administrator University during the licensing year preceding the licensing year for which licensee is requesting reinstatement;

(3) Payment of the current licensure fee and the status change fee as prescribed by the Board at OAC 490:1-7-2, the status change fee prescribed by the Board at OAC 490:1-7-2. (Schedule of fees) and any unpaid fees or fines owed to the Board; and

(4) For those licensees who wish to reinstate their license to active status prior to the next annual license renewal date, the date on which they would like to have their license reinstated by the Board.

(c) ~~An individual applying for reinstatement from inactive status shall not be required to take the national examination if he/she has successfully passed it another time~~ For those licensees who had not completed or cannot provide written evidence verifying completion of the required twenty-four (24) clock hours of Continuing Education Units (CEUs) or completion of Administrator University in the licensing year preceding the licensing year in which his/her license would be reinstated to active status, such individuals have not met the requirements for license reinstatement as established by the Board and his/her license will not be reinstated to active status.

(d) A licensee ~~seeking reinstatement shall submit to a criminal background check. If the results of a criminal background check reveal that the licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for reinstatement may be disapproved~~ who has not reinstated an inactive license to active status within the maximum allowed two (2) consecutive licensing years time limit, as otherwise delineated within this Chapter, is considered to have abandoned his/her license and the practice of long term care administration, and the Board shall take action to formally vacate his/her license. An individual shall, if he/she wishes to practice long term care administration after failure to reinstate his/her license from inactive to active status, re-apply to the Board and meet current requirements for initial licensure as a long term care administrator.

490:10-1-11. Requirements for restoration from suspended status

(a) In addition to the general requirements found in this Chapter each applicant for restoration of a suspended license shall meet the requirements in this Section.

(~~a~~b) Individuals seeking restoration of a license that has been suspended must petition and appear, in person, before the Board and provide the Board with written documentation ~~to ensure the~~ that ~~licensee~~ he/she has complied with all terms of the suspension.

(~~b~~c) The Board, in its sole discretion, may restore a suspended license after the suspension time has elapsed, upon submission of evidence satisfactory to the Board that the conditions responsible for the suspension no longer exist and that no other reasons exist which warrant continued suspension.

(~~c~~d) Evidence shall include complete documentation attested to under oath and by witnesses of facts that indicate that the conditions responsible for the suspension no longer exist. Letters of recommendations from employees, officers of courts, or respected members of the individual's community may also be submitted.

(~~d~~e) Petitioners who have been suspended may be required to complete continuing education hours (in addition to those required for license renewal), and/or specific Administrator University modules, and/or the entire Administrator University curriculum at the discretion of the Board.~~Petitioners shall not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with state income tax requirements~~.

~~(f) A licensee seeking reinstatement shall submit to a criminal background check. If the results of a criminal background check reveal that the licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for reinstatement may be disapproved.~~

~~(g) Petitioners must remit payment of the current licensure fee as prescribed by the Board at OAC 490:1-7-2, if renewal is required, and any unpaid fees or fines owed to the Board as a condition of restoration.~~

SUBCHAPTER 3. APPLICATION FOR LICENSURE

490:10-3-1. Application for initial licensure, reciprocity, or provisional license

(a) Each applicant for licensure as a long term care administrator shall make a verified application on a form furnished by the Board and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license is valid for one year after the date of receipt by the Board.

(c) An applicant shall be deemed to have abandoned the application if he/she does not fulfill all requirements for licensure within one year from the date of application.

(d) An application submitted subsequent to the abandonment of a former application shall be treated as a new application and rules in force at the time of such new application shall apply.

(e) The Executive Director may, upon a showing of good cause, extend the application period for an additional six (6) months.

(f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved and no further action will be taken on the application.

(g) An application shall be determined complete when:

(1) the criminal background check is received by the Board;

(2) all documentation requested in the application has been received by the Board; and

(3) the application fee prescribed by the Board at OAC 490:1-7-2 has been remitted.

(h) Once an application is determined complete, the applicant must then meet the remaining requirements found in this Chapter for an initial license, licensure by reciprocity, or a provisional license, as appropriate.

(i) Upon verification of compliance with all requirements, an applicant shall be eligible for licensure as a long term care administrator.

(j) Applicants eligible for licensure shall pay a license fee as prescribed by the Board at OAC 490:1-7-2. The fee is due and payable on notice of eligibility for licensure. A license will not be issued until said fee is paid in full to the Board.

(k) Upon payment of the license fee, the applicant shall be presented to the Board for ~~approval~~ consideration at the next Board meeting. Applicants are encouraged to attend the Board meeting.

(l) The certificate of license shall be mailed to the applicant within seven (7) working days of Board approval.

~~(m) An applicant who is denied a license shall be notified in writing and may, within 10 days of receipt, file a request for a hearing before the Board.~~

490:10-3-1.1. Evidence requirements

(a) To satisfy the Board's requirement for evidence verifying educational degree(s) conferred or hours of post-secondary education completed, the applicant shall cause an official transcript(s) to be sent directly to the Board office from the educational institution(s) that awarded the degree(s) and/or from the educational institution(s) at which the post-secondary education was completed. Transcripts issued to the student, or copies thereof, shall not be accepted.

(b) To satisfy the Board's requirement for evidence indicating experience, the applicant shall submit a declaration signed by a licensed long term care facility administrator, medical director, director of nurses, or registered nurse who can attest to the applicant's work experience.

490:10-3-3. State ~~standards~~ Standards examination

(a) An individual applying for an initial license, licensure by reciprocity, a provisional license, or reinstatement from inactive status must, prior to the issuance of a license or reinstatement of an inactive license to active status, ~~take~~ sit for and receive a passing score on the ~~state~~ State ~~standards~~ Standards examination.

(b) The Board will conduct at least two licensure examinations within the calendar year.

(c) The application and supporting documents required by the Board must be completed and on file at least thirty (30) days prior to the announced examination date.

(d) At least ten (10) calendar days prior to the scheduled examination, each applicant eligible to ~~take~~ sit for the examination shall be notified of the time and place~~, by letter addressed to the address shown on the application~~.

(e) The ~~board~~ Board shall determine a passing score for the ~~state~~ State ~~standards~~ Standards examination, and shall apply such score uniformly to all persons taking the examination.

(f) To meet the requirements of the ~~state~~ State ~~standards~~ Standards examination, the applicant shall receive a passing score.

(g) An applicant who fails to pass the State Standards examination may re-take the examination ~~once. An applicant who has failed the examination twice must petition the Board if he/she desires to pursue licensure~~.

(h) Fees for the ~~state~~ State ~~standards~~ Standards examination shall be in an amount prescribed by the Board at OAC ~~490:1-7-2~~ 490:1-7-2.

490:10-3-5. Application for licensure renewal

(a) Each applicant for a renewal of a license shall:

(1) File an application, as prescribed by the Board, ~~at least thirty (30) days~~ prior to the expiration date of the current license.

(2) Submit evidence, upon request, satisfactory to the Board that the applicant has successfully completed the required hours of continuing education within the period of the current license.

(3) Not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with ~~state~~ State income tax requirements. If licensee is found to be in non-compliance with these State income tax requirements:

(A) such license shall not be renewed; and

(B) licensee shall not have recourse against the Board for non-renewal of his/her license.

(4) Submit to a criminal background check. At the time of annual license renewal, the Board will randomly select not less than a five (5%) percent sample from all licenses being renewed, against which sample the Board will perform criminal background checks. If the results of a criminal background check reveal that ~~the~~ a licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the licensee's request for renewal may be disapproved.

(5) Remit the Annual License Renewal fee ~~required for obtaining an annual license~~ as prescribed by the Board at OAC 490:1-7-2 and ensure all outstanding fees and fines owed to the Board have been paid.

~~(b) Upon receipt of a complete application, the Board will, within ten (10) days of the expiration date of the current license, notify the applicant of its intention to renew, reject, or otherwise defer action on the renewal request.~~

(~~c~~b) A suspended license shall be subject to expiration and shall be renewed as provided in this ~~section~~ Section. Renewal of a suspended license shall not entitle the licensee to engage in the practice of long term care administration until the suspension ~~has ended, or~~ is ~~otherwise~~ removed by the Board and the ~~right~~ privilege to practice long term care administration is restored by the Board.

(~~d~~c) ~~Failure to receive the renewal application from the Board shall not relieve~~ It is the responsibility of ~~the~~ each licensee ~~of the responsibility of~~ to ~~renewing~~ renew ~~the~~ his/her license prior to the expiration date of the current license.

(~~e~~d) A late fee(s), as prescribed by the Board at OAC 490:1-7-2, ~~will~~ shall be paid by applicants who do not file for renewal ~~at least 30 days~~ prior to the expiration date of the current license.

(~~f~~e) If the license is not renewed by the last day of the current licensing year, the licensee does not hold a valid license as of the first day of the ensuing licensing year and shall not hold a position or function in the capacity as a long term care administrator in Oklahoma.

(f) As soon as practicable after the last day of a given licensing year, the Board shall:

(1) establish a list of those administrators who failed to timely renew his/her license for the ensuing year;

(2) send each such administrator written notification of said non-renewal, asking the respective administrator whether or not he/she intended not to renew his/her license or if his/her non-renewal was in error, and include therein the date on which the Board will take formal action to vacate all non-renewed licenses.

~~(g) Any licensee who has not renewed his/her license within ninety (90) days following its due date is deemed to have abandoned the practice of long term care administration and must re-apply and meet the current requirements for initial licensure as a long term care administrator.~~

(g) Administrators who failed to timely renew his/her license, but who wish to practice as long term care administrators, may petition the Board, in writing, to personally appear before the Board on the date when the Order(s) to vacate non-renewed licenses will be issued, requesting time prior to the issuance of such Order(s) in order to explain why his/her license renewal was not submitted within the time limits established by the Board. Any such petition shall be received in the Board offices no later than close-of-business on the Wednesday of the week preceding the Board Meeting at which the Order(s) to vacate are to be issued, and shall include a concise summary of the reason(s) why his/her license renewal was not submitted prior to the expiration of the previous year's license.

(h) An administrator who fails to timely renew his/her license and does not file a timely petition for reinstatement, as otherwise delineated within this Chapter, is assumed to have voluntarily abandoned the practice of long term care administration and his/her license shall be vacated by the Board.

(i) The Board shall notify all administrators who have timely-filed his/her petition to appear before the Board to have his/her license reinstated pursuant to this Chapter as to the time, date and location where the administrator is to personally appear before the Board. Subsequent failure by the administrator to appear before the Board, as stipulated by the Board in the aforementioned notice, shall be cause for the Board to immediately and permanently withdraw its grant of petition and proceed to vacate the license. Should this occur, and individual wishes to practice as a long term care administrator, he/she must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator.

(j) If the individual administrator for whom the Board has granted his/her petition to appear before the Board does, in fact, appear before the Board, he/she shall be provided the opportunity to present the facts and circumstances surrounding his/her failure to renew his/her license on time. After consideration of the individual's testimony and all supporting evidence provided by the administrator pursuant to his/her request for reinstatement, as well as consideration of any other information it has received that either supports or refutes the information provided by the administrator, the Board shall make its decision whether or not to reinstate the administrator's license.

(1) If the Board decides not to reinstate the administrator's license, and the administrator wishes to practice as a long term care administrator, he/she must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator.

(2) If the Board decides to reinstate the individual's license, the licensee shall be assessed and be obligated to pay a late fee(s) as described in Chapter 1, Subchapter 7 of this Title, and the Board may, at its sole discretion:

(A) impose other sanctions or conditions upon licensee that must be met prior to license reinstatement, or

(B) reinstate the individual's license, conditioned upon licensee subsequently complying with the imposed sanctions or conditions by a certain future date. If the Board so 'conditions' the reinstatement of an individual's license, and the licensee fails to timely meet the 'conditions' for reinstatement imposed by the Board, the Board may suspend, revoke or vacate the individual's license at the Meeting following the date established by the Board wherein licensee was to have been in full compliance with the sanctions or conditions imposed by the Board. Should this occur, and the individual wishes to practice as a long term care administrator, he/she must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator.

(~~h~~k) A licensee who practices after the expiration of his/her license is practicing without a license and is subject to disciplinary action and/or sanctions as determined by the Board.

(~~i~~ l) A licensee who is denied a renewal license shall be notified of the same and ~~in writing and~~ may, within 10 calendar days of receipt of such notification, file a written request for a hearing before the Board.

(m) If the license was not renewed by the Board, a hearing before the Board shall not be granted if:

(1) licensee was non-compliant with state income tax requirements; or if

(2) licensee held an inactive license, and said inactive license could not be renewed for the ensuing year as an inactive license because of the two (2) consecutive licensing years time limit for an inactive license, and licensee did not meet the requirements for reinstatement of his/her active license for the ensuing year.

