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**Brad Henry, Governor**  
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**Secretary of State**  
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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.*

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## **TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 25. AVIATION EDUCATION PROGRAM**

*[OAR Docket #09-1126]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

25:25-1-1 [NEW]  
25:25-1-2 [NEW]  
25:25-1-3 [NEW]  
25:25-1-4 [NEW]

### **GUBERNATORIAL APPROVAL:**

April 24, 2009

*[OAR Docket #09-1126; filed 6-2-09]*

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## **TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 3. PROCEDURE**

*[OAR Docket #09-1153]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

160:3-1-1.1 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1153; filed 6-8-09]*

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

*[OAR Docket #09-1154]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 1. General Provisions  
160:45-1-1 [AMENDED]  
160:45-1-2 [AMENDED]  
Subchapter 3. Open-End Credit  
160:45-3-14 [AMENDED]  
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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

160:45-9-2 [AMENDED]

160:45-9-4 [AMENDED]

160:45-9-5 [NEW]

160:45-9-6 [NEW]

### **GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1154; filed 6-8-09]*

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

*[OAR Docket #09-1155]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 3. Licensing  
160:55-3-1.2 [AMENDED]  
160:55-3-1.4 [AMENDED]  
Subchapter 9. Enforcement  
160:55-9-10 [NEW]

### **GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1155; filed 6-8-09]*

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

*[OAR Docket #09-1104]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

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

# Gubernatorial Approvals

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## GUBERNATORIAL APPROVAL:

May 4, 2009

*[OAR Docket #09-1104; filed 5-28-09]*

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

*[OAR Docket #09-1090]*

## RULEMAKING ACTION:

Gubernatorial approval of Permanent rules

## RULES:

Subchapter 7. General Administration of the County Election Board

Part 7. Public Records

230:10-7-66. Lists of registered voters [AMENDED]

## GUBERNATORIAL APPROVAL:

May 4, 2009

*[OAR Docket #09-1090; filed 5-28-09]*

### **TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION**

*[OAR Docket #09-1091]*

## RULEMAKING ACTION:

Gubernatorial approval of Permanent rules

## RULES:

Subchapter 5. Application for Voter Registration

Part 1. Qualifications for Registration

230:15-5-2. Persons who shall become eligible to register to vote [AMENDED]

Part 21. Voter Registration Application by Mail

230:15-5-83.1. Voter registration for Address Confidentiality Program participants [AMENDED]

230:15-5-89. ~~Transfer~~ Change of address on election day [AMENDED]

Part 25. Voter Registration Application Services in Voter Registration Agencies

230:15-5-123. Discretionary voter registration agencies identified [AMENDED]

Subchapter 9. Receiving and Processing Voter Registration Applications

Part 1. Responsibilities of the State Election Board for Voter Registration

230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board [AMENDED]

Part 5. Processing Voter Registration Applications

230:15-9-24. Processing ~~transfers executed changes of address~~ received on election day or during in-person absentee voting [AMENDED]

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

Part 7. Acknowledgment of Voter Registration Applications

230:15-9-35. Processing additional information about rejected application [AMENDED]

## GUBERNATORIAL APPROVAL:

May 4, 2009

*[OAR Docket #09-1091; filed 5-28-09]*

### **TITLE 230. STATE ELECTION BOARD CHAPTER 20. CANDIDATE FILING**

*[OAR Docket #09-1092]*

## RULEMAKING ACTION:

Gubernatorial approval of Permanent rules

## RULES:

Subchapter 3. Filing for State and County Office

Part 7. Procedure for Filing

230:20-3-37. Checking Declarations [AMENDED]

230:20-3-38. Candidate's name [AMENDED]

## GUBERNATORIAL APPROVAL:

May 4, 2009

*[OAR Docket #09-1092; filed 5-28-09]*

### **TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING**

*[OAR Docket #09-1093]*

## RULEMAKING ACTION:

Gubernatorial approval of Permanent rules

## RULES:

Subchapter 11. Receiving and Processing Absentee Ballots

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [AMENDED]

## GUBERNATORIAL APPROVAL:

May 4, 2009

*[OAR Docket #09-1093; filed 5-28-09]*

### **TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT**

*[OAR Docket #09-1094]*

## RULEMAKING ACTION:

Gubernatorial approval of Permanent rules

## RULES:

Subchapter 3. County Election Board Responsibilities

Part 7. Final Preparations  
230:35-3-56.1. List of restricted records status voters [AMENDED]  
Part 9. Distributing Supplies and Ballots  
230:35-3-71. Voting device not issued to precinct polling place [AMENDED]  
Part 11. Election Day  
230:35-3-78.1. Reporting violations of the law [NEW]  
Part 17. Disposition of Materials  
230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets [AMENDED]  
230:35-3-101.1. Processing ~~transfers~~ changes of address on election day [AMENDED]  
Part 19. Verifying and Counting Provisional Ballots  
230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-1094; filed 5-28-09]*

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

*[OAR Docket #09-1095]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent rules

**RULES:**

Subchapter 5. Municipal Elections  
Part 9. Procedures  
230:40-5-46. Maps required [AMENDED]  
Part 17. Special Elections  
230:40-5-77. Special elections for municipal offices [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 9, 2009

*[OAR Docket #09-1095; filed 5-28-09]*

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

*[OAR Docket #09-1096]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent rules

**RULES:**

Subchapter 5. Instructions for Counters for Manual Recount  
Part 3. Procedure for Counting  
230:45-5-12. Instructions for counting [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-1096; filed 5-28-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 50. AUTOMATED SYSTEMS**

*[OAR Docket #09-1097]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent rules

**RULES:**

Subchapter 3. Voting Devices and Data Processing  
Part 7. Oklahoma Election Management System  
230:50-3-31.1. Modern Election Support Application [NEW]  
Subchapter 9. Telephone Voting System  
230:50-9-9. Counting telephone voting system ballots [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-1097; filed 5-28-09]*

**TITLE 300. GRAND RIVER DAM  
AUTHORITY  
CHAPTER 10. PUBLIC PURPOSE SUPPORT  
AND ASSISTANCE**

*[OAR Docket #09-1105]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

300:10-1-2. [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 14, 2009

*[OAR Docket #09-1105; filed 5-29-09]*

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

*[OAR Docket #09-1106]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:1-1-4 [AMENDED]  
390:1-1-12 [NEW]

## Gubernatorial Approvals

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**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1106; filed 6-1-09]*

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

*[OAR Docket #09-1107]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:10-1-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1107; filed 6-1-09]*

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

*[OAR Docket #09-1108]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Basic Academy Programs

390:15-1-19 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1108; filed 6-1-09]*

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

*[OAR Docket #09-1109]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:25-1-8 [AMENDED]

390:25-1-11 [AMENDED]

390:25-1-13 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1109; filed 6-1-09]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 30. CDS DETECTOR DOG  
CERTIFICATION**

*[OAR Docket #09-1110]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:30-1-5 [AMENDED]

390:30-1-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1110; filed 6-1-09]*

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

*[OAR Docket #09-1111]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. License Requirements

390:35-5-1 [AMENDED]

390:35-5-2 [AMENDED]

390:35-5-13 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1111; filed 6-1-09]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 50. PENALTY ASSESSMENT  
FEES**

*[OAR Docket #09-1112]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:50-1-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1112; filed 6-1-09]*

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

*[OAR Docket #09-1113]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:55-1-15 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1113; filed 6-1-09]*

**TITLE 420. OKLAHOMA LIQUEFIED  
PETROLEUM GAS BOARD  
CHAPTER 10. LIQUEFIED PETROLEUM  
GAS ADMINISTRATION**

*[OAR Docket #09-1132]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

420:10-1-5. Permits [AMENDED]

420:10-1-14. Standards for the storage and handling of  
liquefied petroleum gas [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1132; filed 6-2-09]*

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

*[OAR Docket #09-1159]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 2. General Provisions

580:10-2-2 [AMENDED]

580:10-2-4 [AMENDED]

Subchapter 5. Use of Public Areas of Capitol and Plazas

580:10-5-2 [AMENDED]

580:10-5-6 [AMENDED]

580:10-5-10 [NEW]

Subchapter 7. Use of State Capitol Park

580:10-7-3 [AMENDED]

580:10-7-5 [NEW]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1159; filed 6-9-09]*

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

*[OAR Docket #09-1160]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 2. General Provisions

580:15-2-2. [AMENDED]

Subchapter 4. Supplier Provisions

580:15-4-2 [AMENDED]

580:15-4-5 [AMENDED]

580:15-4-6 [AMENDED]

580:15-4-7 [AMENDED]

580:15-4-11 [AMENDED]

580:15-4-14 [AMENDED]

Subchapter 6. State Agency Provisions

580:15-6-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1160; filed 6-9-09]*

**TITLE 580. DEPARTMENT OF CENTRAL  
SERVICES  
CHAPTER 25. RISK MANAGEMENT  
PROGRAM**

*[OAR Docket #09-1161]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Casualty or Liability Incident Management

580:25-3-2. [AMENDED]

Subchapter 5. Casualty or Liability Claims Management,  
Payment and Reports

580:25-5-1 [AMENDED]

Subchapter 9. Driver and Vehicle Safety Standards for  
Motor Vehicle Operations

580:25-9-1 [AMENDED]

Subchapter 11. Coverage for State Owned Buildings,  
Contents and Other

580:25-11-2 [AMENDED]

## Gubernatorial Approvals

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**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1161; filed 6-9-09]*

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**TITLE 580. DEPARTMENT OF CENTRAL SERVICES  
CHAPTER 65. STATE SURPLUS PROPERTY**

*[OAR Docket #09-1162]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Acquisition of Surplus Property  
580:65-7-5 [AMENDED]  
580:65-7-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1162; filed 6-9-09]*

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**TITLE 735. STATE TREASURER  
CHAPTER 80. UNCLAIMED PROPERTY**

*[OAR Docket #09-1122]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Claims Process  
735:80-7-8. Disposition of unclaimed property other than cash [AMENDED]

**GUBERNATORIAL APPROVAL**

May 4, 2009

*[OAR Docket #09-1122; filed 6-2-09]*

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# Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption" of the proposed new, amended, or revoked rules. "Final adoption" occurs upon approval by the Governor and the Legislature, or upon enactment of a joint resolution of approval by the Legislature. Before proposed permanent rules can be reviewed and approved/disapproved by the Governor and the Legislature, the agency must provide the public an opportunity for input by publishing a Notice of Rulemaking Intent in the *Register*.

Permanent rules are effective ten days after publication in the *Register*, or on a later date specified by the agency in the preamble of the permanent rule document.

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that references the *Register* publication of the permanent action.

*For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 303.2, 308 and 308.1.*

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

[OAR Docket #09-1089]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 30. Continuing Professional Education  
10:15-30-9. [AMENDED]

### AUTHORITY:

Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6

### DATES:

#### Comment Period:

January 8, 2009 through February 18, 2009

#### Public Hearing:

February 18, 2009

#### Adoption:

March 25, 2009

#### Submitted to Governor:

March 27, 2009

#### Submitted to House:

March 27, 2009

#### Submitted to Senate:

March 27, 2009

#### Gubernatorial Approval:

May 4, 2009

#### Legislative Approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

#### Final Adoption:

May 20, 2009

#### Effective:

July 11, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

Sections 15.35 of the Oklahoma Accountancy Act (Act) sets forth the requirements for continuing professional education (CPE). Subchapter 30 sets for the rules to administer the CPE requirements. The amendments to the requirement for re-entering active status clarify that the three-year CPE cycle begins in the year a registrant returns to active status, and that if the hours required to return to active status are fewer than one hundred twenty (120), two hours of professional ethics are required rather than four. Amendments also provide that forty (40) hours of CPE earned to return to active status will be counted toward the new three-year CPE cycle if earned within the year the registrant returns to active status or within one year of the date the registrant returns to active status. Amendments simplify the CPE requirement, modifying it to make it comparable to what registrants would have had to earn if they had remained on active status and allowing registrants one year to make up any hours required above forty (40) instead of the six months previously allowed.

#### CONTACT PERSON:

Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 11, 2009:

## SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

### 10:15-30-9. Re-Entering Active Status

An inactive status registrant upon return to active status must comply with CPE requirements as follows:

~~(1) For each month the registrant was on inactive status, three and one third (3 1/3) hours of qualified CPE, rounded up to the nearest half credit.~~

~~(2) The maximum number of qualified CPE hours required by this rule shall be one hundred twenty (120) hours, including at least four (4) hours of CPE in ethics.~~

~~(3) The registrant can claim any CPE hours earned while on inactive status during the preceding three (3) year period.~~

~~(4) A registrant who immediately gives written notice to the Board upon changing to active status may be granted the following time periods from the date of the change of status in which to complete the CPE required by this section:~~

~~(A) From the date of the change of status, for registrants needing forty (40) hours or less to comply with~~

~~(1) or (2) above, sixty (60) days; and~~

~~(B) From the date of the change of status, a registrant shall complete additional CPE over the forty (40) hours described in (a) above within one hundred eighty (180) days.~~

~~(5) A registrant must document, on a form prescribed by the Board, all qualified CPE required by this rule.~~

~~(6) At its discretion, the Board may modify the requirements of this rule for good cause on a case by case basis.~~

(1) The three (3)-year CPE cycle of a registrant returning to active status shall begin January 1 of the year in which the registrant returns to active status. Forty (40) hours of the CPE credit reported to meet the requirements to return to active status will be counted toward the three (3)-year CPE cycle for the calendar year in which it is earned if the credit is earned:

(A) within the calendar year the registrant returns to active status, or

# Permanent Final Adoptions

- (B) within one year of the date the registrant returns to active status.
- (2) For each calendar year in which the registrant claimed an exemption or failed to report CPE pursuant to the CPE requirement, the registrant must complete forty (40) hours of CPE.
- (3) The maximum number of CPE hours required to return to active status shall be one hundred twenty (120) hours, including at least four (4) hours of professional ethics.
- (4) If the number of CPE hours required to return to active status is fewer than one hundred twenty (120), two (2) hours of professional ethics must be included.
- (5) The registrant may claim any CPE hours earned while on inactive status during the preceding three (3)-year period.
- (6) A registrant who immediately gives written notice to the Board upon changing to active status may be granted the following time periods in which to complete the CPE required by this section:
- (A) Sixty (60) days from the date of the return to active status for registrants needing forty (40) or fewer hours of CPE; and
- (B) One year from the date of the return to active status for any additional CPE above the (40) hours described in (A) above.
- (7) A registrant must document, on a form prescribed by the Board, all qualified CPE required by this rule.
- (8) At its discretion, the Board may modify the requirements of this rule for good cause on a case by case basis.

[OAR Docket #09-1089; filed 5-27-09]

## TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 25. AVIATION EDUCATION PROGRAM

[OAR Docket #09-1127]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
25:25-1-1 [NEW]  
25:25-1-2 [NEW]  
25:25-1-3 [NEW]  
25:25-1-4 [NEW]

**AUTHORITY:**  
3 O.S. Section 85 (L); Oklahoma Aeronautics Commission

**DATES:**  
**Comment period:**  
February 2, 2009 through March 4, 2009.

**Public hearing:**  
March 5, 2009

**Adoption:**  
March 12, 2009

**Submitted to Governor:**  
March 17, 2009

**Submitted to House:**  
March 17, 2009

**Submitted to Senate:**  
March 17, 2009

**Gubernatorial approval:**

April 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2009

**Final adoption:**

May 12, 2009

**Effective:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Per 3 O.S. Section 85 (L), which gives the Oklahoma Aeronautics Commission the authority to organize and administer an aerospace education program, this rule clarifies requirements for participation in the Aviation Education Program, the criteria selection for applicants, and the procedures for awarding an Aviation Education Grant or Contract. The Commission first discussed a need for a rule to better define our Aviation Education Program at a monthly board meeting held in June of 2008.

**CONTACT PERSON:**

Treasure Tytenicz, Government Affairs Liaison and Aviation Education Coordinator, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

### **25:25-1-1. Purpose**

The purpose of this chapter is to set forth the requirements and criteria for aviation education programs to receive funding from the Oklahoma Aeronautics Commission, and to establish the procedures to be followed by the Commission in the administration and enforcement of its duties under Title 3, Oklahoma Statutes, Section 85.

### **25:25-1-2. Requirements for receiving funding for an Aviation Education Program**

(a) The Oklahoma Aeronautics Commission shall identify and award grants to public schools, colleges, and universities, and execute contracts with private entities to promote aviation, aerospace, STEM education, which includes the fields of science, technology, engineering and math, and careers in aviation and aerospace among Oklahoma students.

(b) Each school, college, university, teacher or private entity must complete the Aviation Education Grant application located on the website of the Commission.

(c) A private entity or organization must also complete the Aviation Education Grant application and if their application is selected, enter into a contract with the Oklahoma Aeronautics Commission for the project. Additional contractual forms will also need to be completed.

(d) Applications must be submitted or postmarked no later than May 31<sup>st</sup> in order to be considered for the following fiscal year which starts July 1<sup>st</sup>.

(e) Applicants who receive approval must provide a Financial Audit and a Completion Report to the Oklahoma Aeronautics Commission, which documents the usage of funds and gives a

detailed description of the program's implementation. The report is due within sixty (60) days of the completion of the program.

25:25-1-3. Criteria selection for applicants

(a) An applicant's program must increase aviation awareness by promoting science, technology, engineering, and mathematics (STEM) education, or encourage Oklahoma students to pursue a career in the aviation/aerospace industry.

(b) Applications will be rated according to the following criteria listed in the application:

- (1) Program description
(2) Grade levels served
(3) Number of students involved
(4) Program goals and objectives
(5) Curriculum/subject areas covered
(6) Desired learning outcomes
(7) Student benefits
(8) Measurements of success
(9) Justification of need for the funding

(c) Applications will also be rated according to the following financial information provided by the applicant:

- (1) Total budget of the organization
(2) Total budget of the program
(3) Other contributors and the amount contributed
(4) Percentage of the program that the Oklahoma Aeronautics commission is being asked to fund

25:25-1-4. Procedures for awarding funding to an Aviation Education Program

(a) Staff will take up to sixty (60) days after the May 31st deadline date to review the applications based upon the above mentioned criteria. Applications will then be submitted to the Commission for approval at the next regularly scheduled Commission meeting.

(b) The Oklahoma Aeronautics Commission will make a partial payment of eighty percent (80%) upon completion of the program. The remaining twenty percent (20%) will be paid upon receipt of the Financial Audit and Completion Report.

[OAR Docket #09-1127; filed 6-2-09]

TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS CHAPTER 1. ADMINISTRATION

[OAR Docket #09-1133]

RULEMAKING ACTION: PERMANENT final adoption

RULES: Subchapter 1. Individual Proceedings 38:1-1-3 [AMENDED]

AUTHORITY: Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., § 43B-1875-1

DATES:

Comment Period: February 17, 2009 through March 19, 2009

Public hearing: March 23, 2009

Adoption: March 23, 2009

Submitted to Governor: March 25, 2009

Submitted to House: March 25, 2009

Submitted to Senate: March 25, 2009

Gubernatorial approval: April 29, 2009

Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2009.

Final adoption: May 19, 2009

Effective: July 11, 2009

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: n/a

ANALYSIS: 38: 1-1-3 was amended to correct a typographical error in the original law.

CONTACT PERSON: Richard D. Pierson, Executive Director, Oklahoma Board of Licensed Alcohol and Drug Counselors, 5104 N. Francis, Suite C, Oklahoma City, OK 73118, 405-840-8908

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, 2009:

SUBCHAPTER 1. INDIVIDUAL PROCEEDINGS

38:1-1-3. Individual proceedings

Article II of the Administrative Procedures Act "APA"), 75 O.S. §§ 308a, et seq., governs individual proceedings by the Board for revocation, suspension, probation, and non-renewal of license or certification.

[OAR Docket #09-1133; filed 6-4-09]

TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

[OAR Docket #09-1134]

RULEMAKING ACTION: PERMANENT final adoption

RULES: Subchapter 3. Rules of Professional Conduct 38:10-3-7 [NEW] Subchapter 7. Application

# Permanent Final Adoptions

38:10-7-10 [NEW]  
Subchapter 9. Supervision  
38:10-9-2 [AMENDED]  
38:10-9-4 [AMENDED]  
38:10-9-5 [NEW]  
Subchapter 11. Fees  
38:10-11-1 [AMENDED]  
38:10-11-2 [AMENDED]  
Appendix A. Licensed/Certified Counselor Code of Ethics [REVOKED]  
Appendix A. Licensed/Certified Counselor Code of Ethics [NEW]

## AUTHORITY:

Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., § 43B-1875-1

## DATES:

### Comment Period:

February 17, 2009 through March 19, 2009

### Public hearing:

March 23, 2009

### Adoption:

March 23, 2009

### Submitted to Governor:

March 25, 2009

### Submitted to House:

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### Submitted to Senate:

March 25, 2009

### Gubernatorial approval:

April 29, 2009

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2009.

### Final adoption:

May 19, 2009

### Effective:

July 11, 2009

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

38:10-3-2 Code of Ethics Appendix A was revoked and rewritten to correct wording and grammatical errors.

38:10-3-7 is a new section to establish a Counselor Assistance Program which shall assist in the rehabilitation of counselors whose competency may be compromised by substance use or a mental or physical condition.

38:10-7-10 is a new section, which establishes standards and criteria for CADC's or LADC's to obtain a credential in co-occurring disorders.

38:10-9-2 & 38:10-9-4 amends languages regarding supervision standards and criteria.

38:10-9-5 is a new section that establishes criteria for approving new supervisors.

38:10-11-1 & 38:10-11-2 amends fee schedules to allow fees for new credentials and amends current language to include payments by credit card.

### CONTACT PERSON:

Richard D. Pierson, Executive Director, Oklahoma Board of Licensed Alcohol and Drug Counselors, 5104 N. Francis, Suite C, Oklahoma City, OK 73118, 405-840-8908

**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, 2009:**

## SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

### **38:10-3-7. Counselor Assistance Program**

(a) **Purpose.** These rules have been adopted as pursuant to 59 O.S. Section 1875 for the purpose of establishing a Counselor Assistance Program. This program known as the Counselor Assistance Program, shall assist in the rehabilitation of counselors, whose competency may be compromised by the use of alcohol, drugs, chemicals or any other substances or any other mental or physical condition, including deteriorating through the aging process. This allows for the Board to retain control of counseling practice for the protection of the public and provides an alternative to the disciplinary process.

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

(1) "The Board" or "OBLADC" means the Oklahoma Board of Licensed Alcohol and Drug Counselors.

(2) "LADC" means Licensed Alcohol and Drug Counselor

(3) "CADC" means Certified Alcohol and Drug Counselor

(4) "LADC OR CADC Candidate" means under supervision for LADC or CADC as defined in Oklahoma Statute 1871.

(5) "Program Coordinator" means the person approved by the Oklahoma Board of Licensed Alcohol and Drug Counselors to administer the Counselor Assistance Program.

### (c) **Administration.**

(1) Guidelines and policies for the program will be approved by the Board

(2) The Board will have responsibility for approval and oversight of the budget.

(3) The Program Coordinator will make an annual report to the Board on the activities of the committee.

### (d) **Counselor Assistance Committee(s).**

(1) Members of the Counselor Assistance Committee(s) shall have expertise in treatment of chemical dependency and/or mental health.

(2) Composition of the Committee shall be

(A) at least three members

(B) the majority to be currently LADC or CADC, and

(C) at least one person recovering from chemical dependency and/or a mental health diagnosis.

(3) The Committee shall have the following responsibilities:

(A) determine counselor or counselor candidate acceptance into the program,

(B) develop with counselor or counselor candidate a contract for program participation,

(C) meet with counselor or counselor candidate on a specified basis to monitor and determine progress,

(D) determine successful completion of program,

(E) determine termination from program for failure to comply,

(F) report all terminations to the Board.

(4) The Counselor Assistance Committee(s) shall be appointed by the Board from applications for a term of three (3) years.

(e) **Qualifications of Applicant.**

(1) To be eligible for participation in the Counselor Assistance Program, each applicant must:

(A) have a current unrestricted certification or license, or be under supervision, unless referred by the Board.

(B) have no pending felony charge or conviction that would prevent the counselor, or counselor candidate from practicing.

(C) voluntarily submit an application for participation, and

(D) reside in this state.

(2) Counselors or counselor candidates previously disciplined by the Board shall be ineligible, unless referred to the Counselor Assistance Program by the Board.

(f) **Participation in the Program.** The counselor or counselor candidate shall:

(1) agree in writing to cooperate with program and comply with provisions of the contract, and

(2) assume the financial cost of participation.

(g) **Discharge from Program.** A counselor or counselor candidate shall be considered discharged from the program when the following criteria are met:

(1) The counselor or counselor candidate has been in compliance with all the terms of the contract with the Counselor Assistance Committee and had completed the required program.

(2) Counselor Assistance Committee documents completion of program and eligibility for discharge with written notification to the licensee.

(3) A counselor or counselor candidate may transfer to another state upon submission to the jurisdiction of that state's regulatory Board for Alcohol and Drug Counselors or its equivalent for a Counselor Assistance Program or for discipline. A counselor or counselor candidate shall be considered discharged upon submitting documentation verifying successful completion of that state's regulatory Board for Alcohol and Drug Counselors or its equivalent for a Counselor Assistance Program.

(h) **Termination from Program.** The Counselor Assistance Committee shall make determination that a counselor or counselor candidate has failed to comply with the contract and treatment plan. A counselor or counselor candidate may be terminated for any of the following reasons, including but not limited to:

(1) the counselor or counselor candidate fails to comply with the terms of the contract with the Counselor Assistance Committee.

(2) the counselor or counselor candidate has become unsafe to practice with reasonable skill and safety to consumers under his/her care, or

(3) the counselor or counselor candidate transfers to another state and fails to submit to that state's regulatory Board for Alcohol and Drug Counselors or its equivalent.

SUBCHAPTER 7. APPLICATION

**38:10-7-10. Co-occurring Disorders Credential Rules**

(a) **Definitions.**

(1) Bachelor of Co-occurring Disorders Certification (BCDC) is a bachelor's degree level credential which shall be achieved by certified alcohol and drug counselors (CADC), or certified alcohol and drug counselors candidates that seek to be certified in co-occurring disorders (COD). This credential is required for CADC's to recognize co-occurring disorders and integrate that into substance abuse treatment.

(2) Master's of Co-occurring Disorders Certification (MCDC) is a master's degree level credential which shall be achieved by licensed alcohol and drug counselors (LADC), licensed alcohol and drug counselor candidates, or other Master's level candidates that seek to be certified in co-occurring disorders (COD). LADC's may treat co-occurring disorder within their scope of practice.

(b) **Qualifications.** To be eligible for Board approval as a Bachelor's of Co-occurring Disorders Certification, a CADC or CADC candidate must be in good standing and:

(1) Have a minimum education of a bachelor's degree in co-occurring disorders or a behavioral science field with a clinical application from a college or university that is accredited by the United States Department of Education or the Council on Higher Education Accreditation or an international equivalent if the degree is from an international institution.

(2) 200 clock hours of continuing education units. Most of these should be covered by the appropriate degree in a behavioral science field. This includes a minimum of 140 hours of COD specific training, 30 hours of addiction specific training and 30 hours of mental health specific training to equal 200 hours.

(3) Have completed 4000 hours of COD specific supervised work experience AND 2000 hours of documented work experience in counseling in the last 10 years (6000 hours total).

(4) The two years (4000 hours) of supervised experience requirements for certification as a BCDC must be under the supervision of a Board approved co-occurring disorders supervisor.

(5) 200 Hour Practicum with a minimum of 20 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.

(6) Successfully pass the written exam for BCDC.

(7) Employed in a nationally accredited or Oklahoma Department of Mental Health and Substance Abuse Services certified agency, unless exempt from such certification.

(8) CADC's shall not provide private or independent practice for co-occurring disorders

(9) This is not a freestanding credential.

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- (10) This credential is required for CADC's to recognize co-occurring disorders and integrate that into substance abuse treatment.
- (c) **Qualifications.** To be eligible for Board approval as a Master's of Co-occurring Disorders Certification an LADC, LADC candidate, or other Master's level candidate must be in good standing and:
- (1) Have a minimum education of a Master's degree in co-occurring disorders or behavioral science field with a clinical application from a college or university that is accredited by the United States Department of Education or the Council on Higher Education Accreditation or an international equivalent if degree is from an international institution.
  - (2) Complete 140 hours of COD specific training.
  - (3) Complete 2000 hours (one year) of supervised work experience in COD specific work.
  - (4) Complete a Practicum of 100 hours with a minimum of 10 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.
  - (5) Successfully pass the written exam for MCDC.
  - (6) This is not a freestanding credential.
  - (7) LADC's may treat co-occurring disorders within the scope of their practice.
- (d) **Application.**
- (1) Complete an application form provided by the Board
  - (2) Submit two letters of reference
  - (3) Sign a supervision contract and submit to the Board for approval.
  - (4) Sign a COD code of ethics.
  - (5) Pay application fee of \$140.00
  - (6) The BCDC must be completed within five (5) years from the original date of application.
  - (7) The MCDC must be completed within three (3) years from the original date of application.
- (e) **Supervision.** To be a Board approved supervisor for co-occurring disorders certification, you must:
- (1) Be in good standing as a licensed alcohol and drug counselor and a state mental health professional; or
  - (2) A licensed mental health professional whose license is in good standing, and whose scope of practice includes treatment of alcohol and drug abuse or dependency; or
  - (3) A LADC whose license is in good standing and whose scope of practice includes co-occurring disorders; and
  - (4) Be approved by the Board to supervise CADC's, CADC candidates, or LADC candidates or other Master's level candidates for co-occurring disorders.
- (f) **Renewal of BCDC or MCDC credential.** To maintain the BCDC or MCDC credential, the certified person shall complete, prior to June 30:
- (1) The requirements for renewal of CADC/LADC.

- (2) Pay a co-occurring disorders credential renewal fee of \$50.00

## SUBCHAPTER 9. SUPERVISION

### 38:10-9-2. Supervision of work experience

- (a) **Licensed alcohol and drug counselor.** The one year supervised experience requirement for licensure as an LADC must be under the supervision of an alcohol and drug counselor holding the LADC license.
- (b) **Certified alcohol and drug counselor.** The two year supervised experience requirement for certification as a CADC must be under the supervision of an alcohol and drug counselor holding an LADC license.
- (c) **Practicum.** Practicum supervision may be signed off by anyone who is in a supervisory or educational role and has first hand knowledge that the candidate did complete the requirement for the practicum.
- (d) Supervision hours acquired outside the State of Oklahoma, whether completed or in the process, may be approved by the Board on a case-by-case basis.

### 38:10-9-4. ~~Approved Supervisor Status Supervised Work Experience~~

- (a) ~~Supervisor status. On or before December 31, 2006, Board approved supervisor status remains in effect contingent upon maintaining a current license in good standing. After December 31, 2006, supervisors must be approved by the Board.~~
- (b) ~~Minimum supervision for work experience~~
  - (1) ~~The supervisor is responsible for having and maintaining knowledge about the supervisee's practices whether in private or agency setting~~
  - (2) ~~The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.~~
- (3) ~~a) A supervisee candidate for licensure or certification must receive-obtain an average of one hour per week of live, interactive, and visual supervision from a Board approved supervisor until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period.~~
- (4) ~~b) A contract will be negotiated by The supervisor and supervisee must negotiate a supervision contract and furnish a copy furnished to the Board for approval prior to beginning the supervision. Any supervision completed prior to approval of the supervision contract will not be accepted. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the completion of the minimum number of required hours required, of supervised work experience. When supervision is terminated, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision.~~

(5c) If supervision is terminated by either party, the supervisee must notify the Board within 14 days of the termination in writing in a format prescribed by the Board.

(6d) ~~When requested, the supervisor is free to ask for a sample of the supervisee's work. The supervisee must provide a sample of work to his or her supervisor. Disclosure of work samples shall be in accordance with state and federal rules and statutes governing confidentiality of patient records.~~

~~(7) When the proposed supervisor is not a staff member of the supervisee's agency, the proposed supervisor will ensure that the agency administration, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role, responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.~~

~~(8) An individual may contract for supervision from a Board approved supervisor.~~

~~(9) Supervisors shall adhere to the mandates of these rules~~

~~(10) The supervisor must immediately notify the Board if he or she feels any questionable ethical or professional violations on the part of the supervisee exists.~~

~~(11) Supervisor is also responsible for notifying the Board in writing within 14 days of the date supervision is terminated.~~

**38:10-9-5. Requirements for Supervision Status**

(a) **Qualifications.** To be eligible for Board approval to supervise LADC and CADC candidates for licensure, a Licensed Alcohol and Drug Counselor must be licensed and in good standing and:

(1) if originally licensed in Oklahoma, must have practiced alcohol and drug counseling for at least two years after licensure; or

(2) if licensed by endorsement from another state, must have practiced alcohol and drug counseling for at least one year beyond Oklahoma licensure; or

(3) also hold a license in good standing with supervision privileges in another behavioral health field as determined by the Board; or

(4) hold a current valid IC&RC Certified Clinical supervisor credential, and

(5) successfully complete the Board approved alcohol and drug counselor supervision training course, and

(6) pass the Oklahoma LADC Supervisor Examination(s)

(A) Examination Part A shall consist of clinical supervision skills and knowledge by NAADAC or IC&RC CCS course and exam.

(B) Examination Part B shall consist of Oklahoma State Laws, Rules, and procedures.

(b) **Application Process.**

(1) Complete an application form provided by the Board.

(2) Submit two letters of reference. At least one letter must be from a current Board approved LADC supervisor. The other shall be from another professional holding a current Oklahoma behavioral health license.

(3) Sign a supervision agreement and supervisor code of ethics.

(4) Pay an application processing fee.

(c) **Supervision Training Course and Supervisor Examination.**

(1) The Supervision course shall consist of a fifteen hour Board approved workshop on counseling supervision in combination with thirty hours of directed individual study of Board approved counseling supervision literature for a total of forty-five contact hours. The workshop or class must have a minimum of four enrolled supervisor candidates.

(2) For persons who meet the qualifications in subsection (a)(3) or (4), or were Board approved supervisors prior to the effective date of this rule, the supervision course shall consist of a seven and one-half hour Board approved advanced LADC supervisor training workshop and exam Part B - Oklahoma State Laws, Rules and procedures only.

(d) **LADC's with Prior Supervisor Status.** LADC's who were approved by the Board as supervisors prior to the effective date of this rule must complete the 7 ½ hour advanced supervision training course and pass the Oklahoma LADC Supervisor Examination Part B within eighteen months of the effective date of this rule to retain their Board approved supervision status. Such persons who fail to complete the supervision training course and pass the exam within this time period shall lose their supervision privileges and must reapply.

(e) **Renewal of Supervisor Status.** To maintain Board approved supervisor status, LADC supervisors must complete, prior to June 30 of each year

(1) Three (3) clock hours of continuing education in counseling supervision, and

(2) These hours are included in the twenty (20) continuing education hours required for Licensure renewal.

(3) With the exception of the twenty hour requirements in 38:10-13-2(a), the Rules in subchapter 13 regarding continuing education requirements for licensure renewal shall also apply to continuing education requirements for supervision status.

(4) Approved supervisor designation will not be renewed until renewal fee has been paid and

(5) Continuing education requirements have been met.

(f) **Supervisor Responsibilities.**

(1) The supervisor is responsible for having and maintaining knowledge about the supervisee's practice whether in a private or agency setting.

(2) The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.

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(3) The supervisor must provide an average of one hour per week of live, interactive and visual supervision until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period. Group size is limited to a maximum of six (6) supervisees.

(A) The phrase "an average of one hour per week of live, interactive and visual supervision" means one continuous hour in one day of each week of face-to-face or interactive video supervision relating to the supervisee's skills, knowledge, and practices in providing alcohol and drug counseling to clients. Video supervision shall not exceed 1/8 of the total supervision time (13 sessions for LADC or 26 sessions for CADC). Video supervision must meet all Federal and State Laws of confidentiality.

(B) The Supervisor must provide four hours of face-to-face supervision per calendar month, at the rate of one hour per week, or two hours per week, every other week.

(C) When unforeseen circumstances arise that result in a supervisor providing less than four hours per month, or less than two hours every other week of face-to-face contact, the Supervisor and supervisee shall provide notice of such circumstances to the Board, and shall submit a plan to make up the missed hours to the Board for approval. The plan may include designation of a back-up or alternate supervisor, providing that the supervisee has entered into a supervision contract with the alternate supervisor and such contract has been approved by the Board.

(D) Clinical staff meetings attended by supervisees or meetings with supervisees that consist of discussion of issues other than supervisee's skills, knowledge, and practices in providing alcohol and drug counseling to clients shall not be counted as group supervision.

(4) When the proposed supervisor is not a staff member of the supervisee's agency, the proposed supervisor will ensure that the agency administration, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(5) The Supervisor must be available to the supervisee for consultation "on call" 24 hours a day, seven days a week, and arrange for alternate "on call" supervisor to provide consultation when the primary supervisor is unavailable.

(6) The supervisor must immediately notify the Board of any ethical or professional violations by supervisee.

(7) The supervisor must notify the Board in writing within 14 days of the date supervision is terminated.

### SUBCHAPTER 11. FEES

#### 38:10-11-1. Schedule of fees

Fees are non-refundable and include:

(1) **Application fee.** One-hundred and forty dollars (\$140.00) and shall be submitted with the application form.

(2) **Written examination fee.** One-hundred and twenty-five dollars (\$125.00). Shall be submitted prior to taking the written examination.

(3) **Oral examination fee.** Seventy-five dollars (\$75.00). Shall be submitted prior to taking the oral examination.

(4) **Initial license or certification fee.** One-hundred dollars shall be submitted prior to the receipt of license or certificate. The initial license or certification notices shall invoice the licensed or certified person for the interim period between the original license or certification date and the following June 30 so that subsequent renewals shall be on a July 1 annual basis.

(5) **Renewal fee.** One-hundred dollars (\$100.00). Shall be submitted upon notification by the Board on or before June 30, and validates the license or certification for twelve (12) months.

(6) **Late renewal fee.** Twenty-five dollars (\$25.00) will be charged each month, if the license or certification is not renewed by June 30. This fee combined with the renewal fee shall not exceed \$200.00. The licensed or certified person must submit this fee as well as the renewal fee on or before the following June 30 to avoid revocation.

(7) **Replacement fee.** Twenty-five dollars (\$25.00). Shall be submitted for the issuance of a license or certification to replace a license which has been lost, damaged, or is in need of revision.

(8) **Inactive license or certification fee.** Twenty-five dollars (\$25.00). Payment of this fee renders the license or certification inactive and suspends all rights and privileges granted by the license or certification for a period of no more than two (2) years. If not renewed within the two (2) year period, license or certification is considered lapsed.

(9) **Mailing list of licensed and certified counselors.** Thirty-five dollars (\$35.00).

(10) **Written verification of licensure or certification.** Five dollars (\$5.00).

(11) **Duplication of public records.** Twenty-five cents (\$.25) per page.

(12) **Investigation or prosecution.** At cost incurred.

(13) **Returned check processing fee, or denied or non-payment of credit card fees.** Fifty Dollars (\$50.00).

(14) **Probation.** Twenty-five dollars (\$25.00) per month.

- (15) **Board approved supervisor status designation.** Thirty-five Dollars (\$35.00) for initial application fee.
- (16) **Supervisor status designation annual renewal fee.** Twenty-five Dollars (\$25.00).
- (17) **Co-occurring disorders Certification application fee.** One Hundred Forty Dollars (\$140.00)
- (18) **Co-occurring disorders Certification renewal fee.** Fifty Dollars (\$50.00).

**38:10-11-2. Methods of Payment**

Payment of fees shall be by personal check, cashiers check, money order, ~~or cash~~, or credit card. The Board will accept Visa, Master Card, Discover, or American Express. Any check returned, or denied payment or fee(s) to the Board for non-payment may result in sanction(s).

## APPENDIX A. LICENSED/CERTIFIED COUNSELOR CODE OF ETHICS [REVOKED]

## APPENDIX A. LICENSED/CERTIFIED COUNSELOR CODE OF ETHICS [NEW]

### LICENSED/CERTIFIED COUNSELOR CODE OF ETHICS

I HEREBY AFFIRM THAT...

- A. My primary goal is recovery for the client and his/her family; that I have a total commitment to provide the highest quality care for those who seek my professional services.
- B. I shall evidence a genuine interest in all clients and families and do hereby dedicate myself to the best interest of the clients and to helping them to help themselves.
- C. I shall maintain at all times an objective, non-possessive, professional relationship with all clients.
- D. I shall be willing to recognize when it is in the best interest of the client to release them or refer them to another program or individual.
- E. I shall adhere to all the professional rules of confidentiality of all maintenance and distributions of records, material, and knowledge concerning the client, and respect the integrity and protect the welfare of the person or group with whom I am working.
- F. I shall not in any way discriminate between clients, families, or fellow professionals based on race, religion, age, sex, handicap, national ancestry, sexual orientation, or economic conditions.
- G. I shall respect the rights and views of other counselors and professionals.
- H. I shall advocate changes in public policy and legislation to afford opportunity and choices for all diseased chemical abusers endangering themselves and others.
- I. I shall maintain respect for institutional policies and management functions within agencies and institutions, but will take the initiative toward improving such policies when it will better serve the interest of the client.
- J. I have a commitment to assess my own personal strengths, limitations, biases, and effectiveness on a continuing basis; that I shall continuously strive for self-improvement; that I have a personal responsibility for professional growth through further education and training.
- K. I have an individual responsibility to espouse objectivity and integrity; responsibility to report acts of moral turpitude and uphold ethical professional codes, responsibility for my own conduct in all areas, including, but not limited to, personal, behavioral, the use of mood altering drugs, and community activities. I am further willing to provide, respond to, and support requests by the credentialing body for professional disclosure of legal and ethical behavior and records relating, impinging, or affecting the Alcohol Drug Counselor profession and my professional status.
- L. I shall cooperate with duly constituted professional Ethics Boards and promptly supply necessary information unless constrained by demands of specialized confidentiality rules.
- M. I have a responsibility to myself, my clients, the community, and associates to maintain my physical and mental health and wellbeing and shall adopt a personal and professional stance which promotes the well being of all human beings.

I hereby certify that I have read and agree to abide by the OBLADC code of ethics. I also understand that failure to abide by the OBLADC code of ethics may result in the revocation of my certification, license, or intent status to practice as an alcohol/drug counselor.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

*[OAR Docket #09-1134; filed 6-4-09]*

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# Permanent Final Adoptions

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

[OAR Docket #09-1102]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
75:15-1-2. Definitions [AMENDED]  
Subchapter 2. Domestic Violence and Sexual Assault Programs  
75:15-2-1. Service programs [AMENDED]  
Subchapter 4. Batterers Intervention Programs  
75:15-4-5. Record content [AMENDED]  
75:15-4-19. Critical incidents [AMENDED]  
Subchapter 5. Client Records and Confidentiality  
75:15-5-3. Record content - general [AMENDED]  
75:15-5-3.1. Record content - service specific [AMENDED]  
Subchapter 9. Program Management and Performance Improvement  
75:15-9-9. Critical incidents [AMENDED]  
Subchapter 13. Personnel and Volunteers  
Part 3. Training  
75:15-13-25. Personnel training, sexual assault services [AMENDED]  
75:15-13-26. Personnel training, transitional living services [AMENDED]

### AUTHORITY:

Office of Attorney General; 74 O.S., Sections 18p-1 et seq.

### DATES:

#### Comment Period:

February 17, 2009 through March 19, 2009

#### Public Hearing:

March 19, 2009

#### Adoption:

March 24, 2009

#### Submitted to Governor:

March 27, 2009

#### Submitted to House:

March 27, 2009

#### Submitted to Senate:

March 27, 2009

#### Gubernatorial Approval:

May 4, 2009

#### Legislative Approval:

Failure of the Legislature to disapprove the rules resulted in approval on  
May 20, 2009

#### Final Adoption:

May 20, 2009

#### Effective:

July 11, 2009

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

Pursuant to Title 74 O.S. § 18-p6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence, sexual assault and batterers intervention programs and for private facilities and organizations which offer domestic violence and sexual assault services in this state. These rules set forth the requirements which are required to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement and auditing of domestic violence and sexual assault services in this state.

### CONTACT PERSON:

Susan Damron Krug(405) 522-0042

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING PERMANENT RULES ARE  
CONSIDERED PROMULGATED AND EFFECTIVE  
UPON APPROVAL BY THE GOVERNOR AS SET**

**FORTH IN 75 O.S., SECTION 308.1(A), WITH AN  
EFFECTIVE DATE OF JULY 11, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 75:15-1-2. Definitions

The following words or terms, when used in this chapter, shall have the defined meaning, unless the context clearly indicates otherwise:

**"Admission"** means to accept a client for services or treatment.

**"Advocacy"** means the assistance provided which supports, supplements, intervenes and/or links the client with the appropriate service components. This can include medical, dental, financial, employment, legal and housing assistance.

**"Advocate"** means a person, providing support to ensure clients receive appropriate services.

**"Assessment"** means an appropriate course of assistance based on a face-to-face formal screening.

**"Batterer"** means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

**"Batterers intervention"** means services provided to batterers, or perpetrators of domestic violence that hold a batterer accountable for his or her abusive behavior, provide consequences for engaging in violent or abusive behavior, provide monitoring of batterer's behavior, and require him or her to change his or her behavior and attitudes and are also protective of the victim(s). Anger control or management, substance abuse treatment or mental health treatment alone or in combination with each other shall not constitute batterers intervention; neither may these interventions alone nor in combination with each other be utilized as the primary means of facilitating the required changes in behavior and attitudes.

**"Business day"** shall mean a calendar day other than a Saturday, Sunday, or state holiday. In computing any period of time where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until 5:00 o'clock p.m. of the next business day.

**"Case consultation"** means review of a client's case by the primary service provider and other program personnel, consultants or both.

**"Case management"** means ~~planned linkage, advocacy and referral assistance provided in partnership with an individual to support that individual in implementing an empowerment plan developed with and approved by the individual and staff. The plan must demonstrate the recipient's need for specific services provided~~ the process of supporting and helping victims/survivors and their dependents as they cope with and overcome the effects of domestic violence, sexual assault and stalking. Actions may include activities such as 1) developing, reviewing, and updating the service plan that is designed to solve specific problems in the current life situation; 2) supporting adult/child survivor's skills in

making their desired life changes through activities such as introducing new skills, modifying previous ways of coping with their situation and linking to resources to address immediate needs and secondary issues, and/or 3) exit planning as part of the individual supportive services. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

**"Certified batterer intervention program" or "Certified treatment program for batterers"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide batterers intervention services and treatment programs pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

**"Certified Domestic and Sexual Violence Response Professional"** means a professional certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

**"Certified domestic violence and sexual assault program" or "Certified DV/SA program"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide domestic violence, sexual assault and stalking services pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

**"Child" or "Children"** means any individual from birth to eighteen years of age.

**"Children's Activities"** means direct child contact that is temporary in nature and is not intended to address the effects of domestic violence, sexual assault/abuse and trauma on children i.e., child care, special events such as Christmas parties, Easter egg hunts, that is supervised by program personnel or volunteers.

**"Children's Services"** means direct child contact that is intended to address the effects of domestic violence, sexual assault/abuse and trauma on children including but not limited to intake, needs assessment, groups, advocacy, ~~child care/babysitting~~ and any other service related to domestic violence, sexual assault/abuse and trauma.

**"Client"** means an individual, adult or child, who has applied for, is receiving or has received assistance or services of a DV/SA or batterer's program.

**"Client record"** means written information including assessment information, description of services provided services plan, and other information on an individual client.

**"Community"** means the people, groups, agencies or other facilities within the locality served by the program.

**"Contract"** means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

**"Counseling"** means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified a behavioral health professional staff either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social

Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, psycho-educational interventions or another widely accepted theoretical framework for treatment.

**"Court advocate"** means a qualified, trained staff or volunteer or personnel whose duties are to provide assistance to victims and their dependents in legal matters relevant to their situation. A Court Advocate provides support, information, assistance, safety planning, accompaniment and intervention with any aspect of the civil or criminal legal system on behalf of a victim and advocacy in the court system for victims of domestic violence or, sexual assault or stalking.

**"Crisis intervention"** means an immediately available service to meet the psychological, physiological or safety aspects of domestic violence or sexual assault related crises in response to emergencies, to provide crisis resolution to stabilize conditions and may include triage, danger assessment, screening, planning, intervention, referral and documentation.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a client. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to clients, personnel, volunteers and visitors; incidents involving medication; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Direct services"** means services delivered by a qualified staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

**"Director"** means the person hired by the governing authority to direct all the activities of the organization.

**"DV/SA"** means domestic violence and sexual assault.

**"Documentation"** means the provision of written, dated and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, announcements, correspondence, and photographs.

**"Domestic violence"** means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

**"Education"** means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding

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of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

**"Emergency services"** or **"crisis services"** means a twenty-four (24) hour capability for danger assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention, ~~to resolve immediate, overwhelming problems that severely impair the individual's ability to survive or maintain in the community.~~

**"Emergency transportation"** means transportation for a victim of DV/SA to a secured identified location at which emergency services or crisis services can be provided.

**"Executive director"** means the person in charge of a facility as defined in this section.

**"Facility"** means the physical location(s) of a certified program governed by this chapter of Title 75.

**"Family"** means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

**"Governing authority"** means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA program, shelter, or batterers intervention program in and of all geographical locations and administrative divisions.

**"Group counseling"** means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified staff with not more than twelve (12) clients to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

**"Guardian"** means an individual who has been given the legal authority for managing the affairs of another individual.

**"Indirect services"** means services delivered by a staff member or volunteer, that does not involve direct services with a client or client's child.

**"Initial contact"** means a person's first contact with the program or facility requesting information or service by telephone or in person.

**"Intake"** means the written information about a client as a basis for assessment or services, obtained by the program at time of admission.

**"Licensure"** means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

**"Medical care"** means those diagnostic and treatment services which, under the laws of the jurisdiction in which the program is located, can only be provided or supervised by a licensed physician.

**"Medication"** means any prescription or over-the-counter drug, that is taken as prescribed or directed.

**"Mental health services"** means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

**"Neglect"** means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

**"OAG"** means the Office of the Attorney General.

**"Objectives"** means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

**"Oklahoma Administrative Code"** or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

**"Operation"** means that clients are receiving services provided by the program.

**"Personnel record"** means a file containing the employment history and actions relevant to individual personnel and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

**"Persons with special needs"** means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

**"Policies"** means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

**"Procedures"** means the standard methods by which policies are implemented.

**"Program"** means a set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

**"Program evaluation"** means the documented assessment activities, performed internally or externally, of a program or a service and its staff, activities and planning process to determine whether program goals are met, staff and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

**"Program goals"** means broad general statements of purpose or intent.

**"Qualified staff"** means someone who has met the criteria for provision of direct services as defined in 75:15-13-20.

**"Rape crisis response services"** means "sexual assault services" as defined in this section.

**"Safe Home"** means private dwellings available for the temporary housing of victims of domestic violence, sexual assault and stalking to ensure safety of victims and their dependents until other housing arrangements can be made.

**"Safe Home Provider"** means individual or family providing safe home services through a formal agreement with a Certified DV/SA Program.

**"Safety Planning"** means the process of working with the adult/child victim/survivor to develop tools in advance of

potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents.

"**Screening**" means the process of determining, preliminarily the nature and extent of a person's problem in order to ~~link the person with appropriate and available services to be provided~~ establish the service needs of an individual. At a minimum, a screening shall include a brief personal history related to abuse, a review of the individual's strengths and resources, risk factors and referral needs.

"**Service agreement**" means a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"**Service note**" means the documentation of the time, date, location and description of services provided, and signature of staff providing the services.

"**Service plan**" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"**Sexual assault services**" means personal advocacy and support services provided to victims of rape and sexual assault in settings such as law enforcement, medical settings or program offices.

"**Shelter services**" means a ~~cooperative residential~~ residential living arrangement in a secure ~~residential~~ setting with ~~counseling support and advocacy services~~ provided by qualified staff, or support and client advocacy for victims of domestic violence, sexual assault and stalking and their dependents.

"**Staff**" means personnel that function with a defined role within the program whether full-time, part-time or contracted.

"**Support**" or "**Supportive Services**" means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan.

"**Transitional living services**" means housing maintained and operated by a Certified domestic violence and sexual assault program.

"**Universal precautions for transmission of infectious diseases**" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"**Update**" means a dated and signed review of a report, plan or program with or without revision.

"**Victim recovery services**" mean a face-to-face service, provided one on one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life. This service includes educational and supportive services regarding independent living, self care, and social skills regarding development and lifestyle changes.

"**Volunteer**" means any person who is not on the program's payroll, but provides either indirect or direct services

and fulfills a defined role within the program and includes interns and practicum students.

## SUBCHAPTER 2. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

### 75:15-2-1. Service programs

(a) All certified programs shall serve victims of domestic violence, sexual assault and stalking and their dependents or family members.

(b) The program shall have policy and procedures to maintain facilities, staffing, and operational methods.

(c) All certified programs shall provide sexual assault services and be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place. The program shall collaborate with other certified DV/SA providers in their service area. When appropriate staff is available, the program shall assist the Council on Law Enforcement Education and Training (CLEET) by providing appropriate staff to assist in sexual assault and sexual violence training to law enforcement. The program shall provide at a minimum the following services:

(1) Counseling or advocacy and support services shall be provided in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.

(2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.

(3) A twenty-four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of sexual assault, rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(4) Needed clothing for the sexual assault victim.