490:10-3-6. Licensure term

A provisional license shall ~~expires~~ expire six (6) months from the effective date of the provisional license and shall not be renewed. All other licenses shall expire on December 31 following issuance and may be renewed annually thereafter.

SUBCHAPTER 5. DISCIPLINE

490:10-5-3. Disciplinary action

(a) The Board may deny an initial application; deny a renewal application; suspend or revoke a long term care administrator license, a provisional license, or an AIT training permit; warn; censure reprimand; impose administrative fines or probation or use other remedies that may be considered to be less than revocation and suspension upon proof of any of the following:

(1) The obtaining or attempting to obtain a license by fraud, deceit, or misrepresentation.

(2) Conviction of or a plea of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude.

(3) ~~Habitual indulgence in the use~~ Use of legally-prescribed or illegal drugs (~~narcotic~~ narcotics or other dangerous drugs) or alcohol or the physical dependence on legally-prescribed drugs or illegal drugs or alcohol, or gambling, if such use or dependence, or such gambling, or the behaviors related to or resulting from such use or dependence compromise the individual's ability or capacity to fulfill his/her duties or responsibilities in the long term care facility, or if the same constitute(s) a criminal offense.

(4) Commitment to a mental institution or judicial determination of incompetence.

(5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public.

(6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.

(7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care profession and the public.

(8) Except as otherwise permitted in this Chapter, ~~Concurrently~~ concurrently serving or acting as the administrator of more than one nursing ~~home~~ facility; or exceeding the conditions placed on administrators of ~~ICF~~ ICFs/MR with 16 beds or less ~~facilities~~ as stated in this Chapter.

(9) Failure to comply with state or federal requirements applicable to the facility.

(10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.

(11) Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing facility patronage.

(12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any state official.

(13) Failure to provide verification of continuing education hours.

(14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.

(15) Falsification of any records relating to the operation of a long term care facility; falsification of records submitted to the Board or any other state or federal agency; falsification of a patient's records, or causing a patient's records to be falsified.
(16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.
(17) Improperly interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by statute.
(18) Violation of any disciplinary order, term of suspension, condition, stipulation, or limitation imposed on the licensee by the Board.
(19) Unlicensed practice by an applicant for licensure or practice on a revoked, suspended, delinquent, or inactive license.
(20) Failure to pay fees or fines established by the Board.
(21) Knowingly aiding, assisting, or advising a person to unlawfully practice as an administrator without a required license.
(22) Failure to adequately supervise an assistant administrator and/or failure to assure that the assistant administrator complies with state and federal requirements applicable to the facility.

SUBCHAPTER 8. ADMINISTRATOR-IN-TRAINING (AIT)

490:10-8-17. Supervision of ~~more than one AIT~~ AITs ~~restricted~~

A preceptor shall not concurrently supervise ~~no~~ more than ~~one~~ two (~~1~~2) ~~AIT~~ AITs

SUBCHAPTER 13. STANDARDS FOR ADMINISTRATORS

490:10-13-2. Administrator responsibilities

(a) It is the responsibility of the long term care administrator, as the managing officer of the facility, to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations. The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.
(b) Long Term Care Administrators shall adhere to the Administrator Code of Ethics as adopted by the Board.
(c) Long Term Care Administrators licensed by the Board shall not concurrently serve as the administrator of more than one ~~nursing~~ long term care facility except as otherwise permitted in this Chapter. ~~The Board has the authority to grant a waiver of this restriction as prescribed at OAC 490:1-3-9.~~
~~(d)~~ A Long Term Care Administrator may serve as the administrator of more than one intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-~~/~~MR~~/~~-16), only if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed the lesser of six (6) facilities ~~and~~ or total licensed capacity of sixty-four (64) beds.
(~~e~~d) A long term care administrator must devote at least one-half (1/2) of such person's working time to on-site, on-the-job supervision of a long-term care facility at which he/she is listed as being the Administrator-of-Record.~~; provided that this~~This requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16).
(~~f~~e) Every person licensed as an administrator and designated the "~~administrator of record~~Administrator-of-Record" shall display such license in a conspicuous place in the ~~office~~ facility or place of business requiring such license.
(~~g~~f) Each licensed administrator shall notify the Board within fifteen (15) days following the change of either his/her name, business or personal mailing address, or change in employment. The Board will assess a late fee as prescribed at OAC 490:1-7-2 if it is determined that the administrator failed to provide current contact information within this fifteen day period.
(~~h~~g) Upon receipt of satisfactory evidence that a license has been lost, mutilated, or destroyed, the Board may issue a duplicate or replacement license upon payment of a fee as prescribed by the Board at OAC 490:1-7-2.
(~~i~~h) To change his/her name on a license, the licensee must provide legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement license can be issued.
(~~j~~i) An administrator shall not knowingly initiate contact with ~~a~~ an ~~client~~ individual currently residing in a long term care facility, or knowingly initiate contact with the family or guardian of an individual currently residing in a long term care facility, for the purpose of attempting to persuade a change in that individual's residence to another long term care facility.
(~~k~~j) An administrator shall not knowingly solicit, or permit an employee to solicit clients for his/her long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary to stop such conduct.
(~~l~~k) An Administrator, or applicant for Administrator licensure, in connection with a license application or an investigation conducted by the Board or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the state or federal government having regulatory responsibility over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:
(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misrepresentation known by the Administrator or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Board or such government agency or any designated representative thereof.

490:10-13-3. Requirements for administrators who are in charge of two (2) or more facilities comprising a total of one-hundred-twenty (120) or fewer occupied beds and located within a fifty (50) mile radius of each other, and wherein one-or-more individuals is/are employed in the capacity of "Assistant Administrator, Unlicensed"

(a) The Administrator-of-Record is responsible for ensuring that all minimum requirements delineated herein relating to individuals who wish to serve in the capacity of "Assistant Administrator, Unlicensed" are met prior to the delegation of duties and responsibilities to such individual.

(b) The Administrator-of-Record shall provide qualified individuals serving as an "Assistant Administrator, Unlicensed" with adequate authority and responsibility to administer those aspects of the operations of the facility that are to be delegated to them, including the authority to act in an emergency.

(c) The Administrator-of-Record shall clearly, and in writing, develop a formal job description for the position of "Assistant Administrator, Unlicensed", wherein the duties and responsibilities of the individual serving as an assistant administrator are clearly delineated.

(d) The Administrator-of-Record shall provide supervision, training and direction to the "Assistant Administrator, Unlicensed", and delegate only those duties and responsibilities that may safely be performed by the individual filling that role and that are not otherwise proscribed by law, rule or statute.

(e) The Administrator-of-Record, being licensed by the Board, is legally and ultimately responsible for the management and operation of the facility and, as such, shall maintain sufficient on-site presence in the facility to effectively supervise the "Assistant Administrator, Unlicensed".

(f) The Administrator-of-Record shall ensure the "Assistant Administrator, Unlicensed" does not concurrently serve as an "Assistant Administrator, Unlicensed" of more than one (1) long term care facility.

(g) The Administrator-of-Record shall spend at least ten (10) hours per calendar week on-site in the facility, providing guidance and direction to the "Assistant Administrator, Unlicensed", and further, such on-site supervisory visits shall not be more than ten (10) calendar days apart.

(h) The Administrator-of-Record shall establish a clearly-written policy delineating who the individual residents, residents' family members and/or guardians, and facility staff should contact when the Administrator-of-Record is absent from the facility as well as the procedure that is to be utilized that clearly indicates 'when' and 'how' such contact shall be made. The policy and procedure shall be provided to residents, residents' family and/or guardians, and facility staff and shall be posted in a conspicuous place in the facility.

(i) The Administrator-of-Record shall not delegate nor cause to be delegated to the Assistant Administrator, Unlicensed, any duty or responsibility that has been specified in State or federal law, statute, rule or regulation as being a duty or responsibility that can only be performed by a duly licensed Administrator or any duty or responsibility that is otherwise prohibited by State or federal law, statute, rule or regulation. Such Administrator-only duties or responsibilities include, but are not limited to, responsibilities regarding the review of incident reports and the Administrator's responsibility on the quality assurance committee.

(j) The Administrator-of-Record shall ensure that no individual serve as the "Assistant Administrator, Unlicensed", if that individual holds a license granted by this Board, but which license is suspended, revoked or otherwise restricted.

(k) The facility Administrator shall ensure that no individual serves as an "Assistant Administrator, Unlicensed", if the facility at which the "Assistant Administrator, Unlicensed", is to serve is not one of two-or-more facilities at which the Administrator serves as the Administrator-of-Record, that have a total bed complement not to exceed one-hundred-twenty (120) occupied beds and that are located with a fifty (50) mile radius of each other.

[OAR Docket #08-1142; filed 06-06-08]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS
CHAPTER 15. LONG TERM CARE CERTIFIED ASSISTANT ADMINISTRATORS

[OAR Docket #08-1143]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Certification of Long Term Care "Assistant Administrators, Unlicensed" [NEW]
490:15-1-1. Purpose [NEW]
490:15-1-2. Definitions [NEW]
490:15-1-3. Minimum qualifications for certified assistant administrators [NEW]
490:15-1-4. Conditions for employment for certified assistant administrators [NEW]
Subchapter 3. Application For Certification [NEW]
490:15-3-1. Application process [NEW]
490:15-3-2. Approval process [NEW]

AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators, Title 63 O.S. Section 330.51 et seq.

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Not applicable
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Not applicable
ANALYSIS:
The purpose of the rulemaking action was to implement the provisions of Senate Bill No. 738 of the 2007 Regular Session. Chapter 15 was added to establish minimum qualifications and conditions of employment for individuals serving as unlicensed Assistant Administrators in long term care facilities.
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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 11, 2008:

SUBCHAPTER 1. CERTIFICATION OF LONG TERM CARE "ASSISTANT ADMINISTRATORS, UNLICENSED"

490:15-1-1. Purpose

This Chapter implements the specific rules allowing the Board to 'certify' that individuals have met certain minimum requirements established by the Board, enabling such individuals to serve as a long term care "Assistant Administrator, Unlicensed" in those situations wherein the Administrator-of-Record at the facility in which they are to serve also serves as the Administrator-of-Record of one-or-more additional licensed facilities within a fifty (50) mile radius of each other and wherein the total number of occupied beds at such facilities does not exceed 120 beds. Individuals who serve as Assistant Administrators, Unlicensed, do so under the direct supervision and license of the licensed long term care Administrator-of-Record.

490:15-1-2. Definitions

Definitions set forth in Chapter 1 of this Title shall also apply to this Chapter.

490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for an Assistant Administrator, Unlicensed

(a) In addition to the general requirements for administrators found at OAC 490:10-1-2.1, each applicant seeking certification as having met the minimum qualifications to be able to serve as an Assistant Administrator, Unlicensed, shall meet the requirements in this Section.

(b) In order to qualify to receive a letter from the Board wherein the Board would 'certify' that the individual met the minimum qualifications to be able to serve as an Assistant Administrator, Unlicensed, each applicant must provide evidence satisfactory to the Board of the following:

(1) Successful completion of a high school education and receipt of a high school diploma, or receipt of his/her G.E.D.;

(2) Successful completion of a Board-approved intensive review course on State Rules and Regulations;

(3) Receipt of a passing score on the current Oklahoma State Standards examination; and

(4) two (2) years management, leadership or supervisory experience in a long term care facility,

490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as a "Assistant Administrator, Unlicensed"

(a) Under the supervision, direction and license of the licensed Administrator-of-Record, it shall be the responsibility of the "Assistant Administrator, Unlicensed" to plan, organize, direct, and control those day-to-day functions of a facility delegated to him/her and to maintain the facility's compliance with applicable laws, rules, and regulations during the absence of the licensed administrator.

(b) An "Assistant Administrator, Unlicensed" shall practice only under the direct supervision and license of a licensed Administrator-of-Record who is in charge of two-or-more licensed facilities within a 50-mile radius wherein the total number of occupied beds does not exceed 120, and whose license is active and otherwise unrestricted. An "Assistant Administrator, Unlicensed" shall not continue to serve at a facility if the license of the Administrator-of-Record is suspended, revoked or placed on inactive status, or if the Administrator-of-Record resigns his/her employment or his/her employment is otherwise terminated,

(c) An individual serving as an "Assistant Administrator, Unlicensed" shall be employed by the facility full-time in that capacity, regularly-scheduled for 40 hours per calendar week; shall not concurrently serve as the Assistant Administrator, Unlicensed, of more than one (1) long term care facility; and shall spend at least eighty (80%) percent of their working time on-site at the facility, equitably distributing their on-site time throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. .