(d) All certified programs shall provide crisis intervention including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services that do not provide immediate access to a crisis advocate shall not be sufficient to meet this requirement.

(2) Emergency housing such as hotel or motel available for victims and their dependent(s).

(3) Arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents.

(4) The crisis intervention program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.

(5) Cooperation with law enforcement to provide assistance to the victim and accompanying dependent(s).

(6) Provision of advocacy and referral to assist the victims in obtaining needed services or resources.

(7) Follow-up services shall be offered to all victims if victim safety is not compromised.

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(e) All Certified programs shall provide counseling or support, support groups, advocacy, and victim recovery. Group and/or individual counseling or support services shall be made available before or after normal business hours (8 am to 5 pm), if needed by clients. These services shall minimally provide the following:

- (1) A facility with offices, individual and group counseling space to provide services.
- (2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.
- (3) Current service agreement to be renewed every three (3) years with available community services to provide access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.
- (4) A resource document of local, area, or state resources to facilitate referrals for clients.
- (5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(f) All certified programs are required to conduct a name search of employees at least annually against the registries maintained pursuant to the Oklahoma Sex Offenders Registration Act and the Mary Rippy Violent Crime Offenders Registration Act while such person is working with or serving children. All persons working with or providing services to children shall be required to sign a statement declaring that he or she is not currently required to register under the provisions of the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act. Compliance with the signed statement shall be mandatory for all persons working with or providing services to children, and there shall be no liability or obligation placed upon any person or business to ascertain the truthfulness of the affidavit.

(g) Within five (5) business days of entry into shelter or transitional living or prior to providing children's services (excluding advocacy or crisis intervention), all certified programs shall assess the risk and needs of the children accompanying primary victims and provide children's services to address the effect impact of violence and trauma in their lives including but not limited to; and to facilitate healing. A risk and needs screening and assessment on each child shall minimally include information on his or her:

- (1) Safety, including but not limited to:
  - (A) History of child abuse or neglect;
  - (B) Exposure or witnessing violence;
  - (C) Child's response to witnessing violence;
  - (D) History of involvement in the child welfare system; including the presence of current child welfare involvement;
  - (E) Visitation with the perpetrator;
- (2) Brief trauma screening to assess the impact of trauma;

(3) Developmental history to include speech and language, hearing and visual;

(4) Medical or physical health history;

(5) Social history to include interactions with peers;

(6) History of use of tobacco, alcohol or other drugs;

(7) Parent/guardian custodial status;

(8) Community referral needs.

(h) Services provided to each child shall be culturally sensitive while addressing the identified risk and needs and shall minimally include:

(1) age appropriate safety planning that is appropriate with respect to the child or adolescent's age, development, and education;

(2) a specific safe, protected play area for children;

(3) advocacy with community systems;

(4) referral to community resources for needed services;

(5) linkage and advocacy with the local school system to provide for ongoing educational needs;

(6) parenting ~~education~~ support for clients, if applicable; and

~~(6) age appropriate curricula, children's groups, and referrals for needed services.~~

(7) children's groups using age appropriate topics and based on established best practices.

(gi) Pursuant to Title 10 O.S. § 7103, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.

(j) All Certified programs shall maintain an atmosphere and provide services that are free from all forms of unlawful discrimination based on race, sex, religion, color, age, national origin, and/or disability (including physical, mental illness, and substance abuse).

(hk) All certified programs shall provide public education to increase the community's awareness and understanding of domestic violence, sexual assault and stalking, available and needed resources, and identify the role community can play in eliminating domestic violence, sexual assault, and stalking.

(il) Compliance with 75:15-2-1 shall be determined by a review of the program's policy and procedures, service agreements, on site observation, client and staff interviews and/or other supporting documentation.

## SUBCHAPTER 4. BATTERERS INTERVENTION PROGRAMS

### 75:15-4-5. Record content

(a) Client records shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse, and

- (F) Court Order if applicable.
- (2) Service notes, which shall minimally include:
  - (A) The time, date, location and description of services provided;
  - (B) The signature of staff providing the services; and
  - (C) A service note for each contact for services that shall include:
    - (i) personal responsibility and accountability;
    - (ii) level of participation in services;
    - (iii) change(s) in family, social, personal, legal or work environment(s);
    - (iv) inference of use or increased use of drugs/alcohol;
    - (v) whether or not facilitator observed sufficient indications of risk requiring notification of victim or others, and
    - (vi) referrals for supplemental services.
- (3) Exit information, which shall minimally include:
  - (A) Documentation that the client participated in planning for his or her exit from the program;
  - (B) The reasons for the client's exit or departure; and
  - (C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.
- (b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.
- (c) Client records for batterers intervention services shall conform to the following:
  - (1) An assessment of the client shall be made prior to acceptance into the program. The assessment shall at a minimum include:
    - (A) current and past history of violence;
    - (B) lethality risk indicators;
    - (C) drug and alcohol use/abuse history and screening;
    - (D) mental health history and screening;
    - (E) criminal history and a report of the incident that generated the referral, and
    - (F) current or past history with child protective or adult protective services.
  - (2) An individualized written client-contract shall be completed by the third (3<sup>rd</sup>) session; signed by the batterer; and shall include, but not be limited to:
    - (A) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.
    - (B) The criteria for suspension and termination.
    - (C) The program's rules.
    - (D) A written notice in bold type which specifies **"Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or**

**neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."**

- (E) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.
- (F) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and nonviolence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.
- (G) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.
- (3) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.
- (4) Service termination reports shall be completed for all types of conditions under which services are ended and shall include, at a minimum, the reason for termination, summary of lethality risk indicators, and any concerns for the safety of victims, children, and/or others. Types and reasons for terminating services include:
  - (A) **Rejection.** Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;
  - (B) **Involuntary termination.** Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client-contract; and
  - (C) **Completion.** Upon completion of the program, an exit interview and service termination report shall be completed and documented in the client record. The service termination report shall include a disclosure stating that completion of batterers intervention does not indicate that the client will not re-offend; it is a report that the person has satisfactorily completed the necessary requirements of the certified program without any other known or reported re-offending during the time of enrollment in the program.
- (5) In the case of court-ordered or otherwise referred batterers, without jeopardizing the safety of the victim, a written report to the court or referring agent, shall be

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submitted within seven (7) business days of the following events:

- (A) Acceptance into or rejection from the program including but not limited to a summary of the results of the initial assessment or the reason for rejection;
  - (B) Reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim or to third persons, and;
  - (C) Exit from the program including but not limited to the service termination report. All reports shall include any ~~additional or further recommendations, perceived areas of concern~~ which may include, but are not limited to, substance abuse or mental health ~~evaluation and/or treatment, weekend incarceration, community service hours, probation violation determination, or return to the intervention program issues that the court may want to seriously consider.~~
  - (D) The batterers intervention program shall report any client absence of ~~four (4)–three (3) unexcused, consecutive sessions or seven (7) unexcused absences in a period of fifty-two (52) weeks~~ to the court.
- (6) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record without including any confidential victim identification information; and
- (7) Copies of all service documentation including assessments, exit interviews and reports shall be kept in the batterer's file.
- (d) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.
- (e) Compliance with this 75:15-4-5 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation.

## 75:15-4-19. Critical incidents

- (a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.
- (b) Each critical incident shall be recorded and monitored as follows:
- (1) agency name and name and signature of the person(s) reporting the critical incident;
  - (2) ~~Client ID(s) name(s) of the client(s) or staff member(s), and/or property, involved in the critical incident;~~
  - (3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;
  - (4) a description of the incident;
  - (5) severity of each injury, if applicable. Severity shall be indicated as follows:
    - (A) no off-site medical care required or first aid care administered on-site;
    - (B) medical care by a physician or nurse or follow-up attention required; or
    - (C) hospitalization or immediate off-site medical attention was required;
  - (6) resolution or action taken, date action taken and signature of the agency director or authorized designee;

(c) Critical incidents that shall be reported to the Office of the Attorney General are reported as follows:

- (1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to the Office of the Attorney General Victims Services Unit within forty-eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.
  - (2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.
- (d) Compliance with 75:15-4-19 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

## SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

### 75:15-5-3. Record content - general

- (a) Client records shall contain, at a minimum, the following information:
- (1) Intake and screening information:
    - (A) Client's name;
    - (B) Date of initial contact/intake;
    - (C) Pertinent medical information, including substance abuse;
    - (D) Emergency contact information;
    - (E) History/nature of abuse including dangerousness assessment; and
    - (F) Perpetrator information if known.
  - (2) Service notes, which shall minimally include:
    - (A) The ~~time~~, date, location, start time, duration and description of services provided delineated by time spent and service code;
    - (B) The signature of staff providing the services; and
    - ~~(C) A service note for each contact for other services.~~
  - (3) Service plan focusing on victim safety and, well-being which shall minimally include:
    - (A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and
    - (B) Service plans and their updates shall be signed and dated by the client and staff.
  - (4) Exit information, which shall minimally include:
    - (A) Documentation that the client participated in planning for his or her exit from the program;
    - (B) The reasons for the client's exit or departure; and

- (C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.
- (b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.
- (c) Compliance with 75:15-5-3 shall be determined by a review of program policy and procedures; review of the client records for content; and/or other supporting program documentation.

**75:15-5-3.1. Record content - service specific**

(a) Client records for specific services shall conform to the following:

- (1) Shelter Services:
  - (A) On a client's entry to the shelter, staff shall record the client's name, emergency contact person(s) and any referral for medical or emergency services. This information may be a part of the full intake interview if the full intake is done on entering the shelter.
  - (B) Shelter clients shall have the full intake interview and screening completed within twenty-four (24) hours of entry into the shelter.
  - (C) Service plans shall be completed within five (5) business days of the shelter client's entry to the shelter.
  - (D) The service plan shall be reviewed and updated at least every two (2) weeks.
  - (E) The client's service plan shall include components which address the needs of each children child accompanying the client.
  - (F) The service plan shall include safety issues for client and children.
  - (G) A daily ~~service~~ note.
- (2) Crisis Intervention Services:
  - (A) All face-to-face contacts with active clients are documented and contacts with persons not receiving additional services shall be documented. Documentation shall minimally include the following:
    - (i) Staff/Volunteer Name and signature;
    - (ii) Date, time, length, and location of intervention;
    - (iii) Client's name, age, race, county of residence, and contact number
    - (iv) Protective order information;
    - (v) Personnel involved such as police, hospital, etc.;
    - (vi) Summary of contact including visible injuries, treatment and services requested;
    - (vii) Outcome;
  - (B) All telephone contacts shall be documented. Documentation shall minimally include the following:
    - (i) Staff/Volunteer name;
    - (ii) Date, time and length of call;
    - (iii) Caller's name and contact number, if given;
    - (iv) Summary of the call including services needed;
    - (v) Outcome; and

- (vi) Follow-up services offered if victim safety is not compromised.
  - (C) Contact information is kept by the crisis intervention program.
  - (D) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.
- (3) Counseling, Support and Advocacy Services:
    - (A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.
    - (B) A service plan shall be completed by the fifth (5th) advocacy or counseling session.
    - (C) A service plan review and update shall be completed at least every six (6) months.
  - (4) Sexual Assault Services:
    - (A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.
    - (B) Service plans shall be reviewed and updated at least every ninety (90) days.
  - (5) Transitional Living Services:
    - (A) A service plan shall be developed within five (5) business days of the client moving in.
    - (B) The service plan shall be reviewed and updated at least every ninety (90) days.
  - (6) Safe home Services
    - (A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the safe home, the safe home provider shall record the client's name, emergency contact information, and pertinent medical information.
    - (B) Safe Home clients shall receive a full intake interview and screening by program staff within twenty-four (24) hours of admission or by the first business day following admission.
    - (C) A service plan shall be developed within five (5) business days of the client's entry to the safe home.
    - (D) All records regarding the client shall be retained in the client's record at the sponsoring program.
- (b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.
- (c) Compliance with this 75:15-5-3.1 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

**SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT**

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## 75:15-9-9. Critical incidents

- (a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.
- (b) Each critical incident shall be recorded and monitored as follows:
- (1) agency name and name and signature of the person(s) reporting the critical incident;
  - (2) ~~Client ID(s), name(s) of the client(s)~~ or staff member(s), and/or property, involved in the critical incident;
  - (3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;
  - (4) a description of the incident;
  - (5) severity of each injury, if applicable. Severity shall be indicated as follows:
    - (A) no off-site medical care required or first aid care administered on-site;
    - (B) medical care by a physician or nurse or follow-up attention required; or
    - (C) hospitalization or immediate off-site medical attention was required;
  - (6) resolution or action taken, date action taken and signature of the agency director or authorized designee;
- (c) Critical incidents that shall be reported to the Office of the Attorney General are reported as follows:
- (1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to the Office of the Attorney General Victims Services Unit within forty-eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.
  - (2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.
- (d) Compliance with 75:15-9-9 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

## SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

### PART 3. TRAINING

## 75:15-13-25. Personnel training, sexual assault services

- (a) Prior to providing any direct services or CLEET training, all sexual assault services staff shall receive a minimum of eight (8) hours classroom training in addition to basic orientation which shall include but not be limited to information regarding sexual assault and rape, date rape, spousal rape,

incest, stalking and sexual harassment, as well as training in safety planning and local procedures for providing sexual assault services for victims of rape.

- (b) Compliance with 75:15-13-25 shall be determined by:
- (1) Review of program's policy and procedures.
  - (2) Review of program's training records and other provided documentation of staff training.
  - (3) Review of personnel or volunteer records.

## 75:15-13-26. Personnel training, transitional living services

- (a) Prior to providing any direct services ~~or CLEET training~~, all transitional living services personnel shall receive the prescribed orientation training and minimally have at least six (6) months experience working or volunteer experience in a certified domestic violence/sexual assault program, or related service. When there is staffing shortage situations, a staff person-in-training may be utilized if under the direct supervision of a trained, experienced staff person.
- (b) Compliance with 75:15-13-26 shall be determined by:
- (1) Review of program's policy and procedures.
  - (2) Review of program's training records and other provided documentation of staff training.
  - (3) Review of personnel records.

[OAR Docket #09-1102; filed 5-28-09]

## TITLE 75. ATTORNEY GENERAL CHAPTER 20. ADDRESS CONFIDENTIALITY PROGRAM

[OAR Docket #09-1103]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- 75:20-1-2. Definitions [AMENDED]
- 75:20-1-3. Forms and informational material [AMENDED]
- 75:20-1-5. Criteria for program participation [AMENDED]
- 75:20-1-6. Applying for participation [AMENDED]
- 75:20-1-9. Certification withdrawal and cancellation [AMENDED]
- 75:20-1-10. Use of the substitute address [AMENDED]
- 75:20-1-13. Service of process [AMENDED]
- 75:20-1-14. Agency exemption [AMENDED]
- 75:20-1-15. Disclosure of records [AMENDED]

### AUTHORITY:

Office of Attorney General; Title 22 O.S. Supp. 2008 Section 60.14

### DATES:

#### Comment Period:

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#### Public Hearing:

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May 4, 2009

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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

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May 20, 2009

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July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Pursuant to Title 22 O.S. § 60.14, the Attorney General is required to provide address confidentiality to victims of actual or threatened domestic violence, sexual assault and stalking. These rules set forth the requirements which are necessary to provide these services and implement the address confidentiality program.

**CONTACT PERSON:**

Susan Damron Krug(405) 522-0042

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2009:**

**75:20-1-2. Definitions**

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

"**ACP**" means Address Confidentiality Program.

"**Address Confidentiality Program**" means the statutorily created program responsible for implementing the provisions of 22 O.S., Sections 60.14 et. seq. within the Office of the ~~Secretary of State~~ Attorney General.

"**Application Assistant**" means a representative of a designated agency who is a domestic violence and/or sexual assault advocate that has been trained and registered by the Office of ~~Secretary of State~~ Attorney General to assist individuals in the application process.

"**Authorization Card**" means the card issued by the ~~Secretary of State~~ Attorney General to a program participant upon certification identifying them as a program participant.

"**Authorization Number**" means a number assigned to a program participant by the ~~Secretary of State~~ Attorney General upon certification.

"**Certification**" means the process by which an applicant is determined eligible to participate in the program.

"**Designated Agency**" means a state or local agency, federal government, a federally recognized tribal government agency, or a nonprofit agency that provides counseling, shelter, or other services to victims of domestic abuse, sexual assault, or stalking that has been designated by the ~~Secretary of State~~ Attorney General as a place where persons apply to be program participants.

"**Minor**" means a person who is less than eighteen (18) years of age.

"**Program ~~Director~~ Manager**" means the employee of the Office of the ~~Secretary of State~~ Attorney General designated by the ~~Secretary of State~~ Attorney General to administer the Address Confidentiality Program.

"**Record**" means a public record as defined in 51 O.S., Section 24A.3.

"**Substitute Mailing Address**" means the address assigned to a program participant by the ~~Secretary of State~~ Attorney General.

**75:20-1-3. Forms and informational material**

The ~~Secretary of State~~ Attorney General has prepared the following forms and informational materials related to this Chapter:

- (1) Application Assistant Agreement Form
- (2) Application Assistant Training Manual
- (3) Application Assistant Guide
- (4) Address Confidentiality Program Application
- (5) Checklist for Application
- (6) Authorization Card Form
- (7) Change of Address Form
- (8) Address Confidentiality Program Brochure
- (9) ACP Implementation in Public Schools
- (10) Participant Verification Form

**75:20-1-5. Criteria for program participation**

To participate in the Address Confidentiality Program, an individual must meet the following criteria:

- (1) A person attempting to escape from actual or threatened domestic violence, sexual assault or stalking; or a person residing with another person who is attempting to escape from actual or threatened domestic violence, sexual assault or stalking;
- (2) Fears for his or her safety and/or the safety of other family members;
- (3) Recently established a residence address in Oklahoma unknown to the abuser or is planning to move in the near future; and
- (4) Is eighteen (18) years of age or older or a parent or guardian acting on behalf of a minor or incapacitated person.

**75:20-1-6. Applying for participation**

(a) Any person meeting the criteria to be a program participant who wishes to apply to the Address Confidentiality Program shall complete the required application. The application consists of an Address Confidentiality Program Application, Checklist for Application, and Authorization Card Form.

(b) Forms shall be obtained from an Application Assistant at selected state or local agencies, federally recognized tribes, or nonprofit agencies that have been designated by the ~~Secretary of State~~ Attorney General to assist persons in the application process.

(c) The completed and signed application documents shall be filed with the ACP.

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(d) *Any assistance and counseling rendered by the Office of the ~~Secretary of State~~ Attorney General or its designees to applicants shall in no way be construed as legal advice.* [22 O.S., § 60.14(H)]

### 75:20-1-9. Certification withdrawal and cancellation

(a) A program participant may withdraw from participating in the program by submitting to the ACP written notice of withdrawal and his or her current authorization card. The withdrawal will be effective on the day of receipt of the notification by the ACP.

(b) The ~~Secretary of State~~ Attorney General shall cancel a program participant's certification and invalidate his or her authorization card if:

- (1) A program participant's certification term has expired and a renewal application had not been filed.
- (2) A program participant knowingly provided false or incorrect information when applying for certification.
- (3) A program participant obtains a name change.

(c) The ~~Secretary of State~~ Attorney General may cancel a program participant's certification for any of the following reasons:

- (1) The program participant no longer resides at the residential address listed on the application and has not provided ~~seven (7) days prior~~ written notice seven (7) days after of the change in address has occurred.
- (2) Mail forwarded to the participant is returned non-deliverable or unclaimed.

(d) The ACP shall attempt to send written notification of the cancellation to the participant at the last known mailing or residential address.

### 75:20-1-10. Use of the substitute address

(a) The substitute address serves as the participant's residential, school and work address.

(b) When creating state and local government records or updating existing records, a program participant shall show his or her authorization card to the agency and request address confidentiality through the use of the substitute address as it appears on the authorization card, in lieu of his or her actual address.

(c) The agency employee assisting the program participant may make a file photocopy of the authorization card.

(d) The agency shall accept the substitute address unless the agency has received a written exemption from the ~~Secretary of State~~ Attorney General. See 655:30-1-14.

(e) The agency shall not question the program participant about the details or circumstances of his or her inclusion in the program.

(f) All mail addressed to the participant at the substitute address shall include the authorization number appearing on the participant's authorization card.

(g) Mail received at the substitute address will be forwarded ~~for~~ at no charge to the participant at his or her actual mailing address with the exception of magazines, books, periodicals, packages, and junk mail.

(h) Delivery of a participant's mail may be delayed as much as three (3) to five (5) days. It is important to remember this fact when sending time sensitive documents to a participant.

(i) The Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a participant unless the mail is certified or registered mail.

### 75:20-1-13. Service of process

(a) The Office of ~~Secretary of State~~ Attorney General is designated as agent for service of process and receipt of mail for all program participants.

(b) Service on the ~~Secretary of State~~ Attorney General of any summons, writ, notice, demand or process can be made by mailing to the substitute address or by delivering in person to the Office of ~~Secretary of State~~ Attorney General at ~~2300 N. Lincoln Boulevard, 101 State Capitol,~~ 313 NE 21st Street, Oklahoma City, OK.

(c) When a summons, writ, notice, demand or process is served on the ~~Secretary of State~~ Attorney General, the ACP shall immediately forward a copy to the program participant by first-class mail at the participant's current mailing address shown on the ACP records.

(d) The ACP shall maintain in the program participant's file, a record of all summonses, writs, notices, demands and processes served upon the ~~Secretary of State~~ Attorney General for that participant, which shall include the date of such service and the action taken.

### 75:20-1-14. Agency exemption

(a) An agency requesting an exemption under 22 O.S., § 60.14(F) must provide in writing to the ~~Secretary of State~~ Attorney General the following:

- (1) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of the participant;
- (2) Identification and description of the specific record for which the exemption is requested;
- (3) Identification of the individual(s) who will have access to the record;
- (4) An explanation of how the acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and
- (5) An explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures.

(b) The ~~Secretary of State~~ Attorney General's determination to grant or deny a request for exemption will be based on, but not limited to, an evaluation of the information provided under this Section.

(c) If the ~~Secretary of State~~ Attorney General determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address and that the address will be used only for those statutory and administrative purposes, the ~~Secretary of State~~ Attorney General may issue a written exemption for the agency. The written exemption may include:

- (1) An agency's obligation to maintain the confidentiality of a program participant's address.
  - (2) Limitations on the use and access to the address.
  - (3) Term during which the exemption is authorized for the agency.
  - (4) Designation of the record format on which the address information may be maintained.
  - (5) Designation of an address information disposition date after which the agency may no longer maintain a record of the address information.
  - (6) Any provisions and qualifications determined appropriate by the ~~Secretary of State~~ Attorney General.
- (d) The ~~Secretary of State~~ Attorney General's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons therefore.
- (e) The ~~Secretary of State~~ Attorney General shall keep a record of all exemptions and all documentation relating to requests for exemption.

**75:20-1-15. Disclosure of records**

- (a) The ~~Secretary of State~~ Attorney General shall not make any records in a program participant's files available for inspection or copying unless directed by a court order to the person identified in the order. [22 O.S., § 60.14(G)] The participant information disclosed to a person identified in a court order shall be maintained in strict confidentiality by the party receiving the information.
- (b) The ~~Secretary of State~~ Attorney General may verify the participation of a specific program participant to state or local government agencies in which case the ~~Secretary of State~~ Attorney General may only confirm information supplied in writing as prescribed by the Attorney General by the requestor. State or local agencies are prohibited from knowingly and intentionally disclosing a program participant's actual address unless disclosure is permitted by law.
- (c) The substitute address assigned to a program participant is not confidential.
- (d) The ~~Secretary of State~~ Attorney General shall provide immediate notification of disclosure to a program participant when disclosure takes place if not otherwise prohibited by law.

*[OAR Docket #09-1103; filed 5-28-09]*

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

*[OAR Docket #09-1124]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
87:10-1-2. Definitions [AMENDED]

**AUTHORITY:**

Oklahoma State Employees Benefits Council; 74 O.S. § 1361 et seq.

**DATES:**

**Comment Period:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 1. General Provisions  
87:10-1-2. Definitions [AMENDED]

**Gubernatorial approval:**

August 8, 2008

**Register publication:**

26 Ok Reg 5

**Docket number:**

08-1232

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

This permanent administrative rule is identical to, and supersedes, an emergency administrative rule approved by Governor Brad Henry August 8, 2008, which amended the definition of a "dependent" to change the maximum age to which dependents may be covered by active state employees under the state's flexible benefits plan from twenty-three (23) years of age to twenty-five (25) years of age in accordance with Section 13 of House bill 3112 of the 2<sup>nd</sup> regular session of the 51<sup>st</sup> Oklahoma Legislature, signed by Governor Brad Henry on June 3, 2008.

**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, 2009:**

**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

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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 [23<sup>rd</sup>]~~ ~~twenty-fifth [25<sup>th</sup>]~~ 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]~~ ~~twenty-five [25]~~. 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.

**"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.

[OAR Docket #09-1124; filed 6-2-09]

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

[OAR Docket #09-1123]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

- Subchapter 26. Qualified Transportation Account Option [NEW]
- 87:10-26-1. Qualified transportation account option [NEW]
- 87:10-26-2. Definitions [NEW]
- 87:10-26-3. Reimbursements for participation [NEW]
- 87:10-26-4. Amount of benefit available [NEW]
- 87:10-26-5. Internal revenue code and regulations [NEW]
- 87:10-26-6. Elections/mid year changes [NEW]
- 87:10-26-7. Qualified transportation account option [NEW]
- 87:10-26-8. Claims for reimbursement [NEW]
- 87:10-26-9. Reimbursement or payment of mass transit expense [NEW]
- 87:10-26-10. Forfeiture of unused benefits [NEW]

87:10-26-11. Report to employees [NEW]
AUTHORITY: Oklahoma State Employees Benefits Council; 74 O.S. § 1361 et seq.
DATES:
Comment Period: February 17, 2009, through March 19, 2009
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules: Subchapter 26. Qualified transportation account option [NEW]
87:10-26-1. Qualified transportation account option [NEW]
87:10-26-2. Definitions [NEW]
87:10-26-3. Reimbursements for participation [NEW]
87:10-26-4. Amount of benefit available [NEW]
87:10-26-5. Internal revenue code and regulations [NEW]
87:10-26-6. Elections/mid year changes [NEW]
87:10-26-7. Qualified transportation account option [NEW]
87:10-26-8. Claims for reimbursement [NEW]
87:10-26-9. Reimbursement or payment of mass transit expense [NEW]
87:10-26-10. Forfeiture of unused benefits [NEW]
87:10-26-11. Report to employees [NEW]
Gubernatorial approval: August 8, 2008
Register publication: 26 Ok Reg 6
Docket number: 08-1233

INCORPORATIONS BY REFERENCE: n/a
ANALYSIS:

These permanent administrative rules are identical to, and supersede, emergency administrative rules approved by Governor Brad Henry August 8, 2008, which added a new subchapter, twenty-six (26), to Chapter 10 of title 87. This new subchapter allows the Employees Benefits Council to offer qualified mass transportation accounts. These accounts enable active state employees to purchase monthly mass transit passes on a pre-tax basis. The implementation of these administrative rules is projected to have a positive economic impact on active state employees, enrolled in the state's flexible benefits plan, who choose to participate in qualified mass transportation accounts. By not driving their personal vehicles to work and using mass transit instead, participating employees will realize savings through significantly lower fuel, maintenance, and auto insurance costs. In addition, because these accounts are pre-tax, the amount participating employees, and the agencies they work for, pay in taxes will be reduced. And, these rules will have a positive impact on the environment. As more active state employees use mass transportation, the number of vehicles on the state's streets and highways and the air pollution they create will decline.

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, 2009:

SUBCHAPTER 26. QUALIFIED TRANSPORTATION ACCOUNT OPTION

87:10-26-1. Qualified Transportation account option
(a) This option allows an employee to receive reimbursements for qualified mass transportation expenses which are excludable from gross income. This option is intended to be qualified under Section 132 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. As a result, it is excluded as part of the cafeteria plan described in OAC 87:10-1-1.
(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

87:10-26-2. Definitions
The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Eligible period of coverage" means that time period in which the employee contributes to the Qualified Transportation account and that the employee is on an active pay status.

"Mass Transit expense" means any pass, token, fare card, voucher, or similar item (including an item exchangeable for fare media) entitling a person to transportation. The pass must be used for transportation on a public or privately-owned mass transit system, or on transportation provided by a person in the business of transporting people in a vehicle, seating at least six adults, excluding the driver and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

"Qualified Transportation account" means the book-keeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"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.

87:10-26-3. Requirements for participation
Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the Qualified Transportation account option.

87:10-26-4. Amount of benefit available
The maximum amount which an employee may receive in a Plan Year in the form of Mass Transit expense reimbursement or payment under the Qualified Transportation account option

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shall be the maximum amount as determined on a yearly basis by the Internal Revenue Service pursuant to 26 U.S.C. Section 132(f) and 26 C.F.R. Section 1.132-9.

### **87:10-26-5. Internal Revenue Code and regulations**

The Qualified Transportation option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

### **87:10-26-6. Elections/mid year changes**

- (a) Employees may elect to participate during the open enrollment Option Period prior to the plan year.
- (b) New Hires and employees not previously enrolled may elect to participate during the plan year.
- (c) Employees who have elected to participate may drop the option any time during the plan year. However, once the account has been dropped, the employee may not re-enroll during the same plan year. Any amounts remaining in the account after the option has been dropped are subject to forfeiture pursuant to OAC 87:10-26-10.
- (d) Employees' requests to participate, or drop participation, in Qualified Transportation accounts must be made in a manner and on forms prescribed by the Plan Administrator.

### **87:10-26-7. Qualified Transportation account option**

Each Plan Year, the Plan Administrator shall establish a Qualified Transportation account for each employee who elect to participate in a Qualified Transportation account. During the Plan Year, the applicable payroll office shall on a monthly basis deduct from the employee's payroll the amount designated by the employee and credit the employee's Qualified Transportation account. An employee's Qualified Transportation account for a Plan Year shall be reduced by the amount of any qualified Mass Transit expenses paid to the employee.

### **87:10-26-8. Claims for reimbursement**

Claims for reimbursement of qualified Mass Transit expenses incurred during the period of coverage shall be made in a manner and on forms prescribed by the plan administrator.

### **87:10-26-9. Reimbursement or payment of Mass Transit expense**

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the employee from the employee's Qualified Transportation account for Mass Transit expenses incurred during the Plan Year for which the employee submits documentation in accordance with OAC 87:10-26-8. No reimbursement or payment of Mass Transit expenses incurred during a Plan Year shall exceed the balance available in the employee's Qualified Transportation account. The reimbursement must be for the state employee to utilize Mass Transit. Reimbursement for spousal or dependant expenses is not allowed. The Mass Transit pass must be a monthly pass; passes less than one month will not be reimbursed.

(b) The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.

(c) Upon demand an employee shall immediately refund any overpayment made by the Plan Administrator on behalf of the employee.

(d) If an employee ceases to be an active state employee or terminates employment with the state, such employee shall be entitled to continue receiving benefits pursuant to the Qualified Transportation account option to the extent of the amount remaining in the employee's Qualified Transportation account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.

### **87:10-26-10. Forfeiture of unused benefits**

Amounts remaining in an employee's Qualified Transportation account following final payment of all Mass Transit expenses incurred during the periods described in OAC 87:10-26-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan. An employee who elects to continue to enroll into a Qualified Transportation account in subsequent years, without periods of interruption, will be permitted to roll over unused amounts from previous years subject to the limitations in OAC 87:10-26-4

### **87:10-26-11. Report to employees**

On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each employee who has received Qualified Transportation payments during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to employees no less than once each calendar quarter.

*[OAR Docket #09-1123; filed 6-2-09]*

## **TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 3. DISCIPLINARY PROCEDURES**

*[OAR Docket #09-1130]*

#### **RULEMAKING ACTION:**

PERMANENT final adoption

#### **RULES:**

Subchapter 3. Filing and Disposition of Complaints  
140:3-3-2 [AMENDED]

#### **AUTHORITY:**

Oklahoma Board of Chiropractic Examiners; 59 O.S. § 161.12

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The Oklahoma Board of Chiropractic Examiners needed to amend language to keep language in line with language presently in the statutes and throughout OAC 140 so that each section provides the same meaning.

**CONTACT PERSON:**

Beth Carter

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. FILING AND DISPOSITION OF COMPLAINTS**

**140:3-3-2. Procedures for complaints against chiropractic physicians**

(a) Any person may submit to the Board a complaint against a chiropractic physician. In the event a complaint is initiated by a member of the Board or the Advisory Committee and such complaint involves the member of the Board or the Advisory Committee to the extent that such member of the Board or Advisory Committee cannot render an impartial decision in the matter, the member of the Board or Advisory Committee shall recuse himself from further action, investigation or other matter related to said complaint.

(b) The Board shall make available a form which may be used for the filing of complaints.

(c) Each complaint reviewed by the Board shall be investigated and a written report made to the Board as set forth in subsections (e), (f),(g) and (h) of this section within twenty-four (24) months of receipt of the complaint by the Advisory Committee. No member of the Board shall review any complaint or discuss any complaint with any member of the Advisory Committee or any other person, including the complainant and the chiropractic physician named in the complaint, except that the Board may review the written report of the Advisory Committee as provided in (e), (f), and (g) of this section.

(1) No member of the Advisory Committee or the investigator may, in any way, discuss any complaint or the details therein with any person without order from the Board or a Court of competent jurisdiction. Discussion or

disclosure of any complaint or information therein by an Advisory Committee member or investigator may result in that Advisory Committee member's removal from the investigation committee and other such sanctions as the Board deems appropriate.

(2) The amount of time for investigation of a complaint received by the Board by the Advisory Committee may be a thirty-six (36) extended beyond the twenty four (24) months period of time upon a showing of good cause by either the complainant and /or the chiropractic physician named in the complaint.

(d) Upon receipt of the complaint, the Advisory Committee or investigator shall provide the chiropractic physician named in the complaint with a notice of the complaint and shall require said chiropractic physician to provide a written response to the complaint within twenty (20) days of mailing of a copy of the notice to said chiropractic physician. The failure of a chiropractic physician to respond to such a request of the Advisory Committee or investigator shall be grounds for disciplinary action by the Board. In addition, the chiropractic physician named in the complaint shall not contact, attempt to contact or allow anyone else to contact the person(s) who filed the complaint or whom the chiropractic physician named in the complaint believes may have filed the complaint.

(e) It shall be the duty of the Advisory Committee or investigator to investigate the complaint fully and in a manner consistent with due process requirements and the APA. At the conclusion of the investigation, the Advisory Committee or investigator shall submit a written report to the Board detailing the findings and determination if the Advisory Committee or investigator shall make a recommendation in its written report as to further action by the Board. The Advisory Committee may assign a complaint to an individual investigator employed by the Board on a part-time or full-time basis.

(f) The written report of the Advisory Committee or investigator shall be drafted so as to keep anonymous the name of the Complainant and the chiropractic physician named in the complaint. The report shall include a brief recitation of the facts of the complaint and a statement whether the Advisory Committee or investigator found competent evidence to support the allegations contained in the complaint.

(g) The Board shall review the report of the Advisory Committee or investigator at a meeting of the Board, provided, however that the Board's review of the report shall not be conducted as a hearing and the Board shall not hear testimony or receive evidence. Upon review of the report, the Board may:

(1) dismiss the complaint if the Board finds there is not reasonable cause to believe that there was a violation of the Chiropractic Practice Act;

(2) issue a letter of concern, pursuant to 140:3-3-3, to the chiropractic physician named in the complaint if the Board finds that there is reasonable cause to believe that said chiropractic physician has committed a violation, but such violation, if proven, is not of such a nature as to warrant the imposition of a penalty by the Board; or

(3) initiate an individual proceeding, pursuant to 140:3-3-4, against the chiropractic physician named in the complaint if the Board finds that there is reasonable cause

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to believe that said chiropractic physician has committed a violation and that such violation, if proven, is of such a nature as to warrant the imposition of a penalty by the Board.

(h) In the event the Board votes to issue a letter of concern in regard to a complaint, it shall thereupon be the duty of the Advisory Committee or investigator to provide the board sufficient details as to the nature of the complaint so as to assist the Board to render a meaningful letter of concern.

*[OAR Docket #09-1130; filed 6-2-09]*

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

*[OAR Docket #09-1129]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Procedures for Renewal Licenses

140:10-5-2 [AMENDED]

140:10-5-3 [AMENDED]

Subchapter 8. Administrative Fees

140:10-8-1 [AMENDED]

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#### CONTACT PERSON:

Beth Carter

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 5. PROCEDURES FOR RENEWAL LICENSES

### 140:10-5-2. License renewal program approval

(a) Approval of programs to be offered to satisfy license renewal provisions of the Subchapter is vested solely in the Board. No program shall be offered, advertised or marketed for the purpose of license renewal prior to being approved by the Board.

(b) It shall be the duty of the Board to review and consider for approval, during a meeting of the Board, every application from ~~a~~ a chiropractic association or institution which desires to present a continuing chiropractic education program required for license renewal.

(c) The Board shall maintain a list of all chiropractic associations or institution that notify the Board of an intent to present a continuing chiropractic education program for license renewal. It shall be the duty of each association to inform the Board of any change of address or name.

(d) ~~An~~ A chiropractic association or institution may submit applications to present continuing chiropractic program for license renewal. All applications to present continuing chiropractic program must be submitted at least ninety (90) calendar days prior to said education ~~program~~ programs being presented. Each application must contain the qualifications of the applicant, association or entity seeking to sponsor the program, the state of domicile, the classification of the applicant as "profit" or "nonprofit", and the educational experience of the instructors conducting the program.

(e) The board shall create and approve a form to be used by ~~an~~ a chiropractic association or institution to apply for approval to present a continuing chiropractic education program. In order to be considered for approval, such form shall be completed by an association. An association shall submit a separate application for each program it wishes to present.

(f) The board in its discretion, may refer the application to the Advisory Committee or the Executive Director for review and/or information gathering.

(g) No later than thirty (30) days after submission of the application the Board shall either approve or reject the application.

(h) During the meeting provided for in paragraph (b) of this Section, each association shall be given the opportunity to make an oral presentation of no more than fifteen (15) minutes for each application to provide the Board with any additional relevant information for such program. The board may request additional information regarding the application.

(i) The board shall consider, among other relevant factors, the content of the program and the cost ~~by~~ for a chiropractic physician to attend the program. The Board shall not approve programs which do not present a program of a chiropractic nature; provided no program shall be approved which is used primarily as a sales promotion for the association which presents the program or any speaker who presents any part

of a program or at which products or services related to the programs are offered for sale.

(j) At the conclusion of all presentations and during the same meeting, the board shall announce individually the approval or denial of the application to present a continuing chiropractic program. The Board shall state the specific reason or reasons for the denial of any application.

(k) All programs approved by the Board shall be open to all persons.

**140:10-5-3. Revocation or suspension of license; reinstatement**

In the event that a licensee fails to obtain a renewal license on or before the first day of ~~January~~ July of each year, the original license of such licensee shall be subject to revocation or suspension, upon order of the Board. The Board may reinstate the original license of such person upon the payment of all fees due, plus a penalty fee in the amount of One Hundred Dollars (\$100.00), and upon presentation to the Board of satisfactory evidence of compliance with the continuing education requirements.

**SUBCHAPTER 8. ADMINISTRATIVE FEES**

**140:10-8-1. Fees**

Fee Schedule.

(1) Examination. The following fees shall be assessed for licensure and examination of Chiropractors:

- (A) Original license: \$150.00
- (B) Relocation of Practice: \$150.00
- (C) Examination Fee: \$150.00

(2) Licensure. The following fees shall be assessed for licensure of Chiropractors:

- (A) Renewal fee active license \$225.00
- (B) Renewal fee inactive license \$175.00
- (C) Retired license fee \$50.00
- (D) Reinstatement fee not exceed \$400.00
- (E) Penalty fee for late renewal ~~\$100.00~~ \$150.00

(3) Duplication or modification of license. A fee of ~~\$65.00~~ \$75.00 shall be assessed for duplication or modification of original license.

(4) Miscellaneous fees: the following fees shall be assessed by the Board

- (A) Letter of good standing and/or verifications for other licensing Boards with seal: ~~\$20.00~~ \$35.00
- (B) Verification of licensure: ~~\$2.00~~ \$10.00 per license
- (C) Duplication of proof of license renewal: ~~\$5.00~~ \$10.00
- (D) Duplication of Public Records: per page: \$0.25
- (E) Returned check processing fee: \$20.00
- (F) Duplication of certificates issued by the Board: \$20.00
- (G) Directory ~~\$10.00~~ \$35.00 hard copy and/or diskette

(H) Search fee for records requested for commercial purposes: \$30.00

(I) Continuing education application fee: \$200.00

(J) Post Doctoral Diplomate Chiropractic Specialties registration/re-registration fee: \$50.00

(K) Copy of tape of a board meeting and or an administrative hearing \$20.00

(L) Labels of addresses of all licensed chiropractors \$50.00

(M) Travel-to-Treat registration \$25.00

[OAR Docket #09-1129; filed 6-2-09]

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

[OAR Docket #09-1128]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 140:15-1-2 [AMENDED]
- Subchapter 5. ~~Certificates~~ Authorization for Injectables
- 140:15-5-1 [AMENDED]
- 140:15-5-2 [AMENDED]
- Subchapter 7. Safety and Public Welfare Provisions
- 140:15-7-5 [AMENDED]
- Subchapter 8. Animal Chiropractic Diagnosis and Treatment
- 140:15-8-2 [AMENDED]
- Subchapter 9. Chiropractic Specialties
- 140:15-9-1 [AMENDED]
- 140:15-9-2 [AMENDED]
- 140:15-9-3 [AMENDED]
- 140:15-9-4 [AMENDED]
- 140:15-9-5 [AMENDED]
- 140:15-9-6 [AMENDED]
- Subchapter 10. Acupuncture [NEW]
- 140:15-10-1 [NEW]
- 140:15-10-2 [NEW]
- Subchapter 11. Homeopathy [NEW]
- 140:15-11-1 [NEW]
- 140:15-11-2 [NEW]
- Subchapter 12. Naturopathy [NEW]
- 140:15-12-1 [NEW]
- 140:15-12-2 [NEW]

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**CONTACT PERSON:**

Beth Carter

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 140:15-1-2. Definitions

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

"**Act**" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"**Acupuncture and/or Meridian Therapy**" means a healthcare method used to prevent, diagnose and treat disease by restoring the body's balance and harmony consisting of the stimulation of various points on or within the human body or interruption of the cutaneous integrity by specific needle insertion or other form of point stimulation.

"**Board**" means the Board of Chiropractic Examiners.

"**Certificate**" means a document given to a chiropractic physician by an institution, specialty council, specialty board, or Board, verifying the chiropractic physician has fulfilled the educational requirements set forth by the institution, specialty council, specialty board, or Board granting the certificate.

"**Certification**" means a process by which an institution, specialty council, specialty board, institution, or Board evaluates and acknowledges a chiropractic physician's successful completion of a pre-established set of requirements or criteria.

"**Chiropractic physician**" or "**licensee**" means a person who holds an original license to practice chiropractic in this state.

"**Diplomate Specialty**" means a postgraduate diplomate degree or certificate granted to a chiropractic physician.

"**Homeopathy**" means a healthcare method used to prevent, diagnose and treat disease by homeopathic methods such as homeopathic medicines, agents, remedies and articles.

"**Institution**" means a school of higher education or its affiliate, regulated by a state department of education or state department of health occupation or state commission on higher education or a school accredited by an agency recognized by the United States Department of Education or the Council of Higher Education Accreditation.

"**Naturopathy**" means a healthcare method used to prevent, diagnose and treat disease by naturopathic methods of natural therapeutic modalities that include but are not limited to naturopathic medicines, agents, remedies and articles.

"**Non-Diplomate Specialty**" means a certificate that is not specifically identified as being a Diplomate that is granted to a chiropractic physician by an institution, specialty council, or specialty board.

"**Registry**" means a structured record of registration information regarding all chiropractic physicians holding themselves out as having a specialty certificate.

"**Specialty Board**" means a professional, independent entity that provides for competency testing of didactic and clinical skills of applicants and granting of certifications in post-doctoral chiropractic specialty areas upon completing an approved post-doctoral curriculum.

"**Specialty Certificate**" means a document granted to a chiropractic physician by a specialty council, specialty board, or institution signifying the chiropractic physician has obtained Diplomate specialty status or a non-diplomate specialty certification that is granted by an institution.

"**Specialty Council**" means an approved council by the International Chiropractic Association or the American Chiropractic Association, or its equivalent as approved by the Board.

## SUBCHAPTER 5. CERTIFICATE AUTHORIZATION FOR INJECTABLES

### 140:15-5-1. Authorization Certification from the Board

No chiropractic physician shall administer or cause to be used any injectable vitamins, minerals or nutritional supplements unless said chiropractic physician holds a written certification issued by is authorized by the Board pronouncing that said chiropractic physician is proficient in the administration and use of such injectables. The Board shall establish an examination to be used by the Board to determine the proficiency of any a chiropractic physician who seeks certification authorization from the Board. However Provided that any authorization certification issued before January 1, 1994, shall not require examination. The Board shall maintain a registry listing all chiropractic physicians who are authorized by the Board.

### 140:15-5-2. Application for authorization certification; educational requirements

Any chiropractic physician who desires to administer vitamins, minerals or nutritional supplements by means of injectable procedures shall make application, on a form prescribed by the Board, for authorization a certification for such purpose. Each such chiropractic physician shall submit to the Board documentary evidence of satisfactory completion of at least twenty-four (24) hours of education and training in administration and use of such injectables. Such education and training shall be obtained at an educational program which has

been approved by the Board and meets the following criteria: the program.

- (1) is conducted under the auspices of and taught by the post graduate faculty of a chiropractic institution.
- (2) consist of a minimum of twenty-four (24) hours;
- (3) requires completion of a certification examination given by a board independent of the entity which taught the course; and
- (4) meets such other criteria as the Board deems appropriate.

**SUBCHAPTER 7. SAFETY AND PUBLIC WELFARE PROVISIONS**

**140:15-7-5. Code of Ethics**

There is hereby created the "Oklahoma Chiropractic Code of Ethics". This Code of Ethics is based upon the fundamental principle that the ultimate end and objective of the chiropractic physician's professional services and effort should be: "The greatest good for the patient."

- (1) Chiropractic physicians shall attend their patients as often as they consider necessary to ensure the well-being of their patients, but should avoid unnecessary treatments;
- (2) Having once undertaken to serve a patient, chiropractic physicians shall not neglect the patient. Chiropractic physicians shall not terminate their professional services to patients without taking reasonable steps to protect such patients, including due notice to them allowing sufficient time for obtaining professional services of others, delivering to their patients all papers and documents in compliance with paragraph 3 of this subsection;
- (3) Chiropractic physicians shall comply within twenty-one (21) calendar days of a patient's authorization certification to provide records, or copies of such records, to those persons whom the patient designates as authorized to inspect or receive all or part of such records. A reasonable charge may be made for the cost of copying records. Unpaid charges incurred by the patient are not grounds for refusal to release records.

(A) After receipt of complaint, all records shall be available for inspection and copying by investigators of the Board during normal business hours.

(B) A patient record shall be maintained for every patient under the care of the chiropractic physician and such records shall be kept confidential. Only authorized personnel shall have access to the records.

(C) Records generally shall not be removed from the control of the chiropractic physician except upon court order or as authorized by law. Board staff shall be authorized to obtain copies or review any records to assure compliance with these rules or other parts of the Act.

(D) Chiropractic physicians shall furnish the Board, its investigators or representatives, information lawfully requested by the Board and shall

cooperate with a lawful investigation conducted by the Board.

- (4) Subject to paragraph 3 of this subsection, chiropractic physicians should preserve and protect the patient's confidences and records, except as the patient directs or consents, or if the law requires otherwise. They should not discuss a patient's history, symptoms, diagnosis, or treatment with a lawyer until they have received the ~~informed~~ consent of the patient or the patient's personal representative. They should avoid exploiting the trust and dependency of their patients;

- (5) Chiropractic physicians shall maintain the highest standards of professional and personal conduct. Chiropractic physicians shall refrain from all illegal or morally reprehensible conduct;

- (6) Chiropractic physicians shall assure that the patient possesses enough information to enable an intelligent choice in regard to proposed chiropractic treatment. The patient shall make his or her own determination on such treatment;

- (7) Chiropractic physicians shall observe the appropriate laws, decisions and rules of state governmental agencies of the United States and the State of Oklahoma and cooperate with the pertinent activities.

- (8) Chiropractic physicians may advertise but shall exercise utmost care that such advertising is relevant to the selection of a chiropractic physician, is accurate, truthful, not misleading, false or deceptive, and is scrupulously correct in representing the chiropractic physician's professional status and area of special competence. Communications to the public shall not appeal primarily to an individual's anxiety or create unjustified expectations of results. Chiropractic physicians shall conform to all applicable state laws, rules and judicial decisions in connection with professional advertising;

- (9) Chiropractic physicians may testify either as experts or when their patients are involved in court cases, workers' compensation proceedings or in other similar proceedings in personal injury or related cases.

- (10) The chiropractic profession shall address itself to improvements in licensing procedures consistent with the development of the profession and of relevant advances in science;

- (11) Chiropractic physicians who are public officers part time or full time, shall not engage in activities which are, or may be perceived to be, in conflict with their official duties;

- (12) Chiropractic physicians shall not commit fraud, misrepresentation, or deception which includes, but is not limited to:

(A) Practicing or attempting to practice chiropractic under false or assumed name;

(B) Aiding, assisting, or advising another in the unlicensed practice of chiropractic;

(C) Fraud or deceit in obtaining or renewing a license to practice chiropractic;

(D) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of chiropractic;

(E) Failing to report past, present, or pending disciplinary action by another licensing board or the current status of the final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure;

(F) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those which are signed by the licensee in his/her capacity as a licensed chiropractic physician;

(G) Submitting to any patient, insurer or third-party payor a claim for a service or treatment which was not actually provided to a patient.

(H) Failing to report to the Board a conviction of, or pleading guilty or nolo contendere to, fraud in filing Medicare or Medicaid claims or in filing claims with any third party payor. A copy of the record of the plea or conviction certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction.

(13) Chiropractic physicians shall not abuse the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship which includes, but is not limited to:

(A) Engaging in sexual misconduct which consists of sexual behavior that occurs during the doctor-patient relationship. Chiropractic physicians shall terminate the doctor-patient relationship before dating or having a sexual relationship with a patient. Such termination shall be done in writing and signed by both the patient and the chiropractic physician and placed in the patient's record. This paragraph shall not apply to chiropractic physicians treating their spouses.

(B) Engaging in sexual impropriety which consists of behavior, verbal or physical, that is suggestive, seductive, harassing, intimidating or demeaning to a patient.

(C) Engaging in sexual violation which consists of physical contact, whether or not initiated by the patient, that is sexual or may be reasonably interpreted as such.

~~(13)~~ (14) Chiropractic physicians shall not violate any lawful order of the Board previously entered in a disciplinary hearing or fail to comply with a lawfully issued subpoena of the Board.

~~(14)~~ (15) Chiropractic physicians shall not make statements which in any way reflect against a fellow licensee including statements which imply superiority over another licensee.

## SUBCHAPTER 8. ANIMAL CHIROPRACTIC DIAGNOSIS AND TREATMENT

### 140:15-8-2. Continuing education hours

(a) Each doctor of chiropractic in the State of Oklahoma who is registered with the Board pronouncing that said chiropractic physician is engaged in the practice of animal chiropractic diagnosis and treatment must re-register and submit a sworn statement of hours of continuing education completed during the concluding licensing period. Every three (3) years after original registration, each applicant shall submit documentation of completion of a total of 20 hours of continuing education during the three (3) year period. These hours are in addition to the annually required 16 hours.

(b) Upon successful demonstration of these requirements, the Board shall continue the applicant's name on the registry of chiropractic physicians who are certified to engage in the practice of animal chiropractic diagnosis and treatment.

~~Each Chiropractor certified in animal chiropractic diagnosis and treatment applying for renewal of a license related to animal chiropractic diagnosis and treatment shall have completed a minimum of (6) hours annually, in addition to the required sixteen (16) hours of the Act. The continuing education course attended for purposes of satisfying this rule shall be approved by the Board prior to attendance by the chiropractic physician.~~

## SUBCHAPTER 9. CHIROPRACTIC SPECIALTIES

### 140:15-9-1. Oversight Authority

The Board shall have practice oversight authority for all post-doctorate ~~Diplomate~~ chiropractic specialties. No chiropractic physician shall represent to the public that he/she is a specialist in any area unless said chiropractic physician is registered with the Board. The Board shall review all post-doctorate ~~Diplomate specialty registration~~ applications and shall approve those applications that meet Board requirements. The Board shall maintain a registry listing all chiropractic physicians who are approved by the Board.

### 140:15-9-2. Specialty Register

Chiropractic physicians shall not be registered by the Board as a post-doctorate specialist ~~Diplomate~~ specializing in any activity unless they have received certification for that specialty from a specialty council, specialty board, ~~approved by the International Chiropractic Association or the American Chiropractic Association, or its equivalent specialty board or council or institution~~ approved by the Board.