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION AND REQUIREMENTS FOR CONTINUED ELIGIBILITY

490:15-3-1. Application process

(a) Each applicant who is seeking Board review and for the Board to 'certify' that as of the date of the letter, the applicant has met the minimum qualifications necessary to serve as an "Assistant Administrator, Unlicensed", shall make a verified application on a form furnished by the Board and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for review by the Board for purposes of the Board 'certifying' an individual's qualifications to serve in the capacity of an Assistant Administrator, Unlicensed, is valid for one year after the date of receipt by the Board.

(c) An application shall be determined complete when:

(1) the criminal background check is received by the Board;

(2) all documentation requested in the application has been received by the Board; and

(3) the application fee prescribed by the Board at OAC 490:1-7-2 has been remitted and the monies credited to the Board's account with the State Treasurer.

(d) Once an application is determined complete, the applicant must then meet the remaining requirements for certification found in this Chapter.

490:15-3-2. Approval process

(a) Upon verification of compliance with all requirements, the Board shall 'certify' an individual as having met, as of the date of the letter, the minimum requirements to be eligible to serve as an Assistant Administrator, Unlicensed, within a single facility, one which is administered by a licensed administrator who is serving as the administrator-of-record for that facility and for one-or-more additional licensed facilities within a 50-mile radius of each other and wherein the total number of occupied beds at all such facilities administered by this Administrator-of-Record does not exceed 120.

(b) The applicant shall be presented to the Board for consideration at the next Board meeting. Applicants are encouraged to attend the Board meeting.

(c) Applicants shall be notified of the Board's decision by letter in which the Board will either 'certify' the individual as having met the minimum qualifications or will indicate the individual did not meet the minimum qualifications for the Board to issue its 'certification'. The Board will maintain a listing of individuals it has 'certified' as having met the minimum qualifications. Such listing shall include the individual's name, mailing address and the date the Board issued the letter of 'certification'.

(d) As of the date the Board 'certifies' that an individual applicant meets the minimum requirements for that individual to serve in the capacity of an Assistant Administrator, Unlicensed, such individual may serve in such an unlicensed capacity. However, it shall be the obligation of the Administrator-of-Record to subsequently verify that the individual serving as an Assistant Administrator, Unlicensed continues to meet the minimum qualifications for continued certification (i.e. criminal background check).

[OAR Docket #08-1143; filed 06-06-08]

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

[OAR Docket #08-1149]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Supplier Provisions [AMENDED]
580:15-4-6. [AMENDED]
Subchapter 6. State Agency Provisions [AMENDED]
580:15-6-6. [AMENDED]
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ANALYSIS:
The rule amendments correct an incomplete rule cite and to delete an inapplicable phrase from a section, which were oversights in the approved 2007 rules. Deletion of the phrase "in a bid" from Section 15-4-6 clarifies that a supplier's authorized signature is required on any document submitted to the Central Purchasing Division and not limited to only bid documents. The correction to the incomplete rule cite in 580-6-6 eliminates ambiguity by citing to the specific rule in a subchapter rather than the entire subchapter.
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 11, 2008:

SUBCHAPTER 4. SUPPLIER PROVISIONS

580:15-4-6. Bid preparation

(a) **General.** A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.

(b) **Forms the Purchasing Director requires suppliers to submit.** The Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.

(c) **Additional form requirements.**

(1) **Data the supplier submits.**

(A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(B) All form information entries shall be in ink.

(C) Information the supplier submits shall be legibly hand written, typewritten or printed and shall meet all terms and conditions of the solicitation.

(D) Should the supplier alter form or bid information, the supplier shall initial each alteration.

(2) **Authorized signature.** A form a supplier submits with the supplier's bid to the Purchasing Division shall bear an authorized signature. Any form requiring a supplier's signature submitted ~~in a bid~~ to the Purchasing Division shall have an authorized signature.

(3) **Notary seal.** If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner state laws of the bidder's state specify.

(d) **Contract.** The contract the State Purchasing Director awards pursuant to a solicitation shall consist of the following contract documents: invitation to bid, or request for proposal or request for quotation; Purchasing Division attachments including, but not limited to, amendments, change orders or modifications; the supplier's bid or quotation with attachments, reviewed and approved by the State Purchasing Director; and, the purchase order the State Purchasing Director issues. A contract the State Purchasing Director awards may incorporate by reference all provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.

(e) **Firm bid for sixty (60) days.** The Purchasing Director shall consider a supplier's bid a firm bid for sixty (60) days following the bid closing date.

(f) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. The state shall not pay travel expenses the bid price does not include.

(g) **Tax exemptions.** State agency acquisitions are exempt from sales taxes [68 O.S., §1365] and federal excise taxes [Chapter #.32, Internal Revenue Code #73-73-016-3K]. Bidders shall not include these taxes in price quotes. The Purchasing Director shall supply tax exemption certificates to bidders if the bidder requests.

(h) **Payment terms.** State agencies shall pay suppliers pursuant to 62 O.S., Section 41.4a, et seq. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

(i) **Bonds.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of surety bond with the bid.

(1) **Form of bond.** The bid bond, performance bond or other type of surety bond shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashiers check.

(2) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

(3) **Bond return.** When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety bond, the State Purchasing Director shall retain the bond until the successful completion of the purpose for which the bond was drawn.

(j) **Used or new products.** A bid shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(k) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(l) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(m) **All or none bid.**

(1) **Award to more than one bidder.** If the solicitation specifies that the Purchasing Director may award a contract to more than one bidder, the bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) **Award by item.** If the solicitation indicates that the Purchasing Director may award the bid to more than one bidder by item, the bidder may indicate that the terms and conditions of the bid are all or none.

(n) **High technology systems.**

(1) **New high technology system.** The Purchasing Director shall not evaluate a bid for a high technology system unless the bid includes a statement of work and:

(A) **System upgrade schedule.** Documentation by the bidder of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three-year period following the target purchase date; or,

(B) **No system upgrades.** Documentation that the bidder does not plan any recommended or required system upgrades or improvements to the high technology system, over a projected three-year period following the target purchase date.

(2) **High technology system upgrades.** The State Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid includes a statement of work and:

(A) documentation that the vendor agrees to provide the upgrade or improvement at no charge to the state;

(B) documentation that the vendor previously agreed in a contract to provide the upgrade or improvement at no additional charge to the state;

(C) documentation the state agency obtained from the vendor that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or,

(D) documentation the vendor will no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

(o) **Bidder delivery.** A solicitation shall specify a delivery date or allow the bidder to specify a firm delivery date. If the solicitation does not specify a delivery date, the bidder shall specify the delivery date in the bid.

(p) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the Purchasing Director. [Reference OAC 580:15-4-5(k)]

(q) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

SUBCHAPTER 6. STATE AGENCY PROVISIONS

580:15-6-6. State agency acquisitions

(a) **Acquisition authority.** All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S., §85.1 et. seq., other applicable statutory provisions, this Chapter and the agency's approved internal purchasing procedures.

(b) **Acquisitions under $2,500. 00.** State agencies shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2500.00) that are fair and reasonable.

(c) **Acquisitions over $2,500. 00 and under $10,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make acquisitions not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this subsection. All awards shall be based on lowest and best or best value criteria. An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the complete specifications, terms and conditions for the acquisition to all notified suppliers.

(2) **Supplier selection.** The state agency shall solicit a price quote from a minimum of three suppliers, which may be from the registered supplier list in the appropriate commodity classification compiled by the Purchasing Division and made available to state agencies. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall secure the suppliers' pricing and delivery dates in writing or document price quotation and delivery dates.

(4) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file.

(5) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide an affidavit pursuant to 74 O.S., Section 85.23 (DCS/Purchasing Form 003). The affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature is not acceptable.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification and documentation.** Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.

(C) **Exceptions.** Sales tax permit verification does not apply to acquisitions for services only.

(6) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(7) **Supplier payment.** The state agency shall pay the supplier following receipt,
inspection, and acceptance of the acquisition by the state agency and upon receipt
of a proper invoice from the supplier.

(d) **Acquisitions over $10,000. 00 and under $25,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and ~~580:15-6~~ 580:15-6-6 shall make acquisitions exceeding $10,000.00 but not exceeding $25,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria. An acquisition for professional or nonprofessional services must include statutory language required by

the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the statute.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the complete specifications, terms and conditions for the acquisition to all notified suppliers. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include:

(A) evaluation criteria for the acquisition; and,

(B) a non-collusion affidavit form pursuant to 74 O.S., Section 85.22 and the provisions of (d)(4) of this Section.

(2) **Supplier selection.** The state agency shall solicit a minimum of ten (10) suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in writing.

(4) **Non-Collusion Affidavit.** The state agency shall provide suppliers a non-collusion affidavit form pursuant to 74 O.S., Section 85.22 (DCS/Purchasing Form 004) with any solicitation that is competitively bid. A supplier shall submit the non-collusion affidavit with their response to the solicitation. The non-collusion affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature is not acceptable. If a supplier submits a bid by facsimile or by means of electronic commerce, the supplier shall submit the non-collusion affidavit with the original signature prior to the closing date the state agency specifies.

(5) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

(6) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide an affidavit pursuant to 74 O.S., Section 85.23 (DCS/Purchasing Form 003). The affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature is not acceptable.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification and documentation.** Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.

(C) **Exceptions.** Sales tax permit verification does not apply to acquisitions for services only.

(7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(e) **Additional information:**

(1) **Split purchases.** State agencies shall not make split purchases for the purpose of evading their approved dollar threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to the Oklahoma Central Purchasing Act.

(2) **Change orders.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.

(A) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(B) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(3) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of Oklahoma Central Purchasing Act.

(4) **Acquisitions from another governmental agency.** A state agency may contract with a political division or subdivision, agency of the United States or another state agency pursuant to 74 O.S., Section 581 or Sections 1001 through 1008. Acquisitions shall not be made for the purpose of evading competitive bidding

requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(5) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

(6) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item with prior written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(7) **OneNet acquisitions.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(8) **Authorized signature.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, purchase orders, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

[OAR Docket #08-1149; filed 06-06-08]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 35. FLEET MANAGEMENT DIVISION

[OAR Docket #08-1147]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:35-1-10 [AMENDED]
AUTHORITY:
Department of Central Services; 74 O.S., Section 78(B)(4)
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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2008
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Effective:
July 11, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule amendments update certain maintenance requirements for state vehicles based on industry standards. The maintenance schedule related to transmission service and replacement of hoses and belts for state vehicles required updating to correspond with new model vehicles and industry standards.
CONTACT PERSON:
Gerry Smedley, Administrative Rules Liaison, (405) 522-8519, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105 or gerry_smedley@dcs.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

580:35-1-10. Care and maintenance of vehicles

(a) **Vehicle maintenance schedule.** A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any state-owned vehicle in its possession, according to the following maintenance schedule:

(1) 5,000 vehicle miles: "A" maintenance service due;
(2) 10,000 vehicle miles: "A" maintenance service due;
(3) 15,000 vehicle miles: "A" maintenance service due;
(4) 20,000 vehicle miles: "B" maintenance service due;
(5) 25,000 vehicle miles: "A" maintenance service due;
(6) 30,000 vehicle miles: "A" maintenance service due;
(7) 35,000 vehicle miles: "A" maintenance service due;
(8) 40,000 vehicle miles: "B" maintenance service due;
(9) 45,000 vehicle miles: "A" maintenance service due;
(10) 50,000 vehicle miles: "C" maintenance service due;
(11) 55,000 vehicle miles: "A" maintenance service due;
(12) 60,000 vehicle miles: "B" maintenance service due;
(13) 65,000 vehicle miles: "A" maintenance service due;
(14) 70,000 vehicle miles: "A" maintenance service due;

(15) 75,000 vehicle miles: "A" maintenance service due;
(16) 80,000 vehicle miles: "B" maintenance service due;
(17) 85,000 vehicle miles: "A" maintenance service due;
(18) 90,000 vehicle miles: "A" maintenance service due;
(19) 95,000 vehicle miles: "A" maintenance service due;
(20) 100,000 vehicle miles: "C" maintenance service due.

(b) If the vehicle is stationed in or near the Oklahoma City metro area, service shall be performed by the Division.

(c) If the vehicle is stationed outside the Oklahoma City metro area, all "A" and "B" maintenance shall be obtained from a local vendor as follows:

(1) Check the Fuel/Maintenance locator guide for a location willing to accept the current state fuel card provided with the vehicle. If such a facility is unavailable, contact a local dealership or garage.
(2) Obtain a garage estimate for the service to be performed prior to commencement of work.
(3) Authorization by the Division shall be obtained prior to commencement of the work.
(4) All invoices shall be mailed to the Division.

(d) **"A" maintenance requirements.** "A" maintenance includes the following:

(1) Change oil and filter;
(2) Chassis lubrication;
(3) Check all fluid levels, which include:
  (A) Power steering;
  (B) Master cylinder;
  (C) Transmission fluid;
  (D) Windshield washer;
  (E) Battery; and
  (F) Radiator coolant.
(4) Check tire condition and pressure;
  (A) Rotate and balance (if necessary); and,
  (B) Check spare.
(5) Check for proper operation of the following:
  (A) Windshield wiper and washer;
  (B) All lights and reflectors;
  (C) Horn;
  (D) Heater and air conditioner;
  (E) Emergency brake;
  (F) Radio; and
(6) Check for fluid leaks.

(e) **"B" maintenance requirements.** "B" maintenance includes the items listed in "A" maintenance plus the following:

(1) Air and fuel filters, check and replace, if necessary;
  (A) Replace p.c.v. valve; and,
  (B) Clean and protect battery terminal ends.
~~(2) Service transmission;~~
(~~3~~ 2) Clean engine;
(~~4~~ 3) Check brakes;
(~~5~~ 4) Check shocks;
(~~6~~ 5) Check front wheel bearing on rear drive vehicles; and,
(~~7~~ 6) Check drive axle boots on front drive vehicles.

(f) **"C" maintenance requirements.** "C" maintenance includes all of the items listed in "A" maintenance plus the following:

(1) Complete detail clean; and
(2) Replace all belts and hoses (do not replace hoses if vehicle has extended life coolant);
(3) Service transmission.

[OAR Docket #08-1147; filed 06-06-08]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #08-1152]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]
AUTHORITY:
Oklahoma Real Estate Commission; 59 O.S. §858-208
DATES:
Comment period:
February 18, 2008 through March 18, 2008
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
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:
Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 2401 N.W. 23rd Street, Suite 18, Oklahoma City Oklahoma 73107, 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.

§308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [REVOKED]

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [NEW]

Notice to Seller: Oklahoma Law (the "Residential Property Condition Disclosure Act," Title 60, O.S., Sections 831 et.seq., effective July 1, 1995) requires Sellers of 1 and/or 2 residential dwelling units to complete this form. A Seller must complete, sign and date this disclosure form and deliver it or cause it to be delivered to a Purchaser as soon as practicable, but in any event no later than before an offer is accepted by the Seller. If the Seller becomes aware of a defect after delivery of this statement, but before the Seller accepts an offer to purchase, the Seller must deliver or cause to be delivered an amended disclosure statement disclosing the newly discovered defect to the Purchaser. If the disclosure form or amendment is delivered to a Purchaser after an offer to purchase has been made by the Purchaser, the offer to purchase shall be accepted by the Seller only after a Purchaser has acknowledged receipt of this statement and confirmed the offer to purchase in writing.

Notice to Purchaser: The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain. The information contained in this disclosure statement is not intended to be a part of any contract between the Purchaser and Seller. The information and statements contained in this disclosure statement are declarations and representations of the Seller and are not the representations of the real estate licensee.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Complete this form yourself. (4) If some items do not apply to your property, circle N/A (not applicable). If you do not know the facts, circle Unk (unknown). (5) The date of completion by you may not be more than 180 days prior to the date this form is received by a purchaser.

LOCATION OF SUBJECT PROPERTY: _____

_____

SELLER IS ___ IS NOT ___ OCCUPYING THE SUBJECT PROPERTY.

Appliances/Systems/Services: (The items below are in **NORMAL** working order)

	Circle below			
Sprinkler System	N/A	Yes	No	Unk
Swimming Pool	N/A	Yes	No	Unk
Hot Tub/Spa	N/A	Yes	No	Unk
Water Heater __Electric __Gas __Solar	N/A	Yes	No	Unk
Water Purifier	N/A	Yes	No	Unk
Water Softener __Leased __Owned	N/A	Yes	No	Unk
Sump Pump	N/A	Yes	No	Unk
Plumbing	N/A	Yes	No	Unk
Whirlpool Tub	N/A	Yes	No	Unk
Sewer System __Public __Septic __Lagoon	N/A	Yes	No	Unk
Air Conditioning System __Electric __Gas __Heat Pump	N/A	Yes	No	Unk
Window Air Conditioner(s)	N/A	Yes	No	Unk
Attic Fan	N/A	Yes	No	Unk
Fireplaces	N/A	Yes	No	Unk
Heating System __Electric __Gas __Heat Pump	N/A	Yes	No	Unk

	Circle below			
Humidifier	N/A	Yes	No	Unk
Gas Supply __Public __Propane __Butane	N/A	Yes	No	Unk
Propane Tank __Leased __Owned	N/A	Yes	No	Unk
Ceiling Fans	N/A	Yes	No	Unk
Electric Air Purifier	N/A	Yes	No	Unk
Garage Door Opener/ Control	N/A	Yes	No	Unk
Intercom	N/A	Yes	No	Unk
Central Vacuum	N/A	Yes	No	Unk
Security System __Rent __Own __Monitored	N/A	Yes	No	Unk
Smoke Detectors	N/A	Yes	No	Unk
Dishwasher	N/A	Yes	No	Unk
Electrical Wiring	N/A	Yes	No	Unk
Garbage Disposal	N/A	Yes	No	Unk
Gas Grill	N/A	Yes	No	Unk
Vent Hood	N/A	Yes	No	Unk
Microwave Oven	N/A	Yes	No	Unk
Built-in Oven/Range	N/A	Yes	No	Unk
Kitchen Stove	N/A	Yes	No	Unk
Trash Compactor	N/A	Yes	No	Unk

Seller's Initials_____ Seller's Initials_____

Buyer's Initials_____ Buyer's Initials _____

(OREC-7/08)

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LOCATION OF SUBJECT PROPERTY _____

_____

Source of Household Water	Other Items _____	Yes	No	Unk
	Other _____	Yes	No	Unk
___Public ___Private ___Well Yes No Unk	Other _____	Yes	No	Unk

IF YOU HAVE ANSWERED NO to any of the above, please explain. Attach additional pages with your signature(s).

_____

_____

Zoning, Flood and Water	**Circle below**		
1. Property is zoned: ***(Check one)*** ___residential ___commercial historical ___agricultural ___industrial ___office ___urban conservation ___other ___ unknown			
2. What is the flood zone status of the property? _____			Unk
3. Are you aware of any flood insurance requirements concerning the property?	Yes	No	Unk
4. Do you have flood insurance on the property?	Yes	No	Unk
5. Has the property been damaged or affected by flood, storm run-off, sewer backup, drainage or grading problems?	Yes	No	Unk
6. Are you aware of any surface or ground water drainage systems which assist in draining the property, e.g. french drains?	Yes	No	Unk
7. Has there been any occurrence of water in the heating and air conditioning duct system?	Yes	No	Unk
8. Are you aware of water seepage, leakage or other drainage problems in any of the improvements on the property?	Yes	No	Unk
Additions/Alterations/Repairs			
9. Have any additions or alterations been made without required permits?	Yes	No	Unk
10. Are you aware of previous foundation repairs?	Yes	No	Unk
11. Are you aware of any alterations or repairs having been made to correct defects or problems?	Yes	No	Unk
12. Are you aware of any defect or condition affecting the interior or exterior walls, ceilings, slab/foundation, basement/storm cellar, floors, windows, doors, fences or garage?	Yes	No	Unk
13. Has the roof ever been repaired or replaced during your ownership of the property?	Yes	No	Unk
14. Approximate age of roof, if known _____ number of layers, if known _____			Unk
15. Do you know of any current problems with the roof?	Yes	No	Unk
16. Are you aware of treatment for termite or wood-destroying organism infestation?	Yes	No	Unk
17. Do you have a termite bait system installed on the property?	Yes	No	Unk
18. If yes, is it monitored by a licensed exterminating company? ***(Check one)*** ___yes ___no Annual cost $_____			
19. Are you aware of any damage caused by termites or wood-destroying organisms?	Yes	No	Unk
20. Are you aware of major fire, tornado, or wind damage?	Yes	No	Unk
Environmental			
21. Are you aware of the presence of asbestos?	Yes	No	Unk
22. Are you aware of the presence of radon gas?	Yes	No	Unk
23. Have you tested for radon gas?	Yes	No	Unk
24. Are you aware of the presence of lead-based paint?	Yes	No	Unk
25. Have you tested for lead-based paint?	Yes	No	Unk
26. Are you aware of any underground storage tanks on the property?	Yes	No	Unk
27. Are you aware of the presence of a landfill on the property?	Yes	No	Unk
28. Are you aware of existence of hazardous or regulated materials and other conditions having an environmental impact?	Yes	No	Unk
29. Are you aware of existence of prior manufacturing of methamphetamine?	Yes	No	Unk
30. Have you had the property inspected for mold?	Yes	No	Unk
31. Have you had any remedial treatment for mold on the property?	Yes	No	Unk
32. Are you aware of any condition on the property that would impair the health or safety of the occupants?	Yes	No	Unk
Property Shared in Common, Easements, Homeowner's Association, Legal			
33. Are you aware of features of the property shared in common with adjoining landowners, such as fences, driveways, and roads whose use or responsibility has an affect on the property?	Yes	No	Unk
34. Other than utility easements serving the property, are you aware of easements or right-of-ways affecting the property?	Yes	No	Unk

Seller's Initials_____ Seller's Initials_____ Buyer's Initials_____ Buyer's Initials_____

Page 2 of 3

LOCATION OF SUBJECT PROPERTY _____

35. Are you aware of encroachments affecting the property?	Yes	No	Unk
36. Are you aware of a mandatory homeowner's association?	Yes	No	Unk
Amount of dues $ _____ Special Assessment $ _____			
Payable: ***(Check one)*** ___monthly ___quarterly ___annually			
Are there unpaid dues or assessments for the Property? ***(Check one)*** ___yes ___no			
If yes, amount $ _____ Manager's Name: _____			
Phone No. _____			
37. Are you aware of any zoning, building code or setback requirement violations?	Yes	No	Unk
38. Are you aware of any notices from any government or government-sponsored agencies or any other entities affecting the property?	Yes	No	Unk
39. Are you aware of any threatened or existing litigation or lawsuit(s), directly or indirectly, affecting the property?	Yes	No	Unk
40. Is the property located in a fire district which requires payment?	Yes	No	Unk
Amount of fees $ _____ To Whom Paid _____			
Payable ***(Check one)*** __monthly __quarterly __annually			
41. Is the property located in a private utility district?	Yes	No	Unk
(Check applicable) water__ garbage__ sewer__ other__			
If other, explain: _____			
Initial membership fee $_____ annual membership fee $_____			
(If more than one (1) utility, attach additional pages.)			
Miscellaneous			
42. Are you aware of other defect(s), affecting the property, not disclosed above?	Yes	No	Unk
43. Are you aware of any other fees or dues required on the property that you have not disclosed?	Yes	No	Unk

If you answered "YES" to any of the items 1- 43 above, list the item number(s) and explain. ***(If needed, attach additional pages, with your signature(s), date(s) and location of subject property.***

_____

_____

On the date this form is signed, the seller states that based on seller's **CURRENT ACTUAL KNOWLEDGE** of the property, the information contained above is true and accurate.

Are there any additional pages attached to this disclosure *(circle one)*: Yes No. If yes, how many? _____

Seller's Signature	Date	Seller's Signature	Date

A real estate licensee has no duty to the Seller or the Purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclosure statement.

The Purchaser understands that the disclosures given by the Seller on this statement is not a warranty of condition. The Purchaser is urged to carefully inspect the property and, if desired, to have the property inspected by a licensed expert. For specific uses, restrictions and flood zone status, contact the local planning, zoning and/or engineering department. The Purchaser acknowledges that the Purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase on the property identified. This is to advise that this disclosure statement is not valid after 180 days from the date signed by the Seller.

Purchaser's Signature	Date	Purchaser's Signature	Date

The disclosure and disclaimer statement forms and the Oklahoma Residential Property Condition Disclosure Act information pamphlet are made available at the Oklahoma Real Estate Commission (OREC), Shepherd Mall, 2401 NW 23 St, Suite 18, Oklahoma City, Oklahoma 73107-2431, or visit OREC's Web site www.orec.ok.gov.

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[OAR Docket #08-1152; filed 06-13-08]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1139]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Purchasing
610:1-11-3. Definitions [AMENDED]
610:1-11-14. Purchases in excess of $25,000 [AMENDED]
610:1-11-15. Purchases in excess of $100,000 [AMENDED]
AUTHORITY:
Okla. Const. Art. XIII-A; 70 O.S. §3206; 74 O.S. §85.3A; 74 O.S. §85.9E; Oklahoma State Regents for Higher Education
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The adopted rule makes the following changes:
In order to address an emergency which requires a purchase in excess of $100,000, the amendments provide the Chancellor with the authority to declare an acquisition an "emergency acquisition" as defined by the administrative rules. The Chancellor's declaration of an "emergency acquisition" will allow for purchases exceeding $100,000 when the agency is faced with "an unforeseen condition believed to endanger human life or safety or pose imminent danger to significant property." (OAC 610:1-11-3).
All emergency acquisitions will be reported to the State Regents immediately, and will be reported to the State Regents for ratification at their first board meeting subsequent to the purchase.
Clarification of procedure concerning purchases in excess of $25,000.
Correction of error in definition of "emergency acquisition".
CONTACT PERSON:
Nancy E. Connally, Associate Vice Chancellor for Operations and Legal Affairs, Oklahoma State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 11. PURCHASING

610:1-11-3. Definitions

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

"Acquisition" means all type of purchases and rental necessary to perform the duties assigned to the Oklahoma State Regents for Higher Education, whether bought or leased by contract or otherwise, and includes every means by which the Oklahoma State Regents for Higher Education obtains any materials, supplies, service or equipment.