### 140:15-9-3. Educational Requirements

(a) Specialty training must Chiropractic Physician's seeking Diplomate Specialty status shall meet the following criteria to qualify for inclusion in the Board's Board of Chiropractic Examiners' Registry. The course of study shall must:

- (1) be conducted under the auspices of and taught by the post-graduate faculty of a an accredited chiropractic institution
- (2) consist of a minimum of three hundred (300) hours;
- (3) require completion of a certification examination given by a board independent of the entity which taught the course;
- (4) meet any other criteria that the respective council requires; and
- (5) meet any other criteria the Board deems appropriate.

(b) Non-Diplomate Specialty education shall meet the requirements and guidelines established by the institution, specialty council, or specialty board granting the certificate to the chiropractic physician.

**140:15-9-4. Initial Registration Requirements**

(a) Any doctor of chiropractic in the State of Oklahoma who desires to hold himself or herself out to the public as being a post-doctorate specialist Diplomate in an area must first register with the Board of ~~Chiropractic Examiners~~. Initial registration requires a Chiropractic Physician to submit the following to the Board:

- (1) a completed application on a form provided by the Board
- (2) the specialty registration fee, as set by the Board;
- (3) documentation of specialty Diplomate status issued by the ~~Diplomate Board~~ specialty council or institution, verifying that the licensee has met the protocols, guidelines, standards, and ~~continuing education~~ educational hours required by the respective specialty council, specialty board, or institution.

(b) Upon a successful demonstration of these requirements, the Board of ~~Chiropractic Examiners~~ shall add the applicant's chiropractic physician's name to the registry.

**140:15-9-5. Annual Re-registration Requirements**

(a) Each doctor of chiropractic in the State of Oklahoma who holds himself or herself out to the public as being a post-doctorate specialist Diplomate in an area ~~must re-register with the Board of chiropractic Examiners and submit to the Board on or before December 31<sup>st</sup> of each year~~ shall re-register with the Board if the granting institution, specialty council, or specialty board who granted the chiropractic physician the specialty certificate requires re-certification or renewal of the certificate. The chiropractic physician shall re-register the renewed specialty certification by providing the information required by the Board upon the next chiropractic physician's annual chiropractic license renewal application.

- (1) ~~the post-doctorate Diplomate re-registration fee, as set by the Board; and~~
- (2) ~~documentation of Diplomate status issued by the respective council, verifying that the licensee has met the protocols, guidelines, standards, and continuing educational requirements established by the respective council.~~

(b) Upon a successful demonstration of these requirements, the Board of ~~Chiropractic Examiners~~ shall allow continue the applicant's name on the registry.

**140:15-9-6. Prohibited Acts**

(a) Only those chiropractic physicians holding a post-doctorate specialty certificate Diplomate in post-graduate training and certification programs recognized by the respective specialty council and the Board, specialty board, or institution ~~Board~~ may hold themselves out to the public as possessing special knowledge, skills or training as a post-doctorate specialist Diplomate. Any advertisement which states that a chiropractic physician has special training or skills as being certified in a post-doctorate specialty Diplomate not recognized by the respective specialty council and the Board, specialty board, or institution is engaged in deceptive and misleading advertising practices;

(b) Any chiropractic physician who advertises a specialty not recognized by the Board shall prominently include in the advertisement the following disclaimer in capital letters: "(NAME OF ANNOUNCED AREA OF CHIROPRACTIC PRACTICE...IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE OKLAHOMA BOARD OF CHIROPRACTIC EXAMINERS"

(b) ~~It shall be prohibited by the Board of Chiropractic Examiners for any person to advertise as a post-doctorate Diplomate without first being on the Board of Chiropractic Examiners Specialty Registry;~~

(c) Any chiropractic physician who advertises membership in or certification by any institution or entity not recognized by the Board, shall prominently include in the advertisement the following disclaimer in capital letters: "(NAME OF REFERENCED ORGANIZATION)...IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE OKLAHOMA BOARD OF CHIROPRACTIC EXAMINERS"

(d) A chiropractic physician may advertise limited certificates of attendance otherwise known as limited certificates of proficiency or limited attendance announcements at the Board discretion without registering them with the Board. The Board recognizes limited certificates of this nature granted by product and equipment supplies in conjunction with healthcare educators whose products and equipment are used to carry out the delivery of healthcare without granting the chiropractic physician a certification of diplomate specialty. Certificates of this limited nature are not required to be registered with the Board. A chiropractic physician shall not advertise such certificates in a manner misrepresenting or implying in any way that this type of certificate prepared the chiropractic physician to hold himself or herself out as being certified in or obtaining a diplomate specialty.

**SUBCHAPTER 10. ACUPUNCTURE**

# Permanent Final Adoptions

## **140:15-10-1. Registration from the Board**

No chiropractic physician shall represent to the public that he/she is a specialist in the practice of Acupuncture and/or Meridian Therapy unless said chiropractic physician holds a registration issued by the Board stating that the chiropractic physician is proficient in Acupuncture and/or Meridian Therapy. The Board shall maintain a registry listing all chiropractic physicians who are authorized by the Board. This rule does not apply to persons licensed to practice chiropractic in Oklahoma who graduated from a chiropractic institution on or before January 1, 2000.

## **140:15-10-2. Application for registration; educational requirements**

(a) Any chiropractic physician who desires to represent to the public he/she is a specialist in Acupuncture and/or Meridian Therapy shall make application, on a form prescribed by the Board, for registration for such purpose. Each such chiropractic physician shall submit to the Board documentary evidence of satisfactory completion of at least one hundred (100) hours of education in Acupuncture and/or Meridian Therapy. Such education shall be obtained through an educational program which is subject to or has been approved by the Board and meets the following criteria:

(1) Is conducted under the auspices of and taught by the postgraduate faculty of a fully accredited chiropractic college or institution, by a school of acupuncture recognized by the National Council of Acupuncture Schools and Colleges or by a school of acupuncture recognized by the Accreditation Commission for Acupuncture and Oriental Medicine.

(2) Requires completion of a certification examination approved by the Board independent of the entity which taught the course, and

(3) Meets other such criteria as the Board deems appropriate.

(b) Upon successful demonstration of these requirements, the Board shall list the chiropractic physician's name on the registry.

## **SUBCHAPTER 11. HOMEOPATHY**

## **140:15-11-1. Registration from the Board**

Only a chiropractic physician who has satisfactorily completed education in homeopathy and has received a certificate in homeopathic medicine from an accredited chiropractic institution and upon registration from the Board, may hold himself or herself out to the public as a specialist certified in homeopathic medicine. This rule does not apply to persons licensed to practice chiropractic in Oklahoma who graduated from a chiropractic institution on or after January 1, 2000.

## **140:15-11-2. Application for registration; educational requirements**

(a) Any chiropractic physician who desires to represent to the public that he/she is a specialist in homeopathy shall make

application, on a form prescribed by the Board. Each such chiropractic physician shall submit to the Board documentary evidence of satisfactory completion of education in homeopathic medicine. Such education shall be obtained through an educational program which is subject to or has been approved by the Board.

(b) Upon a successful demonstration of these requirements, the Board shall list the chiropractic physician's name on the registry.

## **SUBCHAPTER 12. NATUROPATHY**

## **140:15-12-1. Registration from the Board**

Only a chiropractic physician who has satisfactorily completed education in naturopathy and has received a certificate in naturopathic medicine from an accredited chiropractic institution and upon registration from the Board, may hold himself or herself out to the public as a specialist certified in naturopathic medicine. This rule does not apply to persons licensed to practice chiropractic in Oklahoma who graduated from a chiropractic institution on or after January 1, 2000.

## **140:15-12-2. Application for registration; educational requirements**

(a) Any chiropractic physician who desires to represent to the public that he/she is a specialist in naturopathy shall make application, on a form prescribed by the Board. Each such chiropractic physician shall submit to the Board documentary evidence of satisfactory completion of education in naturopathic medicine. Such education shall be obtained through an educational program which is subject to or has been approved by the Board.

(b) Upon a successful demonstration of these requirements, the Board shall list the chiropractic physician's name on the registry.

*[OAR Docket #09-1128; filed 6-2-09]*

## **TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD**

*[OAR Docket #09-1137]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. General Operation and Procedures  
158:1-3-8. Fee for dishonored checks [NEW]

### **AUTHORITY:**

Construction Industries Board; 59 O.S. § 1000.4

### **DATES:**

#### **Comment period:**

January 2, 2009 through February 2, 2009

#### **Public hearing:**

February 11, 2009

**Adoption:**

March 11, 2009

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**SUPERSEDED EMERGENCY ACTIONS:**

"n/a"

**INCORPORATIONS BY REFERENCE:**

"n/a"

**ANALYSIS:**

The purpose of these rules is to implement O.S. 59 section 1000.5 (F) (amended by laws 2008, SB45, Section 4 § 1 effective November 1, 2008) to provide a fee for dishonored checks not to exceed amount pursuant to the provisions of Section 1121 of Title 47 of the Oklahoma Statutes.

**CONTACT PERSON:**

Jeanne Britt, Rules Liaison, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771; facsimile: (405) 271-5254; electronic mail: jeanneb@cib.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, 2009:**

**SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES**

**158:1-3-8. Fee for dishonored checks**

The Construction Industries Board may charge and collect a fee of \$25.00 from any licensee, registrant or other obligor of a fee, fine, or other payment for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the licensee, registrant or other obligor.

*[OAR Docket #09-1137; filed 6-5-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 10. FINE SCHEDULE**

*[OAR Docket #09-1138]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Administrative Fine Schedule

158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act, and the Plumbing License Law of 1955, and Home Inspectors Licensing Act [AMENDED]

**AUTHORITY:**

Construction Industries Board; 59 O.S. § 1000.4.; and O.S. Section 1000.9.

**DATES:**

**Comment period:**

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"n/a"

**INCORPORATIONS BY REFERENCE:**

"n/a"

**ANALYSIS:**

The purpose of these rules is to exercise the Board's authority in O.S. 59 §1000.9 (C) which states any order issued pursuant to this section shall state with specificity the nature of the violation. Any penalty assessed in the order shall not exceed One Thousand Dollars (\$1,000.00) per day of noncompliance with the order. In assessing such a penalty, the Board shall consider the seriousness of the violation and any efforts to comply with applicable requirements. The board has determined that these fees originally established have not been changed since July 2002, and the existing penalties have not compelled compliance to the laws at such a low cost. The Board is asking for increase in the fees within the legislative authority already granted to the Board by the Statute.

The purpose of these rules is to implement O.S.59 section 1000.5 (F) (amended by laws 2008, SB45, Section 4 § 1 effective November 1, 2008) to provide a fee for dishonored checks not to exceed amount pursuant to the provisions of Section 1121 of Title 47 of the Oklahoma Statutes. The fees and administrative costs established in 158:10-3-5 rules were previously promulgated by permanent rules and justified by the Oklahoma State Department of Health with the assistance of the Committee of Home Inspector Examiners. The Construction Industries Board will evaluate said fees and costs in the context of its administration of the Home Inspection Licensing Act and propose changes if necessary in a subsequent permanent rule making proceeding. For the term of these rules, the Construction Industries Board is satisfied that the current fees and costs set forth herein are adequate to administer the Home Inspection Licensing Act for the interim.

**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, 2009:**

**SUBCHAPTER 3. ADMINISTRATIVE FINE SCHEDULE**

# Permanent Final Adoptions

## 158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act, and the Plumbing License Law of 1955, and Home Inspectors Licensing Act

(a) The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the Electrical License Act, the Mechanical Licensing Act and The Plumbing License Law of 1955, or each of the respective licensing laws. Except as provided in Section 158:10-3-3, the fine schedule for citations issued by the Board for violations of the following requirements is:

- (1) Contracting without license, which includes offering to perform work:
  - (A) First - ~~\$400;~~\$500.00
  - (B) Second or subsequent - ~~\$500;~~\$1,000.00
- (2) Inactive contractor or a journeyman engaged in contracting:
  - (A) First - ~~\$450;~~\$500.00
  - (B) Second or subsequent - ~~\$500;~~\$1,000.00
- (3) Contractor working unlicensed or unregistered individual (per person):
  - (A) First - ~~\$190;~~\$500.00;
  - (B) Second or subsequent - ~~\$400;~~\$1,000.00
- (4) Contractor working registered apprentice without direct supervision (per apprentice):
  - (A) First - ~~\$100;~~\$500.00;
  - (B) Second or subsequent - ~~\$250;~~\$1,000.00
- (5) Unlicensed or unregistered individual performing trade work under the direction of one acting as a contractor:
  - (A) First - ~~\$150;~~\$500.00;
  - (B) Second or subsequent - ~~\$280;~~\$1,000.00
- (6) Loaning a license:
  - (A) First - \$500;
  - (B) Second or subsequent - ~~\$500;~~\$1,000.00
- (7) Forging or altering a license:
  - (A) First - ~~\$400;~~\$1,000.00;
  - (B) Second or subsequent - ~~\$500;~~\$1,000.00
- (8) Code violations per day (after NOV compliance date):
  - (A) First - ~~\$240;~~\$500.00
- (9) Contracting with an expired bond:
  - (A) First - ~~\$200;~~\$500.00;
  - (B) Second or subsequent - ~~\$320;~~\$1,000.00
- (10) Contracting with expired insurance:
  - (A) First - ~~\$200;~~\$500.00;
  - (B) Second or subsequent - ~~\$320;~~ \$1,000.00
- (11) Failure to properly display firm name and state license number on vehicles:
  - (A) First - ~~\$70;~~\$500.00;
  - (B) Second or subsequent - ~~\$190;~~\$1,000.00

(b) The fine schedule for citations issued by the Board for Violations of the Home Inspector Licensing Act or the Rules promulgated there under shall be subject to the following fines:

- (1) Violation of 158:70-5-2(d):
  - (A) First violation: \$50.00
  - (B) Subsequent violation: \$200.00
- (2) Violations of 158:70-11-2(a):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (3) Violations of 158:70-11-2(b):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (4) Violations of 158:70-11-2(c):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (5) Violations of 158:70-11-2(d):
  - (A) First violation: up to \$200.00
  - (B) Subsequent violation: up to \$500.00
- (6) Violations of 158:70-11-2(e):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (7) Violations of 158:70-11-2(f):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (8) Violations of 158:70-11-2(g):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (9) Violations of 158:70-11-2(h):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (10) Violations of 158:70-11-2(i):
  - (A) First violation: up to \$500.00
  - (B) Subsequent violation: up to \$1,000.00
- (11) Violations of 158:70-11-2(j):
  - (A) First violation: up to \$1,000.00
  - (B) Subsequent violation: up to \$2,000.00
- (12) Violations of 158:70-11-2(k):
  - (A) First violation: up to \$200.00
  - (B) Subsequent violation: up to \$500.00
- (13) Violations of 158:70-11-2(l):
  - (A) First violation: up to \$200.00
  - (B) Subsequent violation: up to \$500.00
- (14) Violations of 158:70-11-2(m):
  - (A) First violation: up to \$200.00
  - (B) Subsequent violation: up to \$500.00
- (15) Violations of 158:70-11-2(n):
  - (A) First violation: up to \$200.00
  - (B) Subsequent violation: up to \$500.00

(b~~c~~) Violations of any other provision of the Electrical Industry Regulations, the Mechanical Industry Regulations and the Plumbing Industry Regulations not otherwise provided herein above or in 158:10-3-2, shall be subject to a fine of \$200.00 for the first offense and \$400.00 for each subsequent offense.

[OAR Docket #09-1138; filed 6-5-09]

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS**

[OAR Docket #09-1139]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 158:30-1-4. Standard of installation [AMENDED]
- Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
- 158:30-9-2. Fee schedule for contractors, journeymen, and apprentices [AMENDED]
- 158:30-9-4. Continuing education [AMENDED]

**AUTHORITY:**

Construction Industries Board; 59 O.S. §§ 1000 through 1023.1 et seq. and 1689.

**DATES:**

**Comment period:**

January 2, 2009 through February 2, 2009

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Failure of the legislature to disapprove these rules results in the approval on May 14, 2009

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May 14, 2009

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July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

"n/a"

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

2009 International Plumbing Code, the 2009 International Fuel Gas Code, and the Plumbing portion of the 2009 International Residential Code as the minimum standard for the installation of plumbing in Oklahoma where no ordinance or regulation of a governmental subdivision applies.

**Incorporating rules:**

158:30-1-4

**Availability:**

Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771. Office hours are from 8:00 a.m., to 4:30 p.m., Monday through Friday.

**ANALYSIS:**

The rule change will incorporate the 2009 International Plumbing code, the 2009 International Fuel Gas Code, and the plumbing portion of the 2009 International Residential Code as the minimum standard for the installation of plumbing in Oklahoma where no ordinance or regulation of a governmental subdivision applies. In 158:39-9-2(f) the language for birth date renewal is obsolete and needs to be stricken from the rules. The purpose of these rules is to exercise the Board's authority in O.S. 59 §1000.5 Fees- Licenses and permits - Issuance and renewal to establish a system of fees to be charged for the application for licenses, for the issuance and renewal of licenses and permits, for administration of examinations and for formal project reviews under the Board's authority. The board has determined that these fees have not been changed since July 2002 and the cost of administration of this industry has increased over the years. The Board is asking for increase in the fees within the legislative authority already granted to the Board by the Statute. The purpose of the rule in 158:30-9-4 is to change the mix of acceptable subjects to fulfill

the continuing education requirements for plumbing licensees. It also removes obsolete "birthday" language.

**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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**158:30-1-4. Standard of installation**

Effective July 1, 2009, and thereafter, The Construction Industries Board hereby—incorporates the International Plumbing Code/~~20062009~~, ~~20062009~~ International Fuel Gas Code, and the plumbing portion of the ~~20062009~~ International Residential Code as the minimum standard for the installation of plumbing in Oklahoma where no ordinance or regulation of a governmental subdivision applies.

**SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES**

**158:30-9-2. Fee schedule for contractors, journeymen, and apprentices**

(a) **Examination fees for contractors and journeyman.** ~~The~~ the Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:30-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. §1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

- (1) contractors application - ~~\$25.00~~ \$30.00
- (2) initial contractor license - ~~\$200.00~~ \$300.00
- (3) renewal contractor license - ~~\$150.00~~ \$250.00
- (4) renewal contractor late fee - \$300.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - ~~\$50.00~~ \$75.00
- (8) renewal journeyman late fee - \$100.00

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(9) apprentice application - ~~\$10.00~~ \$5.00

(10) apprentice registration - \$20.00

(e) **Conversion to birth date renewal proration schedule.** Beginning July 1, 2004 in the Licensing period of 2004-2005 and for a period of one year only, licenses will be prorated as follows:

~~(1) Journeymen license holders with a birth date in the months from July through December will pay a regular renewal fee of \$50.00 plus \$4.16667 (rounded up to the nearest whole cent) for each month (August, September, October, November, December) or 1/12 of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.~~

~~(2) Journeymen License holders with birth dates in the months of January 2005 through June 2005 will pay \$4.16667 (rounded up to the nearest whole cent) each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.~~

~~(3) Contractor license holders with a birth date in the months from July through December will pay a regular renewal fee of \$150.00 plus \$12.50 for each month (August, September, October, November, December) or 1/12 of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.~~

~~(4) Contractor License holders with birth dates in the months of January 2005 through June 2005 will pay \$12.50 for each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.~~

## 158:30-9-4. Continuing Education

(a) **Continuing education requirements.**

(1) No plumbing contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) instructional hours of continuing education on the revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code within one (1) year of adoption. Continuing Education requirements may also be fulfilled by a combination of not less than four (4) hours on the revisions to plumbing related instruction, including revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code and not less than at least two (2) hours of continuing education of manufacturers' installation of equipment or parts.

(2) Credit will be given for CE programs approved by the Plumbing Examining Committee or its designee.

(3) Except as provided herein these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the educational requirements of these rules for the code year during which he or she first passed an exam testing over that code.

(b) The following standards will govern the approval of continuing education programs by the Plumbing Examining Committee (Committee).

(1) The program must be offered by a provider having substantial, recent, experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for change must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) Sixty (60) minutes constitutes one (1) instructional hour.

(8) CE courses shall be presented in one of the following formats:

(A) Six instructional hours presented on one day

(B) Two sessions of three instructional hours each presented within a seven day period

(C) One session of two instructional hours for the purposes of presenting a manufacturers' installation course,

(D) An approved correspondence or online course, or

(E) Another format approved by the committee.

(9) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) Each attendee shall complete a course evaluation on a form provided by the Construction Industries Board.

(D) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Examining Unit the original sign-in sheets and evaluations from the course.

(E) Providers must maintain copies of all sign-in sheets and evaluations for a period of two (2) years following the conclusion of the course.

(10) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Plumbing Examining Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes:

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunches and evaluation time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the product for which the installation is being provided.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory evaluations of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.

(A) The Committee may at any time review courses for quality in instruction. The Committee shall also

investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(d) **Course advertisement.**

(1) All advertising must include the course identification.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # \_\_\_\_\_ has been approved by the Construction Industries Board Plumbing Examining Committee for \_\_\_\_\_ hours of CE credit.

(e) **Correspondence or online course approval.**

(1) Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(2) Only licensees meeting one or more of the following requirements may receive CE credit for taking an correspondence or online course:

(A) Any licensee residing outside of Oklahoma

(B) Who has an expired license that requires a CE course that is no longer available in the classroom,

(C) Any licensee who is currently incarcerated, or

(D) Any licensee who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CE class.

(3) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.

(f) **Alternate Credit accrual.**

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

[OAR Docket #09-1139; filed 6-5-09]

# Permanent Final Adoptions

## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #09-1140]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Licensing Requirements, Display of License, and Firm Name, and Bond Requirements

158:40-5-1. Apprentice requirements [AMENDED]

158:40-5-2. Journeyman requirements [AMENDED]

158:40-5-3. Contractor requirements [AMENDED]

Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals

158:40-9-3. License and registration fees and renewals [AMENDED]

### AUTHORITY:

Construction Industries Board; O.S. 59 §1000.5; and 59 O.S. § 1680 through §1697 et seq.

### DATES:

#### Comment period:

January 2, 2009 through February 2, 2009

#### Public hearing:

February 11, 2009

#### Adoption:

March 11, 2009

#### Submitted to Governor:

March 20, 2009

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March 20, 2009

#### Submitted to Senate:

March 20, 2009

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April 23, 2009

#### Legislative approval:

Failure of the legislature to disapprove these rules results in the approval on May 14, 2009

#### Final Adoption:

May 14, 2009

#### Effective:

July 11, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

"n/a"

#### INCORPORATIONS BY REFERENCE:

"n/a"

#### ANALYSIS:

The purpose of these rules is to implement 59 O.S. §1685(3) amended by laws 2008, SB45, C.4§ 7 effective November 1, 2008, for licensed electricians working in the alarm industry to provide such documents, statements or other information as may be necessary to submit to a national criminal history record check as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The purpose of these rules is to exercise the Board's authority in O.S. 59 §1000.5 Fees-Licenses and permits - Issuance and renewal to establish a system of fees to be charged for the application for licenses, for the issuance and renewal of licenses and permits, for administration of examinations and for formal project reviews under the Board's authority. These fees have not been changed since July 2002 and the cost of administration of this industry has increased over the years. The Board is asking for increase in the fees within the legislative authority already granted to the Board by the Statute. This rule will eliminate obsolete language in In 158:39-9-2(f) the language for birth date renewal is obsolete and needs to be stricken from the rules.

#### CONTACT PERSON:

Jeanne Britt, Rules Liaison, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771; facsimile: (405) 271-5254; electronic mail: jeanneb@cib.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, 2009:**

## SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

### 158:40-5-1. Apprentice requirements

(a) Apprentice electricians shall be registered with the Construction Industries Board and must be under the direct "on-the-job" supervision of a licensed journeyman or contractor when engaged in the work of an apprentice.

(b) No more than two (2) apprentice electricians shall work under the supervision of a single journeyman or contractor.

(c) Apprentice electricians shall work only under a licensed electrician who shall be responsible for the direct supervision of no more than two electrical apprentices.

(d) Apprenticeship registration is effective upon the posting of the application and evidence of such posting shall be a copy of the executed application form with proof of tender of the proper fee which may serve as evidence of registration for a period not to exceed thirty (30) days.

(e) Prior to engaging in any activity regulated by the Alarm and Locksmith Industry Act, a licensed electrical apprentice shall obtain an alarm endorsement registration from the Construction Industries Board. Such alarm endorsement registration may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical endorsement registration shall require an additional fee in accordance with 158:40-9-3. To obtain an electrical endorsement registration, a registered apprentice electrician shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(f) A registered apprentice electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the registered apprentice electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (h) herein.

(g) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (h) herein.

(h) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

- (5) Sexual abuse or exploitation of a child, including offenses involving child pornography;
- (6) Kidnapping;
- (7) Robbery;
- (8) Burglary;
- (9) Possession of stolen property;
- (10) Aggravated assault;
- (11) Aggravated battery;
- (12) Arson;
- (13) Any felony punishable by death or life imprisonment;
- (14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the infliction of physical harm on another person committed while unlawfully present on the property of another.
- (15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or
- (16) A disqualifying five year crime as set forth in subsection (i) herein.

(i) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for alarm endorsement registration by any state or the United States of any of the following:

- (1) Felony theft or grand theft;
- (2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;
- (3) A felony involving a controlled substance;
- (4) A felony involving a firearm;
- (5) Forgery or counterfeiting;
- (6) Forgery of or fraudulent use of a credit card;
- (7) A felony involving the theft of the identity of another;
- (8) A felony involving fraud or embezzlement;
- (9) Insurance or public assistance fraud;
- (10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.
- (11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;
- (12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(j) An individual who has been convicted of a disqualifying crime as set forth in subsection (h) shall be denied an alarm endorsement registration. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days

after receipt of the Administrator's written decision. An appeal of a denial of an alarm endorsement registration to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(k) Every apprentice electrician requiring an alarm endorsement registration on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement registration. A person applying for said alarm endorsement registration within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

**158:40-5-2. Journeyman requirements**

(a) Each journeyman must be licensed and employed by a licensed contractor before engaging in the work of a journeyman electrician.

(b) No journeyman shall contract to furnish labor or labor and materials.

(c) Prior to engaging in any activity regulated by the Alarm and Locksmith Industry Act, a licensed electrical journeyman shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with 158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical journeyman shall provide the following:

- (1) A recent passport style and quality photograph;
- (2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;
- (3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,
- (4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(d) A licensed journeyman electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the registered journeyman electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (f) herein.

(e) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (f) herein.

(f) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

- (1) Murder in any degree;
- (2) Voluntary manslaughter;
- (3) Rape;
- (4) Lewd conduct with a minor;
- (5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

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- (6) Kidnapping;
  - (7) Robbery;
  - (8) Burglary;
  - (9) Possession of stolen property;
  - (10) Aggravated assault;
  - (11) Aggravated battery;
  - (12) Arson;
  - (13) Any felony punishable by death or life imprisonment;
  - (14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the infliction of physical harm on another person committed while unlawfully present on the property of another.
  - (15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or
  - (16) A disqualifying five year crime as set forth in subsection (g) herein.
- (g) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:
- (1) Felony theft or grand theft;
  - (2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;
  - (3) A felony involving a controlled substance;
  - (4) A felony involving a firearm;
  - (5) Forgery or counterfeiting;
  - (6) Forgery of or fraudulent use of a credit card;
  - (7) A felony involving the theft of the identity of another;
  - (8) A felony involving fraud or embezzlement;
  - (9) Insurance or public assistance fraud;
  - (10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.
  - (11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;
  - (12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.
- (h) An individual who has been convicted of a disqualifying crime as set forth in subsection (f) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to

the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(i) Every journeyman electrician requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

### **158:40-5-3. Contractor requirements**

- (a) Each electrical firm must have a person who is currently licensed as an electrical contractor employed full time, and who shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Act and these Rules. Such contractor shall be an officer, partner or owner of that electrical firm, and shall be responsible for the work of and licensed on behalf of that electrical firm.
- (b) An electrical contractor may choose to place his license on inactive status and not be required to provide a bond and insurance. An inactive electrical contractor is a person who, because of the nature of his business, does not offer himself to the public as an electrical contractor. The inactive electrical contractor's license may be used to perform work as a journeyman electrician.
- (c) Each electrical contractor shall advise the Electrical License Unit by mail within thirty (30) days of any change in address or business relationship, structure or affiliation. Failure to so notify shall be cause for administrative sanction.
- (d) An electrical contractor shall only be permitted to represent one electrical firm.
- (e) When two or more electrical firms desire to associate on a job or project as electrical contractors, each person or electrical firm shall have an electrical contractor licensed by the Board, and each shall register with the city or town in whose jurisdiction they intend to operate.
- (f) All active electrical contractors must show proof of compliance with the Nonresident Contracting Act, Title 68 Oklahoma Statutes, Sections 1701 through 1707, by indicating on initial and annual renewal applications the following:
- (1) address of business;
  - (2) Phone number of business;
  - (3) Number of employees;
  - (4) Federal Tax Number;
  - (5) Employer's Social Security Numbers;
  - (6) Employer's account number assigned by the Employment Security commission; and
  - (7) Nonresident electrical contractor bond on file with the Oklahoma Tax Commission, if applicable.
- (g) Each active electrical contractor shall document the hours worked by each apprentice electrician and the hours worked in commercial, industrial and residential electrical work.

(h) Prior to engaging in any activity regulated by the Alarm and Locksmith Industry Act, a licensed electrical contractor shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with 158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical contractor shall provide the following:

- (1) A recent passport style and quality photograph;
- (2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;
- (3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,
- (4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(i) A licensed electrical contractor shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems.

(j) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (k) herein.

(k) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

- (1) Murder in any degree;
- (2) Voluntary manslaughter;
- (3) Rape;
- (4) Lewd conduct with a minor;
- (5) Sexual abuse or exploitation of a child, including offenses involving child pornography;
- (6) Kidnapping;
- (7) Robbery;
- (8) Burglary;
- (9) Possession of stolen property;
- (10) Aggravated assault;
- (11) Aggravated battery;
- (12) Arson;
- (13) Any felony punishable by death or life imprisonment;
- (14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the infliction of physical harm on another person committed while unlawfully present on the property of another.
- (15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or
- (16) A disqualifying five year crime as set forth in subsection (l) herein.

(l) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:

- (1) Felony theft or grand theft;
- (2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;
- (3) A felony involving a controlled substance;

- (4) A felony involving a firearm;
- (5) Forgery or counterfeiting;
- (6) Forgery of or fraudulent use of a credit card;
- (7) A felony involving the theft of the identity of another;
- (8) A felony involving fraud or embezzlement;
- (9) Insurance or public assistance fraud;
- (10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.
- (11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;
- (12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(m) An individual who has been convicted of a disqualifying crime as set forth in subsection (k) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(n) Every electrical contractor requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

**SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS**

**158:40-9-3. License and registration fees and renewals**

**(a) Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:40-9-2 shall be posted in plain view

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at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

- (1) contractors application - ~~\$25.00~~ \$30.00
- (2) initial contractor license - ~~\$200.00~~ \$300.00
- (3) renewal contractor license - ~~\$150.00~~ \$250.00
- (4) renewal contractor late fee - \$300.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - ~~\$50.00~~ \$75.00
- (8) renewal journeyman late fee - \$100.00
- (9) apprentice application - ~~\$10.00~~ \$5.00
- (10) apprentice registration - \$20.00
- (11) alarm endorsement issuance - \$75.00
- (12) alarm endorsement renewal - \$25.00

(c) **License renewal penalties.** Penalty for late license renewal for contractors and journeyman (30 days after expiration date), as provided in the Act is listed above, and upon meeting continuing education requirements listed in 158: 40-9-4.

(d) **Outstanding fines.** A license cannot be issued until the applicant has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

(e) **Duration of licenses.** All licenses shall have a duration of no longer than one year, and shall expire on the last day of the birth month of the licensee each year.

(f) **Conversion to birth date renewal proration schedule.** Beginning July 1, 2004 in the Licensing period of 2004 2005 and for a period of one year only, licenses will be prorated as follows:

- (1) ~~Journeyman license holders with a birth date in the months from July through December will pay a regular renewal fee of \$50.00 plus \$4.16667 (rounded up to the nearest whole cent) for each month (August, September, October, November, December) or 1/12 of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.~~
- (2) ~~Journeyman License holders with birth dates in the months of January 2005 through June 2005 will pay \$4.16667 (rounded up to the nearest whole cent) each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.~~
- (3) ~~Contractor license holders with a birth date in the months from July through December will pay a regular renewal fee of \$150.00 plus \$12.50 for each month (August, September, October, November, December) or 1/12~~

~~of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.~~

~~(4) Contractor License holders with birth dates in the months of January 2005 through June 2005 will pay \$12.50 for each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.~~

[OAR Docket #09-1140; filed 6-5-09]

## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #09-1142]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

158:50-1-2. Definitions [AMENDED]

Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name

158:50-5-1. License types [AMENDED]

158:50-5-2. Limitations of licenses [AMENDED]

### AUTHORITY:

Construction Industries Board; O.S. Section 1000.5 (F); 59 O.S. § 1850.1 through § 1860 et seq.

### DATES:

#### Comment period:

December 1, 2008 through January 2, 2009 during regular business hours at the office of the Administrator, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107.

#### Continued to:

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

#### Public Hearing:

March 24, 2009

#### Adoption:

March 24, 2009

#### Submitted to Governor:

March 25, 2009

#### Submitted to House:

March 25, 2009

#### Submitted to Senate:

March 25, 2009

#### Gubernatorial approval:

April 29, 2009

#### Legislative approval:

Failure of the legislature to disapprove these rules results in the approval on May 19, 2009

#### Final adoption:

May 19, 2009

#### Effective:

July 11, 2009

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions

158:50-1-2. Definitions [AMENDED]

Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name

158:50-5-1. License types [AMENDED]

158:50-5-2. Limitations of licenses [AMENDED]

**Gubernatorial approval:**

November 14, 2008

**Register publication:**

26 Ok Reg 388

**Docket number:**

08-1530

**INCORPORATIONS BY REFERENCE:**

"n/a"

**ANALYSIS:**

The rule change promotes economic development by providing an opportunity for Oklahoma refineries to find qualified personnel to staff their turn-around and expansion projects by providing an alternative verification of experience requirements. Pursuant to SB 2131 The Construction Industries Board is to promulgate rules to implement a mechanical refinery journeyman license and shall offer examinations. This rule change implements the requirements of Section 1850.17 (added by laws 2008, SB2131, Section 405, §12, emergency effective June 3, 2008 of Title 59 to offer examinations for a petroleum refinery mechanical journeyman license. The Board shall promulgate rules to implement the provisions of this section. This rule provides definitions under 158:50-1-2; and provides a petroleum refinery process piping journeyman license under 158:50-5-1.

**CONTACT PERSON:**

Jeanne Britt, Rules Liaison, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771; facsimile: (405) 271-5254; electronic mail: jeanneb@cib.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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**158:50-1-2. Definitions**

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

**"Act"** means Mechanical Licensing Act as found at 59 O.S. § 1850.1 et seq.

**"Administrator"** means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1 et seq.

**"Applicant"** means any person applying for an examination, for a license or registration, for review of plans and specifications or for a mechanical code variance from the ICC International Mechanical Code or the International Fuel Gas Code and the International Residential Code (Chapters 12 through 24) by the Construction Industries Board under the Act.

**"Associated with and responsible for"** means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

**"Board"** means the Oklahoma Construction Industries Board.

**"Bonds and Insurance Unit"** means the consolidated unit that processes bonds, insurance, and citations under the direction of the Construction Industries Board.

**"Cheating"** means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

**"Committee"** means the Committee of Mechanical Examiners.

**"Direct supervision"** means the on-the-job presence by the supervisor who must be a licensed mechanical contractor or mechanical journeyman.

**"Gas piping"** means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

**"Ground source piping"** means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

**"Humidification"**, when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

**"HVAC" or "heating, ventilation and air conditioning"** means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

**"ICC"** means the International Code Council.

**"Limited residential journeyman"** means a type and category of mechanical license that is restricted to new installations in detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this chapter.

**"Mechanical License Unit"** means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

**"Mechanical work"** means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, cooling system, mechanical refrigeration system or ventilation system or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor, provided that minor maintenance and repairs are excluded.

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**"Minor repairs and maintenance"** means minor repairs or maintenance prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the low voltage manufacturer installed controls, the vent system of fuel burning appliances or any repair or maintenance which would violate the safe operation of the equipment.

**"Petroleum refinery"** means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

**"Petroleum refinery journeyman"** means a type and category of mechanical license that is restricted to petroleum refinery process piping.

**"Petroleum refinery process piping work"** means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

**"Process"** means a series of operations performed in the making or treatment of a product.

**"Process piping"** means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial production and processing systems.

**"Reciprocity"** means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

**"Refrigeration system"** means a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

**"Sheet metal"** means the ferrous and non-ferrous ductwork and components which house and ventilates air conditioning systems, both assembled and custom fabricated.

**"Variance"** means the use of an alternative material or method of construction from that prescribed in the ICC International Mechanical Code or the International Fuel Gas Code or the International Residential Code (Chapters 12 through 24) for use at a particular location or project specified in the variance application; and

**"Variance and Appeals Board"** means the Oklahoma State Mechanical Installation Code Variance and Appeals.

## SUBCHAPTER 5. LICENSE TYPES, LIMITATIONS OF LICENSES, CONTRACTOR SPECIAL REQUIREMENTS AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

### 158:50-5-1. License types

- (a) Mechanical licenses shall be issued as journeyman, contractor or inactive contractor.
- (b) Licenses shall be issued for the following categories:
  - (1) HVAC limited or unlimited;
  - (2) Natural Gas Piping;
  - (3) Process Piping;
  - (4) Refrigeration;
  - (5) Sheet Metal;
  - (6) Ground Source Piping; and/or
  - (7) Limited Residential; and/or
  - (8) Petroleum Refinery Process Piping (journeyman only).

### 158:50-5-2. Limitations of licenses

- (a) **License duties.**
  - (1) Journeyman is a person who possesses the knowledge and skills to perform mechanical work within a category or categories without direct supervision.
  - (2) Contractor is a person who possesses the knowledge and skills of a journeyman and who is responsible, either to himself or his employer, for planning, contracting, supervising, or furnishing labor and/or materials used for mechanical work. A mechanical contractor shall only be associated with and responsible for one mechanical firm. However, a mechanical contractor may be responsible for one firm with branch offices.
    - (A) Active contractor is one who is actively performing as a contractor and who has met the bond and insurance requirements for licensure.
    - (B) Inactive contractor is one who has met all the licensing requirements of a contractor, but has chosen not to currently perform as a contractor. An inactive contractor is not required to provide bond or insurance, and will be regulated as a journeyman.
- (b) **License categories.**
  - (1) A limited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:
    - (A) any cooling product, system, or equipment including the process piping, that has a cooling capacity of no more than twenty-five (25) tons, and/or
    - (B) all heating equipment including the process piping that have a heat input of no more than 500,000 British Thermal Units per hour per appliance.
  - (2) A limited residential journeyman license entitles the licensee to install:
    - (A) 5-ton or less cooling systems and/or
    - (B) 150,000 British Thermal Units per hour or less heating systems. Installations shall include complete new systems for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress. Accessory appurtenances (such as humidifiers and filtering systems), kitchen vent hoods, exhaust fans and clothes dryer vent exhausts for such dwellings shall not be prohibited to be

installed by the holder of this category. Such installations shall not include any welding, soldering or final connection of refrigerant lines or final connection of any electrical wiring permitted to be installed in accordance with Oklahoma statutes.

(3) An unlimited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:

(A) any cooling product, system, or equipment, including the process piping, and/or

(B) heating equipment, including the process piping.

(4) A natural gas piping license entitles the licensee to install, alter, modify, service, maintain, or repair all natural gas piping.

(5) A process piping license entitles the licensee to install, alter, modify, service, maintain, or repair all process piping.

(6) A refrigeration license entitles the licensee to install, alter, modify, service, maintain, or repair refrigeration products, systems, or equipment, including the process piping.

(7) A sheet metal license entitles the licensee to install, alter, modify, service, maintain, or repair all ferrous and nonferrous duct systems.

(8) A ground source piping license entitles the licensee to install, alter, modify, service, maintain or repair all piping outside a structure for a ground source (earth or water) loop pipe.

(9) A petroleum refinery journeyman license entitles the licensee to install, alter, modify, service, maintain, or repair all petroleum refinery process piping and said license is limited to petroleum refinery process piping work only. A petroleum refinery journeyman shall be under the direction and supervision of a licensed unlimited mechanical contractor or a licensed process piping mechanical contractor.

[OAR Docket #09-1142; filed 6-5-09]

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS**

[OAR Docket #09-1141]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

158:50-1-4. Adopted references and standard of workmanship [AMENDED]

Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration

158:50-9-2. License and registration fees and renewals [AMENDED]

**AUTHORITY:**

Construction Industries Board; O.S. Section 1000.5 (F); 59 O.S. § 1850.1 through § 1860 et seq.

**DATES:**

**Comment period:**

December 1, 2008 through January 2, 2009 during regular business hours at the office of the Administrator, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107.

**Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

**Public Hearing:**

February 11, 2009

**Adoption:**

March 11, 2009

**Submitted to Governor:**

March 20, 2009

**Submitted to House:**

March 20, 2009

**Submitted to Senate:**

March 20, 2009

**Gubernatorial approval:**

April 23, 2009

**Legislative approval:**

Failure of the legislature to disapprove these rules results in the approval on May 14, 2009

**Final adoption:**

May 14, 2009

**Effective:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

"n/a"

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Effective July 1, 2009, and thereafter, incorporates the International Mechanical Code/2009, International Fuel Gas Code/2009, and the International Residential Code/2009, Chapters 12 through 24) as the minimum standard for mechanical work in Oklahoma.

**Incorporating rules:**

158:50-1-4

**Availability:**

Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 271-2771. Office hours are from 8:00 a.m., to 4:30 p.m., Monday through Friday.

**ANALYSIS:**

This rule change implements the adopted 2009 code standards incorporated by the International Mechanical Code, the International Fuel Gas Code, and the International Residential code (Chapters 12 through 24) as the minimum standard for mechanical work in Oklahoma. The purpose of these rules is to exercise the Board's authority in O.S. 59 §1000.5 Fees- Licenses and permits - Issuance and renewal to establish a system of fees to be charged for the application for licenses, for the issuance and renewal of licenses and permits. These fees have not been changed since July 2002 and the cost of administration of this industry has increased over the years. The Board is asking for increase in the fees within the legislative authority already granted to the Board by the Statute. This will generate revenue for the administration of the laws under the jurisdiction of CIB. These rules will eliminate birth date renewal obsolete language in Subchapter 9. 158:50-9-2. (c).

**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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

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## 158:50-1-4. Adopted references and standard of workmanship

Effective July 1, 2009, and thereafter, ~~The the~~ Construction Industries Board hereby incorporates the International Mechanical Code/20062009, International Fuel Gas Code20062009, and the International Residential Code/20062009, Chapters 12 through 24) as the minimum standard for mechanical work in Oklahoma.

## SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

### 158:50-9-2. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:50-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

- (1) contractors application - ~~\$25.00~~\$30.00
- (2) initial contractor license - ~~\$200.00~~\$300.00
- (3) renewal contractor license - ~~\$150.00~~\$250.00
- (4) renewal contractor late fee - \$300.00
- (5) journeyman application - \$25.00
- (6) initial journeyman license - \$50.00
- (7) renewal journeyman license - ~~\$50.00~~ \$75.00
- (8) renewal journeyman late fee - \$100.00
- (9) apprentice application - ~~\$10.00~~ \$5.00
- (10) apprentice registration - \$20.00

(c) **Conversion to birth date renewal proration schedule.** Beginning July 1, 2004 in the Licensing period of 2004 2005 and for a period of one year only, licenses will be prorated as follows:

- (1) Journeymen license holders with a birth date in the months from July through December will pay a regular renewal fee of \$50.00 plus \$4.16667 (rounded up to the nearest whole cent) for each month (August, September, October, November, December) or 1/12 of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.

(2) Journeymen License holders with birth dates in the months of January 2005 through June 2005 will pay \$4.16667 (rounded up to the nearest whole cent) each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.

(3) Contractor license holders with a birth date in the months from July through December will pay a regular renewal fee of \$150.00 plus \$12.50 for each month (August, September, October, November, December) or 1/12 of a full renewal fee until the birth month of the licensee. This period of prorated fees will extend the duration of the license until the birth month of the license holder in the year of 2005.

(4) Contractor License holders with birth dates in the months of January 2005 through June 2005 will pay \$12.50 for each month or 1/12 of full renewal, until their next birth month (January, February, March, April, May, June) at which time they will pay a full fee to renew their license for a period of one year.

[OAR Docket #09-1141; filed 6-5-09]

## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #09-1143]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, ~~Certification~~Certification and Continuing Education for Inspectors, and Continuing Education Courses  
158:60-5-4. Fees, certification and continuing education for inspectors

### AUTHORITY:

Construction Industries Board; O.S. Title 59. O.S. Sections 1031 through 1044; O.S. §1032. Rules - Promulgation by Construction Industries Board.

### DATES:

#### Comment period:

January 2, 2009 through February 2, 2009

#### Public hearing:

February 11, 2009

#### Adoption:

March 11, 2009

#### Submitted to Governor:

March 20, 2009

#### Submitted to House:

March 20, 2009

#### Submitted to Senate:

March 20, 2009

#### Gubernatorial approval:

April 23, 2009

#### Legislative approval:

Failure of the legislature to disapprove these rules results in the approval on May 14, 2009

#### Final Adoption:

May 14, 2009

#### Effective:

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

"n/a"

**INCORPORATIONS BY REFERENCE:**

"n/a"

**ANALYSIS:**

This rule change implements the requirements of the committee and rules adopted by the Board shall provide requirements for continuing education for building and construction inspectors. The five hours continuing education requirement will be changed to six hours continuing education.

**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, 2009:**

**SUBCHAPTER 5. CATEGORIES AND CLASSIFICATIONS OF INSPECTOR LICENSES, QUALIFICATIONS FOR INSPECTOR LICENSURE, LICENSE REQUIREMENTS FOR INSPECTORS, FEES, CERTIFICATION AND CONTINUING EDUCATION FOR INSPECTORS, AND CONTINUING EDUCATION COURSES**

**158:60-5-4. Fees, certification and continuing education for inspectors**

Fees, certification and continuing education requirements for inspectors are as follows:

- (1) Building inspectors (both unlimited and residential licenses):
  - (A) \$35.00 Fee for license and renewal;
  - (B) \$70.00 Late fee; and
  - (C) Certification or exam - ICC, or Construction Industries Inspector's Exam.
  - (D) C.E.U. - ~~5 (effective for license year beginning July 1, 1995)-6 hours.~~
- (2) Electrical inspectors (both unlimited and residential licenses):
  - (A) \$35.00 Fee for license and renewal;
  - (B) \$70.00 Late fees for renewal license; and
  - (C) Certification or exam - ICC, or Construction Industries Inspector's Exam.
  - (D) C.E.U. - ~~5 (effective for license year beginning July 1, 1995)-6 hours.~~
- (3) Mechanical inspectors (both unlimited and residential licenses):
  - (A) \$35.00 Fee for license and renewal;
  - (B) \$70.00 late fees for renewal license; and
  - (C) Certification or exam - ICC, or Construction Industries Inspector's Exam.
  - (D) C.E.U. - ~~5 (effective for license year beginning July 1, 1995)-6 hours.~~
- (4) Plumbing inspectors (both unlimited and residential licenses):

- (A) \$35.00 Fee for license and renewal;
- (B) \$70.00 late fees for renewal license; and
- (C) Certification or exam - ICC, or Construction Industries Inspector's Exam.
- (D) C.E.U. - ~~5 (effective for license year beginning July 1, 1995)-6 hours.~~

*[OAR Docket #09-1143; filed 6-5-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 70. HOME INSPECTION  
INDUSTRY REGULATIONS**

*[OAR Docket #09-1144]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions [NEW]
  - 158:70-1-1. Purpose [NEW]
  - 158:70-1-2. Definitions [NEW]
  - 158:70-1-3. Standards of Workmanship and Practice [NEW]
- Subchapter 3. Procedures of the Committee [NEW]
  - 158:70-3-1 Procedures of the Committee [NEW]
- Subchapter 5. License Requirements, License Fees, License Period, Re-examination, Display and Insurance [NEW]
  - 158:70-5-1 Home Inspection License Requirements [NEW]
  - 158:70-5-2 License fees, license period, re-examination, display and insurance requirements [NEW]
- Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity [NEW]
  - 158:70-9-1 Qualifications and examination applications [NEW]
  - 158:70-9-2 Examinations [NEW]
  - 158:70-9-3 Course approval requirements [NEW]
  - 158:70-9-4 Instructor qualifications [NEW]
  - 158:70-9-5 Continuing education [NEW]
  - 158:70-9-6 Denied application appeal [NEW]
  - 158:70-9-7 Submission of records [NEW]
  - 158:70-9-8 Substantial compliance and reciprocity [NEW]
- Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts [NEW]
  - 158:70-11-1 License revocation and suspension [NEW]
  - 158:70-11-2 Additional prohibited acts [NEW]

**AUTHORITY:**

Construction Industries Board Act, 59 O.S. §§ 1000.2 and 1000.4; Home Inspection Licensing Act, 59 O.S. §§ 858-622, 858-624, 858-626, 858-627, 858-629, 858-630, 858-631, 858-633 and 858-634.

**DATES:**

**Comment period:**

January 10, 2009 through March 10, 2009

**Public hearing:**

March 24, 2009

**Adoption:**

March 24, 2009

**Submitted to Governor:**

March 26, 2009

**Submitted to House:**

March 26, 2009

**Submitted to Senate:**

March 26, 2009

**Gubernatorial approval:**

April 29, 2009

**Legislative approval:**

Failure of the legislature to disapprove these rules results in the approval on May 20, 2009

# Permanent Final Adoptions

## Final Adoption:

May 20, 2009

## Effective:

July 11, 2009

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

- Subchapter 1. General Provisions [NEW]
- 158:70-1-1. Purpose [NEW]
- 158:70-1-2. Definitions [NEW]
- 158:70-1-3. Standards of Workmanship and Practice [NEW]
- Subchapter 3. Procedures of the Committee [NEW]
- 158:70-3-1 Procedures of the Committee [NEW]
- Subchapter 5. License Requirements, License Fees, License Period, Re-examination, Display and Insurance [NEW]
- 158:70-5-1 Home Inspection License Requirements [NEW]
- 158:70-5-2 License fees, license period, re-examination, display and insurance requirements [NEW]
- Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity [NEW]
- 158:70-9-1 Qualifications and examination applications [NEW]
- 158:70-9-2 Examinations [NEW]
- 158:70-9-3 Course approval requirements [NEW]
- 158:70-9-4 Instructor qualifications [NEW]
- 158:70-9-5 Continuing education [NEW]
- 158:70-9-6 Denied application appeal [NEW]
- 158:70-9-7 Submission of records [NEW]
- 158:70-9-8 Substantial compliance and reciprocity [NEW]
- Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts [NEW]
- 158:70-11-1 License revocation and suspension [NEW]
- 158:70-11-2 Additional prohibited acts [NEW]

### Gubernatorial approval:

November 14, 2008

### Register publication:

26 Ok Reg 390

### Docket number:

08-1531

### INCORPORATIONS BY REFERENCE:

"n/a"

### ANALYSIS:

The rules herein are identical in substance to the existing rules regulating the Home Inspection Industry, which were promulgated by the Oklahoma State Department of Health, the agency which regulated the Home Inspection Industry and housed the Committee of Inspector Examiners prior to the enactment of SB2131. Rules 158:70-1-1; 158:70-1-2; 158:70-1-3 are general provisions which state the purpose of the rules, define material regulatory terms and establish the standards of workmanship and practice, respectively. Rule 158: 70-3-1 establishes the procedures of the Committee of Home Inspector Examiners when conducting business. Rules 158: 70-5-1 and 158: 70-5-2 set forth home inspection license requirements and license fees, periods, re-examination procedures, license display and insurance requirements, respectively.

Rules 158: 70-9-1, 158: 70-9-2, 158: 70-9-3, 158: 70-9-4, 158: 70-9-5, 158: 70-9-6, 158: 70-9-7, and 158: 70-9-8 are identical to the State Department of Health rules governing licensed home inspectors with regard to qualifications and examination applications, examinations, course approval requirements, course instructor requirements, continuing education, denied application appeals, submission of records, substantial compliance and reciprocity. Rules 158: 70-11-1 and 158: 70-11-2 are the promulgation of the State Department of Health rules governing license and suspension proceedings and enumerating additional prohibited acts.

The fees and administrative costs established in these rules were previously promulgated by permanent rules and justified by the Oklahoma State Department of Health with the assistance of the Committee of Home Inspector Examiners. The Construction Industries Board will evaluate said fees and costs in the context of its administration of the Home Inspection Licensing Act and propose changes if necessary in a subsequent permanent rule making proceeding. For the term of these rules, the Construction Industries Board is satisfied that the current fees and costs set forth herein are adequate to administer the Home Inspection Licensing Act for the interim.

## 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 158:70-1-1. Purpose

The rules in this Chapter implement the Home Inspection Licensing Act, Title 59 O.S. 2001, § 858-621 et seq.

### 158:70-1-2. Definitions

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

"Act" means the Home Inspection Licensing Act, found at 59 O.S. § 858-621 et seq.

"Alarm systems" means warning devices, installed or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

"Applicant" means any person applying for an examination for a license or registration under the Act.

"Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

"Board" means the Construction Industries Board.

"Certificates of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Client" means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.

"Committee" means the Committee of Home Inspector Examiners established by the Home Inspector Licensing Act, 59 O.S. 858-624.

"Component" means a part of a system.

**"Continuing education"** means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.

**"Continuing education verification form"** means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.

**"Cosmetic"** means a condition that affects appearance but not the manner in which the system or component functions.

**"Decorative"** means ornamental; not required for the operation of the essential systems and components of a home.

**"Defect"** means a condition, malfunction or problem, which is not decorative or cosmetic, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.

**"Department"** means the Construction Industries Board.

**"Describe"** means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.

**"Dismantle"** means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.

**"Engineering service"** means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

**"Further evaluation"** means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.

**"Home" or "residence"** means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.

**"Home inspection" or "inspection"** means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended. [59:858-622(5)]

**"Home inspection license unit"** means the staff and administrative support unit to the Committee of Home Inspector Examiners.

**"Home inspection report"** means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.

**"Home inspector"** means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

**"Inspect"** means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.

**"Installed"** means attached such that removal requires tools.

**"Instructor"** means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.

**"Normal working order"** means the system or component functions without defect for the primary purpose and manner for which it was designed.

**"Normal operating controls"** means devices such as thermostats, switches or valves intended to be operated by the homeowner.

**"Practice of Architecture"** means that practice defined in section 46.3 of Title 59 and exempt from the Home Inspector's Licensing Act under Title 59 O.S.858-623(B)(2).

**"Professional craftsman"** means a person who can demonstrate by certification, education or experience, specialized skill in the construction or repair of homes, duplexes, apartment buildings or similar structures. Persons demonstrating specialized skill by experience alone must be able to show that they have been actively engaged in their profession, trade or craft for at least one (1) year prior to the performance of a single item inspection.

**"Provider"** means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved qualifying and continuing education to home inspectors.

**"Readily accessible"** means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

**"Readily openable access panel"** means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.

**"Reciprocity agreement"** means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

**"Recreational facilities"** means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.

**"Report"** means to communicate in writing.

**"Roof drainage systems"** means components used to carry water off a roof and away from a building.

**"Shut down"** means a state in which a system or component cannot be operated by normal operating controls.

**"Solid fuel burning appliances"** means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

**"Structural component"** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

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"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.

"Under-floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the floor.

"Unsafe" means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

"Wiring methods" means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

## **158:70-1-3. Standards of workmanship and practice**

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

(1) These standards of practice are the minimum levels of inspection practice required of inspectors for the components and systems identified in these rules. Home inspections performed in accordance with these standards of practice are intended to provide the client with information regarding the condition of the systems and components at the time of the inspection.

(2) The inspector shall be governed by the following general requirements:

(A) The inspector shall inspect all readily accessible installed systems and components listed in these standards of practice.

(B) The inspector shall complete a written inspection report in accordance with these standards and submit the report to the client within an agreed upon time frame.

(C) The inspector shall identify in any written report the client, the inspector who performed the inspection by name and license number and the address of the inspected property.

(D) The inspector shall report:

(i) those systems and components inspected, which in the professional opinion of the inspector, are in normal working order;

(ii) those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order and the reason, if not self evident;

(iii) those systems and components inspected which, in the professional opinion of the inspector, could impair the safety of the occupants or client and the reason, if not self evident;

(iv) the inspector's recommendations to have corrected, further evaluated or monitored any reported condition or defect; and,

(v) any systems and components designated for inspection in these standards, which were present at the time of the Home Inspection but were not inspected and the reason they were not inspected.

(3) These standards of practice are not intended to limit inspectors from:

(A) including other inspection services or inspecting other systems or components in addition to those required by these Standards;

(B) providing a higher level of inspection performance than required by these Standards;

(C) reporting other observations or conditions in addition to those required by these Standards; or,

(D) excluding systems and components from the inspection, if requested by the client in writing.

(4) Beginning July 1, 2006 all home inspectors shall maintain a log or record of all home inspections performed, for a minimum period of five years from the date of inspection. The log or record shall include the name of the client, the address of the property, and the date of the inspection. The home inspector shall maintain a copy of all home inspections completed within the past 36 months. The log or record and inspection reports may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon request of an authorized representative of the Construction Industries Board.

(5) A home inspector who visually examines any portion of a residential unit that is part of a real property consisting of more than four (4) dwelling units, shall advise, in writing, the person requesting the visual examination that the visual examination being conducted by the home inspector is not governed by the Act and these rules.

### **(b) General limitations and exclusions.**

(1) The inspector is not required to perform any action or make any determination not specifically stated in these Standards of Practice.

(2) Inspections performed in accordance with these standards are not required to be technically exhaustive, will not identify concealed conditions or latent defects and are only applicable to buildings with four or fewer dwelling units and their garages, both attached and detached, or carports.

(3) The inspector is not required to:

(A) perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority;

(B) determine the condition of systems or components which are not readily accessible;

(C) determine the remaining life of any system or component;

(D) determine the strength, adequacy, effectiveness, efficiency or insurability of any system or component;

(E) determine the causes of any condition or defect;

- (F) determine the methods or materials for repair or correction of any defect;
- (G) determine future conditions including, but not limited to, failure of systems and components;
- (H) determine the suitability of the property for any specialized use or compliance with any regulatory requirements other than this Chapter;
- (I) determine the presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms, mold, mildew, fungi, or diseases harmful to humans;
- (J) determine the presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water, or air;
- (K) determine the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances;
- (L) determine the operating costs of any system or component;
- (M) determine the acoustical properties of any system or component;
- (N) perform engineering or architectural services or perform work in any trade or professional service other than home inspections;
- (O) provide warranties or guarantees of any kind;
- (P) operate any system or component which is shut down or otherwise inoperable or turn on any utility services;
- (Q) operate any system or component which does not respond to normal operating controls, or shut-off valves;
- (R) enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or may damage the property or its systems or components;
- (S) enter the under-floor crawl spaces, attics or any area which, in the opinion of the inspector, is not readily accessible;
- (T) inspect or determine the integrity of underground systems or components, including, but not limited to, main drain lines connecting to sewers, water lines, gas lines, electrical lines and underground storage tanks or other underground indications of their presence whether abandoned or active;
- (U) inspect systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements and areas in multi-unit housing, such as condominium properties or cooperative housing;
- (V) move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris;
- (W) dismantle any system or component, except as explicitly required by these rules; or,

- (X) light any standing gas pilot light that does not have a spark-ignitor, including but not limited to heating systems, water heaters and fireplaces; or,
  - (Y) determine the cost to correct any defect or provide cost estimates.
- (4) The inspector shall not:
- (A) offer or perform any act or service contrary to law;
  - (B) determine or report on the market value of the property or its marketability;
  - (C) report on the advisability of the purchase of the property; or,
  - (D) advertise or solicit to perform repair services on the inspected home for a period of one (1) year from the date of the inspection.
- (c) **Structural system inspection requirements.**
- (1) The inspector shall inspect:
- (A) the foundation structure including slabs, piers, columns, posts, stem walls;
  - (B) the floor structure including beams, girders, joists, trusses, sill plates, blocking, bracing, drilling, notching and sub floors;
  - (C) the wall structure;
  - (D) the roof structure including rafters, trusses, sheathing, blocking, bracing, drilling, notching and fire stops;
  - (E) the ceiling structure including joists, trusses, blocking, bracing, drilling, notching and fire stops at ceiling penetrations; and,
  - (F) the crawlspace, basement and attic moisture conditions and indicators of harmful water penetration or condensation on structural components.
- (2) The inspector is required to:
- (A) describe the foundation, floor structure, roof structure, ceiling structure and wall structure;
  - (B) describe indicators of foundation or structural movement;
  - (C) enter the crawlspace and attic to determine the general condition of the components;
  - (D) report the method used to observe the crawlspace and attic if the inspector did not enter; and,
  - (E) probe structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required where no deterioration is visible.
- (3) The inspector is not required to:
- (A) enter a crawlspace or any foundation area where the headroom is less than 18 inches, the access opening is less than 18 inches by 24 inches, where the area is excessively wet, or where the inspector reasonably determines the conditions or materials are hazardous to the safety of the inspector;
  - (B) enter an attic space where head room is less than 30 inches, the access opening is less than 18 inches wide by 24 inches long, or where the inspector reasonably determines conditions or materials are hazardous to the safety of the inspector; or

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- (C) perform any invasive or destructive inspection.
- (d) **Exterior inspection requirements.**
- (1) The inspector shall inspect:
- (A) the exterior wall covering, trim, flashings, caulking and protective coatings;
  - (B) all exterior doors and locking devices;
  - (C) overhead garage doors and garage door openers including safety mechanisms;
  - (D) storm windows and doors;
  - (E) attached decks/patios, balconies, stoops, steps, porches, and their associated railings;
  - (F) eaves, soffits and fascias;
  - (G) driveways and walkways leading to dwelling entrances;
  - (H) vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to have an adverse affect on the structure; and,
  - (I) the primary garage or carport.
- (2) The inspector shall describe:
- (A) the exterior wall covering;
  - (B) attached decks/patios and balconies;
  - (C) driveways; and,
  - (D) walkways.
- (3) The inspector is not required to inspect:
- (A) screening, shutters, awnings, and similar seasonal accessories;
  - (B) fences;
  - (C) geotechnical or hydrological conditions;
  - (D) recreational facilities;
  - (E) detached structures except the primary garage or carport;
  - (F) seawalls, break-walls, and docks; or,
  - (G) erosion control and earth stabilization measures.
- (e) **Roof system inspection requirements.**
- (1) The inspector shall inspect the:
- (A) roof covering;
  - (B) roof drainage systems;
  - (C) flashings;
  - (D) skylights;
  - (E) chimneys;
  - (F) attic ventilation covers; and,
  - (G) other roof penetrations.
- (2) The inspector shall describe:
- (A) the roof covering;
  - (B) The inspector shall report;
  - (C) the number of layers of roof covering;
  - (D) asphalt/composition shingles over wood shingles; and,
  - (E) the methods used to inspect the roof.
- (3) The inspector is not required to inspect:
- (A) the interiors of flues or chimneys;
  - (B) antennae; or,
  - (C) other installed accessories.
- (f) **Plumbing system inspection requirements.**
- (1) The inspector shall inspect:
- (A) the interior water supply and distribution systems and components;
  - (B) the connections, flow and drainage of fixtures, and fittings at bathtubs, showers, sinks, toilets and the exterior hose bibs immediately adjacent to the structure;
  - (C) the clothes washing machine faucets and drains;
  - (D) drain, waste and vent systems and components;
  - (E) the shower and bathtub enclosure surfaces;
  - (F) the water heating equipment, safety devices/valves, clearances, vent systems, flues and chimneys, gas supply piping and gas shut off valves;
  - (G) the fuel storage and/or fuel distribution systems; and,
  - (H) the drainage sumps, sump pumps and related piping.
- (2) The Inspector shall describe:
- (A) water supply piping materials;
  - (B) drain, waste, and vent piping materials;
  - (C) the water heating equipment and the energy sources; and,
  - (D) the location of the main water shut-off, main fuel shut-off and the house sewer cleanout.
- (3) The inspector is not required to:
- (A) inspect the interiors of flues or chimneys, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems,
  - (B) determine the quantity or quality of the water supply;
  - (C) determine whether water supply and waste disposal are public or private;
  - (D) operate safety valves, shut-off valves or washing machine hose connections, if installed appliances are present; or,
  - (E) use technically exhaustive techniques to determine the water tightness or integrity of shower pans or enclosures.
- (g) **Electrical system inspection requirements.**
- (1) Except as provided in 158:70-1-3(b), the Inspector shall inspect:
- (A) The service drop;
  - (B) the service entrance conductors, cables, and raceways;
  - (C) the service equipment and main disconnects;
  - (D) the service grounding;
  - (E) the interior components of service panels and sub panels by removing the panel dead front covers;
  - (F) the branch circuit conductors, over current protection devices and the compatibility of the conductors with the device;
  - (G) conduit, wiring and splicing including the basement, crawl space and attic;
  - (H) interior and exterior installed lighting fixtures, switches and ceiling fans;
  - (I) receptacles including polarity and grounding, ground fault circuit interrupters and arc fault circuit interrupters; and,

- (J) exterior electrical components that provide service to a qualifying garage or carport.
  - (2) The Inspector shall describe:
    - (A) the amperage and voltage rating of the service;
    - (B) the wiring methods;
    - (C) the location of main disconnect(s), distribution panels and sub panels;
    - (D) the presence of solid conductor aluminum branch circuit wiring; and,
    - (E) the absence of smoke detectors.
  - (3) The inspector is not required to:
    - (A) inspect remote control devices unless the device is the only control device, alarm systems and components, low voltage wiring systems and components or ancillary wiring systems and components not a part of the primary electrical power distribution system;
    - (B) measure amperage, voltage/voltage drop, or impedance;
    - (C) insert any tool, probe or testing device inside panels or dismantle any electrical device or control other than to remove the dead front covers of the main and sub panels; or,
    - (D) test or operate any over current protection device except ground fault and arc fault circuit interrupters.
- (h) **Heating, Air conditioning and distribution system inspection requirements.**
- (1) **Heating systems.**
    - (A) The inspector shall open readily openable access panels
    - (B) The inspector shall inspect:
      - (i) the installed heating equipment including backup heating devices;
      - (ii) controls;
      - (iii) heating operation;
      - (iv) burners and burner chambers in fuel fired heating systems;
      - (v) combustion air provisions;
      - (vi) gas supply piping and shut off valve;
      - (vii) electrical supply provisions and disconnects;
      - (viii) clearances;
      - (ix) vent systems, flues, and chimneys; and,
      - (x) bathroom supplemental heating appliances.
    - (C) The inspector shall describe the heating methods by their distinguishing characteristics and the energy sources.
    - (D) The inspector is not required to:
      - (i) inspect the interiors of flues or chimneys, humidifiers or dehumidifiers, solar space heating systems, and heat exchangers;
      - (ii) measure amperage of electric heating elements.
  - (2) **Air conditioning systems.**
    - (A) The inspector shall open readily openable access panels.
    - (B) The inspector shall inspect:
      - (i) installed cooling equipment;
      - (ii) cooling operation;
      - (iii) condensate disposal provisions;
      - (iv) the electrical supply provisions and disconnect; and,
      - (v) the refrigerant lines.
    - (C) The inspector shall describe the cooling methods by their distinguishing characteristics and the energy sources.
    - (D) The inspector is not required to:
      - (i) verify sizing or component matching; or,
      - (ii) operate equipment when outdoor temperatures may cause damage to the equipment.
  - (3) **Heat and air conditioning distribution systems.**
    - (A) The inspector shall inspect:
      - (i) plenums and ducts with associated supports, insulation, supply registers and return grills;
      - (ii) radiators and piping;
      - (iii) filters; and,
      - (iv) main air handlers fans and blowers.
    - (B) The inspector shall describe the type of conditioned air distribution system.
    - (C) The inspector is not required to: inspect electronic air filters, heat reclamation equipment or dampers;
      - (2) determine duct leakage or calculate duct sizing; or,
      - (3) determine the uniformity, adequacy, or distribution balance of the heat or cooling supply to habitable rooms.
  - (i) **Interior inspection requirements.**
    - (1) The inspector shall inspect:
      - (A) walls, ceilings and floors of the dwelling and garage;
      - (B) steps, stairways, balconies and railings;
      - (C) doors and windows including operation, glazing and thermal pane seals;
      - (D) installed cabinets and countertops; and,
      - (E) indicators of harmful water penetration or condensation on interior and structural components.
    - (2) The inspector shall describe the walls, ceilings and floors.
    - (3) The inspector is not required to inspect:
      - (A) paint, wallpaper, and other finish treatments;
      - (B) carpeting and other floor coverings;
      - (C) window treatments;
      - (D) the operation of interior door locks, latches and devices; or,
      - (E) recreational facilities.
  - (j) **Insulation and ventilation inspection requirements.**
    - (1) The inspector shall inspect:
      - (A) insulation and vapor retarders/barriers in unfinished spaces,
      - (B) ventilation of attics and foundation areas,
      - (C) mechanical ventilation systems
      - (D) the clothes dryer exhaust system.
    - (2) The inspector shall describe:
      - (A) the insulation and vapor retarders or barriers in unfinished spaces; and,

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- (B) the absence of insulation in unfinished spaces at conditioned surfaces.
- (3) The inspector is not required to:
- (A) disturb insulation or vapor retarders or barriers;
  - (B) operate powered attic vents; or,
  - (C) determine indoor air quality.
- (k) **Appliance inspection requirements.**
- (1) The inspector shall inspect the:
- (A) Food waste disposal;
  - (B) range/stove, regardless of whether it is an installed or free standing appliance;
  - (C) cook top;
  - (D) oven(s);
  - (E) dishwasher;
  - (F) ventilation equipment or range hoods;
  - (G) installed microwave;
  - (H) trash compactor; and,
  - (I) gas appliance connectors and shut off valves.
- (2) The inspector shall describe the range/stove, cook top and oven(s) by the energy source.
- (3) The inspector is not required to:
- (A) operate appliances in all modes or self cleaning cycles; or,
  - (B) inspect clocks, timers, thermostats or household appliances not listed in these standards.
- (l) **Fireplaces and solid fuel burning appliances inspection requirements.**
- (1) The inspector shall inspect the:
- (A) hearth and hearth extension;
  - (B) damper;
  - (C) gas supply; and,
  - (D) the firebox, vent systems, flues and chimneys.
- (2) The inspector shall describe:
- (A) the fireplaces;
  - (B) solid fuel burning appliances; and,
  - (C) chimneys.
- (3) The inspector is not required to:
- (A) inspect the interiors of flues or chimneys, the fire screens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, the heat distribution assists whether gravity controlled or fan assisted or free standing solid fuel burning appliances;
  - (B) ignite or extinguish fires;
  - (C) determine draft characteristics; and,
  - (D) move fireplace inserts, stoves or firebox contents.

### **SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE**

#### **158:70-3-1. Procedures of the Committee.**

(a) Committee meetings are generally, and unless otherwise stated by the Committee, held at the offices of the Construction Industries Board at 2401 N.W. 23<sup>rd</sup> Street, Suite 5, Oklahoma City, Oklahoma 73107. The committee shall meet as often as is

necessary, but at least once each quarter. Meetings of the committee will comply with the Oklahoma Open Meetings Act.

(b) The Committee shall provide oversight to the overall licensure examination process; shall set minimum standards for certifying qualified applicants; may write examinations; may recommend regulations to the Administrator and to the Board; and, shall act as advisor to the Administrator on home inspection licensing and standards enforcement matters.

(c) The only formal procedure available to the public is to apply for a home inspection license. Application for a home inspection license shall be accomplished by filling out an application for examination on a form provided by the committee.

(d) The public may communicate with the Committee in person or by mail through the Agency. The Agency will make available all forms and instructions used by the Committee, rules, and all other written statements of policy or interpretations, all final orders, decisions and opinions. Copies of same may be provided in accordance with OAC 158:1-3-5.

### **SUBCHAPTER 5. LICENSE REQUIREMENTS, LICENSE FEES, LICENSE PERIOD, RE-EXAMINATION, DISPLAY AND INSURANCE**

#### **158:70-5-1. Home inspection license requirements**

No person, on behalf of himself or a firm or company engaged in home inspection work shall engage or offer to engage in, by advertisement or otherwise, any home inspection work who does not possess a valid and appropriate license from the Agency, unless otherwise exempt by law.

#### **158:70-5-2. License fees, license period, re-examination, display, and insurance requirements**

(a) **Initial license fees.** The following fees apply to home inspection industry licensure:

- (1) Approval fees for schools, instructors and home inspection organizations - \$100.00
- (2) Approval fees for educational course content - \$50.00
- (3) Application for license - \$30.00
- (4) Licensure for reciprocity - \$50.00
- (5) Examination fee - \$200.00
- (6) License fee - \$250.00
- (7) License renewal - \$150.00
- (8) License reactivation - \$50.00

(b) **License period.**

(1) A license shall expire twelve months after issuance, and may be renewed without penalty during the month following expiration.

(2) A license which has been expired for more than one (1) year shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and other licensure requirements.

(c) **Re-examination.** Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(d) **License display.** The state issued license number shall be placed on all letterhead stationery, business cards, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued license number.

(e) **Personal license display.** All persons subject to these rules shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Insurance requirements.** Each licensee must maintain insurance coverage and furnish and maintain in effect a certificate of insurance therefore which indicates that the licensee has a comprehensive general liability policy. Limits of liability are to be no less than \$50,000.00 combined single limit for bodily injury and property damage. The certificate of insurance shall provide for thirty (30) days notice to the Home Inspection License Unit, prior to cancellation or material alteration of the required insurance.

**SUBCHAPTER 9. EXAMINATION  
APPLICATIONS, EXAMINATIONS, COURSE  
APPROVAL REQUIREMENTS, INSTRUCTOR  
REQUIREMENTS, CONTINUING EDUCATION,  
DENIED APPLICATION APPEAL, SUBMISSION  
OF RECORDS, SUBSTANTIAL COMPLIANCE  
AND RECIPROCITY**

**158:70-9-1. Qualifications and examination applications**

Applicants for home inspection license examinations must be eighteen (18) years of age or older and be of good moral character, and every application must be accompanied by evidence of successful completion of fifty (50) clock hours of home inspection training that is approved pursuant to 158:70-9-3, or its equivalent.

**158:70-9-2. Examinations**

(a) Home inspection license examinations may include, without limitation, written questions, consisting of open book, closed book and problems, based on current national standards, and other related questions.

(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.

(c) Each applicant shall pay the examination fee before undertaking any examination. Reexamination fees shall be the same as the initial examination fees.

(d) Unless authorized by the Committee, only examinees shall be permitted in the examination area.

(e) Applicants shall present positive identification before undertaking an examination.

(f) Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(g) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Committee shall determine

when the applicant may retake the exam, which time shall be no fewer than three hundred sixty-five (365) days.

**158:70-9-3. Course approval requirements**

(a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Committee in accordance with Section 158:70-5-2.

(b) Applications shall include the following information:

(1) Name and address of the provider;

(2) Contact person and his or her address, telephone number and fax number;

(3) The location of the courses or programs;

(4) The number and type of education credit hours requested for each course;

(5) Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;

(6) If a prior approved course has substantially changed, a summarization of these records;

(7) The names and qualifications of each instructor who is qualified in accordance with Section 158:70-9-4, and

(8) Information as to how the proposed course meets the standard provided in Section 158:70-9-5-(b).

(c) The Agency may automatically accept without further review, courses pre-approved by the Committee.

(d) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the committee before it is advertised or held.

(f) The Committee may decline to renew, or revoke the approval of any qualifying course or any instructor or entity previously approved to conduct a pre-licensing course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants to pass the national Home Inspection Examination or similar qualifying examination.

**158:70-9-4. Instructor requirements**

(a) **Instructor qualifications.** An instructor should have one of the following qualifications:

(1) Three (3) years of recent experience in the subject matter being taught; or

(2) A degree related to the subject area being taught; or

(3) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught.

(4) Other educational, teaching, or professional qualifications determined by the Committee which constitute

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an equivalent to one or more of the qualifications in the previously stated sub-paragraphs (1), (2), and (3) of this paragraph.

(b) **Instructor renewal.** In order to maintain approved status, an instructor must furnish evidence that the instructor has taught a Committee approved course, or any other CEU course the Committee determines to be equivalent, within a required thirty-six (36) month period.

(c) **Re-application.** Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

### **158:70-9-5. Continuing education**

(a) **Continuing education hours.** No home inspection license shall be renewed unless the licensee has completed at least five (5) clock hours of continuing education prior to the date of renewal.

(b) **Special Approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:

(1) Course content should be designed to update knowledge and improve inspection skills directly related to the components and systems described in Subchapter 1 of this Chapter.

(2) All courses shall be at least two (2) hours in length.

(3) Unless provided after regular working hours, the training location shall be outside the regular work place.

(4) Each attendee shall complete a course evaluation on a form provided by the Agency. The CEU provider shall return the completed evaluation forms to the home inspection license unit with the sign-in sheets.

### **158:70-9-6. Denied application appeal**

(a) **Denied instructor/provider application.** If the Committee fails to approve or rejects any proposed instructor or entity seeking to conduct an approved course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision. The applicant may appeal the decision by filing a written request for a hearing before the Committee within thirty (30) days after notice of denial. The Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter. No part of the application fee

is refundable.

(b) **Denied course application.** If the Committee fails to approve or rejects any proposed continuing education offering or fifty (50) hour home inspection training course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision to the party applying for approval. Upon the written request from such party, filed within thirty (30) days after such notice of denial, the Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter for an appeal of the determination of the cause for rejection. No portion of the fee is refundable.

### **158:170-9-7. Submission of records**

(a) An entity conducting an offering shall, within five (5) working days of the completion thereof, submit to the Committee on a form approved by the Committee, a list of the names and license numbers or social security numbers of the licensees who successfully completed the said offering. Each licensee successfully completing an offering shall be furnished a certificate certifying completion.

(b) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.

### **158:70-9-8. Substantial compliance and reciprocity**

(a) In addition to accepting courses approved as described in this Subchapter, qualifying and continuing education credits may be granted to an individual in such case that said individual supplies acceptable documentation showing that the offering meets applicable Committee requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering.

(b) If a non-resident licensee satisfies a continuing education requirement in another state for license renewal, the Committee will exempt the non-resident licensee from the continuing education requirement in the state. In order to qualify for the exemption, the non-resident licensee must file with the license renewal of this state a certificate from the state in which the continuing education was satisfied stating that the non-resident licensee had completed the continuing education requirement for license renewal in that state. The certificate from the state verifying the non-resident's compliance with continuing education in the other state must be received by the Committee within sixty (60) days of issuance by the other state and must be received in conjunction with license renewal.

## **SUBCHAPTER 11. LICENSE REVOCATION AND SUSPENSION AND ADDITIONAL PROHIBITED ACTS**

### **158:70-11-1. License revocation and suspension**

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendere 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 Agency within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

- (e) Any person whose license is suspended pursuant to these Rules may not perform a home inspection and, prior to reinstatement, must make application therefor, which must be accompanied by evidence of successful completion of the continuing education requirements set forth in OAC 158:70-9-3.
- (f) Any person whose license is revoked pursuant to these rules may not perform a home inspection before attaining licensure pursuant to OAC 158:70-9-1.
- (g) Failure to cooperate or provide information regarding an investigation may be grounds to suspend or revoke a licensee's home inspection license.
- (h) Failure to maintain and furnish a certificate of insurance coverage as provided in OAC 158: 70-5-2(f) may be grounds to suspend or revoke a licensee's home inspection license.

**158:70-11-2. Additional prohibited acts**

- (a) No person, entity, or firm may perform home inspection work without first obtaining a license or registration pursuant to these Rules.
- (b) No person shall offer to engage in work as a home inspector during the period his or her license is suspended or revoked.
- (c) No employing home inspection firm shall employ or use an unlicensed home inspector to perform home inspection work.
- (d) No person, entity, or firm may transfer a license or registration.
- (e) No home inspector, licensed pursuant to this Chapter, shall enter into an agreement for the use of his or her license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Agency.
- (f) No person shall make a materially false or fraudulent statement in an application for license or for approval of continuing education, engage in cheating, or otherwise commit an act in violation of 158:70-9-2(g).
- (g) No person shall falsify or fail to disclose in a home inspection report a material defect.
- (h) No person shall accept inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion.
- (i) No person shall accept inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments.
- (j) No person shall perform a home inspection upon a home, or any part thereof, where the home inspector has solicited or performed any work or repair service therein upon a system or component described in Subchapter 1 of this Chapter, within the previous thirty days. If the person performing the home inspection has performed such work within the previous one-hundred eighty days, such prior work must be disclosed to the client.
- (k) No person shall solicit or perform work or repair services upon, a home, or any part thereof, that the home inspector has inspected for one (1) year after the date of the inspection.

- (l) No person shall knowingly accept compensation from more than one client for a single home inspection, unless the home inspector has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated.
- (m) Unless upon demand in writing by the Agency, a law enforcement agency, or by order of a court of competent jurisdiction, no person shall disclose the results of a home inspection to any person other than the client without the written consent of the client.
- (n) No person shall fail to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client. Based upon the potentially adverse affect to the home inspector's ability to produce an unbiased report, some circumstances or conditions are presumed to adversely affect the client and must be disclosed to the client in writing prior to the inspection. These include, but are not limited to, the following:
  - (1) Situations where the payment of remuneration or other consideration is made by the home inspector to a third party and representing a reward or compensation to the third party for the home inspector receiving inspection employment.
  - (2) Situations where the payment of remuneration or other consideration is received by the home inspector from a third party and representing a reward or compensation for the home inspector recommending services or products to the client or other persons having an interest in the
  - (3) In those cases where the client is the buyer of real property, situations where the home inspector has had some prior connection, relationship or association with the seller, his or her assigns or family members related to the seller within the second degree.
  - (4) Situations where prior reports or inspections have been made or conducted upon any system or component of the real property that the home inspector has agreed to inspect.
- (o) No person shall fail to submit a written home inspection report within a reasonable time as determined by the Agency to the client after compensation has been paid to the home inspector.

*[OAR Docket #09-1144; filed 6-5-09]*

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT  
CHAPTER 3. PROCEDURE**

*[OAR Docket #09-1156]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

160:3-1-1.1 [AMENDED]

**AUTHORITY:**

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and 75 O.S., §302(A)(1)

**DATES:**

**Comment period:**

February 2, 2009 through March 4, 2009, continued to March 27, 2009

# Permanent Final Adoptions

**Public hearing:**

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May 6, 2009

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**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

160:3-1-1.1 [AMENDED]

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26 Ok Reg 166

**Docket number:**

08-1352

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The rule removes specific information about the Department of Consumer Credit, because the Department is relocating. With these amendments, the Department of Consumer Credit will not have to make future amendments whenever the specific information changes.

**CONTACT PERSON:**

Roy John Martin, Assistant Attorney General and Legal Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-521-3653.

**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, 2009:**

**160:3-1-1.1. Requests for information**

(a) Requests for information may be made electronically, by telephone, by facsimile, by mail, or by personal appearance at the Office of the Department of Consumer Credit.

~~(1) The Department's web page address is [www.ok-decc.state.ok.us](http://www.ok-decc.state.ok.us).~~

~~(2) The Department's telephone numbers are (405) 521-3653 and (800) 448-4904.~~

~~(3) The Department's facsimile number is (405) 521-6740.~~

~~(4) The Department's address is 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105.~~

~~(5) The Department's regular business hours are 8:00 a.m. to 4:30 p.m.~~

(b) The Oklahoma Open Records Act beginning at §24A.1 of Title 51 of the Oklahoma Statutes sets forth the records that shall be open to any person for inspection, copying or mechanical reproduction.

(c) Where the request is for materials of which copies are not available and photocopying or reproduction by other means

is required, such service shall be provided upon payment of the appropriate fee.

*[OAR Docket #09-1156; filed 6-8-09]*

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

*[OAR Docket #09-1157]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

160:45-1-1 [AMENDED]

160:45-1-2 [AMENDED]

Subchapter 3. Open-End Credit

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

160:45-9-2 [AMENDED]

160:45-9-4 [AMENDED]

160:45-9-5 [NEW]

160:45-9-6 [NEW]

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Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2009

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**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 9. Special Rules for Certain Home Mortgage Transactions

160:45-9-2 [AMENDED]

**Gubernatorial approval:**

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26 Ok Reg 166

**Docket number:**

08-1353

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.

**CONTACT PERSON:**

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Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164,  
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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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**160:45-1-1. Authority, purpose, coverage,  
organization, enforcement and liability**

(a) **Authority.** This chapter, known as Regulation Z, conforms to the regulations issued by the Board to implement the federal Truth In Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). This chapter does not contain fair credit billing provisions, because Oklahoma does not have an exemption from Chapter 4, Credit Billing, of the federal Truth In Lending Act, and Oklahoma does not have a Fair Credit Billing Act; thus, creditors in Oklahoma should recognize that regulation of fair credit billing requirements lies with federal authorities; as a convenience, the pertinent sections of the Code of Federal Regulations, 12 CFR 226, have been referenced.

(b) **Purpose.** The purpose of this chapter is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The chapter also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling and regulates certain credit card practices. The chapter does not govern charges for consumer credit. The chapter requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of 160:45-3-3 and mortgages that are subject to the requirements of 160:45-9-2. The chapter prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

(c) **Coverage.**

(1) In general, this chapter applies to each individual or business that offers or extends credit when four conditions are met:

- (A) the credit is offered or extended to consumers;
- (B) the offering or extension of credit is done regularly; 1/
- (C) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
- (D) the credit is primarily for personal, family or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of 160:45-3-3 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(d) **Organization.** The chapter is divided into subchapters and appendices as follows:

(1) Subchapter 1 contains general information. It sets forth:

- (A) the authority, purpose, coverage, and organization of the chapter;
- (B) the definitions of basic terms;
- (C) the transactions that are exempt from coverage; and
- (D) the method of determining the finance charge.

(2) Subchapter 3 contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of 160:45-3-2 and 160:45-3-3, respectively.

(3) Subchapter 5 relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subchapter 7 contains rules on oral disclosures, language of disclosures, record retention, and rate limitations.

(5) Subchapter 9 contains special rules for mortgage transactions. 160:45-9-2 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. 160:45-9-3 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. 160:45-9-4 prohibits specific acts and practices in connection with mortgage transactions that are subject to 160:45-9-2. 160:45-9-5 prohibits specific acts and practices in connection with higher-priced mortgage loans, as defined in 160:45-9-5(a). 160:45-9-6 prohibits specific acts and practices in connection with credit secured by a consumer's principal dwelling.

(6) Subchapter 11 relates to electronic communication.

(7) Several appendices contain information such as special rules for certain kinds of credit plans, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) **Enforcement and Liability.** Article 6 of the Code contains the administrative enforcement provisions. Sections 5-202, 5-203, 5-301 and 5-302 of the Code contain provisions relating to liability for failure to comply with the requirements of the Code and this chapter.

1/ The meaning of "regularly" is explained in the definition of "creditor" in 160:45-1-2(a).

**160:45-1-2. Definitions and rules of construction**

(a) **Definition.** For purposes of this chapter, the following definitions apply:

(1) **"Administrator"** means the Administrator of the Department.

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- (2) **"Advertisement"** means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.
- (3) **"Billing cycle"** or **"cycle"** means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.
- (4) **"Board"** means the Board of Governors of the Federal Reserve System.
- (5) **"Business day"** means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, and for purposes of 160:45-5-3(a)(1)(ii) and 160:45-9-1, the term means all calendar days except Sundays and the legal public holidays specified in 5 USC 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.
- (6) **"Card issuer"** means a person that issues a credit card or that person's agent with respect to the card.
- (7) **"Cardholder"** means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person.
- (8) **"Cash price"** means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.
- (9) **"Closed-end credit"** means consumer credit other than "open-end credit" as defined in this section.
- (10) **"Code"** means the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes.
- (11) **"Consumer"** means a cardholder or a natural person to whom consumer credit is offered or extended. However, for purposes of rescission under 160:45-3-13 and 160:45-5-7, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.
- (12) **"Consumer credit"** means credit offered or extended to a consumer primarily for personal, family, or household purposes.
- (13) **"Consummation"** means the time that a consumer becomes contractually obligated on a credit transaction.
- (14) **"Credit"** means the right to defer payment of debt or to incur debt and defer its payment.
- (15) **"Credit card"** means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. **"Charge card"** means a

credit card on an account for which no periodic rate is used to compute a finance charge.

- (16) **"Credit sale"** means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer -

- (A) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and
- (B) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

- (17) **"Creditor"** means:

- (A) A person
  - (i) who regularly extends consumer credit **3** that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and
  - (ii) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

- (B) For purposes of 160:45-1-4(c)(8) (Discounts) and 160:45-3-7(d) (Finance charge imposed at time of transaction), a person that honors a credit card.

- (C) For purposes of subchapter 3, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

- (D) For purposes of subchapter 3 (except for the credit and charge card disclosures contained in 160:45-3-2 and 160:45-3-7(e) and (f), the finance-charge disclosures contained in 160:45-3-4(1) and 160:45-3-5(4) through (7) and the right of rescission set forth in 160:45-3-13) and subchapter 5, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

- (18) **"Department"** means the Oklahoma State Department of Consumer Credit.

- (19) **"Downpayment"** means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

- (20) **"Dwelling"** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

- (21) **"Open-end credit"** means consumer credit extended by a creditor under a plan in which -

- (A) the creditor reasonably contemplates repeated transactions;

(B) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and  
 (C) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(22) **"Periodic rate"** means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(23) **"Person"** means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(24) **"Prepaid finance charge"** means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(25) **"Residential mortgage transaction"** means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(26) **"Security interest"** means an interest in property that secures performance of a consumer credit obligation and that is recognized by state or federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosure under 160:45-3-4 and 160:45-5-2, the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under 160:45-3-13 and 160:45-5-7, the term does include interests that arise solely by operation of law.

(27) **"State"** means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(b) **Rules of construction.** For purposes of this chapter, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.  
 (2) Where the words "obligation" and "transaction" are used in this chapter, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word "credit" is used in this chapter, it means "consumer credit" unless the context clearly indicates otherwise.

(3) Unless defined in this chapter, the words used have the meanings given to them by state law or contract.

(4) Footnotes have the same legal effect as the text of the chapter.

(5) Where the word "amount" is used in this chapter to describe disclosure requirements, it refers to a numerical number.

2/ Reserved

3/ A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of 160:45-9-2) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 160:45-9-2 or one or more such credit extensions through a mortgage broker.

**SUBCHAPTER 3. OPEN-END CREDIT**

**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 (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 (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

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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 with equal prominence and in close proximity to the initial rate:~~

(A) The period of time such initial rate will be in effect; and

(B) 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~~ of any minimum periodic payment, ~~the advertisement also shall state, if applicable, that a balloon payment may result and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement shall also state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable.~~ **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 is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum period payment statement:**

(A) That a balloon payment will result; and

(B) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(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. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the

advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(A) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

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

(6) **Promotional rates and payments.**

(A) **Definitions.** The following definitions apply for purposes of paragraph (d)(6) of this section:

(i) **Promotional rate.** The term "promotional rate" means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(ii) **Promotional payment.** The term "promotional payment" means:

(I) For a variable-rate plan, any minimum payment applicable for a promotional period that is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(II) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(iii) **Promotional period.** A "promotional period" means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(B) **Stating the promotional period and post-promotional rate or payments.** If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(i) The period of time during which the promotional rate or promotional payment will apply;

(ii) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in 160:45-3-3, or 160:45-3-14(b)(2) as applicable; and

(iii) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(C) Envelope excluded. The requirements in paragraph (d)(6)(B) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) Alternative disclosures - television or radio advertisements. An advertisement for a home-equity plan subject to the requirements of 160:45-3-3 made through television or radio stating any of the terms requiring additional disclosures under paragraph (b) or (d)(1) of this section may alternatively comply with paragraph (b) or (d)(1) of this section by stating the information required by paragraph (b)(2) of this section or paragraph (d)(1)(B) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

**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).

(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.

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

~~(1) any changed term unless the term was based on an estimate in accordance with paragraph (e)(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. Mortgage transactions subject to RESPA.**

(1) **Time of disclosure disclosures.**

(A) In a ~~residential~~ mortgage transaction subject to the Real Estate Settlement Procedures Act (12 USC 2601 et seq.) that is secured by the consumer's principal dwelling, other than a home equity line of credit subject to 160:45-3-3, 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.

**(B) Imposition of fees.** Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on the consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

**(C) Exception to fee restriction.** A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is bona fide and reasonable in amount.

(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/**

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- (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 in electronic form 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 of payments, the payment schedule, and the disclosures and limitations referred to in 160:45-9-2(c) and (d) and 160:45-9-5(b)(2).

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

(bc) **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~~ If an advertisement

is for credit not secured by a dwelling, 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. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

**(ed) Advertisement of terms that require additional disclosures.**

(1) **Triggering terms.** If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (ed)(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) **Additional terms.** An advertisement stating any of the terms in paragraph (ed)(1) of this section shall state the following terms, **49/** as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

- (A) The amount or percentage of the downpayment.
- (B) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
- (C) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

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

(1) If a catalog or other multiple-page advertisement, or an electronic advertisement (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 (ed)(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 (ed)(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 (such as an advertisement appearing on an Internet Web site) complies with paragraph (ed)(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.

**(f) Disclosure of rates and payments in advertisements for credit secured by a dwelling.**

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(1) **Scope.** The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) **Disclosure of rates.**

(A) **In general.** If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(i) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(ii) The period of time during which each simple annual rate of interest will apply; and

(iii) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in 160:45-5-1(c) and 160:45-5-6.

(B) **Clear and conspicuous requirement.** For purposes of paragraph (f)(2)(A) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(A)(i) through (iii) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(A)(iii) may be disclosed with greater prominence than the other information.

(3) **Disclosure of payments.**

(A) **In general.** In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(i) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(ii) The period of time during which each payment will apply; and

(iii) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

(B) **Clear and conspicuous requirement.** For purposes of paragraph (f)(3)(A) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(A)(i) and (ii) shall be disclosed with equal prominence and in close proximity to any advertised payment that

triggered the required disclosures, and that the required information in paragraph (f)(3)(A)(iii) shall be disclosed with prominence and in close proximity to the advertised payments.

(4) **Envelope excluded.** The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(g) **Alternative disclosures - television or radio advertisements.** An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

(1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or

(2) Stating clearly and conspicuously the information required by paragraph (d)(2)(C) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

(h) **Tax implications.** If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(i) **Prohibited acts or practices in advertisement for credit secured by a dwelling.** The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(1) **Misleading advertising of "fixed" rates and payments.** Using the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

(A) In the case of an advertisement solely for one or more variable-rate transactions,

(i) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and

(ii) Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed.

and the fact that the rate may vary or the payment may increase after that period;

(B) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or

(C) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,

(i) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement with equal prominence as any use of the term "fixed," "Fixed-Rate Mortgage," or similar terms; and

(ii) Each use of the word "fixed" to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(B) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(2) **Misleading comparisons in advertisements.** Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:

(A) **In general.** The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under 160:45-5-8(f)(2) and (3); and

(B) **Application to variable-rate transactions.** If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(3) **Misrepresentations about government endorsement.** Making any statement in an advertisement that the product offered is a "government loan program", "government supported loan", or is otherwise endorsed or sponsored by an federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.

(4) **Misleading use of the current lender's name.** Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:

(A) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(B) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

(5) **Misleading claims of debt elimination.** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

(6) **Misleading use of the term "counselor".** Using the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(7) **Misleading foreign-language advertisements.** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

~~49/ An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used. [Reserved.]~~

## SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

### 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.

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- (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.
  - (xiv) The dollar amount for 2009 is \$583.
- (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, 15 USC 1615(d).
    - (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 otherwise permitted by law if, under the terms of the loan:~~

(A) ~~The penalty can be exercised only for the first five years will not apply after the two-year period following consummation;~~

(B) ~~The penalty will not apply if 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~~ debt payments (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 in accordance with 160:45-9-4(a)(4)(B); and~~

(D) ~~The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.~~

(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.

**160:45-9-4. Prohibited acts or practices in connection with credit secured by a consumer's dwellings subject to 160:45-9-2**

(a) **Prohibited acts or practices for loans subject to 160:45-9-2.** A creditor extending mortgage credit subject to 160:45-9-2 shall not:

(1) **Home improvement contracts.** Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by 160:45-9-2, other than:

(A) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(B) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) **Notice to assignee.** Sell or otherwise assign a mortgage subject to 160:45-9-2 without furnishing the

following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."

(3) **Refinancings within one-year period.** Within one year of having extended credit subject to 160:45-9-2, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to 160:45-9-2, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) **Repayment ability.** ~~Engage in a pattern or practice of extending~~Extend credit subject to 160:45-9-2 to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, current obligations, and employment, assets other than the collateral, current obligations, and mortgage-related obligations. ~~There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to 160:45-9-2 without verifying and documenting consumers' repayment ability.~~

(A) **Mortgage-related obligations.** For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in 160:45-9-5(b)(3)(A), and similar expenses.

(B) **Verification of repayment ability.** Under this paragraph (a)(4) a creditor must verify the consumer's repayment ability as follows:

(i) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(ii) Notwithstanding paragraph (a)(4)(B)(i), a creditor has not violated paragraph (a)(4)(B) if the amounts of income and assets that the creditor relied upon in determining repayment ability are not materially greater than the amounts of the consumer's income or assets that the creditor could

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have verified pursuant to paragraph (a)(4)(B)(i) at the time the loan was consummated.

(iii) A creditor must verify the consumer's current obligations.

(C) **Presumption of compliance.** A creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(i) Verifies the consumer's repayment ability as provided in paragraph (a)(4)(B);

(ii) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(A); and

(iii) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

(D) **Exclusions from presumption of compliance.** Notwithstanding the previous paragraph, no presumption of compliance is available for a transaction for which:

(i) The regular periodic payments for the first seven years would cause the principal balance to increase; or

(ii) The term of the loan is less than seven years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

(E) **Exemption.** This paragraph (a)(4) does not apply to temporary or "bridge" loans with terms of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months.

(b) **Prohibited acts or practices for dwelling-secured loans; open-end credit.** In connection with credit secured by the consumer's dwelling that does not meet the definition in 160:45-1-2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of 160:45-9-2.

### **160:45-9-5. Prohibited acts or practices in connection with higher-priced mortgage loans**

(a) **Higher-priced mortgage loans.**

(1) For purposes of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

(2) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors

for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

(3) Notwithstanding paragraph (a)(1) of this section, the term "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to 160:45-9-3, or a home equity line of credit subject to 160:45-3-3.

(b) **Rules for higher-priced mortgage loans.** Higher-priced mortgage loans are subject to the following restrictions:

(1) **Repayment ability.** A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation as provided in 160:45-9-4(a)(4).

(2) **Prepayment penalties.** A loan may not include a penalty described by 160:45-9-2(d)(6) unless:

(A) The penalty is otherwise permitted by law, including 160:45-9-2(d)(7) if the loan is a mortgage transaction described in 160:45-9-2(a); and

(B) Under the terms of the loan:

(i) The penalty will not apply after the two-year period following consummation;

(ii) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(iii) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(3) **Escrows.**

(A) **Failure to escrow for property taxes and insurance.** Except as provided in paragraph (b)(3)(B) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

(B) **Exemptions for loans secured by shares in a cooperative and for certain condominium units.**

(i) Escrow accounts need not be established for loans secured by shares in a cooperative; and

(ii) Insurance premiums described in paragraph (b)(3)(A) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

(C) **Cancellation.** A creditor or servicer may permit a consumer to cancel the escrow account required in paragraph (b)(3)(A) of this section only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

(D) **Definition of escrow account.** For purposes of this section, "escrow account" means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

(4) **Evasion; open-end credit.** In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in 160:45-1-2(21), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

**160:45-9-6. Prohibited acts or practices in connection with credit secured by a consumer's principal dwelling**

(a) **Mortgage broker defined.** For purposes of this section, the term "mortgage broker" means a person, other than an employee of a creditor, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person, or by drawing on a bona fide warehouse line of credit.

(b) **Misrepresentation of value of consumer's dwelling.**

(1) **Coercion of appraiser.** In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker shall directly or indirectly coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(A) Examples of actions that violate this paragraph (b)(1) include:

(i) **Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling;**

(ii) **Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a consumer's principal dwelling that does not meet or exceed a minimum threshold;**

(iii) **Telling an appraiser a minimum reported value of a consumer's principal dwelling that is needed to approve the loan;**

(iv) **Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount; and**

(v) **Conditioning an appraiser's compensation on loan consummation.**

(B) **Examples of actions that do not violate this paragraph (b)(1) include:**

(i) **Asking an appraiser to consider additional information about a consumer's principal dwelling or about comparable properties;**

(ii) **Requesting that an appraiser provide additional information about the basis for a valuation;**

(iii) **Requesting that an appraiser correct factual errors in a valuation;**

(iv) **Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value;**

(v) **Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract; and**

(vi) **Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.**

(2) **When extension of credit prohibited.** In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of paragraph (b)(1) of this section in connection with an appraisal shall not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(3) **Appraiser defined.** As used in this paragraph (b), an appraiser is a person who engages in the business of providing assessments on the value of dwellings. The term "appraiser" includes persons that employ, refer, or manage appraisers and affiliates of such persons.

(c) **Servicing practices.**

(1) **In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall:**

(A) **Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(2) of this section;**

(B) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or

(C) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

(2) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(3) For purposes of this paragraph (c), the term "servicer" means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(A) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(B) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the RTC; the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 USC §1701 et seq.) is assigned to HUD); the National Credit Union Administration (NCUA); the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(4) For purposes of this paragraph (c), the term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 USC §2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required

pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

(d) This section does not apply to a home equity line of credit subject to 160:45-3-3.

*[OAR Docket #09-1157; filed 6-8-09]*

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

*[OAR Docket #09-1158]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Licensing  
160:55-3-1.2 [AMENDED]  
160:55-3-1.4 [AMENDED]  
Subchapter 9. Enforcement  
160:55-9-10 [NEW]

### **AUTHORITY:**

Administrator of Consumer Credit; 59 O.S., §§2085(A)(1)(b) and (L)(5), 2091(A)(2) and 2093(A)

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Subchapter 9. Enforcement  
160:55-9-10 [NEW]

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26 Ok Reg 8

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Subchapter 3. Licensing  
160:55-3-1.2 [AMENDED]  
160:55-3-1.4 [AMENDED]

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November 12, 2008

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26 Ok Reg 245

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**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The licensing rules provide regulations according to statutory changes in pre-licensing and continuing education requirements.

The enforcement rule establishes a procedure for expending monies from the Oklahoma Mortgage Brokers Recovery fund in connection with reimbursement of approved claims.

**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, 2009:**

**SUBCHAPTER 3. LICENSING**

**160:55-3-1.2. Experience or educational requirement**

(a) **Mortgage Broker.** To apply for a mortgage broker license, an applicant shall provide satisfactory evidence of the required experience or ~~graduation from an institution of higher education or a vocational school with a degree in a discipline that directly relates to the occupation of a mortgage broker~~certificates of completion for twenty (20) hours of education courses approved by the National Association of Mortgage Brokers taken within the required time period. [59:2085(A)(1)(a) and (b)]

(b) **Mortgage Loan Originator.** To apply for a mortgage loan originator license, an applicant shall provide certificates of completion for sixteen (16) hours of education courses approved by the National Association of Mortgage Brokers taken within the required time period and may provide satisfactory evidence of the required experience [59:2085(L)(4) and (5)].

(c) Satisfactory evidence for experience includes, but is not limited to, W-2 forms and 1099 forms.

(d) For purposes of this section, "applicant" means an individual; an owner of a sole proprietorship; the stockholders or three largest stockholders and the officers, directors and trustees of a corporation; the partners, principals, officers and directors of a partnership or limited liability company.

**160:55-3-1.4. Continuing education**

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education, and to set forth the requirements for approval by the Administrator of a proposed continuing education course.

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

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course—completion"** means a form acceptable to the Administrator and completed by the provider that signifies satisfactory completion of the approved course and reflects hours of credit earned.

(3) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self study course.

(4) **"Education verification form"** means a form acceptable to the Administrator and completed by the mortgage broker or mortgage loan originator that states under oath to compliance with the continuing education requirements.

(5) **"Provider"** means the Commission; a technology center school; a college or university; a private school; the Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers or any affiliate thereof; the Oklahoma Bar Association, American Bar Association or any affiliate thereof; or an education provider that provides approved continuing education courses. [59:2093(B)]

(c) **Continuing education requirements.**

(1) **Credit hoursHours.**

(A) All mortgage brokers and mortgage loan originators shall complete sixteen (16) credit hours of continuing education before license renewal or reactivation. [59:2093(A)] ~~Provided, however, continuing education shall not be required for the renewal of any mortgage loan originator license for 2007, and mortgage loan originators shall have from July 1, 2006, until December 31, 2007, to complete the continuing education hours for the renewal of their licenses for 2008.~~ Courses taken in excess of the required hours shall not carry forward.

(B) A minimum of seven (7) of the sixteen (16) credit hours shall consist of:

- (i) one (1) credit hour covering the Real Estate Settlement Procedures Act;
- (ii) one (1) credit hour covering the Truth In Lending Act;
- (iii) one (1) credit hour covering federal laws related to fair lending - the Equal Credit Opportunity Act, the Fair Housing Act and the Home Mortgage Disclosure Act; and
- (iv) four (4) credit hours covering ethics. [59:2093(A)]

~~(C) Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, and subjects not relating to the license. Courses conducted in conjunction with other meetings must have a separate continuing education course component; the method to monitor attendance must be stated and approved by the Administrator.~~

(2) **Correspondence and video courses.**

(A) **Correspondence courses.** A mortgage broker or mortgage loan originator who completes an approved course by correspondence and provides satisfactory proof of completion will receive credit for the number of hours assigned for the course.