"Award" means when the Authority, Chief Executive Officer, department, Purchasing Director, or other person authorized to make the acquisition, agree on a suitable vendor for a competitive bid and the Purchasing Director, or designee, notifies the successful vendor.

"Bidders list" means a list of individuals or business entities that desire notification of solicitations for specified commodity codes.

"Chancellor" means the Chief Executive Officer at the Oklahoma State Regents for Higher Education.

"Commodity Code" means a group of like products or services.

"Competitive Bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Director pursuant to terms, conditions and other requirements of a solicitation.

"Days" means calendar days unless otherwise specified.

"Department" means a department within the Oklahoma State Regents for Higher Education

"EEOC" means Equal Employment Opportunity Commission.

"Emergency acquisition" means an acquisition made by the Purchasing Director without seeking competitive bids to relieve an unforeseen condition believed to endanger human life or safety or pose imminent danger to significant property~~, or a condition certified by the as a serious environmental situation~~.

"Equipment" means all personal property acquired for the Oklahoma State Regents for Higher Education's use which is in the nature of a tool, device, or machine and shall be deemed to include all personal property used or consumed by The Oklahoma State Regents for Higher Education and is not included within the category of materials and supplies.

"Fiscal Year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Goods" means products, material, supplies and includes all property except real property acquired by the Oklahoma State Regents for Higher Education for its use or consumption, except equipment.

"Invitation to Bid" or **"ITB"** means a document issued which describes the goods or services for which offers are being solicited.

"Professional Services" means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include those services requiring special, usually advanced education or skill.

"Purchasing" means the Purchasing Department of the Oklahoma State Regents for Higher Education.

"Purchasing Director" means the Purchasing Director of the Oklahoma State Regents for Higher Education.

"Request for proposal" means a type of solicitation the Purchasing Director sends to suppliers requesting submission of proposal for acquisitions.

"Request for quotation" means a simplified written or oral solicitation the Purchasing Director sends to suppliers requesting submission of a quote.

"Services" means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly use.

"Solicitation" means a request or invitation by the Purchasing Director for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

"State Regents" means the Oklahoma State Regents for Higher Education.

"Vendor registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for specified commodities for a specified period of time.

610:1-11-14. Purchases in excess of $25,000

Purchases in excess of $25,000 must be reported to the Budget & Audit Committee~~, which may choose to forward them to the full board for approval~~. These purchases shall be made on the basis of one of the following processes:

(1) Formal Solicitation process.

(2) Alternatives to the formal bid process. Purchases may be made from purchase orders or purchase contracts or at a price equivalent to purchase order or purchase contracts that have been awarded to a vendor(s) on the basis of competitive bids by any of the following entities:

(A) Oklahoma Department of Central Services;

(B) Colleges, universities, and other entities within the state system;

(C) General Services Administration; and

(D) Educational purchasing consortia.

610:1-11-15. Purchases in excess of $100,000

Purchases in excess of $100,000 require prior approval of the State Regents unless an emergency acquisition is deemed necessary. In such event, the Chancellor shall have authority to execute emergency acquisitions that exceed $100,000. All emergency acquisitions shall be reported to the State Regents immediately, and shall also be reported to the State Regents for ratification at their first board meeting subsequent to the purchase. Documentation that is reasonable and sufficient under the circumstances substantiating the basis for the emergency should be maintained.

[OAR Docket #08-1139; filed 6-6-08]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #08-1138]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Oklahoma Tuition Aid Grant Program
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]
AUTHORITY:
70 O.S., § 626.1, *et seq*.; 70 O.S. § 3206(i); Oklahoma State Regents for Higher Education
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N/A
ANALYSIS:
The adopted rule deletes language identifying the maximum Expected Family Contribution (EFC) eligibility limit for Oklahoma Tuition Aid Grant (OTAG) awards as calculated using Housing and Urban Development (HUD) data. The amendment does not change how the program currently operates. The deletion of this language allows the State Regents to use simpler, more understandable criteria for defining the potential pool of eligible OTAG applicants. For example, using federal Pell Grant eligibility to define potential OTAG recipients is more understandable to students, parents, legislators and the general public.
CONTACT PERSON:
Nancy E. Connally, Associate Vice Chancellor for Operations and Legal Affairs, Oklahoma State Regents for Higher Education, (405) 225-9335, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED 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 11, 2008:

SUBCHAPTER 7. OKLAHOMA TUITION AID GRANT PROGRAM

610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds

(a) *A college tuition aid grant shall be awarded annually to each eligible, qualified full-time or part-time undergraduate or graduate student enrolled in a curriculum leading to a degree or certificate in an institution of collegiate grade or postsecondary institution providing a program of training to prepare students for employment in a recognized occupation in Oklahoma approved or accredited by the Oklahoma State Regents for Higher Education or appropriate postsecondary agency in accordance with the following* [70 O.S., § 626.7]:

(1) Eligibility.

(A) Each full-time or part-time resident student's financial eligibility will be based on their Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. A resident student is one who meets the current Policy on Residence Status of Enrolled Students in the Oklahoma State System of Higher Education. Full-time and part-time status will be defined in accordance with the current definition for full-time or half-time enrollment status for federal Title IV student financial aid eligibility.

(B) *The Oklahoma State Regents for Higher Education shall determine by rules and regulations the maximum number of semesters a student may be eligible for grants.* [70 O.S., § 626.7] An otherwise eligible undergraduate student can continue to receive awards as long as they are eligible for funding from the federal Pell grant program. Graduate students can receive a maximum of eight full-time disbursements.

(C) *No student shall be eligible for grants unless he maintains such minimum standards of academic performance as are required by the institution in which the student is enrolled.* [70 O.S., § 626.7] The minimum standards of academic performance shall be those required by the institution for federal Title IV financial aid recipients.

(D) Students who are incarcerated are not eligible to receive tuition aid grants. Incarceration will be defined in accordance with the current definition for federal Pell grant eligibility.

(E) Students must be enrolled in a postsecondary institution eligible to participate in the federal Title IV student financial aid programs.

(F) Students must meet all general eligibility requirements for recipients of federal Title IV student financial aid. The school of attendance will report each student's completed application status through a reporting system provided by the Oklahoma State Regents for Higher Education.

(G) *In the event a student for any reason ceases to continue to be enrolled during the course of an academic year, the student shall cease to be eligible for tuition aid.* [70 O.S., § 626.7]

(2) Amount of grant.

(A) *The amount of tuition aid grant to any student under this act [70 O.S., § 626.1 et seq.] for any semester shall represent a percentage not greater than seventy-five percent (75%) of the previous year's tuition and enrollment fees normally charged to residents of the State of Oklahoma by the institution of attendance.* [70 O.S., § 626.7] The tuition and enrollment fees used in calculating the award will be based on standards as follows: full-time undergraduate - 30 credit hours per academic year; part-time undergraduate and graduate - 12 credit hours per academic year; full-time graduate - 18 credit hours per academic year; full-time career technology - at least 900 clock hours; and part-time career technology - at least 450 clock hours. If the Oklahoma State Regents for Higher Education determine that funds are available to offer awards for summer enrollments, institutions will be notified. At the time of the notification, summer award amounts will be announced.

(B) *The percentage of aid awarded shall be based on a need analysis system that is consistent with federal student financial aid regulations.* [70 O.S., § 626.7] The percentage of aid awarded shall be based on the student's Expected Family Contribution (EFC) calculated for federal Title IV student financial aid eligibility. The Oklahoma State Regents for Higher Education will issue an annual award payment schedule identifying the maximum eligible EFC and identifying the percentage of aid to be awarded according to EFC ranges. ~~The maximum EFC will be based on a calculation using the Oklahoma low median family income and median household size published annually by the U. S. Department of Housing and Urban Development~~.

(C) *The Oklahoma State Regents for Higher Education shall determine by rules the annual maximum award based on an annual assessment of funds availability. The State Regents shall not increase the annual maximum award amount unless funding is sufficient to serve at least the same number of students as the previous academic year.* [70 O.S., § 626.7]

(D) The minimum amount of grant to be awarded is $200 per academic year or $100 per semester.

(E) The award must be included in the student's financial aid package managed by the institution. If the inclusion of the tuition aid grant award results in the student receiving more financial assistance than is needed to meet their cost of education as determined by the institution, the institution will resolve the overaward in accordance with federal Title IV student financial aid regulations. The institution may reduce or revoke the award if necessary to resolve the overaward.

(3) **Application procedures and deadlines.** *The Oklahoma State Regents for Higher Education may adopt rules and regulations, prescribe and provide appropriate forms for application and employ such persons, contract for such services and make such additional expenditures*

as may be necessary or appropriate for effectuating the provisions of this act. [70 O.S., § 626.7]

(A) Students will apply for tuition aid grant award consideration by completing the federal student financial aid application. A separate application may be provided for students eligible for state financial aid under 70 O.S., § 3242. The Oklahoma State Regents for Higher Education will receive application data from the federal Title IV student financial aid application system for those students who indicate their legal state of residence is Oklahoma. Applications with at least one eligible Oklahoma institution selected by the student will be processed for tuition aid grant award consideration.

(B) The application receipt deadline will be reflected in the application document provided annually by the federal Title IV student financial aid application system.

(4) **Disbursement of funds.**

(A) Funds will be disbursed to students after the institution confirms enrollment status and eligibility in each the fall and spring semesters. One half of the award will be disbursed in the fall semester, and one half of the award will be disbursed in the spring semester.

(B) Funds for eligible students will be delivered to the institution for disbursement to students in accordance with the institution's student financial aid disbursement policies.

(b) The Oklahoma State Regents for Higher Education are hereby authorized to determine priorities for participation in this tuition aid program by full-time, part-time, undergraduate and graduate students based on available state funding. [70 O.S., § 626.8]

[OAR Docket #08-1138; filed 06-06-08]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #08-1140]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-1. Purpose [AMENDED]
610-25-23-2. Eligibility of participants [AMENDED]
610:25-23-3. Applications [AMENDED]
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing OHLAP benefits [AMENDED]
610:25-23-6. Retaining eligibility in postsecondary education [AMENDED]
610:25-23-7. Payment of awards; policies and limitations [AMENDED]
610:25-23-8. Administrative responsibilities [AMENDED]

AUTHORITY:
70 O.S. §2601 et seq.; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education

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May 15, 2008
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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Several changes were required by SB 820 of the 2007 legislative session. These statutorily-mandated changes include:

Second Income Limit Requirement: Beginning with Oklahoma's Promise college students receiving the scholarship for the first time in 2009-10 (primarily high school graduates of 2009 and thereafter), students will be subject to a second family income limit requirement. Students will not receive the scholarship if their parents' income exceeds $100,000 at the time the student goes to college (if the student is independent, the student's income may not exceed $100,000). To enroll in the program in the 8th, 9th, or 10th grade, a student's family income still must be under $50,000 at the time of application. As one possible method to implement this requirement, the proposed rules would require all students to complete a federal financial aid application. In 2006-07, about 84% of the Oklahoma's Promise scholarship recipients completed the federal application.

Minimum College GPA Requirement: Also effective for students receiving the award for the first time in 2009-10, a unique minimum college GPA of 2.0 will be required for courses taken during the sophomore year and a minimum 2.5 GPA for courses taken during the junior year and thereafter.

College Conduct Requirement: Effective January 1, 2008, an Oklahoma's Promise college student that is suspended for more than one semester for conduct reasons will lose the scholarship permanently.

Immigration Status: Beginning with students applying for the program in 2007-08, the student must be a U.S. citizen or lawfully present in the U.S. to receive the award in college. Undocumented immigrant students can still enroll in the program in the 8th, 9th, or 10th grade, but must attain lawful status before they can actually receive the award in college. Undocumented students already enrolled in the program by the end of 2006-07 are "grandfathered" into the program and not subject to this requirement.

Homeschool Student Eligibility: Homeschool students are now eligible to participate in Oklahoma's Promise and receive the scholarship. Homeschool students must apply between the ages of 13 - 15. Like students attending non-accredited schools, homeschool students must also achieve at least a 22 ACT composite score on a test given on a national test date ("residual" ACT scores do not qualify).