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- ~~(B) **Video courses.** In order for a mortgage broker or mortgage loan originator to receive credit for viewing an approved course presented by video, the mortgage broker or mortgage loan originator must view the video under the supervision of a contact person with the provider and swear by affidavit that the video was viewed in its entirety. The affidavit must also be signed by the supervising contact person.~~
- (3) **Credit for instructors.** An instructor who is a mortgage broker or a mortgage loan originator shall receive the same continuing education credit for presenting approved course materials as a mortgage broker or mortgage loan originator who attends an approved classroom instructional session.
- (43) **Certificates of course completion required for license renewal or reactivation.** Each mortgage broker and mortgage loan originator shall attach an education verification form and certificates of course completion for the required number of credit hours to the renewal or reactivation application. [59:2093(A)]
- (54) **Repeating courses.** A mortgage broker or mortgage loan originator may repeat a course before renewal, if the maximum credits hours designated for the course were not attained in the first attempt. By repeating the course, the mortgage broker or mortgage loan originator may not earn more than the maximum credits hours designated for the course. A mortgage broker or mortgage loan originator may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits hours designated for the course.
- (65) **Exceptions.** The requirements for continuing education in this section shall not apply to:
- (A) a mortgage broker whose license is on inactive status; or,
  - (B) a non-resident mortgage broker or mortgage loan originator who is licensed in a state having continuing education requirements and the mortgage broker or mortgage loan originator meets all the requirements of that state. The non-resident mortgage broker or mortgage loan originator shall be responsible for providing satisfactory proof of compliance with the other state's requirements. [59:2093(E)]
- (76) **Extensions.** For good cause shown, the Administrator may grant an extension of time during which the continuing education requirements may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding renewal. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the mortgage broker or mortgage loan originator and shall include details and any documentation to support the request. Each request must be received by the Administrator no less than thirty (30) days before renewal.
- (d) **Approval of continuing education courses.**
- (1) **Information required.** Each provider shall apply for approval of each course. All providers, including publicly funded educational institutions, shall provide:
    - (A) Name and address of the provider.
    - (B) Contact person and his or her address and telephone number(s).
    - (C) The location of the course, unless it is an individual study or correspondence course.
    - (D) ~~The number of CEC hours requested for each course.~~ Documentation that each course is approved by the National Association of Mortgage Brokers and the number of hours approved for each course. Courses must consist of a minimum of one (1) ~~credit~~ hour.
    - (E) Subject outlines which list the summarized subjects covered in each course and a copy of any course materials.
      - (i) ~~If a classroom course, a timed outline including any breaks.~~
      - (ii) ~~If a correspondence course, a copy of text or table of contents with page numbers.~~
    - (F) The names and qualification of instructors. An instructor shall have one (1) of the following qualifications:
      - (i) ~~Three (3) years of recent experience in the subject area being taught; or~~
      - (ii) ~~A degree related to the subject area being taught; or~~
      - (iii) ~~Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.~~
  - (2) **Application deadline for course approval.** At least thirty (30) days prior to the course date, the provider shall apply to the Administrator for course approval. The Administrator shall grant or deny approval in writing based upon information submitted regarding each course. The Administrator will assign the number of CEC hours awarded for an approved course. Each course approval shall be valid for a period of twelve (12) months. Course materials must be resubmitted at the time of expiration.
  - (3) **Withheld or withdrawn approval.** The Administrator may withhold or withdraw approval for any course for non-compliance with any provision of this section. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.
  - (4) **List of approved courses.** A list of approved courses shall be available from the Administrator. [59:2093(C)]
  - (5) **Certificate of Course Completion.** At the completion of each course, the provider shall provide each mortgage broker or mortgage loan originator with a "Certificate of Course Completion" form.
  - (6) **List of mortgage brokers and mortgage loan originators completing course to Administrator.** At the completion of each course, the provider shall provide the Administrator a list of all mortgage brokers and mortgage loan originators who completed the course. This list shall reflect the name and license number of each mortgage broker and mortgage loan originator.

(7) **Course records.** Providers shall maintain course records for at least seven (7) years.

**SUBCHAPTER 9. ENFORCEMENT**

**160:55-9-10. Oklahoma Mortgage Brokers Recovery Fund**

(a) **Purpose.** This section establishes a procedure required by 59 O.S. § 2091(A)(2) for expending monies from the Oklahoma Mortgage Brokers Recovery Fund ("Fund") in connection with reimbursements of approved claims.

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

(1) **"Claimant"** means a person who has been adjudged by a court of competent jurisdiction to have suffered monetary damages as specified by 59 O.S. § 2091(B)(1) and who has filed a claim for reimbursement from the Fund.

(2) **"Court of competent jurisdiction"** means a court having power and authority to hear and decide a civil action filed by a claimant.

(3) **"Final judgment"** means a written final determination by a court of competent jurisdiction of the rights of the claimant and the judgment debtor arising from a transaction or series of transactions as described by 59 O.S. §2091(B)(1). A final judgment under this section shall not include a default or a judgment by default unless the time to file a motion or petition to set aside, correct, open, modify or vacate the default or judgment by default has run and no proceedings to set aside, correct, open, modify or vacate the default or judgment by default have commenced.

(4) **"Judgment debtor"** means a person obligated through a final judgment to pay monetary damages to a claimant.

(c) **Required documentation.** To apply for reimbursement from the Fund, a claimant shall file a written claim to the Administrator. The claim shall include the following documentation:

(1) A certified copy of the affidavit or petition filed in a court of competent jurisdiction;

(2) Certified copies of the final judgment and any orders issued by a court of competent jurisdiction;

(3) Evidence that the final judgment has been enforced as provided by statute for enforcement of judgments in civil actions and the amount realized was insufficient to satisfy the final judgment; and

(4) Evidence that any compensation recovered by the claimant from the judgment debtor, or from any other source for monetary loss arising out of the transaction or series of transactions has been applied to the final judgment awarded by a court of competent jurisdiction.

(d) **Commission review.** The Administrator is authorized to determine the sufficiency of the claim and submitted documentation. After the Administrator receives the required documentation indicated in paragraph (c) of this section, he or she shall

make a recommendation to the Commission concerning approval or denial of the claim. The Commission may take one of the following actions:

(1) Approve or deny the claim based on the Administrator's recommendation;

(2) Approve or deny the claim independent of the Administrator's recommendation; or

(3) Request additional information and or documentation it deems necessary to render a decision in accordance with the requirements of 59 O.S. § 2091 and Oklahoma law.

(e) **Notification.** The Administrator shall submit written notification to the claimant of the Commission's decision regarding the claim.

(f) **Expenditures.**

(1) If the Commission approves a claim, expenditures from the Fund shall be made by the Administrator in accordance with 59 O.S. § 2091 and Oklahoma law.

(2) If at any time monies in the Fund are insufficient to satisfy existing obligations and encumbrances on the Fund or an approved claim, or portion(s) thereof, the Administrator may satisfy such unpaid claims or portion(s) thereof as soon as a sufficient amount of money has been deposited in the Fund. When there is more than one outstanding approved claim, the Commission may determine the order of payment.

(g) **Restrictions.** A claimant shall not be qualified to file a claim for reimbursement from the Fund if:

(1) The claimant is the spouse of the judgment debtor or a personal representative of such spouse;

(2) The claimant is a licensee that acted in their own behalf in the transaction or series of transactions that are the subject of the claim;

(3) The claimant has previously been reimbursed the maximum amount allowed from the Fund involving the same transaction or series of transactions.

[OAR Docket #09-1158; filed 6-8-09]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 5. RULES OF PRACTICE**

[OAR Docket #09-1135]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

Part 1. General

165:5-1-3 Definitions. [AMENDED]

Subchapter 3. Fees

Part 1. General Provisions

165:5-3-1. Fees. [AMENDED]

Subchapter 7. Commencement of a Cause

Part 3. Oil and Gas

165:5-7-27 Enhancement or addition of injection and disposal wells [AMENDED]

Subchapter 15. Orders

165:5-15-6. Location exception orders [AMENDED]

**AUTHORITY:**

Oklahoma Corporation Commission

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Article IX, Section 19, Oklahoma Constitution  
17 O.S. §152

## **DATES:**

### **Comment Period:**

February 17, 2009 through March 26, 2009

### **Public Hearing:**

March 25 & 26, 2009

### **Adoption:**

March 26, 2009

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

March 31, 2009

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

March 31 2009

### **Submitted to Senate:**

March 31, 2009

### **Gubernatorial approval:**

May 6, 2009

### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2009.

### **Final Adoption:**

May 22, 2009

### **Effective Date:**

July 11, 2009

### **SUPERSEDED EMERGENCY ACTIONS:**

None

### **INCORPORATIONS BY REFERENCE:**

None

### **ANALYSIS:**

The need for the adopted rules is to further define terms and definitions of the Rules of Practice, and to streamline the process by requiring a permit rather than a Commission Order.

### **CONTACT PERSON:**

Sally Shipley, (405) 5214258.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **PART 1. GENERAL**

#### **165:5-1-3. Definitions**

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

**"Administrative Law Judge"** means a Commissioner, an Oil and Gas Appellate Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

**"Applicant"** means a person commencing a proceeding either in the form of an application or a complaint, and includes the terms "plaintiff", "complainant", and "petitioner". "Applicant" also means an officer or employee of the Commission who commences a proceeding.

**"Application"** means a petition or any written request for authority, approval, determination, permission, or other Commission action or relief.

**"Attorney"** means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

**"Commission"** means the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

**"Commissioner"** means a member of the Commission.

**"Complaint"** means every form of request for enforcement of an order, rule, or regulation of the Commission or for relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

**"Document"** means a pleading, an answer, written testimony, or any other written matter filed in a cause. A "document" includes any attached appendices.

**"Intervenor"** means a person not an applicant or named respondent who obtains permission to enter the proceeding. An intervenor opposing an application will be deemed a party of record.

**"Legal holiday"** means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

**"Oil and Gas Appellate Referee"** means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

**"Order"** means that which is required or ordered to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

**"Party of record"** means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

**"Person"** means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

**"Protestant"** means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

**"Record"** of any proceeding shall consist of the following:

- (A) Preliminary exhibits, including pertinent pleadings, notices, and proof of publication.
- (B) Transcript of proceedings at all hearings.
- (C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters.
- (D) Exhibits, together with attachments, appendices, and amendments thereto.
- (E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any.
- (F) Appeals and motions subsequent to the hearing.
- (G) Orders or rules of the Commission.

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

**"Regular mail"** means first class mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

**"Respondent"** means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(m), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

**"Restricted mail"** means mailing by certified mail, return receipt requested, within the continental United States and mailing by registered mail outside the continental United States.

**"Secretary"** means the Secretary of the Commission.

**"Staff counsel"** means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

### 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) Emergency 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
- (J) Application for non-commercial injection or disposal well - \$100.00

(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

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- (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 3. OIL AND GAS**

**165:5-7-27. Enhancement or addition of injection and disposal wells**

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed at the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

- (1) Plat.
  - (A) Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing leasehold within one-quarter (1/4) mile of each enhanced recovery injection or disposal well.
  - (B) Commercial disposal well. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing leasehold within one-half (1/2) mile of each disposal well.
- (2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.
- (3) A schematic diagram of the well showing:
  - (A) The total depth or plugback depth of the well.
  - (B) The depth of the injection or disposal interval indicating both the top and bottom.
  - (C) The geological name of the injection or disposal zone.
  - (D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing ~~an order~~ a permit approving fluid injection, shall consider the following:

- (i) Maximum injection rate.
- (ii) Maximum surface injection pressure.
- (iii) Injection fluid.
- (iv) The lithology and rock characteristics of the injection zones and overlying strata.

- (5) Proposed operating data:
  - (A) Daily injection rates and pressures.
  - (B) Geologic name, depth, and location of injection fluid source.
  - (C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.
  - (D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant by regular mail or delivered to the owner of the surface of the land on which the injection or disposal well is to be located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and

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noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma City, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

- (1) PD or tracking number.
  - (2) Name and address of applicant.
  - (3) Location of proposed well to nearest 10 acre tract.
  - (4) Well name.
  - (5) The geological name of the injection formation.
  - (6) The top and bottom of the injection interval.
  - (7) Maximum injection pressures.
  - (8) Maximum B/D or MCF/D injection rate.
  - (9) The type of well (injection, disposal, commercial).
- (e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, 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~~ may be ~~presented~~ approved administratively ~~to~~ by the Manager of Underground Injection Control ~~who shall file his report and make his recommendations.~~
- (f) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide ~~order~~ permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC ~~order~~ permit can be issued immediately without additional area of review, notice, or protest period.

## SUBCHAPTER 15. ORDERS

### 165:5-15-6. Location exception orders

A location exception order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order. For directionally drilled wells, the location of the entry into and exit from the common source of supply must be ~~included based on the directional surveys specified.~~

*[OAR Docket #09-1135; filed 6-5-09]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL & GAS CONSERVATION

*[OAR Docket #09-1136]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. Administration  
Part 1. General Provisions

165:10-1-6. Duties and authority of the Conservation Division [AMENDED]  
165:10-1-7. Prescribed forms [AMENDED]  
Part 9. Purchasers and Transporters  
165:10-1-49. Filing of nominations [AMENDED]  
Subchapter 3. Drilling, Developing, and Producing  
Part 1. Drilling  
165:10-3-2. Notification of spudding of a new well [AMENDED]  
165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports [AMENDED]  
Part 3. Completions  
165:10-3-17. Well site and surface facilities [AMENDED]  
Part 5. Operations  
165:10-3-29. Oil storage [AMENDED]  
Subchapter 5. Underground Injection Control  
165:10-5-2. Approval of enhanced recovery injection wells or disposal wells  
165:10-5-5. Application for approval of enhanced recovery injection and disposal operations [AMENDED]  
165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1 [AMENDED]  
165:10-5-9. Duration of underground injection well orders or permits [AMENDED]  
Subchapter 7. Pollution Abatement  
Part 1. General Provisions  
165:10-7-2. Administration and enforcement of rules [AMENDED]  
165:10-7-4. Water quality standards [AMENDED]  
Part 3. Storage and Disposal of Fluids  
165:10-7-26. One-time land application of contaminated soils and petroleum hydrocarbon based drill cuttings [AMENDED]  
Subchapter 11. Plugging and Abandonment  
165:10-11-9. Temporary exemption from plugging requirements [AMENDED]  
Subchapter 13. Determination of Allowables - Oil and Gas Wells  
165:10-13-3. Production tests on new, re-entered, and recompleted wells [AMENDED]  
Subchapter 15. Oil Well Production and Allowables  
165:10-15-3. Effect of percentage penalty on oil wells [AMENDED]  
165:10-15-5. Discovery oil allowables [AMENDED]  
165:10-15-6. Production tests and reports for discovery oil pools [AMENDED]  
165:10-15-13. Production tests and reports for unallocated oil wells [AMENDED]  
Subchapter 17. Gas Well Operations and Permitted Production  
165:10-17-9. Special allocated gas pools  
Subchapter 21. Application for Tax Exemptions  
Part 8. Deep Wells  
165:10-21-45. General [AMENDED]

### **AUTHORITY:**

Oklahoma Corporation Commission  
Article IX, §§ 18, 19, Oklahoma Constitution  
17 Okla. Stat. § 151 et seq.

### **DATES:**

#### **Comment Period:**

January 13, 2009 through March 18, 2009

#### **Public Hearing:**

March 18, 2009

#### **Adoption:**

March 18, 2009

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

March 19, 2009

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

March 19, 2009

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

March 19, 2009

#### **Gubernatorial approval:**

April 23, 2009

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 14 2009.

#### **Final Adoption:**

May 14, 2009

#### **Effective Date:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

These rules are adopted by the Corporation Commission in order to effectively apply to technological advances that have been made over the past few years in the oil and gas industry. These rules are further adopted to clarify and update terms and definitions so that the rules are more comprehensible, accessible, and easy to use for industry and regulatory agencies to work with effectively.

**CONTACT PERSON:**

Sally Shipley 522-4258.

**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, 2009:**

**SUBCHAPTER 1. ADMINISTRATION**

**PART 1. GENERAL PROVISIONS**

**165:10-1-6. Duties and authority of the Conservation Division**

(a) It shall be the duty of the Conservation Division to administer and enforce the statutes of this State and the rules, regulations, and orders of the Commission relating to the conservation of oil and gas and the prevention of pollution in connection with the exploration, drilling, producing, transporting, purchasing, processing, and storage of oil and gas, and to administer and enforce the applicable provisions of the Natural Gas Policy Act of 1978.

(b) The Conservation Division shall have the right at all times to go upon and inspect any oil and gas properties, pipelines, tank farms, refineries, and other processing plants and pump stations for the purpose of making any investigations or tests to ascertain whether the rules, regulations, and orders of the Commission are being complied with, and shall report to the Commission any violation thereof.

(c) The Conservation Division may require the testing or retesting of any oil, gas, injection, or disposal well upon 48-hour notice. Until the test is completed or excused, no allowable will be assigned the well and the purchaser or taker of oil or gas from such well shall not run oil or gas until authorized by the Conservation Division.

(d) The Director of the Conservation Division may administratively reclassify a well according to the gas-oil ratio as specified in 165:10-13-2 if the retesting of a well pursuant to this Section as reported on Form 1029A indicates a change in the original gas-oil ratio. This administrative reclassification shall only be used for allowable or priority purposes pursuant to 165:10-17-12. The operator shall be notified in writing by the Conservation Division within 15 days of the effective date of any change in classification.

(e) If the operator of the well which has been reclassified objects to said reclassification, he may file a written objection

with the Conservation Division within 15 days of receiving notice of the reclassification. At the same time that the objection is filed, the operator shall file an application and notice setting cause for hearing with the Court Clerk Commission. The notice shall be published one time at least 15 days prior to the hearing in a newspaper of general circulation published in Oklahoma County and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(f) The Conservation Division shall have access to all well records, wherever located. All companies, operators, drilling contractors, drillers, service companies, or other persons shall permit any authorized employee of the Commission to come upon any lease or property operated or controlled by them, and to inspect the records of wells; provided, that information so obtained shall be confidential. Any person who attempts, by means of any threat or violence, to deter or prevent any authorized employee of the Commission from performing any duty hereunder shall be prosecuted to the fullest extent of the law.

(g) Upon request of the Conservation Division, service companies or other persons shall furnish and file reports and records showing gun perforating, hydraulic fracturing, cementing, shooting, chemical treatment, and all other service operations on any well.

**165:10-1-7. Prescribed forms**

(a) Required Conservation Division forms may be submitted to the Commission on forms supplied by the Commission or on xerographic copies of Commission forms or by operator computer generated forms. Operator computer generated forms will be printed from Commission designed files made available to operators via the electronic Bulletin Board Service (BBS), Internet (World Wide Web) or magnetic disk. Operator computer generated forms must contain the exact language and wording of Commission forms. Any alteration of Commission forms language and wording may subject the signature party and/or operator to perjury charges.

(b) The following Conservation Division forms are prescribed for filing purposes:

(1) **Form 1000 - Notice of Intention to Drill application:** Operator shall file Form 1000 before any oil, gas, injection, disposal, or service well is drilled, recompleted, or re-entered. Such notice shall include the name(s) and address(es) of the surface owner(s) of the land upon which the well is to be located. The Commission shall process the application and, if approved, return a computer-generated permit to the operator. The Commission shall mail a copy of the permit to drill or re-enter to the land owner(s). Upon approval, the operator will have six months to commence the permitted operations. A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if written request for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted. A copy of the approved permit shall be posted at the well site. [Reference 165:10-3-1 and 165:10-1-25]

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(2) **Form 1000A - Request for Reserve Pit Requirements:** The operator shall file Form 1000A in duplicate for information before any noncommercial pit is constructed. The Commission shall indicate the necessary liner requirements, if any, and return to the operator. [Reference 165:10-7-16]

(3) **Form 1000B - Application to Drill Deep Anode Groundbeds:** Form 1000B is required to be filed for wells drilled for deep anode groundbeds as required by OAC 165:10-7-14. The purpose of Commission Form 1000B is to ensure groundwater is being protected in construction of the deep anode groundbed. [Reference 165:10-7-14]

(4) **Form 1000S - Application to Drill Seismograph and Stratigraphic Test Holes:** The applicant must post a \$50,000 bond with the Surety Department in the Oil and Gas Conservation Division. The application must also be accompanied with a plat of the project area. [Reference 165:10-7-31]

(5) **Form 1001 - Notification of Intention to Plug:** Operator shall file notice on Form 1001, in duplicate, five days prior to plugging operations and shall notify the appropriate Commission District Office before work is started. If the well is an exhausted producer, list OTC assigned county and lease number. If the Intent to Plug is cancelled, the operator shall notify the Commission by letter. The operator of each offset producing lease shall be notified prior to the plugging of any well other than a dry hole. [Reference 165:10-11-4, 165:10-11-5, and 165:10-11-6]

(6) **Form 1001A - Notification of Spudding of New Well:** Form 1001A is mailed to the operator with the intent to drill permit. Operator shall file with the Conservation Division within 14 days of spudding a new well or reentering a previously plugged well. [Reference 165:10-3-1]

(7) **Form 1002A - Well completion report:** Operator shall furnish a complete well record on Form 1002A within 30 days after completion of operations to drill, recomplete, re-enter, or convert to injection or disposal well. Effective for both dry hole and/or producer. If well is an oil or gas producer, list OTC assigned county and lease number. Gas-oil ratio must be shown when Form 1002A is filed. List on a 24-hour basis both oil and gas. [Reference 165:10-3-25]

(A) **Oil well:** GOR less than 15,000:1

(B) **Gas well:** GOR 15,000:1 or more

(8) **Form 1002B - Confidential Filing of Electric Logs:** Operator shall file Form 1002B within 60 days of the running of the last formation evaluation type wire line log to hold logs confidential for one year period. Optional extension for six months may be requested by operator in writing to the Technical Services Department of the Conservation Division. [Reference 165:10-3-26]

(9) **Form 1002C - Cementing Report to accompany Well Completion Report:** Operator shall file Form 1002C with the Well Completion Report (Form 1002A)

describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs. The form shall be completed and signed by employees of both the operator and the cementing company. [Reference 165:10-3-4(i)]

(10) **Form 1003 - Plugging Record:** Operator will file Form 1003, in duplicate, within 30 days after plugging operations are completed. Both copies are to be mailed to the applicable Commission District Office. If a depleted producer, list OTC assigned county and lease number. [Reference 165:10-11-6 and 165:10-11-7]

(11) **Form 1003A - Notice of Temporary Exemption from Well Plugging:** Form 1003A shall be filed with the appropriate District Office. [Reference 165:10-11-3]

(12) **Form 1003C - Cementing Report to accompany Plugging Record:** operator shall file Form 1003/1003C when well has been plugged. Form 1003/1003C shall be completed and signed by employees of both the operator and the cementing company. [Reference 165:10-11-6 and 165:10-11-7]

(13) **Form 1004 - Monthly Report of Unallocated Natural Gas Wells Production:** Each operator of the required meter under 165:10-17-5 shall make a monthly well on Form 1004 report with the Commission of all natural gas volumes transferred through the meter for the preceding month, by the last day of the month following such transfer. List formation name plus OTC assigned county and lease number. If more than one meter, the operator of each shall file this form. [Reference 165:10-1-47]

(14) **Form 1004B - Notice of Gas Purchase Curtailments:** In any month wherein a first purchaser or first taker has a market demand/supply imbalance and must curtail purchases or takes in compliance with 165:10-17-12, Form 1004B shall be filed by said first purchaser or first taker with the Conservation Division. [Reference 165:10-17-12]

(15) **Form 1005 - Monthly Report of Purchasers (Gas: subject to field rules):** [Reference 165:10-1-47 and 165:10-15-1]

(A) **GAS:** Each operator of the required meter or meters under 165:10-17-5 shall complete computer-generated Form 1005, and return a copy to the Conservation Division indicating the gas amounts transferred through the meter for the preceding month on allocated and special allocated gas wells.

(B) **OIL:** Each first purchaser, or first taker of oil from wells and projects which are capable of producing in excess of their maximum assigned allowables, must complete computer-generated Form 1005 and return a copy to the Conservation Division indicating the amount of oil taken from each well or unit for the preceding month.

(16) **Form 1006 - Surety bond for oil, gas, injection, or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a surety bond (\$25,000.00) or other present alternate surety, Form 1006A or 1006C. Operator must file the original copy only with a copy of the power of attorney

from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. [Reference 165:10-1-12]

(17) **Form 1006A - Financial Statement for oil, gas, injection or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a verifiable financial statement (minimum net worth \$50,000.00 within the State of Oklahoma) or other present alternate surety, Form 1006 or 1006C. Operator must file an original copy on Form 1006A, which must be updated annually from the last filing date. [Reference 165:10-1-11]

(18) **Form 1006B - Operator Agreement to plug oil, gas, and service wells within the State of Oklahoma:** Operator shall agree to plug well(s) in compliance with the Commission rules. This agreement must accompany the operator's elective choice of surety (Form 1006, 1006A, or 1006C). The operator is required to file a Form 1006B with the Conservation Division once every twelve (12) months. [Reference 165:10-1-10, 165:10-1-11, 165:10-1-12, 165:10-1-13, and 165:10-1-14]

(19) **Form 1006BR - Recycling, Reclaiming Operator's Agreement to Close the Reclaiming Facility:** Prior to operating a recycling or reclaiming facility the operator shall file an agreement to close the facility in compliance with OCC rules. This agreement must accompany the application for certification (Form 1020A). [Reference 165:10-8-1 and/or 165:10-8-2]

(20) **Form 1006C - Irrevocable commercial letter of credit:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division an irrevocable commercial letter of credit (\$25,000.00) or other present alternate surety, Form 1006A or 1006. Operator must file the original copy with the bank seal affixed. A letter of credit must be valid for at least a one year period. [Reference 165:10-1-13]

(21) **Form 1006SB - Surety bond for seismic shot hole plugging within the State of Oklahoma:** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field must secure a bond in the amount of \$50,000.00. Seismic companies must file the original Form 1006B only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. Form 1006S shall be filed with the bond. [Reference 165:10-11-6]

(22) **Form 1007A - IBM operator annual unallocated natural gas wells survey:** Annual Survey Form 1007A will be furnished to all operators at the end of each calendar year in duplicate. The form shall be updated by the operator as of December 31 notifying the Commission of any new wells, wells sold (to whom and address), or abandoned since the last 1007A was filed. Original only shall be forwarded to Conservation Division by February 15th for the previous year's activity. List OTC assigned county and lease number (if not imprinted). See 165:10-17-11 for

production penalties on overproduced wells. [Reference 165:10-17-1 and 165:10-17-16]

(23) **Form 1008S - Operators agreement to plug seismic shot holes with the State of Oklahoma:** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field shall be duly registered with the Conservation Division on Form 1006SB. [Reference 165:10-11-6]

(24) **Form 1010 - Application for Cancelled Underage:** Operator shall file, within 30 days for oil, and six months for special allocated and allocated gas from the date of cancellation, to reinstate cancelled underage; stating reason for this request and notifying all offset operators. List OTC assigned county and lease number. [Reference 165:10-15-5]

(25) **Form 1012 - Annual Fluid Injection Report:** Operators shall file Form 1012 by April 1 of each year covering the previous calendar year (January 1 through December 31) on all enhanced recovery projects, pressure maintenance projects, and salt water disposal wells (commercial disposal wells will report twice per year on January 31 and July 31 for the previous six months) for each UIC well. The completed form will list well identification including API number, the Commission order number, injection volume and pressure, etc., as required on the form. No UIC well is to be operated for injection or disposal unless the Form 1012 is filed by the above dates. [Reference 165:10-5-7].

(26) **Form 1013 - Application for adjusting an allowable for an Excessive Water Exemption or Reservoir Dewatering Oil Spacing unit:** An operator in an unallocated oil pool may be permitted to produce at a full capacity allowable rate, provided that the water- oil ratio at the well is greater than or equal to 3:1 as in excessive water exemption. To qualify for the reservoir dewatering oil spacing unit allowable shown on Appendix J, the operator must provide data to show that the water - oil ratio is greater than 1:1 [Reference 165:10-15-1, 165:10-15-16, 165:10-15-17 and 165:10-15-18].

(27) **Form 1014 - Application for Permit to Use Earthen Pit:** The operator of a proposed off-site reserve pit, recycling/reuse pit, spill containment pit, or remediation pit must submit Form 1014 in duplicate to the appropriate District Office for approval before constructing or using the pit. [Reference 165:10-7-16]

(28) **Form 1014CS - Application for Commercial Soil Farming:** For a commercial soil farming site which has an order to operate, the operator shall submit a Form 1014CS to the Pollution Abatement Department for prior approval each time that soil farming is proposed to be done. The application must be processed within ten (10) days of submission. [Reference 165:10-9-2]

(29) **Form 1014D - Application for Surface Discharge:** Each application for surface discharge of produced water must be submitted to a Field Operations office on Form 1014D in quadruplicate. Applications

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will be processed within five working days. [Reference 165:10-7-17 or 165:10-7-32]

(30) **Form 1014HD - Application for Disposal of Hydrostatic Test Water:** Company wishing to discharge water as required by OAC 165:10-7-17, used to test a pipeline or tank, must submit a Form 1014HD to the Pollution Abatement Department for prior approval. [Reference 165:10-7-17]

(31) **Form 1014L - Surface Owner Permission for Land Application:** Each application for land application must include an original Form 1014L, whereby the applicable surface owner gives permission for the applicant to land apply certain deleterious substances to a specific property. [Reference 165:10-7-19 and 165:10-7-26]

(32) **Form 1014N - Application for Commercial Pit Construction:** After a Commission order is obtained, Form 1014N must be submitted for approval by the Manager of Pollution Abatement prior to the construction of each commercial pit authorized by the order. [Reference 165:10-9-1]

(33) **Form 1014S - Application for Land Application:** Each application for land application of materials must be submitted to a Field Operations office on Form 1014S. An original and three copies are required. The applicant must be the operator of the well or other operator responsible for generating the waste to be land applied, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure, and the Oklahoma Energy Resources Board or its contractor may apply in cases where there is no responsible party. The Form 1014S shall be processed within five working days of submission of all required or requested information. [Reference 165:10-7-19 and 165:10-7-26]

(34) **Form 1014W - Application for waste oil or drill cuttings use by County Commissioners:** Application to apply waste oil, waste oil residue, or freshwater drill cuttings must be made by any Board of County Commissioners on Form 1014W. An original and one copy are required to be submitted to the appropriate District Manager. [Reference 165:10-7-22 and 165:10-7-28]

(35) **Form 1014X - Application for waste oil or drill cuttings use by operators:** Application to apply waste oil, waste oil residue, or freshwater drill cuttings must be made by any operator on Form 1014X. An original and one copy are required to be submitted to the appropriate District Manager. [Reference 165:10-7-27 and 165:10-7-29]

(36) **Form 1015 - Application for Administrative Approval to Dispose of or Inject Water into Well(s):** Applicant shall file an original and six copies of application and one complete set of attachments to the Commission on Form 1015. Applicant will also furnish one copy of the application on Form 1015 to the landowner and a copy of the application to each operator of a producing leasehold within one-half (1/2) mile of the well location. Applicant will submit an affidavit of delivery or mailing not later than five days after the application is filed and shall file proof of publication in an Oklahoma City newspaper and a

county newspaper in which the well is located. [Reference 165:10-5-5]

(37) **Form 1015SI - Application for Permit for Simultaneous Injection Well:** Operator shall file original and three copies with the Underground Injection Control Department on Form 1015SI. A copy of the form will also be supplied to the operator of any producing lease within (1/2) mile of the proposed injection well. [Reference 165:10-5-15]

(38) **Form 1015T - Application for Injection of Reserve Pit Fluids:** Each application for the on-site injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed with the Underground Injection Control Department by the well operator on Form 1015T. The original and three copies of the application and one complete set of attachments shall be furnished to the Underground Injection Control Department. A copy of the application will also be supplied to the land owner and the operator of any producing lease within 1/2 mile of the proposed well. [Reference 165:10-5-13]

(39) **Form 1015U - Unit-wide application for Injection:** Optionally, the operator can file a unit-wide application for injection (Form 1015U) that fulfills all the requirements of 165:5-7-27 (b) through (e). Upon review and approval, the operator receives a unit-wide order that allows the operator to file an individual well application (Form 1015) and if it fits the unit-wide criteria, the UIC order can be issued immediately without an additional area of review, notice, or protest period. [Reference 165:5-7-27]

(40) **Form 1016 - Back Pressure Test for Natural Gas Wells:** Operators and/or purchasers, on the Form 1016, will report all single-point and four-point potential tests as required by pool rule orders or general rules. List OTC assigned county and lease numbers and special allocated pool numbers, first date of sales, and complete flow data. [Reference 165:10-17-6 and 165:10-17-7]

(41) **Form 1017 - Guymon-Hugoton Field Gas Well Deliverability Tests:** Operators and/or purchasers of gas in this field shall take deliverability tests between January 1 and August 31 of each year, and on the test sheet Form 1017 file the results with the Commission. List OTC assigned lease number for each well. [Reference Orders No. 17867 and 87291]

(42) **Form 1019 - Guymon-Hugoton Field Acreage Statement for Gas Wells:** A fact statement as to acreage attributable to each well shall be filed with the Commission on Form 1019 within 30 days of the well completion with a plat or map showing location of the well. List OTC assigned county and lease number. [Reference Order No. 17867]

(43) **Form 1020A - Application for Certification for the Recycling, Reuse of Deleterious Substances:** Applicant shall file an original Form 1020A with necessary attachments with the Pollution Abatement Department. Form 1020A is filed prior to construction of facility

or change of operator. [Reference 165:10-8-1 and/or 165:10-8-2]

(44) **Form 1021 - Application for Priority Hardship Classification:** The applicant shall file Form 1021 and the necessary attachments with the Technical Services Department for review prior to any hearing for priority one hardship classification. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

(45) **Form 1021A - Application for limited deviation from the priority gas rules:** The applicant shall file Form 1021A and the necessary attachments with the Technical Services Department for review prior to any hearing for deviation from the priority gas rules. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

(46) **Form 1022 - Application to flare or vent gas:** Operator shall file one copy of Form 1022 to the Technical Services Department of the Conservation Division listing OTC assigned county lease number. [Reference 165:10-3-15]

(47) **Form 1022A - Application to operate vacuum pump:** Operator shall file one copy of Form 1022A with the required attachments to the Technical Services Department of the Conservation Division. No filing fee will be required for application to operate a vacuum pump. Notice requirements as set out in OAC 165:5-7-25 shall apply. [Reference 165:10-3-31]

(48) **Form 1023 - Application for multiple completion, multichoke assembly or commingle completion:** Operator will file the original and four copies of Form 1023 with the required attachments. List OTC assigned county and lease number. [Reference 165:10-3-35; 165:10-3-39; 165:10-3-37]

(49) **Form 1024 - Packer setting affidavit:** Operator will submit Form 1024 as required. [Reference 165:10-3-35 and pertinent field rules]

(50) **Form 1025 - Packer leakage test:** Operator will submit Form 1025 as required. [Reference 165:10-3-35 and pertinent field rules]

(51) **Form 1027 - Bottom hole pressure test:** Operator, on the pink sheet of Form 1027, shall take BHP tests in the manner and during periods prescribed by special field rules. List OTC assigned county and lease numbers. [Reference Special Field Rules and 165:10-13-3]

(52) **Form 1028 - Application for discovery oil allowable:** Operator shall file Form 1028 with the required exhibits and tests within 30 days of completion of each new well in a discovery oil pool. [Reference 165:10-15-7]

(53) **Form 1029A - Production or potential test - oil only:** Operator of each newly completed discovery oil well shall file a potential test Form 1029A not later than 30 days after completion of the well. All tests, if requested, shall be witnessed by another operator.

(54) **Form 1030 - Application for allowable adjustment:** Each operator or other interested parties desiring to adjust the allowable for a well or wells shall file Form

1030 for administrative review and approval. The allowable may be increased, decreased, or transferred as the evidence may indicate for the most efficient rate of production from the well or wells. [Reference 165:10-13-5, 165:10-13-8, 165:10-15-18 and 165:5-7-12]

(55) **Form 1034 - Nominations and purchasers report:** [Reference 165:10-1-49]

(A) **Oil:** Purchasers will furnish nomination data, actual runs from leases, stocks, and other information on Form 1034 to the Conservation Division not later than noon Friday of the week preceding each scheduled market demand hearing. On months in which no market demand hearing is held, Form 1034 shall be filed by the 20th of the month listing crude oil runs for the previous month on line 5 only. Any change in nominations from the previous hearing shall be so indicated on this monthly report.

(B) **Gas:** Purchasers shall file their nominations by letter for wells in special allocated pools no later than one week prior to the market demand hearing.

(56) **Form 1040 - Monthly allocation schedule (gas):** Monthly gas schedule Form 1040 will be forwarded to operators by the Conservation Division indicating the status of special allocated gas wells and their current allowables. Operators will inform the Conservation Division of errors, if any, found in Form 1040 as promptly as possible. Additionally, purchasers will receive the monthly schedule and shall return the production from each well as requested. [Reference 165:10-1-47]

(57) **Form 1055 - Application for Pipe Pulling and Well Plugging License:** No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission. [Reference 165:10-11-1]

(58) **Form 1062 - Field Operations Inspection Report:** IN-HOUSE USE ONLY.

(59) **Form 1070 - Inventory of authorized existing enhanced recovery wells:** Operators shall file reporting Form 1070 before injecting into any enhanced recovery well. [Reference 165:10-5-3]

(60) **Form 1071 - Inventory of authorized existing disposal wells:** Operators shall file the reporting Form 1071 before disposing into any disposal well. [Reference 165:10-5-3]

(61) **Form 1072 - Notice of (commencement) (termination) of injection:** Within 30 days of either the commencement or termination of injection Form 1072 must be filed. Failure to file Form 1072 within 18 months from the date of authorization results in termination of the Commission order. [Reference 165:10-5-7]

(62) **Form 1073 - Notice of transfer of well operatorship:** The new operator shall file Form 1073 to notify the Conservation Division of any change of operation or purchaser of any oil, gas injection, disposal, or enhanced recovery injection well within 30 days after transfer of the well. [Reference 165:10-5-10 and 165:10-1-15]

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(63) **Form 1073I - Notice of transfer of well operator-ship:** The new operator shall file Form 1073I to notify the Underground Injection Control Section of any change of operation of any injection, disposal, or enhanced recovery injection well within 30 days after transfer of the well. [Reference 165:10-5-10 and 165:10-1-15]

(64) **Form 1075 - Mechanical integrity pressure test:** A pressure or monitoring test must be performed on new and existing enhanced recovery injection wells and disposal wells. Information must be submitted on Form 1075 and witnessed by a Field Inspector. Forms shall be submitted to the Conservation Division's Underground Injection Control Department. [Reference 165:10-5-6]

(65) **Form 1081 - Mineral owners escrow account:** Operator shall file, in quadruplicate, Form 1081 annually on anniversary date of first pooling order issued after effective date of Senate Bill 299 (7-1-84) and shall include all applicable orders issued during the twelve-month reporting period. [Reference 165:10-25-1 through 165:10-25-10]

(66) **Form 1085 - Complaint report:** Form 1085 is used by Commission personnel to report violations of General Rules of the Commission to report progress on ongoing remedial actions. Copies are sent to all parties concerned with investigation. Form 1085 combines and replaces old Forms 1034 and 1062. [Reference 165:10-7-7]

(67) **Form 1139 - Application for gross production tax exemption:** Operators shall file one copy of Form 1139 with the required attachments to the Technical Services Department of the Conservation Division. [Reference 165:10-21-75 through 165:10-21-80]

(68) **Form 1534 - Application for tax rebate:** Operators shall file one original of Form 1534 with the required attachments to the Technical Services Department of the Conservation Division. To obtain the tax exemption of the gross production tax, the operator shall forward a copy of the Commission order to the Oklahoma Tax Commission, together with any other data required by that agency. [OTC Rule 10.030.03] [Reference 165:10-21-23, 165:10-21-37, 165:10-21-47, 165:10-21-57, 165:10-21-67 and 165:10-21-82.2]

(69) **Form 1535 - Application for classification of reservoir dewatering project for exemption of sales tax on electricity used for such operations:** Operators shall file one original of Form 1535 with the required attachments to the Technical Services Department of the Conservation Division. To obtain the exemption of sales tax on the sale of electricity and associated delivery and transmission used for reservoir dewatering operations, the operator shall contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194. [Reference 165:10-21-83, 165:10-21-83.1 and 165:10-21-83.2]

(70) **Form 2000BF - AAI Oversight Qualification:** The Applicant shall file one (1) original of form 2000BF to the Brownfields Program of the Conservation Division

listing the qualifications as per AAI of each Environmental Professional who will work on the site.

(71) **Form 2001BF - Brownfields Applicant Eligibility:** The applicant shall file one (1) original of form 2001BF to the Brownfields Program of the Conservation Division. This form is filed to demonstrate applicant's eligibility to be in the Brownfields program.

(72) **Form 2002BF - Consent to Entry:** The applicant shall file one (1) original of form 2002BF to the Brownfields Program of the Conservation Division. This form is the landowner's permission for applicant and their contractors to enter the property for assessment and cleanup work. Copies will be sent to all parties concerned with the assessment and/or cleanup.

(73) **Form 2003BF - Application for Brownfields Site Eligibility:** The applicant shall file one (1) original of form 2003BF to the Brownfields Program of the Conservation Division for all sites applicant is entering into the program. This form provides necessary information on the site.

(74) **Form 2004BF - Application for Brownfields Site Assessment:** The applicant shall file one (1) original of form 2004BF to the Brownfields Program of the Conservation Division. This form can be used by public, quasi-public, and non-profit entities to request a free Targeted Brownfields Assessment of a site that has been approved as eligible for the Brownfields program.

(75) **Form 2005BF - Brownfields Certificate of NFA:** The form 2005BF will be issued by the Commission to the Brownfields Applicant, after the Brownfields staff has made a no further action (NFA) necessary decision. The applicant must file the Certificate of NFA in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to The Oklahoma Corporation Commission within 30 days.

(76) **Form 2006BF - Brownfields Certificate of Remediation Completion:** The form 2006BF will be issued by the Commission to the Brownfields Applicant, after the Brownfields staff has made a final inspection of the site and review of the project following a remedial action. The applicant must file the Certificate of Completion and any land use restrictions in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to The Oklahoma Corporation Commission within 30 days.

## PART 9. PURCHASERS AND TRANSPORTERS

### 165:10-1-49. Filing of nominations

(a) ~~All purchasers, buyers, and takers of crude oil in Oklahoma shall file their nominations for purchases of crude oil from wells in allocated pools, unallocated pools, and enhanced oil recovery pools with the Conservation Division on Form 1034-0 not later than noon Friday of the week preceding the regularly scheduled market demand hearing.~~

(b) All operators of natural gas wells in special allocated gas pools where well allowable calculations according to special allocated field rules are in effect shall file their pool nominations on Form 1034-G not later than one week prior to the date of the market demand hearing.

(1) Nominations shall be restricted to the volume not to exceed the wellhead absolute open flow (WHAOF) times calendar days for each well in a pool. For wells in pools where the WHAOF is not utilized, the equivalent well deliverability or calculated rate of flow applicable to that particular pool may be used in lieu of the WHAOF. For wells exempt from testing, nominations shall be restricted to a volume not to exceed the well's minimum, double minimum, or special allowable time calendar days.

(2) Operators shall attach to Form 1034-G a listing of each of their special allocated wells by pool, OTC Lease Number, API Number, well name and number, and location as recorded on Form 1040, plus the applicable WHAOF, deliverability, or rate of flow value as determined by the appropriate well test for that time period. Wells exempt from testing shall be indicated as test-exempt on the list.

(3) Failure of an operator to properly file nominations on Form 1034-G shall result in a zero allowable being assigned to the operator's wells for the month in which the nominations would have been used in calculating the field allowable. Allocation factors for a pool shall not be recalculated as a result of the filing of a late Form 1034-G.

**SUBCHAPTER 3. DRILLING, DEVELOPING, AND PRODUCING**

**PART 1. DRILLING**

**165:10-3-2. Notification of spudding of new well**

(a) Except as provided in (c) of this Section, the operator of a new well shall file with the Conservation Division a Notice of Spudding of New Well on Form 1001A within 14 days after spudding of the well.

(b) For the purposes of (a) of this Section, spudding of a new well refers to:

(1) The first boring of the portion of the hole intended to penetrate the base of treatable water or a common source of supply, whichever is shallower, in the drilling of a well for the production of oil and gas or for use as an injection, disposal or service well.

(2) Reentry into a previously plugged well for purposes of producing oil and gas or for use as an injection, disposal or service well.

(c) Filing of a Notice of Spudding of a New Well on Form 1001A shall not apply to:

(1) Any workover operation to deepen, plug-back, or recomplete.

(2) An unplugged hole spudded before January 9, 1986.

(3) Recompletion attempts in an unplugged hole for which a Notice of Spudding of New Well has been filed.

(d) In addition to the notification of spudding a new well as required in (b) of this Section, the operator shall notify the district office ~~within 14 days of~~ no less than 24 hours before the first boring of the hole for setting conductor pipe used for the sole purpose of near surface stabilization of the borehole when such operations are not continuous with spudding operations as defined in (b) of this Section. The notification required by this subsection may be provided in person, by phone, or in writing, and any written notification may be submitted by mail, fax, e-mail or other electronic means.

**165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports**

(a) **Scope.**

(1) This Section governs the following:

- (A) Surface casing and cementing requirements.
- (B) Alternate casing and cementing procedure used instead of adequate surface casing and cement.
- (C) Minimum cementing and testing requirements for intermediate and production casing.
- (D) Minimum valve and blowout preventer requirements.
- (E) Cementing reports.

(2) This Section shall apply to the following:

- (A) Wells drilled or reentered for the production of oil, gas or brine.
- (B) Wells drilled or reentered for disposal of oil-field wastes.
- (C) Wells drilled for enhanced recovery injection.
- (D) Wells drilled in subsurface gas storage units created by order of the Commission.
- (E) Other oilfield related service wells.

(b) **Effect on area rules.**

(1) If any area rules promulgated by order of the Commission require less casing and cement than required by this Section, then this Section shall supersede the area rules.

(2) If an applicable area rule promulgated by order of the Commission has more stringent casing and cementing requirements than what are required by this Section, the Conservation Division shall enforce the area rules.

(c) **Surface casing and cementing requirements for wells listed in (a)(2) of this Section:**

(1) **Minimum surface casing requirements.** Unless an alternate casing program is authorized by the Conservation Division or by an order of the Commission, suitable and sufficient surface casing shall be run and cemented from bottom to top with a minimum setting depth which is the greater of:

- (A) Ninety feet below the surface, or
- (B) Fifty feet below the base of treatable water.

(2) **Penalty for noncompliance.** An operator setting less than the required amount of surface casing or failing to remediate uncirculated cement before resuming operations shall be fined \$5,000.00.

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(3) **Exceptions to (c)(1).** Operators having wells producing hydrocarbons which were in compliance with the surface casing requirements at the time of completion shall not be required to comply with (1) of this subsection.

(4) **Well to be used for annular injection under 165:10-5-13.** If the operator intends to dispose of drilling or stimulation fluids by annular injection, then the operator shall comply with 165:10-5-13 which requires a surface casing string to be set not less than 200 feet below the base of treatable water, unless a Commission order provides otherwise.

(5) **Depth limitation on setting surface casing.** The well operator shall run and cement the surface casing string required by this subsection before drilling the well more than 250 feet below the base of treatable water, unless otherwise approved on the Permit to Drill.

(6) **Penalties.** Operators failing to obtain permission to drill a well more than 250 feet below the treatable water, or to obtain permission for an alternate casing and cementing procedure may be fined \$2,500.00.

(7) **Cementing procedures.**

(A) **Approved methods.** Except as provided in (B) of this paragraph for bradenhead cementing, cement shall be run by either the tubing and pump method, the pump and plug method, or the displacement method.

(B) **Bradenhead cementing prohibited.** Bradenhead cementing is prohibited without written permission from the District Office of the Conservation Division.

(C) **Restrictions on stage cementing.**

(i) **Above 200 feet.** Running cement through small tubulars is permitted above 200 feet in depth without special permission.

(ii) **Below 200 feet.** Below 200 feet in depth, the operator shall obtain permission from the District Office of the Conservation Division before using small tubulars to run cement.

(D) **Steel casing required.** For purposes of the surface casing requirements of this Section, surface casing shall be oil field grade steel casing.

(E) **Witnessing of setting of surface casing.** The operator shall give at least 24 hours notice by telephone to the appropriate District Office or Field Inspector as to the time when surface casing will be run.

(F) **Minimum cement setup time.** The cement behind the surface casing shall set at least eight hours before further drilling.

(G) **Down-hole testing of surface casing and cement.** Before drilling the shoe of the surface casing, the operator shall test the surface casing using the procedure prescribed by (f) of this Section.

(H) **Failure to circulate cement or fall back of cement behind surface casing.**

(i) **Verifying the top of cement.** If no conductor string is set and the cement did not circulate to the surface or falls back more than five feet, the operator shall determine the top of the cement

using a method approved by the District Manager or Field Inspector.

(ii) **Top of cement less than 200 feet from the surface.** If the top of the cement is found less than 200 feet from the surface, the operator may circulate cement to surface using small tubulars.

(iii) **Top of cement greater than 200 feet from the surface.** If a conductor string has been set and the cement has been found to be ten feet or more above the base of the conductor string, no corrective action is required. If no conductor string has been set and the top of the cement is greater than 200 feet from the surface, the operator shall perform a corrective cementing operation by circulating cement to the surface from a point 50 feet below the base of the treatable water or from the determined top of the cement, whichever is shallower. The District Manager or Field Inspector may grant permission to circulate cement through small tubulars.

(I) **Insufficient surface casing or mechanical failure.** Within 24 hours after discovery of a problem with the surface casing or cement, the operator shall notify the appropriate District Office of the Conservation Division by telephone of:

(i) Any mechanical failure of the surface casing or cement.

(ii) Discovery of a treatable water formation below the shoe of the surface casing.

(J) **Penalty.** An operator, failing to report a rupture, break, or opening in the surface casing, shall be fined \$1,000.00 and the well shut down.

(K) **Notice.** The District Manager or Field Inspector shall be given at least 24 hours notice prior to any cementing operation in order that they may have the opportunity to witness.

(d) **Alternate casing and cementing procedures.**

(1) **Requirement of approval on the Permit to Drill.** Use of an alternative casing and cementing procedure instead of surface casing and cement required by (c) of this Section is prohibited without authorization on the Permit to Drill for the well.

(2) **Disapproval.** The Manager of Technical Department may not issue a permit for an alternate casing string and cementing procedure if one or more of the following conditions exist:

(A) The well will penetrate a known lost circulation zone.

(B) The treatable water bearing formation(s) will be endangered.

(C) The projected depth of the well is less than 100 feet from the top of any authorized secondary project or gas storage facility.

(3) **Applicability of other casing and cementing standards.** Alternate casing and cementing procedures under this subsection are subject to the provisions of (c)(7) of this Section.

(4) **Alternate casing and cementing procedure.**

(A) An operator having permission to run an alternate casing string may, for protection of the treatable water, drill the well to casing point and circulate cement to the surface, or circulate cement from a depth of 100 feet below the base of treatable water to the surface after following the procedures set out in (f) of this Section.

(B) Oil based drilling mud shall be prohibited.

(C) If a well is completed using an alternate casing and cementing procedure, a bond log covering the interval from 100 feet below the base of the treatable water to the surface shall be required. The District Manager may waive this requirement. A completion attempt, in cases where the protection of treatable water is questionable, is strictly prohibited.

(D) Unless extended by the District Manager, the operator shall have 72 hours after drilling and testing is completed to run production casing or plug the well. A minimum of 24 hours prior notice must be given to the appropriate District Office prior to cementing operations so that a Field Inspector may have the opportunity to witness the cementing or plugging procedures. If the well is plugged and abandoned, procedures set out in (e) of this Section shall be followed.

(E) In the event that casing is run and cement does not circulate to the surface, or falls back, the operator shall determine the top of the cement using a method approved by the District Manager.

(5) **Remedial actions.**

(A) If the top of the cement is less than 200 feet from the surface, the operator may circulate cement from that point to the surface using small tubulars or by perforating the casing at that point and circulating cement to the surface.

(B) If the top of the cement is greater in depth than 200 feet, the operator shall perforate the casing at the top of the cement and circulate cement to the surface, or with the written permission of the Field Inspector, use small tubulars.

(C) In the event that a conductor string had been set and the top of the cement is at least ten feet above the base of the conductor casing no remedial action is needed.

(D) Unless waived by the District Office, all corrective cementing operations shall be approved and witnessed by the Field Inspector.

(E) In wells where corrective actions were needed for casing or cementing problems, a completion attempt shall not be made without approval by the District Manager.

(e) **Permanent well marker.** In the event that the well is a dry hole and no casing has been run, then during the plugging of the well the operator shall run and cement from bottom to top at least one joint of casing at the surface not less than 25 feet in length for use as a permanent well marker. The casing used as a well marker shall be oil field grade steel casing with an outside diameter of at least seven inches. The top of the marker

shall be three feet below the surface and be capped with a steel plate inscribed or embedded with the well number and date of plugging on the steel plate. An operator failing to run and cement the well marker as required shall be fined \$1,000.00 and shall, under the supervision of the Commission, replug the well.

(f) **Minimum cement for additional casing strings.** If additional casing other than surface casing is run, except for temporary purposes, it shall be run, set, and cemented with a calculated volume of cement sufficient to fill the annular space behind the casing string from the base of the casing string to a minimum height which is the greater of five percent of the depth to which the casing string is set, or a height of 200 feet. Wells approved for horizontal completion are exempt upon approval of the Conservation Division. Any well approved for horizontal completion shall be cemented with a calculated volume of cement sufficient to fill the annular space behind the production casing string to isolate the producing formation. The Conservation Division may grant a variance to this requirement for a horizontal well upon request.

(g) **Pressure testing of casing strings.**

(1) Before drilling the cement plug in a casing string, the operator shall pressure test the installed casing for 30 minutes at a minimum pressure which is the lesser of the surface gauge pressure equal in pounds per square inch to 0.2 of the length of the casing in feet or 1500 psig.

(2) During the 30 minute test, if the surface pressure drops ten percent or more, the operator shall:

(A) Repair and retest the casing until the requirements of this subsection are met; or

(B) Plug the well according to the rules of this Chapter.

(h) **Minimum wellhead equipment for drilling wells.** ~~Except in proven areas where less equipment is known to be adequate, every drilling well shall be equipped with a master-gate, or its equivalent, or an adequate blowout preventer. A flow line valve of proper size and working pressure shall be attached. All reasonable and prudent precautions shall be taken for keeping the well under control during drilling operations, including but not limited to the use of blow-out preventers and high pressure fittings attached to properly anchored and cemented casing strings and the maintenance of mud-laden fluid of sufficient weight to provide proper well control. Blow-out preventers shall be tested at regular intervals to ensure proper operation.~~

(i) **Cementing reports.**

(1) The operator of the well shall submit, attached to Form 1002A Completion Report, a Form 1002C Cementing Report describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs.

(2) If additional cementing operations occur after submission of the Cementing Report, the operator shall submit an amended Form 1002C for the well.

(j) **Surface casing requirements for re-entry wells.** For a re-entry as defined by 165:10-1-2, casing and cementing requirements at the time of re-entry shall apply.

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(k) **Surface casing requirement for recompletions.** For a recompletion as defined by 165:10-1-2, casing and cementing requirements applicable to wells commenced on the latter of the spud date or re-entry date for the well shall apply.

(l) **Casing and cementing requirements for wells converted for injection or disposal.** If a well is converted for use as an injection or disposal well, it shall be subject to the casing and cementing requirements of this Section effective at the time of conversion of the well.

(m) **Casing and cementing requirements for wells penetrating unitized common sources of supply.** Each newly drilled or re-entered well which penetrates a common source of supply in which enhanced recovery operations are being conducted shall be properly cased and cemented from not less than 100 feet below to not less than 100 feet above each unitized common source of supply to prevent migration of formation fluids and contain formation pressure. In the event the well is to be plugged without being cased, the well shall be properly cemented over the aforementioned interval(s) during plugging procedures.

(n) **Insufficient surface casing and cement.** When it has been determined that a treatable water-bearing formation has not been properly cased and cemented, the operator shall take such measures designated by the Director of Conservation or ordered by the Commission to protect any treatable water-bearing formation.

### PART 3. COMPLETIONS

#### 165:10-3-17. Well site and surface facilities

(a) **Scope.** This Section shall be applicable to all operators and owners of oil and gas wells, leases, secondary recovery units, converted or newly drilled saltwater disposal or injection wells, and re-entries or reworkings of the above; however, this Section does not cover pits used in connection with oil and gas operations (see 165:10-7-16).

(b) **Removal of fire hazards.** Any material that might constitute a fire hazard shall be removed a safe distance from the well location, tanks, and separator. All waste oil shall be burned or disposed of in a manner to avoid creating a fire hazard.

(c) **Removal of surface trash.**

(1) All surface trash, debris, and junk associated with the operations of the property shall be removed from the premises. Equipment and material that may be useable and related to the operations of the property are not considered trash, debris and junk. With written permission from the surface owner, the operator may, without applying for an exception to 165:10-3-17(b), bury all nonhazardous material at a minimum depth of three feet; cement bases are included.

(2) The District Office or field inspector may issue a Form 1036 for any alleged violation of this subsection. If the operator fails to remove trash, debris, and junk after written notice, the Commission may fine the operator up to \$1,000.

(d) **Required lease signs.** Within 30 days after the completion of any producing oil or gas well, a sign shall be posted and maintained at the location showing operator of the well and the operator's business phone number, name of farm, number of the well, and legal description of the well; provided, however, where more than one well is producing on a lease, the operator may post and maintain a sign at the principal lease entrance showing the lease name, operator, legal description, and number of wells, and on each well designate the number of the well. Within 30 days after completion or recompletion of an enhanced recovery injection well or a disposal well, a sign shall be posted and maintained at the well location showing the operator of well, name of farm, well number, legal description of the well, and the Commission order number by which it was authorized. The legal description of each well completed on or after March 1, 1976, shall be posted at the well and shall describe the location of the well to the nearest quarter quarter section and shall show the section, township, and range. On a 160-acre or larger drilling and spacing unit, a sign shall also be posted at the entrance to the well site. The District Office or field inspector may issue Form 1036A for failure to post a required sign. If an operator fails to post a sign as directed, the Commission may fine the operator \$50.00 per violation; provided that total fines per incident shall not exceed \$500.00 per lease.

(e) **Notice of fire or blowout.** In case of a fire or blowout, the well operator shall notify by telephone or telegraph, as soon as possible, either the Conservation Division or the appropriate District Office of the Conservation Division.

(f) **OTC numbers on stock tanks for oil and condensate.**

(1) On all oil and gas producing leases, the first purchaser of crude oil or condensate shall print its name or affix the company logo and print or affix the OTC Gross Production Division Purchaser Reporting Number on at least one of the storage tanks from which marketable liquids are being delivered.

(2) On all oil and gas producing leases, the well operator shall print or affix the OTC Gross Production Division assigned Production Unit Number and the OTC Gross Production Division Operator Reporting Number on at least one of the tanks from which marketable liquids are being stored. In the case of an enhanced recovery or unitization operation where several OTC Gross Production Division assigned Production Unit Numbers exist for the wells in the unit, the word "unitized" shall be printed or affixed to one of the storage tanks from which marketable liquids are being delivered to the purchaser.

(3) The identification numbers required in this subsection shall always be clearly legible. All letters and numbers shall be a minimum of two inches in height. Any operator failing to post required information shall be fined \$50.00 per violation; provided that total fines per incident shall not exceed \$500.00 per well.

(g) **OTC numbers on gas meter or meter house.**

(1) On all gas producing leases, the operator of the well site gas meter required under 165:10-17-5 shall print or affix its name and OTC reporting number on the outside of

the meter house or on the outside of the meter itself if no meter house exists.

(2) The operator of the lease shall print its OTC lease number and operator reporting number on the meter house or on outside of the meter if no meter house exists.

(3) The identification required in this subsection shall always be clearly legible. ~~All letters and numbers shall be a minimum of two inches in height.~~

(h) **Valve and seals on stock tanks.** The operator shall install tank valves such that metal identification seals can be properly utilized. These seals shall be used on all delivery tank valves to lessen unauthorized movement of marketable products.

(i) **Man-ways on frac tanks.** Each frac tank used at the wellsite shall have protective man-ways to prevent persons from accidentally falling into the frac tank.

(j) **Guy line anchors.** All guy line anchors left buried for use in future operations of the well shall be properly marked by a marker of bright color not less than four feet in height and not greater than one foot east of the guy line anchor.

(k) **Well site cleared.** Within 90 days after a well is plugged and abandoned, the well site shall be cleared of all equipment, trash, and debris. Any foreign surface material is to be removed and the location site restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the location site is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the well.

(l) **Restored surface.** Within 90 days after a lease has been abandoned, surface equipment such as stock tanks, heater, separators, and other related items shall be removed from the premises. The surface shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the surface is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the lease.

(m) **Leasehold roads.** All leasehold roads shall be kept in a passable condition and shall be made accessible at all times for representatives and field inspectors of the Commission. At the time of abandonment of the property, the area of the road shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the road area is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the property.

(n) **Extension of time.**

(1) An operator may request an extension of time required in (k), (l), and (m) of this Section for not more than six months by applying to the District Office and showing that there is no imminent danger to the environment and that one of the following conditions exists:

(A) That an agreement with the surface owners is not possible.

(B) That adverse weather conditions exist or existed.

(C) That the equipment needed to conform to (k), (l), and (m) of this Section was not or is not available.

(2) If approved by the District Manager, the extension shall be granted and the surface owner shall be notified by the operator. Any extension beyond six months shall require application, notice and hearing pursuant to OAC 165:5-7-41.

## PART 5. OPERATIONS

### 165:10-3-29. Oil storage

Oil storage tanks shall be constructed so as to prevent leakage. Dikes or retaining walls, where necessary, shall be constructed, based on tank capacity and throughput, so as to prevent oil or deleterious substances from ~~polluting surface and subsurface water~~ causing pollution and to ensure public safety.

## SUBCHAPTER 5. UNDERGROUND INJECTION CONTROL

### 165:10-5-2. Approval of enhanced recovery injection wells or disposal wells

(a) The subsurface injection or disposal of any substance for any purpose is prohibited except upon approval of the Commission pursuant to 165:10-5-5 or 165:10-5-12 and 165:10-5-13. This authorization may be conditioned upon the applicant taking corrective action to protect treatable water as specified by the Commission ~~in its order~~. The Commission ~~shall~~ may fine an operator up to \$5,000.00 for any violation of this subsection.

(b) Except as provided in (c) and (d) in this Section, every well used for injection or disposal shall be cased and tested in accordance with 165:10-3-4 and 165:10-5-6.

(c) The testing requirements of 165:10-5-6 shall not apply to wells permitted by Commission order for subsurface injection of onsite reserve pit fluids.

(d) The Conservation Division may approve a Form 1015 application to convert for injection or disposal an existing well which does not comply with 165:10-3-4 if:

(1) The operator attaches to the Form 1015 application a description of an alternate method of protecting treatable water.

(2) The Conservation Division approves the proposed alternate method.

(3) The application is filed in accordance with OAC 165:5-7 if a hearing is required.

(4) The application is not protested.

(e) Any newly drilled or newly converted injection or disposal well which is within one-half (1/2) mile of any active or reserve municipal water supply well shall not be approved without notice and hearing, and the Commission shall not issue an order authorizing injection or disposal into said well until

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the applicant proves by substantial evidence that said well shall not pollute said water supply well. A commercial disposal well shall not be approved within a designated wellhead protection area.

### 165:10-5-5. Application for approval of enhanced recovery injection and disposal operations

~~(a) Each application for approval of a well for use as an injection well or disposal well shall be filed in accordance with 165:5-7-27.~~

(a) **Application.** Each application for the approval of a newly drilled or newly converted injection well, disposal well, or commercial disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) **Application.** The application for the approval of an enhanced recovery injection or disposal well(s) shall be accompanied by:

#### (1) Plat.

(A) **Noncommercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing leasehold within one-quarter (1/4) mile of each enhanced recovery injection or disposal well.

(B) **Commercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing leasehold within one-half (1/2) mile of each disposal well.

(2) **Completion Report.** If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) **Schematic diagram.** A schematic diagram of the well showing:

- (A) The total depth or plugback depth of the well.
- (B) The depth of the injection or disposal interval indicating both the top and bottom.
- (C) The geological name of the injection or disposal zone.
- (D) The depths of the tops and bottoms of the casing and cement to be used in the well.
- (E) The size of the casing and tubing, and the depth of the packer.

(4) **Proposed zone information.** Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish to the Commission, sworn evidence and data in support of such findings. The Commission, when issuing an order approving fluid injection, shall consider the following:

- (i) Maximum injection rate.
- (ii) Maximum surface injection pressure.
- (iii) Injection fluid.
- (iv) The lithology and rock characteristics of the injection zones and overlying strata.

#### (5) Proposed operating data:

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) **Application for approval.** A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant by regular mail or delivered to the owner of the surface of the land on which the injection or disposal well is to be located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(d) **Notice of application.** Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma City, Oklahoma, and in a newspaper of general circulation published in each

county in which land embraced in the application are located. The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10 acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum BID or MCFID injection rate.
- (9) The type of well (injection, disposal, commercial).

(e) **Written objection.** If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, 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 on the pollution docket. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall sign the permit.

(b~~f~~) In addition to the requirements of ~~165:5-7-27~~, listed above, the Manager of Underground Injection Control may request the applicant to submit the following information as a prerequisite to approval of the application:

- (1) For those wells included in ~~165:5-7-27(b)(1)~~ OAC 165:10-5-5(b)(1) which penetrate the top of the injection interval, a tabulation of the wells indicating the following information, if available, from public records:
  - (A) Dates the wells were drilled.
  - (B) The present status of the wells.
  - (C) The identity of any abandoned well which was improperly plugged or remains unplugged.
- (2) A list of the following information, if available, to the applicant:
  - (A) The shut-in bottom hole formation pressure in psi; or the stabilized shut-in surface pressure and fluid level in the proposed injection well.
  - (B) The permeability of the proposed injection zone expressed in millidarcies.
  - (C) The porosity of the proposed injection zone expressed as a percentage of pore volume.
  - (D) Documentation of the methods used to arrive at the data requested above.

(e~~g~~) ~~An order authorizing~~ Authorization of an enhanced oil recovery injection well or a disposal well or a commercial disposal well will expire and become null and void if no well completion report (Form 1002A) is filed within six months from the date of completion or recompletion conversion of the well.

(d~~h~~) In addition to the well construction requirements as set out in 165:10-3-1, commercial saltwater disposal wells shall comply with the following requirements:

- (1) At a minimum, the well shall be constructed with a wellhead, surface casing, production casing, tubing, and packer.
- (2) The surface casing shall be set and cemented at least fifty (50) feet below the base of the treatable water

bearing zone. The production casing will not be allowed to also serve as the surface casing.

(3) The production casing must be set and cemented through the injection zone with the cement circulated behind the casing to a height at least two hundred fifty (250) feet above the disposal zone. A cement bond log showing quality and placement of the cement must be furnished to and approved by the Commission before the well may be used for injection or disposal. The Manager of Underground Injection Control may approve the Arbuckle Formation for open hole completion.

(4) The annulus between the tubing and the casing must be open from the surface to the packer to allow for pressure testing and monitoring of the injection tubing and packer and the annulus filled with a packer fluid that protects against corrosion.

(5) The packer must be set at least within seventy-five (75) feet of the top of the perforations.

(6) Adequate gauges shall be installed on each annulus to allow proper monitoring of the disposal operation.

(7) Tubing must be internally coated or lined to prevent corrosion from injected fluids. PVC, Plastic Coated, Stainless Steel or Fiberglass will qualify.

(8) The packer must either internally coated or stainless steel.

(9) Commercial disposal wells authorized with a positive injection pressure must be equipped with a down hole shut-off device with a seal divider installed between the packer and the tubing. A Stainless Steel Profile Nipple and an "ON-OFF" Tool will qualify under this Section.

(e~~i~~) No Commercial disposal well will be permitted whose injection pressure approaches or exceeds the demonstrated frac gradient of the injection zones(s).

(f~~j~~) All permitted injection zones must be completed for injection. Authorization for any zones not initially completed as an injection zone will expire within 60 days following initial completion or recompletion date.

**165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1**

(a) **Scope.** This Section applies to:

- (1) Notice of Commencement of Injection and Disposal Operations on Forms 1012 and ~~1072~~ 1075.
- (2) Annual Report of Injection Projects, saltwater disposal wells and LPG storage wells on Form 1012.
- (3) Notice of Voluntary Termination of Operations on Form 1072.
- (4) Notice of mechanical failure or down-hole problems on Form 1075.

(b) **Annual report of enhanced recovery injection projects, saltwater disposal wells and LPG storage wells.**

- (1) **Submit Form 1012 by April 1st.** Each operator of a saltwater disposal well, LPG storage well or an authorized waterflood, pressure maintenance project, gas repressuring project, or other enhanced recovery project shall submit annually Form 1012 for every well to the Conservation Division as follows:

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- (A) Form 1012 shall be submitted by April 1st for the previous calendar year for all noncommercial wells.
- (B) For commercial disposal wells Form 1012 shall be submitted February 28 and August 31, for the previous six months.
- (2) **Failure to submit Form 1012.** Any operator who fails to submit the report on Form 1012 as required by (c)(1) of this Section ~~shall may be subject to a fine of \$500.00~~ fin ed up to \$500.00 and:
- (A) Injection into the project is prohibited until the operator submits Form 1012 for each injection well.
- (B) ~~The order is voidable~~ or permit is subject to termination.
- (3) **Required monthly monitoring.** On a monthly basis, the operator of each enhanced recovery injection well and disposal well and LPG storage well shall monitor and record the injection rate and surface injection pressure for the well.
- (4) **All UIC wells.** Saltwater disposal wells, injection wells and storage wells shall be reported on Form 1012 individually according to the order or permit authorizing disposal.
- (c) **Monitoring requirements for commercial disposal well.**
- (1) The operator of a commercial disposal well shall monitor and record the casing tubing annulus pressure and the injection pressure on a daily basis.
- (2) The operator of a commercial saltwater disposal well shall make available upon request of the Commission a log of all loads of deleterious substances disposed at the well. The log shall be kept on file for a period of at least five (5) years. The log of record shall include at a minimum, the amount, the location of the source, and the operator and/or owner of the source of the deleterious substance.
- (d) **Notice of voluntary termination.**
- (1) If an operator permanently terminates injection into a well, the operator shall submit to the Conservation Division Form 1072 within 30 days after termination of injection. Form 1072 shall state:
- (A) The legal description of the well.
- (B) The reason for termination.
- (C) The status of other wells, if the well is in an enhanced recovery project.
- (2) Submission of Form 1072 to permanently terminate injection shall terminate the authority under the order.
- (e) **Notice of mechanical integrity problem.**
- (1) **Notice of mechanical failure or down-hole problem.** When a mechanical problem occurs, then:
- (A) The well operator shall notify the Field Inspector for Conservation within 24 hours after discovery of the problem.
- (B) Within five days after discovery of the problem, the well operator shall submit to the Manager of Underground Injection Control written notice of the failure and a plan to repair and/or retest the well.
- (C) Repair shall be reported on the annual Form 1012 for the well.
- (D) Any operator failing to timely notify the Commission shall be subject to a fine of \$1,500.00.
- (2) **Shutdown.**
- (A) **Administrative shutdown.** The Conservation Division may shut down a well if a mechanical failure or down-hole problem indicates that injected substances are not or may not be entering the injection interval authorized by order of the Commission.
- (B) **Administrative authority to recommence injection.**
- (i) If a well is shut down under (1)(A) of this subsection, the well operator shall be responsible for proving to the satisfaction of the Manager of Underground Injection Control:
- (I) The mechanical integrity of the well for injection.
- (II) That the injected substances are going into and are confined to the permitted injection interval.
- (ii) Upon submission of proper proof of the satisfactory capability of the well for injection, the Manager of Underground Injection Control may authorize recommencement of injection.
- (C) **Resolution of disputes by order of the Commission.** In the event of a dispute between the Manager of Underground Injection Control and any person as to the suitability of a well for injection, the affected person may seek relief by order of the Commission. Upon application, notice, and hearing meeting the requirements of 165:5-7-27(c) and (d) for protested applications, the Commission may issue an order determining whether or not the well should be used for further injection.
- (3) **Notice of unreported repairs.** Any prior unreported repair of the well shall be reported on the next annual Form 1012 to be submitted to the Manager of the UIC Department.

### 165:10-5-9. Duration of underground injection well orders or permits

- (a) Subject to 165:10-5-10, ~~orders authorizing~~ authorization of injection into enhanced recovery injection wells and disposal wells shall remain valid for the life of the well, unless revoked by the Commission for just cause or lapses and becomes null and void under the provisions of 165:10-5-5(e)(g), or 165:10-5-7(f).
- (b) An order granting underground injection may be modified, vacated, amended, or terminated during its term for cause. This may be at the Commission's initiative or at the request of any interested person through the prescribed complaint procedure of the Conservation Division. All requests shall be in writing and shall contain facts or reasons supporting the request.
- (c) An order may be modified, vacated, amended, or terminated after notice and hearing if:

- (1) There is a substantial change of conditions in the enhanced recovery injection well or the disposal well operation, or there are substantial changes in the information originally furnished.
- (2) Information as to the permitted operation indicates that the cumulative effects on the environment are unacceptable.
- (d) If an operator fails to ~~submit to complete or convert a well as approved by the Conservation Division any initial report required by this Section~~ within eighteen (18) months after the effective date of the order or permit authorizing injection into ~~permitting~~ the well, then the order or permit authorizing injection into ~~terms of the order permitting~~ the well or enhanced recovery project shall expire.

**SUBCHAPTER 7. POLLUTION ABATEMENT**

**PART 1. GENERAL PROVISIONS**

**165:10-7-2. Administration and enforcement of rules**

- (a) The Manager of Pollution Abatement shall supervise and coordinate the administration and enforcement of the rules of this Subchapter under the direction of the Director of Conservation and the Commission.
- (b) Site assessments and remediation projects for petroleum and produced water pollution should adhere to the general practices appearing in the Oil and Gas Conservation Division's Guardian Guidance document including the Guidelines and Numerical Criteria for New or Historic Produced Water/Brine Spills Appendix. Any alternative plan shall be approved by the Manager of Pollution Abatement prior to implementation.
- (c) **Specific areas of Conservation Division jurisdiction to which Pollution Abatement rules apply:**
  - (1) Field operations for geologic and geophysical exploration for oil, gas and/or brine, including seismic shot holes, stratigraphic test holes or other test wells.
  - (2) Exploration, drilling, development, production or processing of oil, gas and/or mineral brine at the lease site.
  - (3) The exploration, drilling development and operation of wells used in connection with the recovery, injection, or disposal of mineral brines including construction, operation, maintenance, closure and abandonment of the facilities and activities.
  - (4) Reclaiming and/or recycling facilities associated with the exploration, drilling, development, production or transportation of oil and/or gas (including the processing of saltwater, crude oil, natural gas condensate, tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment).
  - (5) Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR parts 144 through 148 for Class II injection wells, Class V wells used for the recovery, injection or disposal or mineral brines as defined in the Oklahoma Brine Development Act.

- (6) Tank farms for storage of crude oil and petroleum products located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities that are not subject to the jurisdiction of the Oklahoma Department of Environmental Quality.
- (7) Construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum projects, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation [not including pipelines in natural gas liquids extraction plants, refineries, or reclaiming facilities other than those specified in OAC 165:10-7-4(c)(6)].
- (8) The handling, transportation, storage and disposition of saltwater, drilling fluids, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, production, and operation of oil and gas wells at any facility or activity specifically subject to Commission jurisdiction or other oil and gas extraction facilities and activities.
- (9) Spills of deleterious substances associated with facilities and activities specified in OAC 165:10-7-4(c)(8) or otherwise associated with oil and gas extraction and transportation activities.
- (10) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission.
- (d) **Monitoring of sites.** Before consideration for closure by the Conservation Division or the Commission, the responsible party shall monitor a remediation project subject to implementation of the water quality standards for a period of one (1) year, unless:
  - (1) Otherwise provided by Commission order, or
  - (2) As directed by the Manager of Pollution Abatement or designated Conservation Division staff.
- (e) **Public participation; Resolution of complaint or disagreement with Conservation Division staff.**
  - (1) In any case where the Conservation Division determines the need for public participation in the resolution of a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution, the Conservation Division may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.
  - (2) In any case where a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution cannot be resolved administratively between the responsible party and the complainant or because of a disagreement with the Conservation Division's manager of Pollution Abatement, Manager of Field Operations, or other Conservation Division staff, regarding the complaint, the responsible party or the complainant may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.

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## 165:10-7-4. Water quality standards

(a) **Scope.** The Commission hereby adopts the State water quality standards established and promulgated by the Oklahoma Water Resources Board (OWRB) or its successors effective October 7, 1987, and additions and revisions as lawfully published in the Oklahoma Register effective as provided by statute. The Commission's Oil and Gas Conservation Division (Conservation Division) shall implement the water quality standards with regard to its particular jurisdictional areas as referred to in ~~(e)~~ 165:10-7-2(c).

### (b) General considerations.

(1) The primary goal of the implementation of the water quality standards in the context of a remediation project subject to Commission jurisdiction shall be the protection and/or restoration of the beneficial use of the land, the soil and any surface or subsurface waters of the State adversely impacted or impaired by pollution from a Commission regulated site or facility.

(2) A remediation project utilizing the water quality standards shall adhere to the general practices appearing in the Conservation Division's *Oklahoma Water Quality Standards Implementation Plan (WQSIP)*.

(3) Where appropriate, a remediation project utilizing the water quality standards shall follow the use support assessment protocols (OWRB-OAC 785:46-7) as specified in *Oklahoma Water Quality Standards Implementation Plan*.

### (c) Specific areas of Conservation Division jurisdiction.

Compliance with the water quality standards for specific areas of the Conservation Division's jurisdiction requires compliance with rules applicable to these operations, found in Oklahoma Corporation Commission Oil and Gas Conservation rules OAC 165, Chapter 10. Responsible parties shall refer to and comply with the rules in OAC 165:10 that pertain to each of the environmental jurisdictional areas listed below as (1) through (10). The completion of a remediation project pursuant to this paragraph and compliance with rules pertaining to specific areas of Conservation Division jurisdiction shall be considered compliance with the water quality standards. The partial listing of rules in the Commission's "Guidance Document of Technical Measures" for technology based pollution prevention measures in areas of jurisdictional responsibility (1) through (8) and (10), listed below, is for guidance only and is not intended to be an exhaustive notation. Similar applicable rules for jurisdictional area (9), below, are listed in the WQSIP. Review of the Conservation Division rules will be made on a case-by-case basis to determine compliance:

(1) Field operations for geologic and geophysical exploration for oil, gas and/or brine, including seismic shot holes, stratigraphic test holes or other test wells.

(2) Exploration, drilling, development, production or processing of oil, gas and/or mineral brine at the lease site.

(3) The exploration, drilling, development and operation of wells used in connection with the recovery, injection, or disposal of mineral brines including construction, operation, maintenance, closure and abandonment of the facilities and activities.

~~(4) Reclaiming and/or recycling facilities associated with the exploration, drilling, development, production or transportation of oil and/or gas (including the processing of saltwater, crude oil, natural gas condensate, tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment).~~

~~(5) Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR parts 144 through 148 for Class II injection wells, Class V wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act.~~

~~(6) Tank farms for storage of crude oil and petroleum products located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities that are not subject to the jurisdiction of the Oklahoma Department of Environmental Quality.~~

~~(7) Construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation [not including pipelines in natural gas liquids extraction plants, refineries, or reclaiming facilities other than those specified in OAC 165:10-7-4(c)(6)].~~

~~(8) The handling, transportation, storage and disposition of saltwater, drilling fluids, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, production, and operation of oil and gas wells at any facility or activity specifically subject to Commission jurisdiction or other oil and gas extraction facilities and activities.~~

~~(9) Spills of deleterious substances associated with facilities and activities specified in OAC 165:10-7-4(c)(8) or otherwise associated with oil and gas extraction and transportation activities.~~

~~(10) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission.~~

~~(d) **Monitoring of sites.** Before consideration for closure by the Conservation Division or the Commission, the responsible party shall monitor a remediation project subject to implementation of the water quality standards for a period of one (1) year, unless:~~

~~(1) Otherwise provided by Commission order, or~~

~~(2) As directed by the Manager of Pollution Abatement or designated Conservation Division staff.~~

~~(e) **Public participation; Resolution of complaint or disagreement with Conservation Division staff.**~~

~~(1) In any case where the Conservation Division determines the need for public participation in the resolution of a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution, the Conservation Division may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.~~

~~(2) In any case where a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution cannot be resolved administratively between the responsible party and the complainant or because of a disagreement with the Conservation Division's Manager of Pollution Abatement, Manager of Field Operations, or other Conservation Division staff, regarding the complaint, the responsible party or the complainant may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.~~

**PART 3. STORAGE AND DISPOSAL OF FLUIDS**

**165:10-7-26. One-time land application of contaminated soils and petroleum hydrocarbon based drill cuttings**

(a) **Authority for land application.** No person shall land apply soils or drill cuttings contaminated by salt or petroleum hydrocarbons except as provided by this Section. Any operator failing to obtain a permit shall be fined \$2,000.00.

(b) **Scope.** This Section shall cover the land application of soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. [Reference 40 CFR Subtitle C and EPA publication EPA530-K-95-003 "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation]. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality. Any land application made under this Section shall be done on a one-time basis to land that has not been previously used for this practice or similar practices.

(c) **Receiving site suitability restrictions.** Land application shall only occur on land having all of the characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (g)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of eight percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock will be at least 40 inches if crude oil contaminated soils or petroleum hydrocarbon-based drill cuttings are to be applied; 20 inches if salt contaminated soils are to be applied.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy loam, fine sandy loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream found on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and District Offices); and a minimum of 100 feet to any freshwater pond, lake, or wetland designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service (available for viewing at the Commission's Oklahoma City Office). Also, see (h)(6) of this Section.

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well location and the receiving site. At the well site the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed if required by the District Office. A stockpile of cuttings at the receiving site must be located on the permitted area. The stockpile of cuttings, whether at the well location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspectors shall be contacted at least two working days prior to sampling of the receiving soil and materials to be land applied. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative surface core samples from the surface (0-6 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory.

(3) **Materials to be land applied.** Representative samples of the materials to be land applied shall be taken, composited into a minimum one-pint sample, and placed in a clean container for delivery to the laboratory. Alternatively, materials to be land applied may be composited by the laboratory.

(e) **Analysis requirements.**

(1) **Salt contaminated soils or drill cuttings.** Analysis requirements will be dependent upon the loading method that is chosen. For most applications, loading

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based on Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) will be most appropriate. However, applicants proposing to land apply on a site in western Oklahoma, where the soils commonly contain moderate to high levels of gypsum, may benefit from using the loading formula based on Chlorides (Cl).

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils. Either a 1:1 extract or saturated paste extract shall be used for sample preparation for TDS or TSS or Cl loading. A saturated paste moisture equivalent is necessary where the saturated paste sample preparation method is used.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC, TDS or TSS, and ESP for TDS/TSS loading. For Chloride loading, parameters shall include Chlorides (dry weight basis) and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by salt shall include at a minimum EC for TDS/TSS loading and both EC and Cl for Chloride loading.

(2) **Soils and drill cuttings contaminated by petroleum hydrocarbons.**

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by petroleum hydrocarbons shall include at a minimum a test of the appropriate carbon range(s), which is determined by the nature of the waste material. These include Gasoline Range Organics (GRO) - C6 to C10 (EPA test method 8015/8020 M) and TPH (Oklahoma method 1005 extended C35).

(f) **Application rates.**

(1) **Calculations.** The maximum application rate for TDS or TSS, Cl, and GRO, or TPH shall be calculated by the applicant based upon the analyses of the materials to be land applied and the soil of the application area. For salt contaminated soils or drill cuttings, if the application area encompasses more than one soil sampling area, the rate shall be calculated in one of two ways, depending on how the application will be made. The applicant may either calculate the maximum application rate for the entire application area based upon the highest soil TDS or TSS or Cl value of any sampling area (averaging not allowed), or calculate it for each ten acre (or less) application area using the respective soil TDS or TSS or Cl values of each sampling area.

(2) **Soil loading formulas.** The maximum application rate for any application area shall be restricted by the most limiting parameter. To determine this, the soil loading formulas in Appendix I of this Chapter shall be used as applicable.

(3) **Variations.** In special situations, a request for a variance relating to soil loading of petroleum hydrocarbons may be administratively approved by the Manager of Field Operations. The applicant shall submit a written request explaining the circumstances or conditions which warrant a variance and shall also submit a management plan for reducing the petroleum hydrocarbon content in the soil to two percent or less.

(g) **Application for permit.**

(1) **Who may apply.** Only the operator responsible for generating the waste to be land applied or the operator's designated agent may apply for a land application permit, except that the Oklahoma Energy Resources Board or its designated contractor may make application to land apply materials for which there is no responsible party.

(2) **Required form and attachments.** Each application for land application of soils contaminated by salt and/or crude oil or petroleum hydrocarbon-containing deleterious substances shall be submitted to a Field Operations office on Form 1014S. A legible original shall be required. The following shall be attached to the application:

(A) Written permission from the surface owner to allow the applicant to land apply, incorporate, and fertilize materials. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1320 feet of the boundary of the land application area.

(C) Receiving site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analyses of receiving soil samples.

(E) Analyses of contaminated soil or petroleum hydrocarbon-based drill cuttings.

(F) For contaminated soils, an investigation report and diagram, drawn to scale, detailing the aerial extent and depth of the contamination; and sampling procedures which were used to assure that representative samples were taken.

(G) Loading calculations.

(H) Copies of all chains-of-custody related to sampling.

- (I) If there is an agent, a notarized affidavit designating same, signed by the operator within the last 12 months.
  - (J) Identification of any soil farming permit that has been issued in the same quarter section. This information is available in the OCC Soil Farming Database on the web at [www.occeweb.com](http://www.occeweb.com).
  - (K) Other information as required by this Section or requested by a Field Operations office.
- (3) **Review period.** The Field Operations office shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five working days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.
- (h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:
- (1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.
  - (2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission.
  - (3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which materials are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.
  - (4) **Materials to be land applied.** Land application under this Section shall be limited to soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils or drill cuttings land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.
  - (5) **Weather restrictions.** Land application, including incorporation, shall not be done:
    - (A) During precipitation events.
    - (B) When the soil moisture content is at a level such that the soil cannot readily take the addition of materials.
    - (C) When the ground is frozen to a degree that the soil cannot readily take the addition of fluids.
  - (6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:
    - (A) Fifty feet of a property line boundary.
    - (B) Three hundred feet of any water well or water supply lake used for domestic or irrigation purposes.
    - (C) One-quarter (1/4) mile of any water well or water supply lake used for municipal purposes.
  - (7) **Land application rate.** The maximum calculated application rate of materials shall not be exceeded. Under

no circumstances shall land applied materials exceed a two inch depth. Furthermore, no runoff or ponding of land applied materials shall be allowed. It may require more than one pass or lift to achieve the maximum application rate while avoiding runoff or ponding. For land applications involving petroleum hydrocarbons all free oil shall be removed.

(8) **Land application method.**

(A) Application of materials shall be uniform over the approved land application area, and shall be made by a method approved by the Commission prior to use. Land applied materials shall be incorporated into the soil by disking or chiseling during or immediately after application to a minimum depth of two times the depth of applied materials; however, if any contaminated sandy soil is applied to any clayey soil, incorporation shall be to a minimum depth of four times the depth of the applied materials.

(B) An application vehicle shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 80 barrels. It shall have a diffuser mechanism to spread the mud in a fan pattern. The mud will be forced from the tank with air pressure or a mechanical pump.

(C) Drill cuttings shall be spread with an industrial mechanical spreader.

(9) **Fertilizer.** For any land application involving petroleum hydrocarbon-contaminated soils and/or drill cuttings, fertilizer shall be applied at an appropriate rate as indicated by soil testing for available N-P-K to adjust the average carbon-nitrogen ratio in order to enhance biodegradation of the petroleum hydrocarbons and assist in reestablishing vegetation. In the absence of soil testing, Nitrogen, Phosphorus, and Potassium shall be applied at a rate of 160-40-40 lbs. per acre (actual N-P-K).

(10) **Vegetative cover.** A bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.**

(A) Land application shall be completed within 30 days of the anticipated completion date shown on the approved application form.

(B) At the end of twelve (12) months the permit shall expire by its own terms.

(12) **Post-application report.** A post-application report shall be submitted by the operator or the operator's agent to the Manager of Field Operations within 30 days of the completion of land application. The report shall give specific details of the land application, including volumes of materials applied and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. The report shall contain a statement certifying that the land application was done in accordance with the approved permit.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall

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be discontinued and the Field Operations office shall be contacted immediately. The Field Operations office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with Field Operations' approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(i) **Variations.** A variance from the time provisions of (d)(1), (h)(1), (h)(10) or (h)(11) of this Section may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

### SUBCHAPTER 11. PLUGGING AND ABANDONMENT

#### 165:10-11-9. Temporary exemption from plugging requirements

(a) **Scope.** The Commission may permit any well which is required to be properly abandoned pursuant to OAC 165:10-11-3 and OAC 165:10-11-5, at the request of an operator, to be temporarily abandoned.

(b) **Application.** An application for a permit to temporarily exempt a well from the plugging requirement shall be made on Form 1003A completed in its entirety, and submitted to the appropriate Conservation Division's District Office.

(c) **Permit.**

(1) Any operator seeking approval for temporary abandonment shall submit a notice of intent to temporarily abandon the well, Form 1003A, to the appropriate District Office describing the temporary abandonment procedure used.

(2) The permit will be valid for a period of five (5) years. At least 30 days prior to the expiration of any approved temporary abandonment permit, the operator shall return the well to beneficial use in accordance with Commission rules, permanently plug and abandon said well, or apply for a new permit to temporarily abandon the well.

(3) No temporary abandonment will be approved that does not prevent the contamination of treatable water and/or other natural resources and the leakage of any substance at the surface.

(4) If the well fails the tests required herein the problem shall be found, corrected and a new test successfully conducted within 30 days or the well shall be plugged and abandoned in accordance with Commission rules.

(5) Upon successful completion of the work on the temporarily abandoned well, the operator will submit a new request for temporary abandonment to the appropriate District Office.

(d) **Protection of treatable water.** The treatable water shall be protected by one or more of the following:

(1) A drillable, retrievable or temporary bridging plug set above the producing interval and below the top of the

cement. The surface shall be capped with a valve in operational condition. A pressure test may be required by the appropriate District Office.

(2) A packer run on tubing and set above the producing interval and below the top of the cement. The well shall be equipped with suitable wellhead packoff equipment and be closed to the atmosphere.

(3) A fluid level test determined by use of equipment approved by the Conservation Division's Field Operations Department. The fluid level must be no higher than 150 feet below the base of the treatable water. The Field Inspector shall be notified at least 48 hours beforehand to be afforded the opportunity of witnessing the procedure. Fluid level tests must be conducted annually each of the five (5) years during the anniversary month of the permit. Additional tests may be required at any time at the request of the Conservation Division's Field Operations Department. The wellhead shall be closed to the atmosphere.

(4) A casing inspection log confirming the mechanical integrity of the production casing submitted to the appropriate Conservation Division's District Office.

(5) Alternate methods of testing may be approved by the Conservation Division's Field Operations Department by written application and upon showing that such a test will provide information sufficient to determine that the well does not pose a threat to natural resources.

(e) **Surface facilities.** The well site of a well with temporary exemption from the plugging requirements shall be kept in a neat and orderly manner, including lease roads, with a legible sign showing the name of the operator, operator telephone number, well name, number, and the legal location.

(f) **Termination of permit.** The permit for a temporary exemption from plugging shall terminate and plugging operations shall commence within 30 days after:

(1) The time interval set has lapsed and a renewal has not been granted.

(2) The lease or unit on which the exempted well was located has become nonproductive.

(3) The fluid level has risen to a point less than 150 feet below the base of the treatable water.

(4) The Conservation Division's Field Operations Department has determined that the surface area or wellhead equipment requirement does not meet the standards required by the Commission.

(g) **Exception to termination of permit.** An exception to the termination of an exemption from the plugging requirements shall be allowed if:

(1) An application to convert the well to a disposal, injection, or supply well has been filed with the Commission, and proper notice, according to OAC 165:5, has been met.

(2) An application requesting an exception to the plugging rules has been filed with the Commission and an exception has been granted by an order of the Commission.

**SUBCHAPTER 13. DETERMINATION OF ALLOWABLES - OIL AND GAS WELLS**

**165:10-13-3. Production tests on new, re-entered, and recompleted wells**

- (a) On all new wells, re-entered wells, and recompleted wells classified as oil wells for allowable purposes, in any regular spacing unit(s) and reservoir dewatering oil spacing unit(s), initial production tests shall be performed and reported to the Commission on Form 1029A for discovery oil wells, Form 1002A for other oil wells, unless otherwise specified by order of the Commission. The test shall not commence until after recovery of a volume of oil equivalent to or greater than the amount of load oil or other liquids introduced into the well.
- (b) On all new wells, re-entered wells, and recompleted wells classified as gas wells for allowable purposes, initial production tests shall be performed and reported to the Commission on Form 1016 unless otherwise specified by order of the Commission or by OAC 165:10-17-7(b)(1).
- (c) If special pool rules prescribe, by order of the Commission, the manner in which production tests are to be performed in any separate common source of supply, the production or gas-oil ratio test shall be performed and reported to the Commission in accordance with such special pool rules.

**SUBCHAPTER 15. OIL WELL PRODUCTION AND ALLOWABLES**

**165:10-15-3. Effect of percentage penalty on oil wells**

If a percentage penalty has been assigned to an oil well, the penalty shall, depending on the status of the well, be subtracted from:

- (1) **Discovery status.** The applicable allowable from the Discovery Allowable Table (Appendix B to this Chapter) or the capacity of the well to produce as reported ~~on Form 1029A or the annual Form 1008A~~, whichever is less.
- (2) **If allocated or unallocated per-well status.** The applicable allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor or the capacity of the well to produce as reported ~~on the initial Form 1029A or the annual Form 1008A~~, whichever is less.
- (3) **If unallocated per-lease status.** The shallowest ten acre or less allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor for the penalized well only. The penalty shall be subtracted from the lease allowable.

**165:10-15-5. Discovery oil allowables**

- (a) **Number of barrels of oil per day and duration of the discovery allowable period.** The maximum number of barrels of oil per day and the duration of the discovery allowable period shall be determined from the Discovery Allowable Table (Appendix B to this Chapter) or the Allocated Well Allowable (Appendix A to this Chapter), whichever is greater, provided

that the well is in compliance with the other provisions of this Section and other rules pertaining to allowables. If the well is not capable of producing at the discovery rate without causing preventable waste, the temporary discovery allowable shall be the capacity of the well to produce as reported ~~on Form 1029A or the annual Form 1008A~~, unless otherwise limited by the Commission.

(b) **Effective date of discovery allowable.**

- (1) The discovery allowable period for the pool shall begin with the date of first completion of the discovery well of the pool and extend as provided in the Discovery Well Allowable Table (Appendix B to this Chapter).
- (2) The discovery allowable period for each well in the pool shall run from the date specified under 165:10-15-7 for each well to the date of termination of the pool, if granted administratively.
- (3) If application, notice, and hearing are required, the effective date of the discovery allowable period shall be specified by an order of the Commission, provided that such date shall not precede the date of filing of the application. The date of expiration of the discovery allowable shall still be determined as set forth in (1) of this subsection.

- (c) **Gross allowable production.** The gross allowable production for any proration period from a well in a discovery pool may, at the option of the operator, be produced at any time during the proration period; however, in no event shall the production exceed the maximum efficient rate of flow.

**165:10-15-6. Production tests and reports for discovery oil pools**

- (a) **Initial test requirements.** The operator of each well in each discovery pool shall perform an initial potential test and furnish the Conservation Division the results of such test ~~on Form 1029A~~ not later than 30 days after completion of each well. Each individual well shall be tested for not less than six hours and not more than 24 hours with the production calculated and reported at a daily rate (24 hours).

(b) **Witnessing of tests.**

- (1) With respect to initial test, the operator shall give twenty-four (24) hour notice of the opportunity to witness said test to the Conservation Division and the offset operator(s) producing from the same pool, but no waiver or signature of Conservation Division personnel is required ~~on Form 1029A~~.
- (2) Any operator in the pool may witness any official test for any well in the pool. However, any person other than a Commission employee witnesses a test at their sole risk and expense.

**165:10-15-13. Production tests and reports for unallocated oil wells**

- (a) **Per-well basis allowable.**
  - (1) If the well is an allocated well, or an unallocated well located on lands in which drilling and spacing units have not been established and the operator elected to accept allowables on a per-well basis, or an unallocated well

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located on lands in which drilling and spacing units have been established, the operator shall file a production test ~~on Form 1029A~~ no later than 30 days after the earlier of:

- (A) Making the election,
- (B) Completion of the well, or
- (C) Recompletion of the well.

Each individual well shall be tested for not less than six hours and not more than 24 hours with the production calculated and reported at a daily rate (24 hours).

(2) Each new well shall be given an allowable equal to the allowable for an unallocated per-well basis well until the production test has been performed with the results reported to the Conservation Division ~~on Form 1029A~~. The allowable shall be effective for a period not longer than 30 days from completion of the well. A Form 1002A Completion Report may be used in lieu of a Form 1029A to establish an oil allowable if oil and gas production rates reported on Form 1002A establish the well's classification as an oil well. No further allowable shall be assigned to the well until compliance with this subsection.

(3) Until an operator submits the required test results for any well, as provided in subsection (a)(1), no allowable shall be assigned to the well. If said test results are filed late, then the allowable shall be effective the first day of the following month after the Conservation Division accepts the test.

(4) All initial tests shall be conducted in the manner set forth in (1) of this subsection.

(5) Annual testing shall not be required.

(b) **Per-lease basis allowables.**

(1) If the well is an unallocated well located on lands in which drilling and spacing units have not been established and the operator elects to accept allowables on a per-lease basis, the operator shall file a production test ~~on Form 1029A~~ with the Conservation Division not later than 30 days after:

- (A) Making the election,
- (B) Completion of the initial well on the lease,
- (C) Completion of a subsequent well on the lease,
- (D) Recompletion of any well on the lease, or
- (E) Retesting of any well on the lease.

Each well on the lease shall be tested for not less than six hours and not more than 24 hours with the production calculated and reported at a daily rate (24 hours).

(2) Each lease shall be given an additional allowable equivalent to the shallowest ten-acre or less allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor for each new producing well added to the lease until the production test has been performed with the results reported to the Conservation Division ~~on Form 1029A~~. The additional allowable shall be effective for a period not longer than 30 days from completion of the well. No further additional allowable shall be assigned to the lease until compliance with this subsection.

(3) If an operator fails to submit the required test results for any lease with allowables calculated on a per-lease basis, no allowable shall be assigned to the lease. The

operator may submit the results of the test to the Conservation Division ~~on Form 1029A~~ to reinstate the allowable. A Form 1002A Completion Report may be used in lieu of a Form 1029A to establish an oil allowable if oil and gas production rates reported on Form 1002A establish the well's classification as an oil well. The allowable shall be effective the first day of the following month after the Conservation Division accepts the test.

(4) No lease shall be granted underage resulting from failure to perform a required test in compliance with this Section.

(5) All initial tests, annual tests and retests shall be conducted in the manner set forth in (1) of this subsection.

## SUBCHAPTER 17. GAS WELL OPERATIONS AND PERMITTED PRODUCTION

### 165:10-17-9. Special allocated gas pools

(a) **Scope.** This Section applies to special allocated gas pools except any special allocated gas pool with allowables based upon volumetric withdrawals.

(b) **Minimum unit allowable of 150 mcf/d.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the minimum allowable for a drilling and spacing unit in the pool shall be 150 MCF/D regardless of the amount of any location exception penalty charged against a unit well. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(c) **Minimum unit allowable of 450 mcf/d for the Guymon-Hugoton pool.**

(1) For the Guymon-Hugoton Special Allocated Gas Pool, minimum allowables shall be determined as follows: The minimum allowable shall be the lesser of 450 mcf/d or the drilling and spacing unit's capability. Capability shall be defined as the average of the highest three (3) of the last twelve (12) months of production. A drilling and spacing unit receiving a minimum allowable shall not accrue underage. The minimum allowables under this Section shall not affect the calculation of capable well allowables. The field monthly allowable shall be equal to total nominations and not adjusted for underage or overage.

(2) The deliverability standard pressure (DSP) to be used in the application of special allocated rules (field rules) shall be defined as 25 pounds less than the average shut-in wellhead pressure of the pool.

(3) The Corporation Commission shall calculate and publish reports of allowable and production quarterly.

(d) Minimum unit allowable of 2,000 mcf/d for the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools. For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the minimum allowable for a drilling and spacing unit in each pool shall be 2,000 mcf/d. For purposes of this Section, the net minimum allowable shall be

the gross minimum allowable adjusted for overage or underage according to this Section.

(e) **Double minimum allowable of 300 mcf/d.**

(1) **Compressor and application required.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, if a drilling and spacing unit has a minimum allowable under (b) of this Section, the operator of a well in the drilling and spacing unit may obtain for the unit a double minimum allowable regardless of any location penalty against a well by installing a compressor on a unit well and applying for a double minimum allowable under (2) of this subsection.

(2) **Request for administrative approval.** To apply for a double minimum allowable, the operator shall submit to the Manager of Production Allowables for the Conservation Division a letter requesting a double minimum allowable and stating the factual basis for the request and the legal description of the well with the compressor.

(f) **Basic allowable.**

(1) **Use of basic allowable for determining overage and underage.** For purposes of determining the amount of overage or underage accrued by a well or drilling and spacing unit, the Conservation Division shall establish on a yearly basis a status factor known as the basic allowable.

(2) **Apportionment of basic allowable.**

(A) **Increased density unit without apportionment of the allowable.** If neither OAC 165:10-13-9 nor an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a unit basis.

(B) **Increased density unit with ratable allowables.** If either OAC 165:10-13-9 or an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a per well basis. For purposes of computing overage and underage, the basic allowable shall be apportioned to each unit well using the formula for determining each well's ratable allowables for the applicable month under (3) of this subsection. The term "ratable allowables" refers to a well's share of the unit allowable under the formula apportioning the allowable amongst the unit wells.

(3) **Computation of the basic allowable.** Except as provided in (C) of this paragraph for basic allowable changes, the basic allowable for the calendar year shall be computed as follows:

(A) **For all pools except the Red Oak Pools.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's January allowable for the calendar year.

(B) **For the Red Oak Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's March allowable for the calendar year.

(C) **Changes in the basic allowable.**

(i) **Test exempt minimum allowable.** If a drilling and spacing unit receives test exempt minimum allowable status as provided in this Section, then the basic allowable shall be a minimum allowable.

(ii) **Test exempt double minimum allowable.** If a drilling and spacing unit receives a test exempt double minimum allowable as provided in this Section, then the basic allowable for the unit shall be a double minimum allowable.

(iii) **Retests.** If the well operator submits to the Conservation Division a retest which is approved by the Conservation Division, then the Conservation Division shall recompute the basic allowable using the retest. Retests are permitted at any time and become effective the first day of the month after acceptance by the Conservation Division.

(g) **Determination of overage and underage.**

(1) **Overage.**

(A) **Drilling and spacing unit without ratable allowables.** If no well in a drilling and spacing unit is subject to a ratable allowable, the current monthly allowable shall be compared with the second prior month's unit production. Production in excess of the current monthly allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, overage shall not reduce any subsequent monthly allowable until accumulated overage exceeds the applicable overage limit under (h) of this Section.

(B) **Drilling and spacing unit subject to ratable allowables.** If any well in a drilling and spacing unit is subject to a ratable allowable, the current monthly ratable allowable for the well shall be compared with the second prior month's production from the well. Production in excess of the ratable allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, the well's overage shall not reduce any subsequent monthly ratable allowable until accumulated overage exceeds the well's overage limit under (h) of this Section.

(2) **Underage.**

(A) **Drilling and spacing unit without ratable allowable.** If no well in a drilling and spacing unit is subject to a ratable allowable under OAC 165:10-13-9, the current monthly allowable for the unit shall be compared with the second prior month's unit production. If production is less than the allowable, the difference between the production and the unit allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly allowable.

(B) **Drilling and spacing unit with ratable allowables.** In a drilling and spacing unit with ratable allowables, the current monthly ratable allowable for a well shall be compared with the second prior

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month's production from the well. If production was less than the current monthly ratable allowable, the difference between the production and the ratable allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly ratable allowable for the well.

(h) **Overage limits.**

(1) **For all pools Except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and the Red Oak Spiro, the overage limit is six times:

(A) The basic allowable for the drilling and spacing unit, if the overage carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(2) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools, the overage limit is 168 times:

(A) The basic allowable for the drilling and spacing unit, if the overage is carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(3) **Mandatory curtailment for excessive overage.**

(A) **Single well drilling and spacing unit.** If accumulated overage from a single well drilling and spacing unit exceeds the applicable overage limit, production from the unit shall be curtailed to 25 percent of the monthly allowable until accumulated overage is reduced below the overage limit.

(B) **Multiple well unit without ratable allowables.** In a multiple well drilling and spacing unit without ratable allowables, if accumulated overage for the unit exceeds the applicable overage limit, the unit production shall be curtailed to 25 percent of its monthly allowable until the accumulated overage is reduced below the overage limit.

(C) **Multiple well unit with a ratable allowable.** In a multiple well drilling and spacing unit with one or more wells subject to a ratable allowable, if the accumulated overage for a well exceeds its overage limit, production from the well shall be curtailed to 25 percent of its monthly ratable allowable until the well's accumulated overage is reduced below its overage limit.

(i) **Underage limits.**

(1) **For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the underage limit is three times the status factor for:

(A) The drilling and spacing unit,

(i) If the unit has only one well, or

(ii) If the unit has multiple wells but no unit well has a ratable allowable; or

(B) The well, if a well has a ratable allowable.

(2) **For all other special allocated gas pools subject to this Section.** For all other special allocated gas pools subject to the Section, the underage limit is six times the status factor for:

(A) The drilling and spacing unit, if the status factor is determined on a unit basis; or

(B) The well, if the well is subject to a ratable allowable.

(j) **Cancellation of underage.**

(1) **Underage in excess of the underage limit.** If accumulated underage exceeds the applicable underage limit, the accumulated underage shall be cancelled.

(2) **Subsequent underage.** After cancellation, underage shall not accrue until after:

(A) The drilling and spacing unit produces a current monthly allowable, if the unit wells share a unit allowable; or

(B) A well with a ratable allowable produces a current monthly ratable allowable.

(k) **Reinstatement of cancelled underage.**

(1) The operator may apply for reinstatement of cancelled underage by:

(A) An application for administrative approval on Form 1010, if filed within six months after cancellation of underage; or

(B) Application, notice, and hearing under OAC 165:5-7-1.

(2) Reinstated cancelled underage shall be available to increase the monthly allowable or ratable allowable for up to one year without cancellation. If reinstated underage is cancelled, the operator may reapply under (1) of this subsection.