In addition, there are other changes unrelated to SB 820. These include:

Allowing students whose legal custody is currently subject of an active legal proceeding to submit an application without parental or guardian information.

Beginning in 2010-11, all students receiving the Oklahoma's Promise scholarship would be required to meet the federal "satisfactory academic progress" (SAP) standards that are required to remain eligible for federal financial aid. SAP standards require students to complete at least two-thirds of the courses they attempt and also require students to achieve at least a 2.0 GPA or its equivalent by the end of their second year in college.

Incorporates the provisions of HB 1762 of the 2007 legislative session which provides eligibility to students that reside in a state adjacent to

Oklahoma who are enrolled in an Oklahoma school district pursuant to a contractual agreement authorized by Oklahoma law.

Adds language recognizing the use of the name "Oklahoma's Promise" as authorized in SB 1493 of the 2006 legislative session.

Deletion of uses of the acronym "OHLAP".

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 11, 2008:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

610:25-23-1. Purpose

The Oklahoma Higher Learning Access Program ~~(OHLAP)~~, created by the Oklahoma Higher Learning Access Act passed in 1992 (70 O.S. § 2601 et seq.), is designed to help provide access to postsecondary education opportunities for students with financial need who have demonstrated a commitment to academic success in high school. The program shall also be known as "Oklahoma's Promise. " The Act identifies two primary purposes:

(1) The first is to ensure that students who satisfy the requirements of the program, and who pursue an associate or baccalaureate degree in Oklahoma at an accredited public or private institution, or pursue studies in a postsecondary program or course offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System for Higher Education, are relieved of the burden of paying:

(A) undergraduate resident tuition at institutions of The Oklahoma State System for Higher Education;

(B) tuition for enrollment in postsecondary programs or courses of a public technology center, not to exceed the amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education; or

(C) some portion of fees or tuition at a private institution of higher education in Oklahoma accredited pursuant to 70 O.S. § 4103.

(2) *The further purpose of the ~~OHLAP~~ program is to establish and maintain a variety of support services whereby a broader range of the general student population of this state will be prepared for success in postsecondary endeavors*. [70 O.S. § 2602]

610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth or tenth grade at a public or private school and whose parents' income meets the financial need criteria are eligible to apply to become ~~an OHLAP~~ a program participant. Students educated by other means who are between the ages of thirteen (13) and fifteen (15) are eligible to apply to become a program participant. Eligibility requirements to participate in the program include the following:

(1) The student must be a resident of the state of Oklahoma or be enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes; and

(2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the ~~OHLAP~~ program's financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed $50,000 per year at the time the student applies for participation in the program. [70 O.S. § 2603]

(B) Parents of students making application to the ~~OHLAP~~ program must use their most recent calendar (tax) year income to establish financial need eligibility. Parents of tenth-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the tenth-grade if the parents' income is expected to be significantly less than the previous year.

(C) The OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine a student's custodial parent(s).

~~(D) *A student who satisfies the financial need criteria during the eighth, ninth or tenth grade when he or she begins participating in the Oklahoma Higher Learning Access Program shall not later be denied participation in the Oklahoma Higher Learning Access Program on grounds that the student does not meet the financial need criteria*. [70 O.S. § 2603]~~

610:25-23-3. Applications

(a) Students and their parent(s), custodial parent(s), or guardian(s) must complete fully an application form provided by the Oklahoma State Regents for Higher Education (OSRHE). If a student's legal custody is the subject of an active legal proceeding, the student may submit an application without the information of their parent(s), custodial parent(s), or guardian(s). The application will be treated as an incomplete application per section (h) below until the student's legal custody is determined.

(b) The application shall include either:

(1) an agreement form upon which the school site contact person (see rule 610:25-23-8 for polices policies related to the contact person) shall certify that the student meets the financial need criteria and which verifies that the student and his/her parent(s), custodial parent(s), or guardian(s) agree to the program's requirements. The agreement form shall be retained in the student's permanent record and a copy forwarded to the OSRHE. A copy

of the agreement form must be received by the OSRHE for the student to be considered enrolled in the program; or

(2) an agreement form submitted directly to the OSRHE which shall be processed and verified by the OSRHE.

(c) Students participating in the Oklahoma Higher Learning Access Program shall provide their social security number, or their student identification number used by their local school, to the OSRHE. The OSRHE shall keep the numbers confidential and use them only for administrative purposes.

(d) Any falsified or incomplete information on the application forms may result in the student's disqualification from the program.

(e) Applications will be accepted throughout the school year.

(f) Contact persons should forward copies of agreement forms to the OSRHE monthly, but not later than June 30 of each school year.

(g) Persons applying directly to the OSRHE must submit agreement forms to the OSRHE no later than June 30. If June 30 is not a business day, agreement forms shall be submitted no later than the first business day thereafter. Applications mailed to the OSRHE must be postmarked by June 30, or the next business day if applicable, to be considered timely submitted to the OSRHE.

(h) Applicants submitting incomplete applications shall be provided an opportunity to provide the required documentation to complete their application. Applications that remain incomplete by the time the student graduates high school will not be accepted.

610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions:

(1) *Attend school regularly and to do homework regularly*;

(2) *Refrain from substance abuse*;

(3) *Refrain from commission of crimes or delinquent acts*;

(4) *Have school work and school records reviewed by mentors designated pursuant to the program*;

(5) *Provide information requested by the Oklahoma State Regents for Higher Education [OSRHE] or the State Board of Education*; *and*

(6) *Participate in program activities*. [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) *Assist the student in achieving compliance with the agreements*;

(2) *Confer, when requested to do so, with the school contact person, other school personnel, and program mentors*;

(3) *Provide information requested by the Oklahoma State Regents for Higher Education or the State Board of Education*; *and*

(4) *Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships*. [70 O.S. § 2605]

(c) Students in the program graduating high school prior to 2010 must complete the following 17-unit core curriculum with a minimum 2.5 grade-point-average (GPA) on a 4.0 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcripted with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation.

(1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);

(2) Two units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture):

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) Two additional units, or years, of subjects listed above, or any Advanced Placement (AP) course(s) except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);

(7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.

(d) Students in the program graduating high school in 2010 and thereafter must complete the following 17-unit core curriculum with a minimum 2.5 grade-point-average (GPA) on a 4.0 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcripted with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set

of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation.

(1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);

(2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture):

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) One additional unit, or year, of subjects listed above, or any Advanced Placement course except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);

(7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.

(e) The program curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the program curricular requirements.

(f) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.

(g) Strict parameters regulate the substitution of applied courses (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System).

(h) Exceptions to the required core curriculum will be considered according to the following:

(1) Students attending schools, or homeschool students participating in other educational programs, which do not offer all the core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) Core curriculum requirements which are also required for regular college admission (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.

(B) Any other core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for program benefits; provided, such approval may require the satisfaction of any core curriculum requirements omitted in high school or other educational program.

(i) Students must attain a minimum 2.5 cumulative GPA on a 4.0 grading scale for all work attempted in grades nine through twelve.

(j) Homeschool students and students ~~Students~~ graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT and SAT test scores from tests administered on national test dates prior to the student's high school graduation will be considered.

610:25-23-5. Securing Program benefits

(a) To qualify for the program benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

(1) Be a resident of this state both at the time of application to the program and at the time the student graduates from high school, or have been enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.

(2) Have graduated within the previous three years from a high school or other educational program if homeschooled~~the Oklahoma School of Science and Mathematics. For the purposes of qualifying for program benefits, home-educated students shall not be considered to have graduated from a high school. Students graduating from a secondary program accredited by the North Central Association Commission on Accreditation and School Improvement shall be considered to have graduated from a high school for the purposes of qualifying for program benefits~~.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall

be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in the program shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(6) Be a United States citizen or lawfully present in the United States. This provision shall not apply to any student that was enrolled in the program prior to the end of 2006-07 school year.

(b) For students receiving the program benefit award for the first time in 2009-10 and thereafter, at the time the student begins postsecondary education and prior to receiving any program benefit award, the income from taxable and nontaxable sources of the student's parent(s) shall not exceed $100,000 per year. The determination of financial qualification as set forth in this paragraph shall be based on income of the student, not the income of the parent(s), if the student:

(1) is determined to be independent of the student's parents for federal financial aid purposes,

(2) was in the permanent custody of the Department of Human Services at the time the student enrolled it the program, or

(3) was in the court-ordered custody of a federally-recognized Indian tribe, as defined by the federal Indian Child Welfare Act, at the time the student enrolled in the program.

(c) Award recipients shall apply for financial aid at the institution in which they enroll.

(d) All students eligible to receive the program benefit award for the first time in 2009-10 and thereafter must complete an application for federal financial aid (Free Application for Federal Student Aid or FAFSA) or its equivalent. Students not eligible to complete the FAFSA will be provided an alternate method by the OSRHE.

(e) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive program benefits.

610:25-23-6. Retaining eligibility in postsecondary education

(a) To retain eligibility for ~~OHLAP~~ program benefits while pursuing a program of higher learning in an institution of The Oklahoma State System of Higher Education, the student shall maintain good academic standing and satisfactory academic progress according to standards of the Oklahoma State Regents for Higher Education. Students attending an eligible private institution shall maintain good academic standing and satisfactory academic progress according to the standards of the institution in which they are enrolled. [70 O.S. § 2603; OSRHE Policy II-2-46.3]

(b) Effective January 1, 2008, any student receiving the program benefit award that is expelled or suspended for more than one semester from an institution of higher education for conduct reasons shall permanently lose eligibility for program benefits.

(c) For students receiving the program benefit award for the first time in 2009-10 and thereafter, the student must achieve a minimum grade point average of 2.0 on a 4.0 scale or its equivalent for courses taken during the student's sophomore year and achieve a minimum grade point average of 2.5 on a 4.0 scale or its equivalent for courses taken during the student's junior year and thereafter.

610:25-23-7. Payment of awards; policies and limitations

(a) Eligible students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident tuition paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];

(b) Eligible students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund in an amount equivalent to the average undergraduate resident tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;

(c) Eligible students enrolled in a postsecondary program offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education shall have an award equivalent to tuition paid, not exceeding the average amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;

(d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;

(e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;

(f) Students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. *The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than*

five (5) years after the student's first semester of postsecondary enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military service, or service required by the student's religious or cultural traditions;

(g) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(h) Students who have previously received awards shall have priority over students applying for initial awards;

~~(i) Award recipients shall apply for financial aid at the institution in which they enroll;~~

(~~j~~i) *The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards* [70 O.S. § 2604]. Award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

610:25-23-8. Administrative responsibilities

The Oklahoma Higher Learning Access Act established administrative roles and responsibilities for the Oklahoma State Regents for Higher Education and the State Board of Education.

(1) *On a form provided by the Oklahoma State Regents for Higher Education, every public school district shall designate at least one ~~OHLAP~~ contact person, who shall be a counselor or teacher, at each Oklahoma public school site in which eighth, ninth- or tenth-grade classes are taught. When requested by the State Regents, the State Board of Education shall assist the State Regents to ensure the designation of contact persons*. Private schools shall also designate at least one school official as a contact person. For students who are educated by other means, a parent or guardian or other person approved by the State Regents shall be designated as the contact person. [70 O.S. § 2605]

(A) The contact person ~~at the local school district~~ shall be responsible for processing student applications for the ~~OHLAP~~program according to the rules and regulations established by the OSRHE.

(B) The contact person shall maintain the agreements, which shall be executed on forms provided by the OSRHE.

(C) The local contact person shall:

(i) monitor the student's compliance with the terms of the agreement;

(ii) document transfer out of state, death, and other conditions; and

(iii) report on circumstances of noncompliance to the OSRHE.

(D) Compliance with the program requirements for attending school regularly, refraining from substance abuse, and refraining from criminal or delinquent acts shall be determined according to the local school district's policy.

(E) The local district contact person shall report ~~OHLAP~~ program participants who transfer into or out of the district to the OSRHE and identify the local education agency (LEA) and site from which or to which the student transferred.

(F) Beginning in April of the student's year of graduation, the local contact person shall gather from the ~~OHLAP~~ program participants and his/her records, information which substantiates that the program requirements have been met and the higher education institution in which the student has enrolled or plans to enroll.

(G) The agreement certification form should be completed, signed, dated, and forwarded to the OSRHE as soon after the student's graduation as possible.