(3) For the Guymon-Hugoton special allocated gas pool, the operator of any drilling and spacing unit in such pool which unit has accumulated cancelled underage credited thereto on the records of the Commission prior to July 1, 1998 shall have until January 1, 2000 to file an application with the Commission pursuant to OAC 165:5-7-1 for the reinstatement of such accumulated cancelled underage as credited to such unit prior to July 1, 1998. Upon the filing of such an application, the cause seeking reinstatement of such accumulated cancelled underage shall be diligently prosecuted. In such proceeding for the reinstatement of such accumulated cancelled underage credited to such drilling and spacing unit prior to July 1, 1998, the Commission shall determine the portion of such accumulated cancelled underage which is proper and valid under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool and shall reinstate only such portion that is determined to be proper and valid under such special pool allocation rules (field rules). If an application for reinstatement of any such accumulated cancelled underage credited to a drilling and spacing unit on the records of the Commission prior to July 1, 1998 is not filed with the Commission on

or before January 1, 2000, such accumulated cancelled underage shall be permanently deleted from the records of the Commission and shall not thereafter be able to be reinstated or used for any other purpose under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool.

(l) **Effect of reinstatement of underage on pool allowables.** If cancelled underage has been distributed among the capable wells in the pool, reinstated underage shall not be deducted for the allowables of the capable wells which received distributed cancelled underage.

(m) **Test exempt status.**

(1) **No allowable without test.** For all pools except West Cheyenne Upper Morrow and Purvis Chert, no allowable shall be assigned unless:

(A) **Single well drilling and spacing unit.** The operator submits the required test or the unit has test exempt status under this Section.

(B) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, the operator of at least one well in the unit submits the required test in accordance with applicable pool rules or the unit is granted test exempt status under this Section.

(2) **Automatic test exempt status.**

(A) **For the West Cheyenne Upper Morrow and Purvis Chert Pool.** For the West Cheyenne Upper Morrow and Purvis Chert, a drilling and spacing unit shall have test exempt status as follows:

(i) **Single well drilling and spacing unit.** In a single well drilling and spacing, the well operator does not submit either an initial or an annual test.

(ii) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, none of the well operators in the unit submit either an initial or annual test. A test exempt drilling and spacing unit on the West Cheyenne Upper Morrow and Purvis Chert Pools shall have a minimum allowable under the applicable orders establishing and modifying pool rules as opposed to (b) of this Section.

(3) **Test exempt status upon requests for all other pools.** For all other pools except Guymon-Hugoton a drilling and spacing unit shall be test exempt upon written request to the Conservation Division if the potential for the unit does not exceed:

(A) The applicable minimum allowable under this Section.

(B) A double minimum allowable, if the Conservation Division has granted a double minimum to the unit.

(4) **Termination of requested test exempt status.**

(A) **Automatic termination.** Requested test exempt status shall terminate upon:

(i) **Submission of a retest.** Submission of a retest showing that the well has a potential in excess of a test exempt allowable, or;

(ii) **Overproduction.**

(I) **Single well drilling and spacing unit.** If gas production from a single well drilling and spacing unit exceeds a test exempt allowable during any month while the well has test exempt status, the unit shall lose test exempt status beginning with next month following the month with overproduction.

(II) **Multiple well drilling and spacing unit.** If total gas production from a multiple well drilling and spacing unit exceeds the minimum allowable during any month while the unit has test exempt status, the unit shall lose test exempt status beginning with the next month following the month with overproduction.

(B) **Reinstatement of test exempt status after automatic termination.** After termination of test exempt status for overproduction, the Conservation Division shall not reinstate test exempt status until:

(i) The operator requests test exempt status; and

(ii) The allowable year during which overproduction occurred expires.

(n) **Suspension of well allowable calculations under field rules when market demand exceeds supply for Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro pools.**

The Commission, upon finding in the market demand hearing that the supply of natural gas from the various separate common sources of supply included in and covered by the Red Oak Fanshawe Pool 456, the Red Oak Red Oak Pool 457, and the Red Oak Spiro Pool 458 is less than such market demand, shall suspend the special field rules calculations for determining allowables for wells in such pools and such suspension shall be effective until such time that the supply of natural gas from these pools exceeds the market demand for such natural gas, and during such suspension the gas allowables for wells in such pools shall be determined under this rule.

(1) **For existing wells, granting separate allowables and establishing overage status as of the effective date of this rule.** Each well in existence as of the effective date of this rule which is then completed in one or more of the Red Oak Fanshawe Pool 456, Red Oak Red Oak Pool 457, and the Red Oak Spiro Pool 458 shall be deemed an Existing Well for purposes of this rule. Each Existing Well shall receive a full separate allowable. Any total net overage including cancelled underage, accumulated by and assigned to any such drilling and spacing unit, shall be distributed and assigned in equal proportions to the Existing Wells in such drilling and spacing unit. Any such net overage so assigned to an Existing Well shall hereinafter be made up from the separate allowable for such well under the provisions of the Commission's rules applicable to a well in an unallocated gas pool.

(2) **Test requirements and determination of unit allowables for new and existing wells.** Any new well drilled and completed or any Existing Well re-completed into one or more of the Red Oak Fanshawe Pool 456, Red Oak Red Oak Pool 457, and Red Oak Spiro Pool 458 after the effective date of this rule, shall be deemed a New Well

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for purposes of this rule. The allowable for any New Well or Existing Well as to the applicable pool covered hereby shall be determined using the same allowable formula used by the Commission for the determination of a gas allowable for a capable well or a minimum well in an unallocated gas pool. **EXCEPTION:** Any Existing Well which is a minimum well shall be exempt from the annual test requirement. If any drilling and spacing unit formed for any common source of supply in any pool covered by this rule contains more than one New Well completed in such common source of supply and such New Wells are classified as gas wells, such New Wells shall share a single unit gas allowable in the same manner as any other gas wells in the same drilling and spacing unit in an unallocated gas pool, unless the Commission grants a separate gas allowable as to production from such pool after proper notice and hearing.

(o) **Suspension of well allowable calculations using field rules when market demand exceeds supply for the Guymon-Hugoton Pool 182.** The Commission, upon finding that the supply of natural gas from Guymon-Hugoton Pool 182 common source of supply is less than the market demand and that the expectations for supply to continue to be less than the market demand as determined in the market demand hearing, will suspend special field rule calculations for determining allowables until such time that the supply of natural gas from this pool exceeds the market demand.

(1) For allowable purposes, wells which produce less than 450 mcfg per day must conduct a 48 hour shut-in pressure test according to pool rules. For reporting purposes, an operator may submit these data for several wells as an attachment to Form 1017 providing operator name, date of test, well name, location and api number for each well.

(2) For allowable purposes, wells which produce more than 450 mcfg per day must conduct a deliverability test according to pool rules and submitted on Form 1017.

(3) Upon submission of the proper test, the allowable shall be the well's capability to produce.

(p) **Suspension of well allowable calculations using field rules when all wells in the West Cheyenne Upper Morrow gas pool produce less than the pool minimum allowable and the market demand exceeds supply.** The Commission, upon finding that the supply of natural gas from West Cheyenne Upper Morrow Pool 136 common source of supply is less than the market demand and that the expectations for supply to continue to be less than the market demand as determined in the market demand hearing, will suspend special field rule calculations for determining allowables and well allowables will be the wells' capacity to produce up to 2000 mcf per day. Each well will be exempt from the annual test requirement.

## SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

### PART 8. DEEP WELLS

#### 165:10-21-45. General

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "depth" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and June 30, 2009.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and June 30, ~~2008~~2011.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and June 30, ~~2008~~2011.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

[OAR Docket #09-1136; filed 6-5-09]

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

[OAR Docket #09-1145]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 7. General Administration of the County Election Board  
Part 7. Public Records  
230:10-7-66. Lists of registered voters [AMENDED]

#### AUTHORITY:

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The State Election Board is in the process of upgrading both computer hardware and software in the County Election Board offices. Part of the upgrade includes the migration of certain functions to a personal computer-based platform. For the first time, the County Election Board offices have the capability to provide certain reports and information to the public on compact disks and by e-mail in addition to paper printouts. The State Election Board is establishing a fee schedule for reports and other information provided to the public on compact disks. The purpose of these fees is to ensure that these items are provided to the public by the County Election Board in a uniform manner at a uniform cost statewide.

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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 15, 2009:**

**SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD**

**PART 7. PUBLIC RECORDS**

**230:10-7-66. Lists of registered voters**

(a) The Secretary of the County Election Board is authorized to format and print certain reports, such as lists of registered voters, from OEMS or from MESA for the benefit of candidates or the public. The Secretary is authorized to collect a fee of 25 cents per page for such specially-printed reports. The header and trailer pages of the report, if applicable, shall not be included in the page count of a report. Copies of Precinct Registries shall not be made available to the public prior to the election date for which they were created.

(b) Requests for reports shall be filled in as timely a manner as possible, but the Secretary shall not be required to print

or to produce any such reports requested during the period beginning the week preceding through the week following an election, nor during the last period beginning two weeks prior to through the two weeks following a statewide General Election. Provided, however, reports and other information that may be necessary shall be made available to candidates who are considering the filing of or who are involved in contests of election. Contests of election shall include recounts and allegations of irregularities or of fraud.

(c) The Secretary is authorized to provide copies of reports generated in MESA to the public upon request in the following formats.

(1) PDF copies on compact disks. The Secretary may copy PDFs of reports generated in MESA to compact disks (cds) upon request. A fee of not to exceed one dollar per compact disk shall be collected. The Secretary shall use only blank media or storage devices provided by the County Election Board.

(2) PDF copies by e-mail. The Secretary may e-mail PDFs of reports generated in MESA upon request. (However, some reports may create files too large to be e-mailed.) No fee shall be collected for e-mailed reports.

(3) Paper copies. The Secretary may print copies of reports generated in MESA on paper upon request. A fee of not to exceed 25 cents per page shall be collected.

(4) Loaned copies. At the discretion of the Secretary, instead of the options listed in (A) through (C) of this subsection, the Secretary may print copies of reports generated in MESA and make them available for loan. No fee shall be collected for loaned copies.

[OAR Docket #09-1145; filed 6-8-09]

**TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION**

[OAR Docket #09-1146]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Application for Voter Registration

Part 1. Qualifications for Registration

230:15-5-2. Persons who shall become eligible to register to vote [AMENDED]

Part 21. Voter Registration Application by Mail

230:15-5-83.1. Voter registration for Address Confidentiality Program participants [AMENDED]

230:15-5-89. ~~Transfer~~ Change of address on election day [AMENDED]

Part 25. Voter Registration Application Services in Voter Registration Agencies

230:15-5-123. Discretionary voter registration agencies identified [AMENDED]

Subchapter 9. Receiving and Processing Voter Registration Applications

Part 1. Responsibilities of the State Election Board for Voter Registration

230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board [AMENDED]

Part 5. Processing Voter Registration Applications

230:15-9-24. Processing ~~transfers executed~~ changes of address received on election day or during in-person absentee voting [AMENDED]

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

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Part 7. Acknowledgment of Voter Registration Applications  
230:15-9-35. Processing additional information about rejected application  
[AMENDED]

**AUTHORITY:**

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009.

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**ANALYSIS:**

An amendment in Subchapter 5 concerns persons permitted to apply for voter registration prior to becoming eligible to vote. Title 26, Section 4-103 of the Oklahoma Statutes says, "Any person who will become a qualified elector before the next ensuing election at which he could vote shall be entitled to become a registered voter of the precinct of his or her residence not more than sixty (60) and not less than twenty-four (24) days prior to said election." In other words, a person whose eighteenth birthday occurs on or just before election day is entitled to register prior to his or her actual birthday. Such voter registration applications are accepted beginning 60 days prior to the election through the deadline for voter registration for the election 24 days prior to the election. The amendment clarifies the procedure for processing and activating such voter registration applications. These applications are entered into the computer upon receipt. The computer program flags the applications and activates them only after either the applicant's birthday or the application deadline has passed. This is not a new procedure. However, these details have never been expressly stated in the rules, and the amendment is the State Election Board's response to questions and requests for clarifying language received from County Election Board personnel during the 2008 election season.

Another proposed amendment in Subchapter 5 concerns the state Address Confidentiality Program (ACP). Supervision of this program was transferred from the office of the Secretary of State to the office of the Attorney General on July 1, 2008. The amendment reflects this change of supervision. A second Section concerning the ACP located in Subchapter 9 also is amended.

Also in Subchapter 5, one Section is amended to correct the name of a state agency identified as a discretionary voter registration agency. The Oklahoma Office of Handicapped Concerns has changed its name to the Oklahoma Office of Disability Concerns. This is the only amendment in the Section.

In Subchapter 9, a Section concerning the administrative processing of certain voter registration applications received at polling places on election day is amended to eliminate the term "transfer of address on election day." The "transfer of address on election day" procedure dates from the days when all voter registration transactions were conducted by deputy Voter Registrars, when the voter registration rolls closed only 10 days before an election, and, with very few exceptions, elections could be scheduled on any Tuesday. Transfer on election day enabled a voter to change his or her address within a precinct at the polls and to have that change processed and in effect for the next election in which the voter was eligible to vote - which may well have been the following Tuesday. When Oklahoma implemented the National Voter Registration Act in the mid-1990s, it required, among many other things, both registration by mail and a "fail-safe" voting procedure. In the course of implementing mail registration, deputy Voter Registrars were eliminated.

It was decided that the transfer of address on election day procedure would accommodate the fail-safe voting requirement if it were no longer limited only to changes of address within a precinct.

When transfers on election day are entered into the OEMS computer, they are "flagged" within the program as transfers. This allows them to be activated even if voter registration is closed for a subsequent election. However, since there is no longer a circumstance in which elections conducted by the County Election Board are scheduled less than 24 days apart, this procedure is no longer necessary. We are, therefore, eliminating the term from our rules and will no longer flag these applications for special processing in OEMS. Voters still are entitled both by state and federal law and by State Election Board rules to submit applications to change their addresses at the polling place on election day.

Some persons are permitted under state law to conceal their residence addresses on their voter registration records. We refer to these voters as "restricted records status voters." Information about restricted records status voters has not been entered into the OEMS computer system and their names have not appeared on any report produced by the system, including Precinct Registries. County Election Board personnel have been required to maintain information about restricted records status voters manually and to provide a list of their names and appropriate district information, but not their addresses of residence, to Precinct Officials on election day. A feature of the new MESA (Modern Election Support Application) software is the ability to enter the names and district information of restricted records status voters into a separate computer program that will result in placing the voters' names in the appropriate Precinct Registry. Their addresses are not entered. The Section that concerns processing applications for restricted records status is amended to include information about the MESA functionality and instructions that should be provided to Precinct Officials on election day.

Finally, a Section that concerns rejected voter registration applications is amended to clarify part of the procedure. One type of rejection notice, called an Insufficient Information Rejection Notice, is sent to voter registration applicants who fail to provide certain information on their application forms. The referenced rejection notice is a letter asking the voter to provide the missing information so that the application can be completed and activated. If the additional information is received by the County Election Board 24 days or less before an election, the information is entered into the computer, but the application is not completed and activated until the election date has passed. Language has been added to the Section to clarify this fact. During the 2008 election season, the State Election Board received many questions from County Election Board personnel about this process and it was determined that this clarification of the existing process is necessary.

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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 15, 2009:**

**SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION**

**PART 1. QUALIFICATIONS FOR REGISTRATION**

**230:15-5-2. Persons who shall become eligible to register to vote**

(a) Any person who becomes qualified to register to vote during a period that begins 60 days before an election and ends on election day is entitled to apply for voter registration at any time beginning 60 days before the election. Such applications

must be valid and must be postmarked or received by an authorized voter registration agency or by the State Election Board more than 24 days before the election. The election must be one in which the person, once registered, is entitled to vote.

(b) The provision described in (a) most often applies to a person whose eighteenth birthday falls within a period that begins 60 days before an election and ends on election day. However, this provision also may apply to persons who become United States citizens during the same period.

(c) Voter registration applications from persons described in this section shall be entered into OEMS immediately upon receipt as outlined in 230:15-9-18. Such voter registration applications shall be approved and activated and voter identification cards shall format and print only after one of the following events occurs.

(1) The date (for example, the applicant's eighteenth birthday) on which the applicant becomes eligible to vote passes.

(2) The voter registration application deadline for the election passes.

**PART 21. VOTER REGISTRATION APPLICATION BY MAIL**

**230:15-5-83.1. Voter registration for Address Confidentiality Program participants**

(a) A person certified by the ~~Secretary of State~~ Attorney General as a participant in the Address Confidentiality Program (ACP) may request an ACP Voter Registration Packet from the State Election Board. A form to use for this request is provided by the State Election Board to the ~~Secretary of State~~ Attorney General for distribution with other ACP materials. An ACP participant who is a registered voter when entering the program must cancel the existing voter registration and apply for new registration as an ACP voter. An ACP voter will receive absentee ballots by mail for all local, state, and national elections in which she is eligible to vote for up to four years. Upon receipt of the ACP Voter Registration Packet, the participant follows these steps to become a registered voter.

(1) If the ACP participant is currently registered to vote in Oklahoma, fill out the Request to Cancel Voter Registration form in the presence of a Notary Public.

(2) Fill out the enclosed ACP Oklahoma Voter Registration Application form.

(A) Enter the actual residence address in Box 6 on this form. Election officials must know the actual residence address in order to assign the voter to the correct precinct and issue the correct ballots. Only one member of the State Election Board staff will have access to this form.

(B) Enter the ACP address as the mailing address in Box 7.

(C) Be certain to sign the ACP Oklahoma Voter Registration Application form.

(3) Read and sign the ACP Voter Registration Statement of Understanding form.

(4) Obtain a photocopy of one of the following forms of identification that shows both the participant's name and ACP address. Federal law requires persons who register to vote by mail to provide identification prior to voting for the first time in a federal election.

(A) a valid and current photo identification.

(B) a current utility bill.

(C) a current bank statement.

(D) a government check.

(E) any other government document that shows both the name and the ACP address.

(5) Use the self-addressed envelope included in the ACP Voter Registration Packet to mail the following items to the Oklahoma State Election Board.

(A) signed and notarized Request to Cancel Voter Registration form, if applicable.

(B) filled out and signed ACP Oklahoma Voter Registration Application form.

(C) signed ACP Voter Registration Statement of Understanding form.

(D) copy of identification.

(b) In order to protect the confidentiality of the ACP voter's address, the following rules must be observed.

(1) An ACP voter may not vote in person at the polling place for the precinct in which the voter resides.

(2) An ACP voter may not vote by in-person absentee ballot at the County Election Board office.

(3) An ACP voter may not sign an initiative petition or any other petition that is verified against voter registration records.

(4) An ACP voter must not apply for voter registration when obtaining or changing address on an Oklahoma driver's license or state identification card or when applying for certain forms of public assistance.

**230:15-5-89. ~~Transfer~~ Change of address on election day**

(a) A registered voter who has changed his or her residence within the county but who has not yet changed his or her voter registration shall be entitled to vote at the polling place in the precinct serving the former address. Such a voter also shall be entitled to make application to change his or her voter registration while at the polling place by completing an Oklahoma Voter Registration Application form and submitting the completed form to the Precinct Inspector for return to the County Election Board. Oklahoma Voter Registration Applications used to execute a ~~transfer~~ change of address on election day shall be processed ~~under special conditions to ensure that the voter has every opportunity to receive his or her new voter identification card in time to vote at the new polling place at the next ensuing election.~~ The voter may take the application form from the polling place and mail it to the County Election Board at a later time, but the application will not receive special processing and if the next election is scheduled less than 24 days from the date of the first election, the voter will not be eligible to vote at the new polling place until after the date of the next election according to the procedure outlined in 230:15-9-18 and 230:15-9-24.

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(b) A registered voter who has changed his or her residence address within the county but who has not yet changed his or her voter registration shall be entitled to vote ballots for the precinct of his or her former residence on a day of in-person absentee voting. Such a voter also shall be entitled to execute a ~~transfer-change~~ of address at the in-person absentee polling place by completing an Oklahoma Voter Registration Application form and submitting the completed form to one of the in-person Absentee Voting Board members. The application shall be processed by the County Election Board ~~under special conditions to ensure that the voter has every opportunity to receive his or her new voter identification card in time to vote at the new polling place at the next ensuing election according to the procedure outlined in 230:15-9-18 and 230:15-9-24.~~

## PART 25. VOTER REGISTRATION APPLICATION SERVICES IN VOTER REGISTRATION AGENCIES

### 230:15-5-123. Discretionary voter registration agencies identified

Discretionary voter registration agencies shall include the County Election Board office in each county in Oklahoma and the Oklahoma Office of ~~Handicapped-Disability~~ Concerns.

## SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

### PART 1. RESPONSIBILITIES OF THE STATE ELECTION BOARD FOR VOTER REGISTRATION

#### 230:15-9-3.1. Processing voter registration and absentee ballot requests from Address Confidentiality Program participants at the State Election Board

(a) Persons who are certified participants in the Address Confidentiality Program administered by the office of the Oklahoma ~~Secretary of State-Attorney General~~ and who are registered voters must cancel their existing voter registrations and apply to the State Election Board for new registration as ACP voters. The voter registration information of ACP voters shall be maintained in the office of the State Election Board by a designated employee of the State Election Board and shall not be released to any person for any purpose except by court order. The name, address, and precinct number of an ACP voter shall not be entered in OEMS and shall not appear on any report or list produced by the State or the County Election Board.

(b) ACP participants who become registered as ACP voters may vote only by mail absentee ballot. The absentee ballots shall be mailed by the appropriate County Election Board Secretary to the ACP address. An ACP participant's voter registration application shall be considered to be an application

for mail absentee ballots for all elections in which the voter is eligible to vote and shall be valid for up to four years from the date it is received by the State Election Board.

(c) The Secretary of the State Election Board shall provide a form to be used by ACP participants to request an ACP Voter Registration Packet. The ACP Voter Registration Packet shall include the following items.

- (1) ACP Voter Registration Instructions
- (2) Request to Cancel Voter Registration form
- (3) ACP Oklahoma Voter Registration Application form
- (4) ACP Voter Registration Statement of Understanding form
- (5) Self-addressed return envelope stamped "ACP"

(d) The Secretary of the State Election Board shall designate an employee of the State Election Board to be responsible for receiving and processing voter registration and absentee ballot requests from ACP participants. The designated employee shall prepare and mail an ACP Voter Registration Packet in response to requests received from certified ACP participants. Upon receipt of a completed ACP Voter Registration Packet at the State Election Board office, the following procedure shall be observed.

- (1) All mail received at the State Election Board office with an ACP stamp shall be separated from other agency mail and delivered unopened to the designated employee.
- (2) The employee shall open the ACP envelope and remove the contents. The items in the returned packet shall be processed as follows.

(A) Send the Request to Cancel Voter Registration form to the appropriate County Election Board to be processed.

(B) Access OEMS and/or mapping software to determine the voter's correct precinct number and district information. Record precinct and districts on the ACP Oklahoma Voter Registration Application form.

(C) Verify that the voter enclosed a photocopy of one of the following forms of identification that shows both the voter's name and the ACP address: a current and valid photo identification; a current utility bill, bank statement, government check, or paycheck; or any other government document that shows both the voter's name and the ACP address.

(D) Fill out an ACP Absentee Ballot Application form. Enter the voter's name, ACP address, date of birth, precinct number, school district/board district, and municipality/ward, if applicable.

(E) Mail the ACP Absentee Ballot Application form, an ACP Voter History form, and a copy of the ACP Instructions for County Election Board to the Secretary of the appropriate County Election Board.

(3) The employee shall file the ACP Oklahoma Voter Registration Form, the Statement of Understanding, the copy of the voter's identification as described in (2)(C), and a copy of the ACP Absentee Ballot Application form. The file containing these materials shall be locked.

**PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS**

**230:15-9-24. Processing ~~transfers executed changes of address received on election day or during in-person absentee voting~~**

~~(a) A registered voter who has changed residence within the county but who has not yet changed his or her address of residence for voter registration purposes is entitled to vote at the next ensuing election at the polling place serving the former address and to execute a transfer change of address. A registered voter also is entitled to execute a transfer change of address during in-person absentee voting in the same manner as a voter at the polling place on election day. The Voters shall use the Oklahoma Voter Registration Application form shall be used to execute a transfer change of address. The received date for such applications for change of address shall be the date the applicant voted. Transfers Voter registration applications for change of address shall be processed according to the following procedure by the procedure described in 230:15-9-18.~~

~~(1) Transfers executed by in-person absentee voters shall be processed according to the following procedure.~~

~~(A) Stamp the received date on the voter registration application form. The received date for these applications is the date the person voted.~~

~~(B) Verify that all Applications for In Person Absentee Ballots have been entered in OEMS. Applications for In Person Absentee Ballots must be entered in OEMS before the transfers of address are processed.~~

~~(C) Enter the voter registration application information in OEMS. Indicate that the application is a transfer and enter the election date.~~

~~(D) Override the warning that the voter already has received credit for voting by in person absentee ballot in the election and complete the transaction.~~

~~(2) Transfers executed by voters at the polling place on election day shall be processed according to the following procedure after all provisional ballots have been verified.~~

~~(A) Stamp the received date on the voter registration application form. The received date for these applications is the election date.~~

~~(B) Enter the voter registration application information in OEMS. Indicate that the application is a transfer and enter the election date. Make note of and investigate any warning that the voter already has received credit for voting.~~

~~(C) Process all transfers received at the polling place on election day after all provisional ballots have been verified and before credit for voting is given to all other voters as required by 230:35-3-93.~~

~~(3) As soon as all transfers received during in person absentee voting and at the polling place on election day have been entered in OEMS, request and print voter identification cards and rejection notices and mail them to voters. See 230:15-9-29 and 230:15-9-33.~~

~~(b) All voter registration applications received during in person absentee voting and at the polling place on election~~

~~day, except those received from voters who cast provisional ballots, shall be processed as transfers on election day as outlined in (a) of this Section. Voter registration applications from voters who cast provisional ballots shall be entered as outlined in 230:35-3-125.1.~~

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

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

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

- (1) Voter's name as it appears on the voter registration form.
- (2) Voter's date of birth.
- (3) Last four digits of the voter's Social Security number.
- (4) Reason for application for restricted records status. (If voter is covered by victim's protection order, include case number, date of issue and the expiration date of the order.)
- (5) Voter's signature.
- (6) Date.

(c) Upon receipt of an application for restricted records status, the Secretary of the County Election Board shall ~~cause the following action to be taken~~ follow the appropriate MESA software instructions to enter the restricted records status voter's name, political affiliation, precinct number, school district, and municipality. This will cause the name and district information to print in the appropriate Precinct Registry without the voter's residence address.

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

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

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- (3) Check the Additional Information file. Remove any documentation of the voter's registration and attach it to the voter registration application form.
- (4) Remove the voter's absentee ballot application from the appropriate file and attach it to the voter registration form.
- (5) Locate the voter's registration information in OEMS and follow the appropriate software instructions to delete the registration information.
- (6) Attach the voter's application for restricted records status to the voter's registration form and other materials and file in the restricted records status file.
- (d) The Secretary of the County Election Board shall designate a file cabinet with a lock or any other appropriate container with a lock as the restricted records status file. Access to the restricted records status file shall be restricted to the Secretary, Assistant Secretary or Chief Clerk and other County Election Board employees authorized by the Secretary.
- (e) Restricted records status shall be effective immediately upon receipt of an application from a qualified voter, and it shall remain in effect until the voter chooses to end it. The voter's registration information may be removed from restricted records status only upon receipt of written instruction from the voter.
- (f) Any subsequent application for change of voter registration initiated by a restricted records voter shall be processed routinely, with the exception that the voter registration application information shall not be entered in OEMS and the form shall be filed in the restricted records status file instead of the Central File. If necessary, however, the voter's information shall be modified in the Restricted Records Maintenance area of MESA. Any application for absentee ballots from such a voter also shall be processed manually. The application for absentee ballots shall be filed in the restricted records status file.
- (g) ~~The Secretary shall prepare and maintain a list of restricted records status voters. The list shall be organized by precinct and shall include only the restricted records status voter's name, school district code, and municipal code. See 230:35-3-56.1. A restricted records status voter who votes in person at his or her precinct polling place shall sign the Precinct Registry beside his or her own name. The Secretary shall instruct Precinct Officials in precincts with restricted records status voters that no identification or address confirmation is required for these voters.~~
- (h) The Secretary shall print the Restricted Records List from MESA and provide it to the in-person Absentee Voting Board on each day of in-person absentee voting. A restricted records status voter who votes at the in-person absentee polling place shall sign the Absentee Voting Board Record.
- (i) ~~An ACP Absentee Ballot Application for Absentee Ballots form and ACP Voter History Record form received from the State Election Board shall be filed immediately in the restricted records status file. No entry shall be made in OEMS or in MESA concerning ACP voters and the name, address, and precinct number of an ACP voter shall not appear on any list or report.~~

## PART 7. ACKNOWLEDGMENT OF VOTER REGISTRATION APPLICATIONS

### 230:15-9-35. Processing additional information about rejected application

(a) When an Insufficient Information Rejection Notice is returned by the applicant with the additional information needed to complete a rejected application, the Secretary of the County Election Board shall cause the following procedure to be observed.

- (1) The date that the returned rejection notice is received by the County Election Board shall be indicated on the notice.
  - (2) The rejected application form shall be removed from the Additional Information Requested file. The date that additional information was received shall be noted on the back of the application form.
  - (3) Write the additional information in the appropriate spaces on the application form in such a way that it is clear that the information was not written by the applicant. Each addition to the application shall be initialed and dated by the County Election Board employee who adds it. Place the returned rejection notice in the Additional Information Correspondence File.
  - (4) Locate the application information in OEMS and enter the additional information.
  - (5) If the additional information is sufficient to make the application valid, place the application form in the appropriate Approved Application file until voter identification cards are printed. See 230:15-9-29.
  - (6) If the additional information is insufficient to make the application valid, the application shall be rejected. See 230:15-9-33. After the rejection notice has been printed, attach the returned Insufficient Information Rejection Notice to the rejected application form and file them in the Rejected Applications File.
- (b) An Insufficient Information Rejection Notice with additional information received by the County Election Board 24 days or less before an election, as outlined in 230:15-5-86, shall be entered in OEMS or MESA as soon as possible. However, the application shall not be activated until after the election.

[OAR Docket #09-1146; filed 6-8-09]

## TITLE 230. STATE ELECTION BOARD CHAPTER 20. CANDIDATE FILING

[OAR Docket #09-1147]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Filing for State and County Office

Part 7. Procedure for Filing

230:20-3-37. Checking Declarations [AMENDED]

230:20-3-38. Candidate's name [AMENDED]

### AUTHORITY:

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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n/a

**ANALYSIS:**

Amendments proposed in this subchapter are intended to expand and clarify the instructions for County Election Board personnel who receive Declarations of Candidacy. The added instructions and information reflect common practice by State Election Board personnel who perform the same tasks. New language instructs county personnel to read each line of the Declaration form aloud to the candidate and to spell the candidate's name aloud, to make a specific notation on the form when a Declaration is not received personally from the candidate, and to permit only the candidate to make corrections on a Declaration of Candidacy. Other new language provides clarification on the way a candidate chooses to enter his or her name on the Declaration of Candidacy form. The amendments do not require any change to the Declaration of Candidacy form.

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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 15, 2009:**

**SUBCHAPTER 3. FILING FOR STATE AND COUNTY OFFICE**

**PART 7. PROCEDURE FOR FILING**

**230:20-3-37. Checking Declarations**

(a) The Secretary shall scrutinize all information on the Declaration of Candidacy form. The Secretary is advised to read each line of the Declaration aloud to the candidate and to spell out the candidate's name. Specifically, the Secretary shall confirm the following facts regarding the Declaration:

- (1) The candidate's signature is notarized or witnessed by an appropriate authority. Check to see that both the Notary Public's signature and an impression of the Notary's seal are present on the Declaration of Candidacy form.

(2) The supporting petition bears the required number of signatures or more, or the accompanying cashier's check or certified check is in the proper amount and form. See 230:20-3-33.

(3) The name of the candidate as it appears on the first line of the Declaration of Candidacy conforms identically to the signature of the candidate at the bottom of the form.

(4) The office sought is complete, including district number if required.

(5) The address of residence listed is within the county (or district) of the office sought.

(6) The mailing address is complete, including zip code.

(7) The box for party candidate, Independent, or Judicial is checked. If the party candidate box is checked, then the name of the political party is written in immediately thereafter. (Judicial candidates file their Declarations of Candidacy only with the Secretary of the State Election Board.)

(8) The precinct and county blanks are completed.

(9) The date of birth blank is completed.

(b) The Secretary has no authority to reject the filing of any candidate unless the Declaration shows on its face that the candidate does not meet the qualifications to become a candidate for the office as contained in the Oklahoma Constitution, statutes, or the resolution calling the election, or in the case of a home rule charter city, in the charter. [26:5-117] If there are errors on the Declaration, the Secretary shall point out such errors to the candidate. For example, one common error is to indicate the current year in the date of birth instead of the actual year of birth. The candidate then shall correct the errors and sign his initials beside the correction. Only the candidate may make corrections on a Declaration of Candidacy.

(c) If the Declaration of Candidacy was received by mail or was delivered by someone other than the candidate, the Secretary shall indicate on the form that it was not received in person from the candidate by noting the letters "NIP" for "not in person" on the upper right corner.

**230:20-3-38. Candidate's name**

(a) The candidate's name shall appear at the top of the Declaration of Candidacy form exactly the same as the candidate's signature appears at the bottom of the form. ~~A woman may file for office under her maiden name.~~ Quotation marks and parentheses are not permitted to appear in, before, or after a candidate's name. Prefixes, suffixes, and titles are not permitted. To determine the foregoing, the following examples are offered:

- (1) Mr., Mrs., Miss, Ms., Dr., M.D., Rev., Prof., Father, Judge, Sen., Gen., Col., Major, Capt., Sgt., etc., are not permitted.
- (2) Jr., Sr., II, III, etc., may be permitted if they are part of the candidate's name.

(b) A candidate is not required to list his or her full legal name on the Declaration of Candidacy form. The candidate's name on the Declaration of Candidacy form is not required to match exactly the name on his or her voter registration. A candidate who is generally known by or who does business using

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a nickname may choose to use that name on the Declaration of Candidacy. A married woman may use her maiden name on the Declaration of Candidacy form.

[OAR Docket #09-1147; filed 6-8-09]

## TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #09-1148]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 11. Receiving and Processing Absentee Ballots

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters [AMENDED]

### AUTHORITY:

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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#### ANALYSIS:

The amended Section concerns receiving ballots by fax from uniformed services and overseas voters. New language clarifies when these voters may return a federal write-in absentee ballot by fax. The federal write-in absentee ballot is a blank ballot for federal offices provided by the Federal Voting Assistance Program in the United States Department of Defense. Oklahoma accepts this write-in ballot by mail and by fax. During the 2008 election season, County Election Board personnel had questions about the earliest time before an election that they could accept the write-in ballot by fax for a specific election. There is no earliest time. Uniformed services and overseas voters may submit their federal write-in absentee ballot by fax at any time prior to an election involving federal offices.

These voters also are permitted to fax their ballots either to the State Election Board office or to the County Election Board office in the county of their residence. When the State Election Board receives a faxed ballot, it is immediately faxed to the appropriate County Election Board, and the hard copy is mailed to that county. This step was inadvertently omitted from the written procedure and this omission is now being remedied.

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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 15, 2009:

## SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

### 230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters

(a) All uniformed services and overseas voters are entitled to fax their voted absentee ballot to the State Election Board or to the County Election Board that issued the ballot if they receive their regular mail absentee ballot 30 days or less before the date of the election. Uniformed services and overseas voters who request a faxed ballot for federal offices as described in 230:30-9-5.1 must return said ballot by fax. Uniformed services and overseas voters may fax the federal write-in absentee ballot described in 230:30-13-1 through 230:30-13-4 at any time.

(b) A uniformed services or overseas voter described in (a) of this section may fax a copy of the voted ballot either to the State Election Board or to the County Election Board that issued the ballot in addition to mailing the original ballot to the issuing County Election Board. A fax cover sheet for this purpose may be downloaded and printed from the Federal Voting Assistance Program (FVAP) website: [www.fvap.gov](http://www.fvap.gov). Uniformed services voters may obtain copies of the fax cover sheet from the Voting Service Officers in their units. Overseas voters may obtain the cover sheet at United States embassies, consulates, and military installations. A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot. All faxed ballots must be received by the State Election Board or by the County Election Board no later than 7 p.m. (United States Central Time Zone) on the date of the election in order for the ballot to be counted. In the event that a voter's regular ballot is received by mail at the County Election Board prior to 7 p.m. on election day, only the voter's regular ballot shall be counted. The voter shall follow these instructions to fax a voted ballot to the State Election Board or to the County Election Board.

(1) After marking the ballot, make a photocopy of the ballot, reduced as necessary to fit an 8 1/2" by 11" page. Do not alter the original ballot.

(2) Fill out and sign the affidavit envelope included with the mail absentee ballot.

(3) Fill out the fax cover sheet.

(4) Fax the cover sheet, affidavit, and voted ballot to one of the secure numbers provided by the FVAP for ballot transmission.

(5) Immediately mail the voted original ballot to the County Election Board. Follow the instructions included with the ballot.

(c) The Secretary of the State Election Board shall assign one or more employees to receive and process voted ballots faxed by uniformed services and overseas voters. Upon receipt by fax of a voted ballot, the assigned employees shall take the

following steps to transmit the ballot and related information to the appropriate County Election Board Secretary.

(1) Verify that each voted ballot is accompanied by a fax cover sheet that includes the following information:

- (A) the voter's name
- (B) the voter's county of residence in Oklahoma
- (C) the voter's signature on the Secret Ballot Waiver
- (D) the voter's signed Affidavit if the faxed ballot is a copy of the voter's regular mail absentee ballot

(2) Stamp the fax cover sheet with the date and time it was received and immediately transmit both the cover sheet and the ballot to the appropriate County Election Board Secretary. If the Secretary does not have a fax machine in the office, notify the Secretary that a voted absentee ballot is being transmitted.

(3) In the event that a voted ballot is received without an appropriate identifying cover sheet and/or without the voter's signature on the Secret Ballot Waiver, the ballot shall be set aside in a secure place. If possible, immediately send a notice that the transmission was incomplete and that the ballot cannot be counted. Instruct the voter to send both the cover sheet and the ballot again. Document the receipt of the unidentified ballot and then destroy it.

(4) In the event that an identifying cover sheet is received without the voted ballot, set the cover sheet aside in a secure place. If possible, immediately send notice that the transmission was incomplete and the ballot was not received. Instruct the voter to send both the cover sheet and the ballot again. If the voter does not send the cover sheet and ballot again by 7 p.m. in the United States Central Time Zone on election day, document the receipt of the cover sheet without the ballot, and notify the County Election Board Secretary that the voter attempted to return the ballot but the ballot was not received.

(5) Ballots received by fax after 7 p.m. on election day in Oklahoma shall not be counted.

(6) Mail the original faxed ballot and cover sheet to the appropriate County Election Board.

(d) Upon receipt by fax of a voted ballot from the State Election Board, the Secretary of the County Election Board shall take the following steps.

(1) Attach the fax cover sheet to the ballot with a paper clip, fold the sheets in half and place in the locked absentee ballot box. If the ballot is received from the State Election Board on election day after the absentee ballot box has been opened, place the faxed ballot in a secure place until the County Election Board members are ready to count the ballot.

(2) Enter the date received in the voter's absentee application information in OEMS.

(3) After 7 p.m. on election day, the members of the County Election Board shall mark a substitute ballot and count it as instructed in 230:30-19-6.

(e) Upon receipt by fax of a voted ballot from a uniformed services voter or an overseas voter, the Secretary of the County Election Board shall follow the same steps outlined in (c) of this section.

(f) A voter who faxes a voted ballot to the State Election Board or to a County Election Board as described in this section must sign a Secret Ballot Waiver. The Secret Ballot Waiver is part of the fax cover sheet provided by the FVAP, and also is part of the fax cover sheet provided by the County Election Board to voters who ask for a federal office ballot to be faxed as outlined in 230:30-9-5.1. However, if neither of these cover sheets is available, the voter must include the following signed statement among the materials faxed with the voted ballot. "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." This statement must be signed and dated by the voter.

*[OAR Docket #09-1148; filed 6-8-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 35. ELECTION CONDUCT**

*[OAR Docket #09-1149]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. County Election Board Responsibilities

Part 7. Final Preparations

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

Part 9. Distributing Supplies and Ballots

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

Part 11. Election Day

230:35-3-78.1. Reporting violations of the law [NEW]

Part 17. Disposition of Materials

230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets [AMENDED]

230:35-3-101.1. Processing ~~transfers~~ changes of address received on election day [AMENDED]

Part 19. Verifying and Counting Provisional Ballots

230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [AMENDED]

**AUTHORITY:**

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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# Permanent Final Adoptions

## ANALYSIS:

In Subchapter 3, one Section which concerns a list of voters in restricted records status is amended to include information about a function of the new MESA (Modern Election Support Application) software being implemented by the State Election Board. "Restricted records status" is the term used to refer to voters covered by the provisions of Title 26 § 4-115.2. These voters are entitled to apply to conceal their residence and mailing address information in their voter registration records. Since the effective date of the referenced statute (June 5, 2003), and upon application by these voters for restricted records status, information on these voters has been removed from the County Election Board computer system and their records have been maintained manually. One functionality of MESA permits the County Election Board Secretary to maintain a list of these voters and their applicable district information, but not their address information, so that their names can be printed in the appropriate Precinct Registry for elections. A Section is amended to include information about the MESA function and to remove references to the manual process of maintaining these records.

There is a special procedure for the Secretary of the County Election Board to follow in certain limited circumstances when a precinct polling place must be open for an election, but there are no voters in the precinct eligible to vote in the election. When this circumstance occurs, the Secretary may choose not to issue a voting device to the precinct on election day and instead provide Precinct Officials only with provisional voting materials in the event a voter appears claiming to be eligible to vote in the election. The Section detailing this procedure is amended to include a Ballot Accounting Form among the supplies for the precinct along with instructions for completing and returning it to the County Election Board office. This is not a new form.

At every election, but especially at state and federal elections, questions arise about how and to whom to report suspected election law violations. For many years, County Election Board Secretaries have been verbally instructed to notify the County Sheriff when they receive complaints of possible violations. A new Section codifies this long-standing instruction.

Two Sections are amended to reflect slight changes in the procedures for processing voter registration application forms at the polling place on election day.

One Section concerning provisional ballots is amended to clarify instructions concerning the generation of Totals Printouts from the voting devices used to count provisional ballots, instructions concerning the storage of counted provisional ballots, and instructions concerning reading voting device memory packs into the computer and printing and proofreading reports.

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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 15, 2009:**

## SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

### PART 7. FINAL PREPARATIONS

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

The Secretary of the County Election Board shall prepare and maintain in MESA a list of restricted records status voters. See 230:15-9-25. The list shall include only the name, political affiliation, precinct number, school district code and municipal code of each restricted records status voter. ~~The list shall be arranged by precinct. Prior to each election, the Secretary shall attach the restricted records status voter list to the appropriate Precinct Registry. Maintaining this information in MESA will cause the restricted records status voter's name to print in the~~

~~Precinct Registry without his or her residence address. The Secretary also shall print and provide a complete copy of the list Restricted Records List to the in-person Absentee Voting Board. Any restricted records status voter who votes in person at his or her precinct polling place or at the in-person absentee polling place shall sign the restricted records status voter list Precinct Registry beside his or her own name. The signed list shall be used to give credit for voting after the election. When a restricted records status voter votes by in-person absentee ballot, the voter's eligibility shall be confirmed by the Restricted Records List and the voter shall sign the Absentee Voting Board Record.~~

### PART 9. DISTRIBUTING SUPPLIES AND BALLOTS

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

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

- (1) Only one entity is holding an election in the precinct.
- (2) Voter registration records indicate that there are no registered voters assigned to the entity in the precinct.
- (3) The County Election Board Secretary and entity officials believe that no one resides within the entity's boundaries in the precinct.

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

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

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

- (1) One copy shall be posted on the polling place door.
- (2) One copy shall be placed inside the ballot transfer ease box.
- (3) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.

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

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

- (2) After the zero printout prints, insert one blank ballot for the precinct in the voting device. The voting device will return the blank ballot and will print the "un-voted blank ballot!" message.
- (3) Do not remove the blank ballot from the voting device. Press the override key to accept the blank ballot.
- (4) Follow the procedure outlined in 230:35-5-75.1 to close the polls and obtain the Totals Printout. The Totals Printout will show zero votes for all candidates and one undervote (the blank ballot).
- (5) Tear the Totals Printout, which includes the zero printout, off the voting device. The Secretary and the other two Board members shall sign the Totals Printout in the spaces indicated for the Inspector, Judge, and Clerk. Set the original Totals Printout aside in a secure place. Print at least two additional copies of the Totals Printout to make available for public inspection after 7 p.m. and to enclose in the ballot transfer case.
- (6) Indicate on the Ballot Accounting Form for the precinct that one blank ballot from the reserve stock was processed through the voting device.
- (f) The following special instructions shall be provided to the Precinct Officials for use on election day when a voting device is not issued to a precinct polling place.
  - (1) Although the polling place must be open for today's election, County Election Board records indicate that there are no voters in this precinct eligible to participate in the election. Therefore, a voting device has not been issued for this polling place.
  - (2) In the event that a voter appears and claims to be eligible to vote in the election, Precinct Officials shall issue a provisional ballot to the voter following the provisional voting procedure in 230:35-5-177.
  - (3) At 7 p.m., the Inspector shall indicate the number of provisional ballots cast on each copy of the Provisional Ballots Cast sheet included in the precinct supplies. The Precinct Officials each shall sign the copies. The copies shall be distributed as follows:
    - (A) One copy shall be posted on the polling place door.
    - (B) One copy shall be placed inside the ballot transfer box.
    - (C) One copy shall be placed inside the clear plastic sleeve on the orange Provisional Ballot Bag.
  - (4) If a provisional ballot is cast, follow the instructions in 230:35-5-75.3(g) to secure the orange Provisional Ballot Bag for return to the County Election Board office.
  - (5) Complete the Ballot Accounting Form and pack the ballots as outlined in 230:35-5-75.3. Pack all remaining supplies as outlined in 230:35-5-76.

## **PART 11. ELECTION DAY**

### **230:35-3-78.1. Reporting violations of the law**

When the Secretary of the County Election Board receives reports on election day of possible violations of election laws either from Precinct Officials or from voters, the Secretary

shall notify the County Sheriff. Enforcement of the election laws is the responsibility of the County Sheriff. The Secretary immediately shall notify both the State Election Board and the District Attorney of any possible violations of the law by Precinct Officials or county election officials. Following the election, the Secretary shall notify both the State Election Board and the District Attorney of any other reports made to the Sheriff of potential felonies.

## **PART 17. DISPOSITION OF MATERIALS**

### **230:35-3-101. Processing FORMS FOR USE BY PRECINCT OFFICIALS booklets**

(a) The Secretary shall remove the FORMS FOR USE BY PRECINCT OFFICIALS booklet and all used Oklahoma Voter Registration Applications from the election supply container from each precinct. Examine the FORMS booklet, tear out all used forms, and process them according to the following procedure.

(1) The Secretary shall cancel the registrations of deceased voters indicated by used Cancellation of Registration of Deceased Voter forms as outlined in 230:15-5-63 and 230:15-5-65.

(2) The Secretary shall read the Inspector's Notes to Secretary sheets and shall take any necessary action.

(3) The Secretary shall examine the Absentee Voter Affidavit. If OEMS identifies voters who voted both by mail or in-person absentee ballot and at a precinct polling place, the Secretary shall notify both the District Attorney and the State Election Board. The Secretary shall follow any instructions concerning the Absentee Voter Affidavit given by either the District Attorney or the State Election Board.

(b) ~~All remaining voter registration application forms shall be processed as transfers on election day. See 230:35-3-101.1 and 230:15-9-24 according to the procedure outlined in 230:15-9-18 and in 230:15-9-24.~~

(c) After the used forms from the FORMS booklet have been processed as outlined in (a) of this Section they shall be retained for 24 months following the date of the election. The booklet covers and any unused forms remaining inside the covers shall be retained for 30 days following the election and then either shall be destroyed or, if possible, saved for reuse.

### **230:35-3-101.1. Processing ~~transfers~~ changes of address received on election day**

All voter registration applications received at the in-person absentee polling place or at the precinct polling place on election day, shall be ~~processed as transfers on election day entered in OEMS or MESA. See 230:15-9-18 and 230:15-9-24. Verification of provisional ballots cast in the election must be completed before any transfers are entered in OEMS. All transfers must be entered in OEMS before credit for voting can be given to voters as required in 230:35-3-93.~~ Voter identification cards and rejection notices for the applications processed as transfers received at the in-person absentee polling place or at the precinct polling place on election day shall be printed

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and mailed as soon as possible after all such applications have been processed. See 230:15-9-29 and 230:15-9-33.

## PART 19. VERIFYING AND COUNTING PROVISIONAL BALLOTS

### 230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots

(a) The County Election Board members shall meet on Friday next following the election at such time as the Secretary may prescribe to open the verified provisional ballot affidavit envelopes and to count the provisional ballots. The Board members shall follow these steps to remove the provisional ballots from the envelopes.

(1) The Board members shall receive the verified provisional ballot affidavit envelopes, sorted by precinct, from the Secretary or a designated County Election Board employee.

(2) The Board members shall open the affidavit envelopes and remove the ballot secrecy envelopes. If an affidavit envelope indicates that the voter received two or more ballots, but that not all the ballots enclosed are to be counted, see (c) of this Section.

(A) Set the affidavit envelope aside.

(B) Place the ballot secrecy envelope in an appropriate container.

(3) When all the affidavit envelopes from a single ~~provisional ballot~~ precinct have been opened, the secrecy envelopes shall be mixed together.

(4) The Board members shall open the ballot secrecy envelopes and remove the ballots.

(A) Set the secrecy envelope aside.

(B) Unfold the ballot and place it in the designated container for the precinct.

(b) When all the verified provisional ballot envelopes for a single precinct have been opened, the ballots shall be counted. The following procedure shall be observed.

(1) The Secretary shall assign a County Election Board employee to count the provisional ballots. The members of the County Election Board shall observe the counting process.

(2) The employee assigned to count the ballots shall take the following steps.

(A) The memory pack for the precinct shall be inserted in the voting device.

(B) Press the Print Totals key to obtain a Totals Printout. Verify that the totals match exactly the Totals Printout from election night.

(C) The polls shall be reopened so that the memory pack can read additional ballots.

(D) Insert the ballots, one at a time, into the device. If the device returns a ballot, do not remove the ballot. Use the override key to accept the ballot, then continue inserting ballots.

(E) After all the provisional ballots have been counted, ~~generate at least three Totals Printouts~~

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

(3) The employee who counted the ballots and the members of the County Election Board each shall sign all the copies of the Totals Printout.

(4) The employee shall remove the counted provisional ballots and place them in a ballot transfer case. If ballots from more than one precinct are placed in the same ballot transfer case, the ballots shall be separated by precinct. (The counted provisional ballots may be placed in the same ballot transfer case as any counted telephone ballots which also shall be separated by precinct.) One signed copy of the Totals Printout shall also be placed in the ballot transfer case. The ballot transfer case shall be sealed with a short turquoise State Election Board seal signed by the County Election Board members and the employee who counted the ballots. The Secretary shall check the "Counted Provisional Ballots" box on the seal and shall indicate the precinct numbers included in the ballot transfer case.

(5) The sealed ballot transfer case shall be given to the Sheriff, who shall provide security for the counted ballots until 5 p.m. on Friday following the election or until the ballots are delivered to the district courtroom for a recount.

(6) One copy of the provisional ballots Totals Printout shall be made available for inspection in the County Election Board office after 1 p.m. on Friday following the election.

(7) Follow the appropriate software instructions to read the memory packs into the computer.

(8) Print a Precinct Report for each precinct in which provisional ballots were counted. Proof the Precinct Report against the Totals Printout.

(c) If a provisional voter was issued two or more ballots and, upon verification of the voter's information, it is determined that one or more of the ballots cannot be counted, the County Election Board members shall follow these steps when opening the affidavit envelope.

(1) Open the affidavit envelope and remove the secrecy envelope.

(2) Write "Count (BALLOT TYPE OR CODE) ballot only" on the secrecy envelope in red ink.

(3) Place secrecy envelope in the container with other secrecy envelopes.

(4) When opening the secrecy envelopes, remove from the marked envelopes only the specific ballot or ballots to be counted. Put the ballots that cannot be counted back in the secrecy envelope and set it aside with the other uncounted provisional ballot materials.

[OAR Docket #09-1149; filed 6-8-09]

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

[OAR Docket #09-1150]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Municipal Elections  
Part 9. Procedures  
230:40-5-46. Maps required [AMENDED]  
Part 17. Special Elections  
230:40-5-77. Special elections for municipal offices [AMENDED]

**AUTHORITY:**

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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n/a

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

One Section is amended only to reflect the change in the name of the agency that maintains mapping information for the State Election Board. The Geo Information Systems Department at the University of Oklahoma is now called the Center for Spatial Analysis.

One Section is amended to include information about a statutory provision concerning special elections for municipal office. Title 11 § 8-109 provides that if a vacancy occurs or if a special election to fill a vacancy would occur within 120 days of the filing period for the next regular municipal election, a special election shall not be held. The vacancy shall appear on the ballot for the regular election as an unexpired term. This statutory language is not new, but due to an oversight, it has not appeared in the State Election Board rules until now.