(2) *The local school district where an Oklahoma Higher Learning Access Program student is attending when the student begins participation in the program and any subsequent school district where the student attends shall forward information regarding the student's participation in the program to a school to which the student transfers upon the school's request for the student's records*. [70 O.S. § 2605]

(3) The Oklahoma State Regents for Higher Education shall:

(A) *designate personnel to coordinate tracking of program records for the years when students participating in the program are still in the public schools, provide staff development for contact persons in the public schools, and provide liaison with the State Board of Education and local organizations and individuals participating in the program* [70 O.S. § 2605];

(B) coordinate and develop policies and procedures to implement the Oklahoma Higher Learning Access Act;

(C) coordinate the publication and distribution of ~~OHLAP~~ program awareness information and materials;

(i) *Each school year, every fifth- through ninth-grade student in the public and private schools of Oklahoma and students educated by other means who are in the equivalent of the fifth through ninth grade shall be apprised, together with his/her parents, custodial parent, or guardian, of the student's opportunity for access to higher learning under the Oklahoma Higher Learning Access Program* [70 O.S. § 2605];

(ii) *The Oklahoma State Regents for Higher Education and the State Board of Education shall develop, promote, and coordinate a public awareness program to be utilized in making students and parents aware of the ~~OHLAP~~ program* [70 O.S. § 2605];

(D) coordinate the provision of technical assistance to local school districts and individual participants;

(E) administer the Oklahoma Higher Learning Access Trust Fund;

(F) process applications submitted directly to the OSRHE;

(G) determine final eligibility for the ~~OHLAP~~ program award.

[OAR Docket #08-1140; filed 06-06-08]

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

[OAR Docket #08-1137]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Membership Provisions
715:10-1-6 [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-4 [AMENDED]
Subchapter 13. Contributions For Membership Service
715:10-13-3.1 [REVOKED]
Subchapter 15. Service Retirement
715:10-15-6. [AMENDED]
715:10-15-11 [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-7 [AMENDED]
715:10-19-8 [AMENDED]
Subchapter 21. Investment Policy
715:10-21-2 [AMENDED]
715:10-21-3 [REVOKED]
715:10-21-4 [REVOKED]
715:10-21-5 [REVOKED]
Subchapter 23. State And Education Employees Group Health and Dental Insurance Program
715:10-23-1 [AMENDED]
715:10-23-2 [AMENDED]
715:10-23-3 [AMENDED]
715:10-23-5 [AMENDED]
Subchapter 25. Qualified Domestic Order
715:10-25-2 [AMENDED]
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ANALYSIS:
715:10-1-6 is being amended to remove statute supplement references.
715:10-5-4 is being amended to remove statute supplement references.
715:10-13-3.1 is being revoked.
715:10-15-6. is being amended to comply with changes in immigration laws. The amendments strike documents no longer acceptable to verify date of birth and change subparagraph numbers to comply with changes.
715:10-15-11 is being amended to change form number for beneficiary designation updates.
715:10-19-7 is being amended to clarify requirements for the TRS Tax-Sheltered Annuity program.
715:10-19-8 is being amended to correct wording in (f).
715:10-21-2 was adopted as an emergency rule in 2007 and now is being promulgated as an emergency rule. Amendments are necessary to update the TRS investment policy.
715:10-21-3, 715:10-21-4 and 715:10-21-5 were revoked as emergency rules and are being revoked as permanent rules to update the TRS investment policy.
715:10-23-1 is being amended to clarify TRS service requirement; removes "Oklahoma" and inserts "creditable" before "service"; removes "credits" after "service".
715:10-23-2 is being amended to remove statute supplement citation references.
715:10-23-3 is being amended to clarify TRS service requirement and to remove statute supplement citation references.
715:10-23-5 is being amended to remove statute supplement citation references.
715:10-25-2 is being amended to remove statute supplement citation references.
CONTACT PERSON:
Jacqueline Scott Shannon, Communications Director/Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4743

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-6. Date of Membership

Date of membership is the date the initial contribution is made to TRS under the current membership account. (TRS Form 1-A must be completed and on file with TRS and membership approved by the Board of Trustees.) Any former member of TRS who has previously withdrawn contributions and who redeposits said withdrawn contributions as permitted by law~~,~~ shall have his or her initial date of membership reinstated. Any person who transfers service from the Oklahoma Public Employees Retirement System in accordance with 70 O.S. ~~Supp. 1994~~, Section 17-116.2(L), shall be eligible to use his or her initial entry date into the Oklahoma Public Employees Retirement System as his or her date of membership in TRS. If a current member purchases non-contributory service for those years of qualified employment prior to the current date of membership, the official date of membership will remain the date the member's current membership account was opened.

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-4. Cost to purchase Oklahoma service

The purchase price for each year of Oklahoma service, unless otherwise specified, shall be based on the actuarial cost of the incremental projected benefits being purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions adopted by the Board of Trustees to be utilized in the actuarial valuation report for the Fiscal Year beginning each July 1. New actuarial assumptions approved by the Board subsequent to January 1, 1991, shall be incorporated into such tables with an effective date of the next January 1st.

(2) The actuarial value shall be based upon the member's age, full-time equivalent salary and contribution level at the time of purchase (or the annual salary of the previous year, if greater), together with the earliest age for retirement with maximum benefits and actuarially assumed salary at time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be determined as the age at last birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 40% male and 60% female population, based on the actuarial assumptions in paragraph (1) of this section.

(5) The actuarial cost shall not be less than the contributions required of the member at a rate commensurate with the salary earned as a regular full-time employee the last preceding school year prior to the purchase. Individuals employed on a less than full-time basis shall have their salary adjusted upward, in a prorata manner, to the amount that would be earned if employed full-time.

(6) Payment may be made in a lump sum for all eligible years of service or in installments equal to establishing one (1) year of creditable service.

(7) A billing statement will be issued at the request of the member. The due date of payment shall be the date prior to the member's next birthday or June 30th, whichever occurs first.

(8) A member may request payment of past service credits billed in accordance with provisions of 70 O.S. ~~Supp. 1993~~, Section 17-116.8, as amended, to be amortized in monthly installments of not more than sixty (60) months. A payment schedule may be established allowing the member to make monthly payments directly to Teachers' Retirement or through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to Teachers' Retirement. Payments remitted by an employer for its employees must be kept separate from the employer's regular retirement contributions and tax sheltered annuity deposits. Effective January 1, 2002, installment payments made through employer payroll deductions qualify for special tax treatment. (See OAC 715:10-5-35.)

(9) The installment payment schedule provided for in this section must be in equal monthly increments of twelve-month periods not to exceed sixty (60) months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in paragraph (11) of this section.

(10) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. The current interest rate is eight percent (8%).

(11) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated in whole years for only the principal amount paid. Any payment balance that is not used in crediting whole years will be refunded to the member.

(12) Credit will not be awarded for partial years of service unless the member's employment record is such that one-half (1/2) year of credit is included in the original service to be purchased.

(13) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in

paragraph (11) of this section. All payments must be completed one (1) month prior to the effective retirement date of the member.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-3.1. Employer contribution rates [REVOKED]

~~(a) Beginning July 1, 1998, through June 30, 2000, the local employer shall pay four and eight-tenths percent (4.8%) of the regular annual compensation of the member, up to the member's applicable maximum compensation level.~~

~~(b) Beginning July 1, 2000, through June 30, 2001, the employer shall pay five and eight-tenths percent (5.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level~~

~~(c) Beginning July 1, 2001, through June 30, 2002, the employer shall pay six and eight-tenths percent (6.8%) of the regular annual compensation of the member up to the member's applicable maximum compensation level.~~

~~(d) Beginning July 1, 2002, the employer shall pay seven and five hundredths percent (7.05%) of the regular annual compensation of the member up to the member's applicable maximum compensation level. In addition to the contribution rate of 7.05% on each active member's applicable regular annual compensation, the employer shall pay seven and five hundredths percent (7.05%) of the regular annual compensation of any retired member as defined in OAC 715:10-17-1 and 715:10-17-5.~~

~~(e) Beginning January 1, 2007, through June 30, 2007, all remitting entities other than comprehensive and four-year regional universities, shall pay seven and six tenths percent (7.6%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.~~

~~(f) Beginning July 1, 2007, through June 30, 2008, all remitting entities other than comprehensive and four-year regional universities, shall pay seven and eighty-five hundreds percent (7.85%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.~~

~~(g) Beginning July 1, 2008, though June 30, 2009, and for each fiscal year thereafter, all remitting entities other than comprehensive and four-year regional universities, shall pay eight percent (8%) of the regular annual compensation of the member not in excess of any applicable maximum compensation level of the member.~~

~~(h) The employer contribution rate increase provided in subsections e, f and g of this section shall not become effective unless appropriation levels to each of the affected remitting entities are increased so that the additional employer contribution obligation is funded.~~

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-6. Verification of date of birth

A member, filing for retirement benefits, must provide proof of date of birth. Proof of the birth date of the designated beneficiary is also required when the member selects either Retirement Option 2 or Option 3. Although a birth certificate is the best evidence of correct age, one is not always obtainable. In such cases, the Board of Trustees has ruled that any of the documents listed below also shall be acceptable:

(1) United States Census record.

(2) Military record.

~~(3) College record, or elementary school record (employment contracts are not acceptable.)~~

(~~4~~ 3) Naturalization record.

~~(5) Church record, or baptismal certificate.~~

(~~6~~ 4) Passport (must be at least five years old).

~~(7) Marriage license (showing age of member on date of issuance).~~

~~(8) Life insurance policy (must be at least five years old, does not include health and accident policies).~~

~~(9) Record in school administrative office (must be at least five years old).~~

~~(10) Family Bible Record (a photostatic copy, or a certification from a notary is needed). The notary must state that the record has been examined, and that it appears to be genuine. The record will be accepted dependent upon these findings.~~

715:10-15-11. Designation of beneficiaries for retirement options

A designation of beneficiary must be made when the retirement contract is completed. A member who selects the Maximum or Option 1 retirement plan may name more than one beneficiary. Beneficiaries named for the Maximum and Option 1 retirement plan may be changed by the member at any time. A member desiring to change or update a beneficiary designation should request TRS Form ~~14R~~ 90. The beneficiary for the Option 2 or Option 3 retirement plan cannot be changed even if the beneficiary dies before the member, providing, however, the retired member may designate an alternate beneficiary to receive the $5,000 death benefit, when the spouse predeceases the member. The member who elects the Option 4 retirement plan must name a beneficiary, who can be any living person. The beneficiary does not have to be a spouse or dependent.

SUBCHAPTER 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-7. Methods of computing maximum TSA contribution

(a) The elective deferral limit for 403(b) plans ~~will increase from $10,500 in 2001 to $15,000 in 2006, based upon the following schedule~~ :for Calendar Year 2008 is $15,500. Elective deferral limits for future years will be set by the Internal Revenue Service.

~~(1) Year 2002: $11,000~~

~~(2) Year 2003: $12,000~~
~~(3) Year 2004: $13,000~~
~~(4) Year 2005: $14,000~~
~~(5) Year 2006: $15,000~~

(b) These contribution levels replace the 20% of compensation limitation with 100% of taxable compensation, not to exceed the applicable dollar limit. For persons age 50 or older, increased contribution amounts above the applicable deferral limits ~~are as follows:~~ for Calendar Year 2008 is $20,500. The applicable deferral limits for future years will be set by the Internal Revenue Service.

~~(1) additional $1,000 for 2002~~
~~(2) additional $2,000 for 2003~~
~~(3) additional $3,000 for 2004~~
~~(4) additional $4,000 for 2005~~
~~(5) additional $5,000 for 2006~~

(c) A special catch-up provision allows members who have more than fifteen years of service with employer to make additional contributions up to $3,000 per year. However, aggregate contributions of all years above the limits may not exceed $15,000. In addition a member can no longer make catch-up contributions once his or her prior years' contributions to any tax-sheltered annuity exceed $5,000 multiplied by the years of service with the employer.

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

(1) Attainment of age fifty-nine and one-half (59 1/2).

(2) Death.

(3) Disability. For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.

(4) Separation from service (termination of employment).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another tax-sheltered annuity program.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age 59 1/2 are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection (i) of this section.

(f) Members who have not attained age 59 1/2 and who have not separated from service (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship ~~exist~~ exists. (See OAC 715:10-19-9.)

(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the previous month have been posted. No earnings will be paid during the month in which an account is closed.

(h) Members who roll-over their tax-sheltered annuity accounts to another tax-sheltered annuity program may return these funds to the Teachers' Retirement System's program at a later time.

(i) At termination or retirement, a member may elect one of the following annuity distribution options subject to Internal Revenue Service requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a);

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member.

(j) Earnings on Teachers' Retirement System tax-sheltered annuity accounts are calculated each month-end, based on accumulated deposits as of the first day of the month.

(k) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the tax-sheltered annuity account, unless otherwise designated by the member.

(l) In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of:

(1) the end of the calendar year immediately following the calendar year in which the member died; or

(2) the end of the calendar year in which the member would have attained age 70 1/2.

(m) Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death. In the event there is no designated beneficiary, or if the member's estate or a charitable organization is the designated beneficiary, the entire account balance must be distributed by the fifth year following the member's death.

(n) In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or retires.

SUBCHAPTER 21. INVESTMENT POLICY

715:10-21-2. Statement of investment policy

(a) The purpose of the investment policy is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment process. The purpose of the Oklahoma Teachers' Retirement System Fund is to provide for an orderly means whereby employees of the educational systems of the State of Oklahoma who have attained retirement age may be retired from active service, to enable such employees to accumulate reserves for themselves and their dependents, to provide for termination of employment and retirement and death benefits.

(b) The Standard of Investment for the Board of Trustees in making investments shall be to exercise the judgment and care in the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital.

(c) The Board of Trustees of the Oklahoma Teachers' Retirement System shall invest the Retirement Fund solely in the interest of the membership and their beneficiaries, and for the exclusive purpose of providing benefits to such membership and their beneficiaries and defraying reasonable expenses of administering the Oklahoma Teachers' Retirement System. Investing shall be handled with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent man, acting in a like-capacity and familiar with such matters, would use in the conduct of an enterprise of a like-character and with like-aims.

(d) The Board will diversify the investments of the funds so as to minimize the risks of large losses. The Board shall be responsive to the financial needs and objectives of the Fund. The investment objectives of the Board, as fiduciaries, are long-term rather than short-term.

(e) The Board, in maintaining its investment policy, takes into consideration the actuarial assumptions of the retirement program and its unfunded liabilities.

(f) The Board of Trustees may appoint investment advisors to assist in the investment of the retirement funds.

(g) ~~Regarding the social issue of apartheid in South Africa, the Board of Trustees has resolved that when investment alternatives are equal, the investment advisors should give preference in their security selection to those companies that support the Sullivan Principles. The perception of investment equality rests entirely with the Oklahoma Teachers' Retirement System's investment advisors.~~

~~(h)~~ The proxy policy statement of the Board of Trustees reflects the fiduciary duty to vote proxies in a manner that most benefits its members. The advisors are to first consider the economic impact on the System, and should the economic impact be neutral, then the advisors should give consideration to acceptable efforts made on behalf of special interests of social conscience. The Board of Trustees retains the right to vote all proxies should it so choose. Special interest proxy voting decisions will be brought before the Board of Trustees at the earliest possible date prior to the voting of the proxy for possible direction by the Board. In addition, the advisors will comply with any supplemental proxy voting criteria which the Board may promulgate.

715:10-21-3. Investment guidelines [REVOKED]

~~(a) The intention of establishing guidelines for investments which are mutually agreeable to the advisor and to the Oklahoma Teachers' Retirement System is to assure that all securities purchased for the System meet fiduciary standards and that adequate diversification of investments is maintained. The System has imposed certain investment restrictions which will not be changed without action by the Board of Trustees.~~

~~(b) While the following restrictions remain in effect, the System may NOT:~~

~~(1) Invest in "restricted securities", including fixed income securities, preferred stock, common stock, or any common stock acquired upon conversion thereof. Restricted securities are securities which have not been registered under the Securities Act of 1933 and as a result are subject to restrictions on resale.~~

~~(2) Purchase securities on margin, or engage in the short selling of securities not owned.~~

~~(3) Participate on a joint and several basis in any securities trading account.~~

~~(4) Purchase securities of any company with a record of less than five (5) years continuous operation (including that of predecessors).~~

~~(5) Invest in companies for the purpose of exercising control or management.~~

~~(6) Concentrate its investments in a particular industry inasmuch as the maximum commitment to an industry may not exceed 25 percent of the total value of the Fund's portfolio.~~

~~(7) Invest in real estate fee-simple, but only through investment certificates or other financial instruments. Real estate shall not be held by the System as freehold or leasehold. This policy statement does not exclude the authority of the Board to purchase real estate for home office facilities to be used in administering the System, including land, equipment and office building; and providing that the foregoing shall not prevent the Fund from purchasing or selling publicly-traded securities of issuers engaged in any aspect of the real estate business or marketable securities secured by real estate or interest therein which would include mortgage-backed securities.~~

~~(8) Purchase or sell commodities, commodity contracts, mineral, oil, gas or other mineral explorations or developmental programs. However, the Fund may purchase the securities of companies engaged in the exploration, development, production, refining, transportation and marketing of oil, gas or other minerals.~~

~~(9) Make loans of money or securities other than through the purchase of securities in accordance with the investment objectives; by lending portfolio securities under circumstances where the borrower of such securities provides cash or cash equivalents as collateral at all times in an amount at least equal to the value of the owned securities and the Fund retains the right to obtain any dividends, interest or other distribution on the securities and any increase in their market value and reserves the right to terminate such arrangement at any time; and by entering into repurchase agreements~~

~~(10) Be restricted in realizing net investment gain or losses during any period.~~

~~(11) Purchase foreign securities.~~

715:10-21-4. Portfolio assets allocation [REVOKED]

~~(a) The following guidelines, in (b) and (c) of this section, reflect the System's goals for the funds. It is recognized that the actual asset allocation for the portfolio at any time will be influenced by the investment style of the advisor and their perceptions of the relative attractiveness of the various categories of permissible securities.~~

~~(b) The following shall be the range of TRS' portfolio assets:~~

~~(1) Equities: 0-65%~~

~~(2) Fixed Income: 10-90%~~

~~(3) Real Estate: 0-5%~~

~~(c) Neither the upper nor the lower limits for portfolio allocations are intended to require portfolio activity for the sole purpose of complying with the guidelines. However, deviations from these guidelines, when they occur, should be discussion items at meetings between the Board of Trustees and the advisors, and are to be included in the advisors' monthly reports.~~

715:10-21-5. Cash equivalents guidelines [REVOKED]

~~So long as the following restrictions remain in effect, all funds will:~~

~~(1) Not purchase the securities of any issuer other than obligations issued or guaranteed as to principal and interest by the government of the United States, its agencies or instrumentalities, if, as a result:~~

~~(A) More than 5 percent of the total assets of the Fund would be invested in securities of such issuer.~~

~~(B) More than 25 percent of the Fund's total assets would be invested in the securities of issuers having their principal business activities in the same industry except for the banking industry.~~

~~(2) Limit commercial paper investments to those rated A1/P1 by Standard & Poor's or Moody's Investor Service.~~

SUBCHAPTER 23. STATE AND EDUCATION EMPLOYEES GROUP HEALTH AND DENTAL INSURANCE PROGRAM

715:10-23-1. State and Education Employees Group Health and Dental Insurance Program

Members of Teachers' Retirement who retire or terminate employment with at least ten (10) years of ~~Oklahoma~~ creditable service ~~credits~~ are eligible to enroll in the State and Education Employees Group Health and Dental Insurance Program. The retiring member must conform to rules and regulations promulgated by the State and Education Employees Group Insurance Board, which is the final authority on questions of eligibility for membership and coverage provided by the insurance plan. Questions regarding eligibility for insurance coverage and monthly premiums should be referred to the local school district's health insurance coordinator or the State and Educations Employees Group Insurance Board.

715:10-23-2. Monthly health insurance premium supplement paid by the Teachers' Retirement System

Teachers' Retirement will pay a monthly health insurance premium supplement for each retired member who is enrolled in the health insurance plan provided by the State and Education Employees Group Health and Dental Insurance plan or in an insurance program provided by a participating education employer who provides health insurance coverage to former employees, provided the retired member had at least ten (10) years of Oklahoma service prior to retirement. The term "participating education employer" for purposes of this subchapter shall have the same meaning as the term "public school" as defined by 70 O.S. ~~1991~~, Section 17-101. The payment shall be in accordance with 74 O.S. ~~Supp. 1999~~, Section 1316.3, as amended, which provides that the supplement paid by Teachers' Retirement shall be the premium rate of the Medicare supplement charged to the retired employees not to exceed an amount between $100 and $105, depending on length of service and the final average salary of the retired member as specified in subsection 4 of Section 1316.3 of Title 74 of the Oklahoma Statutes.

715:10-23-3. Participating education employers not enrolled in the State and Education Employees Group Insurance Plan

In accordance with 74 O.S. ~~Supp. 1993~~, Section 1316.3, as amended, Teachers' Retirement will pay a monthly health insurance premium supplement to a participating education employer for all retired members enrolled in an insurance program provided to retired members of the employer, provided the retired member had at least ten (10) years of ~~Oklahoma~~ creditable service prior to retirement. For purposes of this section the following shall apply:

(1) The participating employer must notify Teachers' Retirement that a retired member will remain enrolled in the insurance plan provided by the employer.

(2) Each month Teachers' Retirement will provide the participating employer with a list of all retired members qualifying for the health insurance premium payment and a financial officer authorized by the school shall certify the listing is correct.

(3) Teachers' Retirement will remit payment to the participating education employer upon receipt of the certified statement.

(4) The participating education employer will be responsible for collecting additional premiums and remitting the total premium for each member to the health insurance provider.

(5) The participating education employer shall file with Teachers' Retirement at least once each year the monthly premium charged for the medicare supplement insurance plan provided to retired members of the employer's insurance plan. In the event the medicare supplement premium is modified during the school year, the employer shall notify Teachers' Retirement at least thirty (30) days prior to the effective date of the change.

715:10-23-5. Retired members ineligible for health insurance supplement

Retired members who are not enrolled in either the State and Education Employees Group Health Insurance plan or an insurance plan provided by a participating education employer are not eligible for the insurance supplement provided for in 74 O.S. ~~Supp. 1993~~, Section 1316.3 as amended. Retired members who for any reason are not receiving monthly retirement benefits from the Teachers' Retirement System are not eligible for the insurance supplement.

SUBCHAPTER 25. QUALIFIED DOMESTIC ORDER

715:10-25-2. Filing a qualified domestic order

A member of Teachers' Retirement, his or her legal representative, a member's former spouse, or his or her legal representative may file a qualified domestic order with the Teachers' Retirement System. In not less than thirty (30) days of such filing, Teachers' Retirement will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided to Teachers' Retirement. All qualified domestic orders filed with the Teachers' Retirement System of Oklahoma must be in accordance with Oklahoma Statutes and must conform to the provisions of 70 O.S. ~~Supp. 1993~~, Section 17-109, as amended. TRS Form 110.46 OTRS Qualified Domestic Order is available upon request and its use is recommended.

[OAR Docket #08-1137; filed 06-06-08]

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

1:2008-23.

EXECUTIVE ORDER 2008-23

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 Friday, June 13, 2008 to honor Major Scott A. Hagerty an Oklahoma resident, who died on Tuesday, June 3, 2008, at age 41 while serving in Afghanistan.

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 10th day of June, 2008.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #08-1150; filed 06-12-08]

1:2008-24.

EXECUTIVE ORDER 2008-24

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Severe storms, tornadoes and flooding beginning on June 5, 2008, and continuing have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.
2. It may be necessary to provide for the rendering of mutual aid assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The counties included in this declaration are:

Alfalfa, Beckham, Blaine, Cotton, Custer, Dewey, Ellis, Grant, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita and Woods.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.
5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.
6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 11th day of June, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #08-1151; filed 6-12-08]

TITLE 75. ATTORNEY GENERAL CHAPTER 20. ADDRESS CONFIDENTIALITY PROGRAM

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2008, *rules promulgated by the Office of the Secretary of State to implement [the Address Confidentiality Program] shall be transferred to and become part of the administrative rules of the Office of the Attorney General . . . . Such rules shall continue in force and effect as rules of the Office of the Attorney General from and after July 1, 2008, and any amendment, repeal or addition to transferred rules shall be under the jurisdiction of the Attorney General* [House Bill 2638 (2008)].

As directed by HB 2638, notice is hereby given that the Secretary of State's Address Confidentiality Program rules in Chapter 30 of Title 655 [655:30-1-1 through 655:30-1-15] have now been placed in a new Chapter 20 of the Attorney General's Title 75, and will be published as such in the 2008 Supplement to the *Oklahoma Administrative Code.*

For additional information relating to this transfer, see House Bill 2638 (2008).

TITLE 655. SECRETARY OF STATE CHAPTER 30. ADDRESS CONFIDENTIALITY PROGRAM

TRANSFER OF RULEMAKING AUTHORITY:

Effective July 1, 2008, *rules promulgated by the Office of the Secretary of State to implement [the Address Confidentiality Program] shall be transferred to and become part of the administrative rules of the Office of the Attorney General . . . . Such rules shall continue in force and effect as rules of the Office of the Attorney General from and after July 1, 2008, and any amendment, repeal or addition to transferred rules shall be under the jurisdiction of the Attorney General* [House Bill 2638 (2008)].

As directed by HB 2638, notice is hereby given that the Secretary of State's Address Confidentiality Program rules in Chapter 30 of Title 655 [655:30-1-1 through 655:30-1-15] have now been placed in a new Chapter 20 in the Attorney General's Title 75, and will be published as such in the 2008 Supplement to the *Oklahoma Administrative Code.*

For additional information relating to this transfer, see House Bill 2638 (2008).