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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 15, 2009:**

**SUBCHAPTER 5. MUNICIPAL ELECTIONS**

**PART 9. PROCEDURES**

**230:40-5-46. Maps required**

(a) The governing board of a municipality shall provide to the County Election Board or Boards of the county or counties wherein the municipality is located, a current, correct map of the municipality. [26:13-107] The map shall define clearly the municipal limits of and the ward boundaries within the municipality. [26:13-107] In the event that changes are made to the municipal limits or ward boundaries of the municipality, the governing board shall provide a complete, revised map. [26:13-107] It is the responsibility of the governing board of a municipality to provide a current and accurate map with a resolution calling a regular or special election.

(b) The governing board of a municipality may fulfill its responsibility for providing maps to the County Election Board by submitting information defining the municipality's corporate boundaries to the Oklahoma Tax Commission as required by state law (Title 11 O.S., Section 21-112) and by administrative rule of the Oklahoma Tax Commission (OAC 710:65-18-10) and by also reporting information about any changes in the municipality's boundaries as they occur. The Oklahoma Tax Commission and the ~~Geo Information Systems Department of~~ Center for Spatial Analysis at the University of Oklahoma maintain a digital mapping system for municipal boundaries. The digital maps are updated as notice of changes are received by the Tax Commission. The digital maps are available on the internet and may be downloaded and printed at no charge from the ~~website [www.geo.ou.edu](http://www.geo.ou.edu)~~ website [www.csa.ou.edu](http://www.csa.ou.edu). If the governing board of a municipality fails to provide the County Election Board with a map as outlined in this section, County Election Board personnel are authorized to use maps from the ~~Geo Information Systems Center for Spatial Analysis~~ website both to prepare for and to conduct elections and to resolve questions of voter eligibility, and to verify provisional ballots.

(c) The governing board of a municipality that nominates by ward and elects at large shall provide the County Election Board with a map showing the current ward boundaries within the municipality prior to a candidate filing period for a regular or special election. (Ward boundary lines are indicated on the digital maps maintained by the Oklahoma Tax Commission and ~~Geo Information Systems~~ the Center for Spatial Analysis only for municipalities that elect by ward.)

**PART 17. SPECIAL ELECTIONS**

**230:40-5-77. Special elections for municipal offices**

(a) **Special partisan elections.** When a special partisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]

(1) The dates of a three-day filing period which shall begin on a Monday and end on the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]

(2) The date of the special primary election, which shall be not less than 45 days after the close of the filing period. [11:16-114]

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- (3) The date of the special general election, which shall be not less than 45 days after the date of the special primary. [11:16-114]
- (4) A home rule charter municipality may schedule primary and general elections on the identified election dates in the months of March and April when there are fewer than 35 days between the election dates. [26:13-101.1]
- (b) **Special nonpartisan elections.** When a special nonpartisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]
- (1) The dates of a three-day filing period which shall begin on a Monday and end on the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]
- (2) The date of the special general election, which shall be not less than 45 days after the close of the filing period. [11:16-114]
- (c) **Time for special election resolution.** A copy of the resolution or order shall be filed with the Secretary of the County Election Board not less than 60 days preceding the date of the special general election. [11:16-114; 26:13-102]
- (d) **Dates for special elections.** Special municipal elections may be called only on election dates established by state law. [26:13-101.1]
- (e) **Special election not permitted.** A special election shall not be called to fill a vacancy in an elected municipal office if the vacancy occurs or the election would be held within 120 days of the first day of the filing period for the next regular municipal election. [11:8-109] In such circumstances, the vacancy shall be filled for the balance of the unexpired term at said regular municipal election.

[OAR Docket #09-1150; filed 6-8-09]

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

[OAR Docket #09-1151]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Instructions for Counters for Manual Recount  
Part 3. Procedure for Counting  
230:45-5-12. Instructions for counting [AMENDED]

### AUTHORITY:

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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n/a

#### INCORPORATION BY REFERENCE:

n/a

#### ANALYSIS:

One Section concerning counting ballots manually in a recount is amended to remove a reference to an obsolete item. In the days when most counties in Oklahoma counted all ballots manually, the State Election Board provided special pencils with red lead on one end and blue lead on the other. At any time that Counters completed a count or took a break from counting, they changed the color lead they were using to tally the count. At the advent of voting devices statewide in 1992, the State Election Board stopped providing the pencils and in the ensuing years most counties have exhausted their supplies of them. Other references to the pencils in the rules have long since been removed. However, this one reference remained and is now being removed.

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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 15, 2009:**

## SUBCHAPTER 5. INSTRUCTIONS FOR COUNTERS FOR MANUAL RECOUNT

### PART 3. PROCEDURE FOR COUNTING

#### 230:45-5-12. Instructions for counting

After the preparations described in 230:45-5-11 have been completed, the Counters shall begin to count the ballots. The following procedure shall be observed to count the ballots.

- (1) The Caller and Stacker shall examine each ballot.
- (2) The ballot shall be examined for each party, the office to be recounted and the name of the candidate voted upon.
- (3) The Stacker shall agree with the Caller, or the ballot cannot be counted for that candidate.
- (4) The first Tallyer shall repeat the name of the candidate and the number (from one to five) of the vote that is being recorded for that candidate.
- (5) The second Tallyer shall agree with the first Tallyer, or the recording shall stop and shall not continue until the Tallyers are in agreement.
- (6) ~~In recording the first count, Tallyers shall use the red end of the red and blue lead pencils. Thereafter, the color of the pencil lead shall be rotated each time a break occurs in the counting.~~
- (7) In recording the votes, the Tallyers shall use the tally method; i.e., votes shall be recorded in segments of

five, from one to five, or from one to "tally." The fifth vote shall be shown by a slash line through the other four votes. (8-7) When a ballot has been counted completely, the Caller shall hand the ballot to the Stacker, who shall stack the ballots in two ballot transfer boxes.

(9-8) The Stacker shall stack separately ballots that cannot be counted, including voted ballots that have been mutilated and ballots that have not been marked in any manner. These uncounted ballots shall be stacked in one ballot transfer box, and the counted ballots shall be stacked in a separate box. When the count is completed, the uncounted ballots shall be banded with a rubber band and returned to the ballot transfer box with the counted ballots.

(10-9) When all of the ballots in the first count have been counted, the Stacker shall write, ~~using the red end of a red and blue leaded pencil, "End of First Count" on the back of the last ballot in each stack. Thereafter, a similar notation shall be made for the end of the second count, third count and so on, using the color of pencil lead that was used by the Tallyers in recording the count.~~

(11-10) At the end of each count, the Tallyers shall verify that their totals are in agreement. If their totals do not agree, no further ballots shall be counted until their totals are in agreement.

[OAR Docket #09-1151; filed 6-8-09]

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 50. AUTOMATED SYSTEMS**

[OAR Docket #09-1152]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Voting Devices and Data Processing
- Part 7. Oklahoma Election Management System
- 230:50-3-31.1. Modern Election Support Application [NEW]
- Subchapter 9. Telephone Voting System
- 230:50-9-9. Counting telephone voting system ballots [AMENDED]

**AUTHORITY:**

Title 26 O.S., Section 2-107; Secretary of the State Election Board

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**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

One new Section is added to describe the new Modern Election Support Application (MESA) software currently being developed and implemented by the State Election Board and to authorize its use. MESA represents the first steps toward a new generation of the Oklahoma Election Management System and the migration of its functions to a personal computer-based platform.

One Section concerning counting telephone voting system ballots is amended to make the process of counting these ballots more similar to the process of counting provisional ballots. Minor inconsistencies between these two procedures were sources of confusion for some County Election Board personnel during the 2008 election season, especially since the two procedures are conducted almost simultaneously.

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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 15, 2009:**

**SUBCHAPTER 3. VOTING DEVICES AND DATA PROCESSING**

**PART 7. OKLAHOMA ELECTION MANAGEMENT SYSTEM**

**230:50-3-31.1. Modern Election Support Application**

(a) The Modern Election Support Application is a software system developed for the Oklahoma State Election Board for use by the County Election Boards in the administration of voter registration and elections and the performance of various election-related duties. The abbreviation "MESA" shall be used to refer to the software in the rules of the State Election Board. The MESA software is a new function of OEMS (Oklahoma Election Management System) and is the first step in the process of updating the functions of OEMS and of upgrading and modernizing the hardware platform on which it resides. MESA software may be installed on personal computers in the possession of the County Election Board. All County Election Board employees, at the discretion of the Secretary of the County Election Board, may become authorized users of MESA.

(b) County Election Boards are authorized to use the MESA software as necessary in the performance of their official duties. Use of the MESA software is optional in all areas where its functionality duplicates the functionality of OEMS.

**SUBCHAPTER 9. TELEPHONE VOTING SYSTEM**

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

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

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

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

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

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

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

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

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

~~(6) After all substitute telephone ballots have been counted, obtain~~ Obtain a new Totals Printout after all substitute telephone ballots have been counted. The following message will print after each race on the Totals Printout: "Test Results Only. Results Are Not Official!" However, these results are official and this message should be disregarded.

(A) Set the first new Totals Printout aside in a safe place. Do not put it in a ballot transfer case.)

(B) Print at least three more copies of the Totals Printout. ~~The following message will print after each race on the Totals Printout: "Test Results Only. Results Are Not Official!" However, these results are official and this message should be disregarded.~~

(7) Sign the Totals Printouts. The employee who counted the ballots and the members of the County Election Board each shall sign all copies of the Totals Printout.

~~(7-8)~~ Remove the counted telephone ballots from the ballot box and place them in a ballot transfer case with one signed copy of the Totals Printout. If telephone ballots for more than one precinct are placed in the same ballot transfer box, the ballots shall be separated by precinct. (The telephone ballots may be placed in the same ballot transfer case as the counted provisional ballots which also shall be separated by precinct.)

~~(8-9)~~ Seal the ballot transfer case and affix to the box a short turquoise State Election Board seal signed by the

County Election Board members and the employee who fed the ballots into the voting device. The Secretary shall check the "Counted Telephone Ballots" box on the seal and shall indicate the precinct number or numbers included in the ballot transfer box.

~~(9-10)~~ Give the sealed ballot transfer case to the Sheriff, who shall provide security for the counted ballots until 5 p.m. or until the ballots are delivered to the court room for a recount.

~~(10-11)~~ One copy of each of the new Totals Printouts shall be made available for public inspection in the County Election Board office.

~~(11-12)~~ Follow the appropriate software instructions to read the absentee precinct memory pack into the computer.

~~(12-13)~~ Print a Precinct Report for the absentee precinct. Proof the Precinct Report against the Totals Printout.

[OAR Docket #09-1152; filed 6-8-09]

## TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #09-1125]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

330:36-1-4. [AMENDED]

Subchapter 2. Allocation Procedures

330:36-2-1. [AMENDED]

330:36-2-9. [AMENDED]

330:36-2-12. [AMENDED]

330:36-2-17. [AMENDED]

Subchapter 4. Development Applications and Selection

330:36-4-2. [AMENDED]

330:36-4-2.1. [AMENDED]

330:36-4-3. [AMENDED]

Subchapter 6. Program Administration

330:36-6-7. [AMENDED]

### AUTHORITY:

These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

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n/a

**ANALYSIS:**

Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if said owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

**CONTACT PERSON:**

Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2010:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**330:36-1-4. Definitions**

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the Code shall control more restrictive meaning shall be applied.

**"Affiliate"** means any Person that directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any other Person.

**"Allocation"** means the maximum amount of TCA's available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

**"Applicable Fraction"** means the fraction used to determine the qualified basis of a qualified low income building which is the smaller of the unit fraction or the floor space fraction.

**"Applicant"** means any individual, nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Taxpayer and Taxpayer's predecessor

in interest, if any, and includes any successor in interest, Transferee, of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Taxpayer or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having any right, title, or interest in the Development.

**"Application"** means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

**"Application Packet"** (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit public input on the Application Packet, and provide explanation of any significant changes. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

**"Area Median Gross Income"** means the median gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

**"Building"** means a Residential Rental Property containing residential Housing Units located on the land and included in the Development. For purposes of the Credit Program, each Building is identified by its Building Identification Number assigned by OHFA BIN and its street address assigned by the United States Postal Service. In case of any inconsistency, the BIN shall control. In the event more than one Building is located on the land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

**"Capital Needs Assessment"** (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures. The physical inspection should include an interview with the on-site manager and maintenance personnel. This assessment should identify deferred maintenance, physical needs, remaining useful life of key components, building material deficiencies and material

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building code violations that affect the property use, structural and mechanical integrity, and the future physical and financial needs. The assessment must include the cost of labor and materials identified in detail and the extent of future expenditures contemplated to ensure the costs will be addressed through operating and replacement reserves. Components which should be examined and analyzed in this assessment include but are not limited to:

(A) site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utility lines;

(B) structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system and drainage;

(C) interiors, including unit and common area finishes (carpeting, vinyl or tile flooring, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors; and

(D) mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection and elevators.

**"Carryover Allocation"** means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

**"Carryover Allocation Agreement"** means the contract between Taxpayer and OHFA, authorized and approved by the Trustees, wherein subject to the satisfaction by Taxpayer of the terms, conditions, obligations and restrictions contained therein or in any Resolution of the Trustees, a Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

**"Certifications"** means the representations made under penalties of perjury by the Applicant, Taxpayer, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Development Compliance Period.

**"Code"** means the Internal Revenue Code of 1986, as amended, and in effect at the date of the Regulatory Agreement, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

**"Commitment"** means a representation or agreement of the Taxpayer/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Taxpayer and its Transferees and successors in interest

throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Taxpayer with OHFA in connection with the Credit Program.

**"Compliance Period"** means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

**"Consultant"** means any person (which is not an Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

**"Control"** (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies or any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

**"Credit"** means the low-income housing tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

**"Credit Period"** means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is placed in service, for Credit purposes, or if the Taxpayer makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

**"Credit Program"** means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

**"Credit Reservation"** means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

**"Developer"** means the person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Taxpayer of the Development. Developer also includes any other person or organization affiliated with, Controlled by, In Control Of or A Related Party to, the Developer, as determined by OHFA.

**"Development"** means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter

constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

**"Development Compliance Period"** means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

**"Development Team"** means the Applicant, architect, attorney, consultant, developer, general contractor, market analyst and/or appraiser, property management company, tax professional, Taxpayer, and the principals of each.

**"Drug"** for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

**"Drug-Related Criminal Activity"** means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

**"Due Date"** if a due date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the due date becomes the next business day.

**"Elderly"** means a person sixty-two (62) years of age or older. This definition is for consideration for the Elderly set-aside and for points in which one hundred percent (100%) of units are for Elderly.

**"Eligible Basis"** means generally the depreciable basis in the property.

**"Extended Use Period"** means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

**"Gross Rent"** means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B)); (iii) paid to Taxpayer (on the basis of the low-income status of the Qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Taxpayer to the extent an equivalent amount is paid to the RHS under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be

reduced below the amount of Gross Rent established in the first Year of the Credit Period.

**"Hard Construction Costs"** means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, a reasonable contingency can be included.

**"Homeless"** means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status. OR (4) displaced as a result of a major disaster and receives FEMA assistance. Homeless individuals are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

**"Housing Unit"** means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common Area Units are not included.

**"HUD"** means the U.S. Department of Housing and Urban Development.

**"Income"** means the income of one or more Qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

**"IRS"** means the Internal Revenue Service of the Treasury.

**"IRS Form 8609"** means the IRS Form entitled "Low Income Housing Credit Certification" issued by OHFA no later than the end of the calendar year that such Building is Placed-In-Service or to be issued. The IRS Form 8609 establishes the maximum Credit for a Building.

**"IRS Form 8823"** means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

**"Land"** means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

**"Large Development"** means a Development with more than sixty (60) units.

**"LIHTC Program"** means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

**"Low-Income Unit"** means a Housing Unit that is both Rent-Restricted and occupied by Qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account

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local health, safety and building codes and it is used other than on a transient basis except in the case of transitional housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer Total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

**"Market Rate Unit"** means a Housing Unit that does not meet the definition of a Low-Income Unit.

**"Minimum Low-Income Housing Set-Aside"** means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by Qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Taxpayer must have selected either: (i) twenty percent (20%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Taxpayer and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Taxpayer.

**"National Non-Metro Area Median Income"** means as determined and published annually by HUD.

**"Nonprofit"** means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

**"Nonprofit Sponsored Development"** means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the

Development and operation of the Development throughout the Compliance Period.

**"OAHTC Program"** means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

**"OHFA"** means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

**"One Year Period (1YP)"** means period commencing on the date on which OHFA and the owner agree to the Qualified Contract price in writing and lasting twelve (12) calendar months.

**"Owner"** means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest of Owner, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

**"Partnership"** means any syndicate, group, pool or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is treated for federal income tax purposes as a partnership and is not considered within the meaning of the Code, a trust or estate or a corporation. A Partnership may be a general Partnership or a limited Partnership and must have partners and an objective to carry on business and divide the gains therefrom.

**"Person"** means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

**"Placed-In-Service" means:** (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for rehabilitation expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

**"Preliminary Application (QCPA)"** means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a request for a qualified contract.

**"Program Rules"** means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the

Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

**"Qualified Allocation Plan (QAP)"** means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing will be published by OHFA Staff.

**"Qualified Building"** means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Taxpayer or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

**"Qualified Contract"** means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

**"Qualified Contract Application (QCA)"** means an application containing all information and items required by the OHFA to process a request for a Qualified Contract.

**"Qualified Contract Price (QCP)"** means calculated purchase price of the development as defined within §42(h)(6)(F) of the Code and as further delineated in Chapter 36 Rules.

**"Qualified Development"** means a Development or Residential Rental Property where an Applicable Percentage or more of the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum Low Income Housing Set Aside.

**"Qualifying Households"** means households whose annual incomes do not exceed the chosen set-aside (which is either 50% or 60%) of the median family income for the area.

**"Regulatory Agreement"** means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

**"Rehabilitation Expenditures"** means amounts that are capitalized and incurred for the addition to or improvement of an Existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest

in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

**"Rent-Restricted"** means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the income limitations for Qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

**"Resident"** means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

**"Resolution"** means an official action of the Trustees and includes all Resolutions adopted by the Trustees with respect to a Development.

**"Review Report"** means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the review report for each Application.

**"Rural Area"** means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by contacting the Stillwater USDA-RD office.

**"Rural Development"** means a Development that is, or will be located within a Rural Area. RHS 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

**"Section 8"** means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

**"Selection Criteria"** means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

**"Site Control"** means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Taxpayer has obtained Site Control.

**"Special Needs"** means such targeted populations as may be designated from time to time in an Application Packet by official action of OHFA's Board, which designations may include, but are not necessarily limited to, the homeless, the

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elderly, persons with mental and physical disabilities and/or disabled persons.

**"State"** means the State of Oklahoma.

**"TCA"** means a federal low-income tax Credit allocation by OHFA to a Development owner pursuant to Section 42 of the Code, these Rules, QAP, the Act, the applicable AP, the Application, and formal action by the OHFA Board of Trustees.

**"Three-Year Period"** for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the owner may no evict or terminate a tenancy of an existing tenant of any low-income unit except for good cause. During the Three-Year Period the owner may not increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code.

**"Threshold Criteria"** means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the Taxpayer and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require no further action by OHFA Staff except to notify the Applicant of the disqualification.

**"Total Housing Units"** means all Housing Units in a Building including both Market Rate Units and Low-Income Units.

**"Total Development Costs"** means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application and in an independent certified public accountant's certification of sources and uses of funds submitted to OHFA.

**"Transfer"** means any sale, transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a transfer, sale, contribution or assignment by the Applicant, Taxpayer or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general Partnership, general partner of a limited Partnership, any party to a joint venture or the manager of a limited liability company.

**"Transferee"** means any and all successor(s) in interest of Taxpayer, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident)

of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

**"Transitional Housing"** for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

**"Treasury"** means the United States Department of the Treasury.

**"Trustees"** means the Board of Trustees of OHFA.

**"Unit Fraction"** means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of Total Housing Units, whether or not occupied, in the Building.

**"Violent Criminal Activity"** means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

## SUBCHAPTER 2. ALLOCATION PROCEDURES

### 330:36-2-1. TCAs distribution

(a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal application process governed by the Qualified Allocation Plan (QAP).

(b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the applicable AP, and at the discretion of the OHFA Trustees, by their formal action, giving consideration to Staff recommendation following a thorough review and financial feasibility analysis.

(c) The Trustees reserve the right, to consider and make an award of TCAs at any time as the Trustees, in their sole discretion, deem such award appropriate under the circumstances and facts presented to them. Approval of such an award shall be at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.

(d) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. Requests for the AP should be directed to the OHFA Housing Development Team or the AP can be accessed at OHFA's website, [www.ohfa.org](http://www.ohfa.org).

### 330:36-2-9. Reallocation of additional tax Credits

(a) Annually, additional tax Credits may become available for the award of TCAs as the result of:

- (1) Development cancellations;
- (2) Developments completed under original cost estimates;
- (3) Credits allocated but not utilized; or,
- (4) Other circumstances.

(b) In keeping with the applicable AP, OHFA may award TCAs based on the amount of Credits available, in the calendar year any such Credits first become available. ~~For the calendar year in which such additional Credits become available they may be prorated among all the remaining cycles for which awards have not been made by formal action by OHFA.~~

~~(e) OHFA reserves the right, in its complete discretion, to make any adjustments in the amount of TCAs that may be awarded in any cycle of a given calendar year, by increasing or decreasing the amount of TCAs made available in a given cycle.~~

(c) The Trustees reserve the right, to consider allocations of TCAs outside the established reservation cycles for a given calendar year. The Trustees, in their sole discretion, reserve the right to approve such an allocation of TCAs, provided the facts presented to them demonstrate a special circumstance or need and said allocation promotes the development of residential use housing within the State. Provided however, the Trustees also reserve the right to deny any request for an allocation of TCAs made outside the established reservation cycles for a given calendar year. Consideration of all allocations of TCAs shall be made at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.

(d) All Credits not awarded in any calendar year shall be carried over for use in the next calendar year, in accordance with the provisions of the Code, these Rules, the applicable AP and/or the formal action of OHFA Trustees.

**330:36-2-12. Communications with OHFA during Application Review**

(a) **Communications with OHFA Employees.** Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, concerning the Application or any other Applications filed ~~in the same cycle~~. OHFA reserves the right, in OHFA's sole discretion, to contact the contact person(s) identified by the Applicant for the purpose of clarifying any matter.

(b) **No Ex Parte Communications with the Board of Trustees of OHFA.** Neither an Applicant nor members of the public shall communicate, directly or indirectly, with the Board of Trustees regarding an Application under consideration by OHFA except upon notice and opportunity for all parties to participate. Applicants and others who wish to communicate with the Board of Trustees must follow the specific steps as set forth in 330:36-2-13.1.

(c) **Preliminary Review Report.** Following the release of the preliminary Review Report, the Applicant may submit questions or request clarification concerning the preliminary Review Report. All such questions or inquiries must be in writing, addressed to the Staff member designated in the cover letter accompanying the preliminary Review Report. These questions may be submitted electronically. OHFA reserves the right to grant or deny requests for meetings with the Staff of OHFA at any time during the Application process. Any and all requests must be in writing.

(d) **Final Review Report.** Upon issuance of the final Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13.

(e) **Noncompliance.** Failure to comply with this subsection 330:36-2-12 may result in termination of the review process and denial of the Application.

**330:36-2-17. Final Allocations**

(a) **Prior approval.** Applicants must have previously been approved for a Reservation, either in a prior year or ~~during one of the Reservation cycles for~~ previously in the calendar year in which the request is made.

(b) **Deadline for filing.** Owner's request for approval of the Final Allocation must be received by OHFA ~~on or before November 1 of the year in which the Owner has elected as the first taxable year of the Credit, or at such later date as OHFA may specify in writing to the Owner.~~ Failure to file a timely Final Allocation accompanied by all required documentation may result in the denial of the Final Allocation and a determination by the Trustees that the Credits have been returned by the Applicant.

(c) **Complete filing.** The Final Allocation must be accompanied by all evidence or documentation required by the Program Rules then in effect, and such other information or documentation which may be requested by OHFA, in its sole discretion, to verify compliance with the Code, the Program Rules and the Resolutions, and to verify the amount of the Final Allocation. A complete and executed Regulatory Agreement in the form provided by OHFA and ready for filing, together with the appropriate fees, including without limitation applicable filing fees and compliance monitoring fees, must be filed with the Final Allocation. The Regulatory Agreement shall contain provisions for regulation and enforcement by OHFA and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to the requirements of OHFA.

(d) **Additional requirements.** In addition to the opinions and certifications of professionals which may be required to be filed with OHFA pursuant to 330:36-2-16 in connection with a request for a Carryover Allocation, prior to making a final Allocation, OHFA will require:

(1) An audited certification of the total Development costs, and the eligible basis and qualified basis of each Building in the Development and the sources and uses of funds for the Development prepared from an independent certified public accountant.

(2) All opinions must be in a form satisfactory to OHFA and must indicate that the professional has made an independent inquiry into the matters contained therein.

(e) **Approval.** Upon receipt of a completed Final Allocation, OHFA will conduct a final feasibility analysis. Approval of the Final Allocation is subject to Owner's continued compliance with the Code, the Program Rules, the Resolutions, all terms and conditions of this Agreement, Owner's payment of all fees required by the Program Rule.

(f) **Issuance of Form 8609(s).** Subject to the approval of the Final Allocation by the Trustees, OHFA will, upon notification by Owner that the Development (or any Building

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therein) has been placed in service, issue IRS Form 8609(s) respecting each such Development (or each Building therein) to the extent required by, and in accordance with, the Code and the Program Rules. No Form 8609(s) shall be issued if OHFA has not received an executed Regulatory Agreement and all Exhibits thereto, together with applicable fees.

## SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

### 330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, ~~the Threshold Criteria set out herein below in this section.~~ criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application ~~will~~ may result in the Application being rejected without further review. The Threshold Criteria ~~shall~~ may include, but are not necessarily limited to the following:

(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application ~~eyele~~ requires notice. If the application is considered at a different Board meeting than in the notice, this notification requirement is considered to be met.

(A) **Written Notices.** The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman of the appropriate county commissioners, state legislators (or their successor) within whose district the development is located at the time of application regarding their intent to submit an application. This written notice shall serve to provide a reasonable opportunity to comment on the application. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application ~~eyele~~ requires notice.

(B) **Additional notice requirements.** If the site for the development is not located within the specific corporate limits of an incorporated town or city, but is within two (2) miles of an incorporated town(s) or city(ies) limits, Applicant must provide the same

notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application ~~eyele~~ requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application ~~eyele~~ requires notice. The requirements for the publication notice will be in the annual AP. At a minimum all such notices must contain the reasonably anticipated information below:

- (i) ~~the name and the legal description or street address of the proposed Development;~~
- (ii) ~~the names, business addresses and telephone numbers of the Applicant and the Applicant's designated contact person in regard to the proposed Development;~~
- (iii) ~~whether the Development is new construction, acquisition and rehabilitation and/or substantial rehabilitation;~~
- (iv) ~~the maximum number of units, the type of development, and percentage of income restricted units;~~
- (v) ~~the month in which the Applicant reasonably expects the Application to be considered by the OHFA Trustees for an award of a TCA;~~
- (vi) ~~the name, business address, telephone number and extension number of the contact person at OHFA to whom all inquiries about the hearing on the Application and the proposed Development should be directed.~~

(2) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.

(3) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

- (A) ~~will own a minimum of fifty one percent (51%) ownership interest (directly or through a Partnership) in the Development;~~
- (~~B~~A) is at least a minimum of fifty-one percent (51%) co-general partner, co-managing member, or a

controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(~~C~~B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 26 CFR § 1.469;

(~~D~~C) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(~~E~~D) is duly authorized to do business within the State; and

(~~F~~E) has at least one demonstrable year of affordable housing experience ~~in the State~~.

(4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is located at the time of application, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions.

(5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their Placed in Service Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. The removal as a General Partner may be considered lack of capacity and performance. Applicants with existing Developments may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, and may include any of their Development team. Instances of non performance may include, but not limited to:

- (A) failure to meet and maintain minimum property standards;
- (B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;
- (C) have been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;
- (D) events of material uncorrected non-compliance with any Federal or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years.

(~~F~~) failure to comply with OHFA's requests for information or documentation on any development funded or administered by OHFA.

(6) **Acquisition Credits.** Applicants requesting acquisition Credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d) (2)(B) have been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

(7) **Phase I environmental study.** Applicants must submit a Phase I Environmental Assessment of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. In lieu of assessment for existing RHS-financed properties to be acquired and rehabilitated, the Applicant and RHS must certify that there are no adverse environmental concerns. Any remediation requirements should be detailed and costs identified in the budget.

(8) **Financial feasibility and viability.** Applicants must demonstrate with their financing that there are firm commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. ~~Projects financed through the RHS programs must submit a Multiple Family Housing Obligation Fund Analysis, Form FmHA 1944 51, or other evidence of firm commitment.~~ Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Commitment letters must include loan amount, interest rate, loan term, debt service coverage ratio (permanent lender), loan amortization period (permanent lender), borrower, loan fees, collateral and conditions precedent to funding. Requirements set out in 36-4-2.2 (b)(c) and (d) are part of the analysis for financial feasibility.

(9) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness ~~shall~~ may include but not be limited to:

- (A) site control; and
- (B) Applicant must provide preliminary plans or specifications; and
- (C) proper zoning for the proposed Development.

(10) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local or State public housing authority documents the presence of a client waiting list for affordable housing units in the locale of the proposed development.

(11) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital

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needs assessment performed by a qualified independent third-party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements plus reserves have a useful life that meets the full term of affordability based on extended use agreements. The assessment should also demonstrate the need for the rehabilitation work and in the degree proposed. In addition, all rehab developments must include a complete, detailed tenant income audit that identifies all existing tenants and their income. The audit shall separately identify those tenants whose income exceeds applicable income limits.

**(12) Development amenities.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the annual AP.

(c) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and shall ~~may~~ include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below fifty percent (50%) AMFI to the total number of AHTC units in the project. A sliding scale for points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be awarded for an extension of the term of affordability beyond the minimum required by the Code and established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. ~~Examples of location and condition variables may include, locating Developments within Difficult Development Areas, Qualified Census Tracts, Presidentially declared disaster areas as identified in the current or preceding year or Empowerment Zones, Enterprise Zones, Enterprise Communities.~~ Points Locations and points will be established in the annual AP.

(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost beneficial investments or contributions to the proposed Development. Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. Points for this criterion will be established in the annual AP.

(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed development will be analyzed. ~~Examples of community support include, but are not necessarily limited to: fee waivers, tax abatements, public~~

~~improvements directly related to a Development, donations of property and/or materials, and other contributions of direct value to the proposed Development.~~ Support must be directly related and of direct value to the proposed project. Eligible evidence of support and points will be established in the annual AP.

~~(6) Development Amenities.~~ Each Application will be analyzed and evaluated as to commitments made therein for the provision of amenities. ~~Points available under this criterion will be established in the annual AP. Only amenities which exceed the minimum required by applicable laws or building codes will be eligible for points.~~

~~(7) Development Services.~~ Each Application will be analyzed and evaluated as to commitments made therein for the provision of resident appropriate services. ~~Points available under this criterion for the resident appropriate services will be established in the annual AP.~~

~~(8) Applicant/Owner Experience.~~ Each Application will be analyzed and evaluated as to the experience of the Applicant and/or the Development Team in owning and successfully operating Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP.

~~(9) Management Experience.~~ Each Application will be analyzed and evaluated as to managing or providing management for Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the management team members. Changes in management may not occur after the Reservation without the prior written approval of OHFA.

~~(10) Tenant/Special Needs Populations.~~ Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. Points available under this criterion will be established in the annual AP and will be based upon a percentage of units dedicated to special needs.

~~(11) Tenant populations of individuals with children.~~ Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. Points available under this criterion will be established in the annual AP. To be eligible, the market study must indicate a need for family units.

~~(12) Tenant ownership.~~ Points available to applicants proposing for single family home ownership after the Compliance Period will be established in the annual AP. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which will be evaluated for feasibility.

~~(13) Tie-breaker.~~ In case there are applications with the same final score in any set aside, a drawing shall occur at the Board of Trustees meeting in which the applications are being considered for funding. All applications with the same score in any set aside will be entered in the drawing. The first application drawn, will be funded first, the second

application drawn, will be funded next, and so forth until such time as the tax credits have been allocated under the set aside. Applications not drawn under a set aside will be placed in the next set aside in which they qualify in rank score order.

~~(14) **Women/MBE.** Points may be established in the AP for Applicants utilizing Minority Business Enterprises/Women Business Enterprises (M/WBEs) as a participant of the Development Team.~~

~~(4511) **Preservation of affordable housing units from pre-1990.** Points may be established in the AP for the preservation of affordable housing.~~

~~(4612) **Energy Efficiency of a development.** Points will be established in the AP to encourage energy efficiency of developments. This may be a separate point category, or it may be combined within another threshold or selection category.~~

~~(4713) **Historic Nature of a development.** Points will be established in the AP regarding the historic nature of developments. This may be a separate point category, or it may be combined within another threshold or selection category.~~

~~(4814) **Negative Points.** OHFA Staff will deduct points for records of poor performance. Point deductions will be established in the AP.~~

(15) **Tie-breaker.** In case there are applications with the same final score in any set-aside, a drawing shall occur at the Board of Trustees meeting in which the applications are being considered for funding. All applications with the same score in any set-aside will be entered in the drawing. The first application drawn, will be funded first, the second application drawn, will be funded next, and so forth until such time as the tax credits have been allocated under the set-aside. Applications not drawn under a set-aside will be placed in the next set-aside in which they qualify in rank score order.

(d) **OHFA discretion.** Notwithstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2.1(c), the OHFA Board of Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if allocation is:

- (1) in compliance with Code Section 42;
- (2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and
- (3) determined by the Trustees to be in the interests of the citizens of the State.

**330:36-4-2.1. General program requirements and limitations**

(a) **General.**

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:

- (1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.

(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:

(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

- (A) General requirements may not exceed six percent (6%) of the hard construction costs;
- (B) General Overhead may not exceed two percent (2%) of the hard construction costs; and
- (C) Builders Profit may not exceed eight percent (8%) of the hard construction costs.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

- (A) General requirements may not exceed six percent (6%) of the hard construction costs.
- (B) General Overhead may not exceed two percent (2%) of the hard construction costs; and
- (C) Builders Profit may not exceed six percent (6%) of the hard construction costs.

(d) **Underwriting standards.**

(1) **Operating and replacement reserves.**

(A) Minimum operating reserves must equal six months of projected operating expenses plus:

- (i) debt service payments and
- (ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal \$250.00 per unit annually for new construction and \$300.00 for rehabilitation developments.

(C) Developer guarantees or letters of Credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate financial capacity and liquidity. OHFA will also consider the developer's track record and the number of other guarantees outstanding.

(D) Notwithstanding the foregoing, these underwriting standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural Housing 515 or 538, and such program provides for sufficient budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

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- (B) The minimum acceptable debt service coverage ratio will be established in the AP.
- (3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.
- (4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.
- (5) **Minimum hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of ~~\$7,500~~ \$20,000 in hard construction costs per unit will be expended or at least twenty percent (20%) of eligible basis, whichever is greater.
- (6) **Buildings Designated by OHFA to receive increase in credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the annual AP.
- (e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the IRS Form 8609 is issued for a building. Due dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) calendar days after the Certificate of Occupancy is issued for the last building in the project, the Taxpayer must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the Development. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused Credits.
- (f) **Construction time period.** Construction, not including site prep work, must begin within Construction, not including site prep work, must begin within nine (9) months of the last calendar day of the month of the Credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax Credits.
- (g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Taxpayer, Owner or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.
- (h) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

### 330:36-4-3. Fees

- (a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

- (1) **Application fees.**
- (A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be ~~\$350.00~~\$500.00;
- (B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be ~~\$700.00~~\$1,000.00;
- (C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be ~~\$1,400.00~~\$2,000.00;
- (D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be ~~\$2,800.00~~\$3,000.00;
- (E) for scattered sites, the application fee shall be ~~\$350.00~~\$500.00 per site, up to a maximum of ~~\$2,800.00~~\$3,000.00.
- (F) For non-profit sponsored Developments the application fee shall be ~~\$350.00~~\$500.00.
- (2) ~~**Amendment fee.** Any amendments to an Application, exhibits thereto or other information on file with OHFA must be accompanied by a \$75.00 processing fee along with \$15.00 per each supplemental page and/or each page amended. No amendments to an Application will be accepted prior to approval of a reservation unless the amendment is requested, in writing, by OHFA.~~
- (3) **Reservation fees.** A non-refundable Reservation fee of two percent (2%) of the reservation amount is due within fourteen (14) calendar days of notification from OHFA of the approval of a Reservation.
- (4) **Allocation fee.** An Allocation fee shall be paid in an amount equal to eight percent (8%) of the total TCA, but in any event not less than \$1,000.00. The Allocation fee must accompany the Final Allocation or Carryover Allocation request. ~~The Allocation request will not be submitted to the Trustees for approval, nor will a~~ Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA.
- (5) **Processing fee.** A processing fee of three quarters of one percent (.75%) of the TCA must accompany the request for a final Allocation. A service fee of \$100.00 must accompany the Request for Final Allocation of Credit. Form 8609(s) will not be issued unless this fee has been received by OHFA.
- (6) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies).
- (7) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the compliance period and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be

paid to OHFA. If the Compliance fee is not paid within thirty (30) calendar days of the due date, then a Late Fee will be assessed. The Late Fee is equal to ten percent (10%) of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 or by taxable or tax-exempt bonds (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and RHS or the bond issuer wherein the RHS or bond issuer agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be \$210.00 per Development per year, plus \$9.00 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and RHS or the bond issuer wherein RHS or the bond issuer agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be \$350.00 per Development per year, plus \$19.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be \$275.00 per Development per year.

(D) For all other Developments the fee shall be \$350.00 per Development, plus \$19.00 per OAHTC unit per year within any building within the Development.

**(87) Additional monitoring fees.** In the event of non-compliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed \$30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

**(98) Ownership/General Partner transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership/general partner of the Development or any of the Buildings therein, a fee of three percent (3%) of the amount of annual tax Credit allocation, but no less than \$2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

**(9) Management Transfer fees.** In the event that the owner submits a request for approval of a transfer of the management company of the Development, a \$500.00 fee per development shall be imposed to cover OHFA's costs

of handling the request. This fee shall accompany the request and shall be non-refundable.

**(10) Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, ~~(such as Resolutions and Regulatory Agreements)~~ must be reimbursed by the Owner within ten (10) calendar days of OHFA's statement of same. Failure to do so may result in the rejection of consideration of the Application.

**(11) Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of \$10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

~~(12) Copies of Credit listing. Copies will be provided at a cost of \$10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.~~

~~(12) Compliance Workshops.~~ A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.

~~(13) Qualified Contract fees.~~ Submission deadlines for these fees will be established in the Qualified Contracts Application materials. Preliminary Application (PA) fee shall be \$1,500.00. Additionally, the Qualified Contract Application (QCA) fee shall be \$12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the applicant. Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an all inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and applicants will receive notice of the charge and reason.

~~(14) Late fees. The Form 8609(s) will not be issued unless these fees have been received by OHFA.~~

~~(A) Progress reports.~~ Progress reports as required in 36-4-2.2 when filed late will be assessed a late fee of \$10.00 per calendar day, per each late report. ~~The Final Allocation request will not be submitted to the Trustees for approval, nor will Form 8609(s) be issued unless this fee has been received by OHFA.~~

~~(B) Carryover Allocations.~~ Applicants Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

~~(C) Final Allocations.~~ Applicants Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

~~(D) Transfer Documents.~~ Owners who fail to timely file all requirements in regard to the transfer of ownership or general partnership interest (or other type of entity) may incur \$25.00 late fee per calendar day.

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(E) Acknowledgment of Placed in Service Form. Owners who fail to timely file an Acknowledgment of Placed In Service Form in accordance to timelines established in the AP shall incur \$10 late fee per calendar day.

## SUBCHAPTER 6. PROGRAM ADMINISTRATION

### 330:36-6-7. OHFA monitoring procedures.

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing Credit agencies monitor all placed in service tax Credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Regulatory Agreement (Land Use Restriction Agreement) provisions which contain additional owner commitments made to secure points in the project selection process, e.g. additional low-income units or an extended low-income use period. OHFA has assembled and will make available to the development owners, a Compliance Manual explaining the OAHTC monitoring process in detail. An owner representative and a management agent representative will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The owner of a low-income housing project is required to keep records for each qualified low-income building in the project showing:

- (A) The total number of residential units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (B) The percentage of residential rental units in the building that are low-income units;
- (C) The rents charged on each residential rental unit in the building (including any utility allowances);
- (D) The number of occupants in each low-income unit;
- (E) The low-income unit vacancies in the building and information that shows when, and to whom the next available units were rented;
- (F) The initial income certification of each low-income tenant per unit, and any additional recertification that may be required;
- (G) Documentation to support each low-income tenant's income certification;
- (H) The eligible basis and qualified basis of the building at the end of the first year of the Credit period;

(I) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and

(J) Copies of all correspondence with the IRS.

(2) The owner is required to retain the records described in this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) **Certification and review provisions.**

(1) Between the placed in service date of a building and the submission of an application for a final allocation of Credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7 (c)(6) of these Rules.

(2) In accordance with Section 42(l)(1), following the close of the first taxable year in the Credit period, the owner must certify to the Secretary of the Treasury:

- (i) the taxable year in which such building was placed in service,
- (ii) the adjusted basis and eligible basis as of the close of the first year of the Credit period,
- (iii) the maximum applicable percentage and qualified basis, and
- (iv) the election made for the low-income targeting threshold.

(v) This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA. The due date for submission is May 10, or as extended by the Service or Staff, of the year due to The Service for the first Credit year.

(3) Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last building is Placed in Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever minimum set-aside is applicable to the project, and, if the applicable to the project, the 15-40

test under Section 42(g)(4) for "deep rent skewed" projects;

(B) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change and a description of the change;

(C) The owner has received an income certification from each low-income tenant and documentation to support that certification;

(D) Each low-income unit in the project was rent-restricted under Section 42(g)(2);

(E) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);

(F) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

(G) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of that change;

(H) All tenant facilities included in eligible basis under Section 42(d) of any building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) If a low-income unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be rented to tenants not having a qualifying income;

(J) If the income of the tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;

(K) An extended low-income housing commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Land Use Restriction Agreements;

(M) There was no change in the Owner entity (for example, transfer of general partnership interest);

(N) If the owner received its Credit allocation from a portion of the State's ceiling set-aside for projects involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation if the development (within the meaning of CFR § 1.469) and complete the Non-Profit Addendum or other form prescribed by OHFA;

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred

for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgment from federal court; and

(P) An extended low-income housing commitment as described in Section 42(h)(6) was in effect, that an owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(Q) Collect data required by HUD in a form prescribed by OHFA. In no way will the data collection be in violation of Fair Housing.

(5) OHFA will review the owner certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and for at least twenty (20) percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the extended use period, OHFA must conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(8) The certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the extended use period, and the certifications are to be made under penalty of perjury.

(9) The owner is required to provide to OHFA, for the first Credit year, a copy of the completed Part II 8609, 8609 Schedule A and Form 8586 that is submitted to the Internal Revenue Service.

(10) The owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing provisions.** OHFA has the right to perform an audit of any low-income housing project during the term of the Land Use Restriction Agreement. An audit includes physical inspection of any building in the project, as well as a review of the records described in 330:36-6-7(c)(1) of these Chapter 36 Rules. The auditing provision of this paragraph is in addition to any inspection of low-income certifications and documentation under 330:36-6-7(c)(7) of this Chapter 36 Rules.

(e) **Notification of non-compliance provisions.**

(1) OHFA will provide prompt written notice to the owner of a low-income housing project if OHFA does not receive the certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant income certification supporting

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documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The owner shall have a period of time, not to exceed thirty (30) calendar days, from the date of such notice (the "Correction Period") to supply any missing certifications and bring the project into compliance. OHFA may extend, in its own discretion, the Correction Period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Non-compliance with the Internal Revenue Service no later than forty-five (45) calendar days after the end of the Correction Period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

[OAR Docket #09-1125; filed 6-2-09]

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

[OAR Docket #09-1114]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:1-1-4 [AMENDED]  
390:1-1-12 [NEW]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 70 O. S., Section 3311(L)(2); 70 O.S., Section 3311(M)(2); and 70 O.S., Section 3311(B)(13).

**DATES:**  
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**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**

n/a  
**ANALYSIS:**

Amended rules would correct statutory references as a result of legislative changes and implement a formula based fee for event and course fees permitted by statute.

**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 11, 2009:**

### 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)~~ 70 O.S. Section 3311(L)(2).

(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)~~ 70 O.S. Section 3311(M)(2).
  - (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.

**390:1-1-12. Event and course fees**

(a) Events and courses identified by the Director, shall be subject to fees authorized in 70 O.S. 3311(B)(13). Costs will be advertised at the time the event or course is announced.

(1) Hourly tier rate per student cost for courses or events:

(A) Supplies

(i) Level 1: \$ 0.00

(ii) Level 2: \$ 3.13

(B) Facility rental other than K.O. Rayburn Training Center

(i) Level 1: \$ 0.00

(ii) Level 2: \$ 0.38

(iii) Level 3: \$ 0.63

(iv) Level 4: \$ 0.75

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- (v) Level 5: \$ 0.88
- (vi) Level 6: Facility rental fees for the K.O. Rayburn Training Center outlined in (OAC) 390:55-1-11 divided by the number of hours for the class or event.

**(C) Professional service fees**

- (i) Level 1: \$ 0.00
- (ii) Level 2: \$ 1.75
- (iii) Level 3: \$ 3.50
- (iv) Level 4: \$ 12.50
- (v) Level 5: \$ 25.00
- (vi) Level 6: \$ 50.00

**(2) Event or course fees based upon a per person rate:**

- (A) Level 1: \$ 100.00
- (B) Level 2: \$ 150.00
- (C) Level 3: \$ 240.00
- (D) Level 4: \$ 350.00
- (E) Level 5: \$ 375.00
- (F) Level 6: \$ 475.00

**(b) Payment of fees shall be submitted with an application form at least five working days prior to the event.**

**(c) Forms of payment accepted include:**

- (1) Business check
- (2) Purchase order
- (3) Cashiers check
- (4) Money order.
- (5) Credit card accepted by CLEET, or
- (6) Cash if paying in person.

**(d) Cancellations for an event or course must be made 24 hours in advance. Applications not cancelled shall be charged the full fee amount.**

**(e) The full fee amount for an event or course will be refunded in the event of a cancellation by CLEET due to unforeseen circumstances or at the request of the Director.**

**(f) Failure to pay any assessed fee shall result in an action against a certification or license pursuant to OAR Chapter 2, Administrative Procedures.**

*[OAR Docket #09-1114; filed 6-1-09]*

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

*[OAR Docket #09-1115]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:10-1-6 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 70 O. S., Section 3311(B)(2); 70 O.S., Section 3311(E)(4); and 70 O.S., Section 3311 et seq.

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The process for an officer seeking Oklahoma Peace Officer Certification, who has been certified as a peace officer in another state or as a federal peace officer, will be amended to require all applicants to attend the legal block of instruction, modify testing requirements, and allow the Director to exercise discretion to award a certification, if in the opinion of the Director, the requirements for certification equal or exceed the qualifications required in Oklahoma.

**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 11, 2009:**

**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 and 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). Officers may have one retest for the certification examination.~~ Any retest would follow the guidelines listed in OAC 390:15-1-13.

(6) The director may, in the exercise of discretion, award a certificate to any person who has been duly certified under the laws of another state if, in the opinion of the director, the education, training and experience of that officer equal or exceed the qualifications required to complete satisfactorily the basic course of instruction required for Oklahoma certification.

[OAR Docket #09-1115; filed 6-1-09]

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

[OAR Docket #09-1116]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Basic Academy Programs  
390:15-1-19 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311.5(H)(I) and 70 O.S., Section 3311, et seq.

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Amendments are non-substantial and are required to correct statutory references in the rules as a result of legislative changes that resulted in re-numbering of the statute.

**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 11, 2009:

**SUBCHAPTER 1. BASIC ACADEMY PROGRAMS**

**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)~~ 70 O.S. Section 3311.5(H)(I) 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 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 request shall be submitted to the Council. The Director shall make written notification of the Council's approval or denial of the request. If approved, the notification shall include an agreement between the Council and the agency making 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) 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)~~ 70 O.S. Section 3311.5(H) shall minimally include the following information:

(1) **Justification.** The agency making the request must demonstrate to the Council that 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)~~ 70 O.S. Section 3311.5(H).

(2) **Employment standards.** The agency making 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, in a format approved by the Council.

(3) **Program documentation.** The agency making 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:

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- (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.

[OAR Docket #09-1116; filed 6-1-09]

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

[OAR Docket #09-1117]

### RULEMAKING ACTION: PERMANENT final adoption

- RULES:**
- 390:25-1-8 [AMENDED]
  - 390:25-1-11 [AMENDED]
  - 390:25-1-13 [AMENDED]

### **AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311 (B)(2) and 70 O.S., Section 3311, et seq.

### **DATES:**

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### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

Language will be amended to require verification by the agency head of training records submitted to CLEET for data entry into the centralized peace officer training records and allow the Director to grant a waiver for comparable training for specialized instructor certification. New language would establish requirements for instructor certification for non-law enforcement personnel. At this time specialized instructor certification is only recognized upon successful completion of a CLEET recognized instructor school, this change would consider comparable training for specialized instructor certificates. The change to provide an avenue to recognize CLEET instructor certification for non-law enforcement personnel would allow civilian staff to conduct training for CLEET recognition.

### **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 11, 2009:**

#### **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) 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, 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, CLEET number, and employing agency and the authorized signature of the agency head or designee certifying attendance.

(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 any 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.

**390:25-1-11. Requirements for specialized instructor certification**

To qualify for specialized instructor certification, applicants must meet the following qualifications:

(1) Meet the qualifications for basic instructor certification as described in OAC 390:25-1-10; and

(2) Successfully complete a CLEET recognized or approved instructor development school in the specialized field for which application is made.

(3) The director may, in the exercise of discretion, award special instructor certification to applicants who have completed comparable training, education or experience that equal or exceed the qualifications for specialized instructor certification.

**390:25-1-13. Adjunct Instructor**

(a) **Justification.** Realizing that it would be contrary to the best interests of law enforcement to restrict or discourage qualified private individuals from participating in law enforcement training, CLEET shall recognize such individuals as adjunct instructors.

(b) **Conditions for recognition.** CLEET shall recognize individuals who meet the following qualifications and under the following conditions:

(1) Individuals whose exceptional training, experience, or educational attainment qualifies him or her to teach particular subject areas without the benefit of Instructor Development Training.

(2) Applications shall be in writing and shall include the applicant's name, address, and biographical data; a description of the subject area(s) to be taught, and a resume' of the applicant's training, experience, and/or educational attainment in these subject areas.

(3) For the purpose of this subsection, CLEET will only recognize training, experience and educational attainment that can be classified as professionally recognized and formal in nature.

(c) The director may award instructor certification for non-law enforcement personnel who have completed comparable training, education, or experience that equal or exceed the qualifications for basic or specialized instructor certification.

[OAR Docket #09-1117; filed 6-1-09]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 30. CDS DETECTOR DOG CERTIFICATION**

[OAR Docket #09-1118]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:30-1-5 [AMENDED]

390:30-1-6 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311 (B)(9) and 70 O.S., Section 3311, et seq.

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### SUPERSEDED EMERGENCY ACTIONS:

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### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

Amendments would clarify that CLEET or OBNDND will conduct certification trials for CDS Detector Dog certification, it would remove the requirement to publish dates and locations for certification trials annually, clarify the passing score, and specify that CLEET relies upon the test reports of OBNDND or their designee conducting tests. Amendments would allow CLEET to schedule dates for certification trials upon demand to better meet the needs of our clients and clarify how test information is evaluated by CLEET.

### 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 11, 2009:**

#### **390:30-1-5. Standards for certification**

(a) Based on demand and the availability of staff, CLEET and or OBNDND will conduct certification trials at designated sites across the state. ~~Known dates and locations of certification trials shall be published annually in January.~~

(b) Testing for certification of CDS detector canine teams shall be conducted by qualified agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDND), and/or their designees, who have successfully completed an appropriate course of instruction, or who are currently certified in the training and handling of CDS Detector Dogs by the United State Custom Service.

(c) Certification trials and testing criteria shall be consistent with the standards currently utilized for the certification of CDS detector dogs.

(d) CDS detector canine teams shall be certified only in the detection of controlled dangerous substances for which the dog scores ~~an eighty per cent (80%) higher "find" rate, and not more than a twenty per cent (20%) "false response" rate~~ passes the certification test.

(e) CLEET relies on the test reports of OBNDND or their designee conducting the test for the purpose of determining whether the canine team passed the certification test.

#### **390:30-1-6. Application for certification**

(a) Any person, group, or organization, public or private, that utilized canine teams for the purposes of detecting controlled dangerous substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance during field tests ~~to be designed and conducted jointly by CLEET and OBNDND.~~

(b) Persons wishing to seek CLEET CDS detector canine team certification may receive an application and instructions by calling or making a written request to CLEET administrative offices.

(c) Applicants must submit the application and appropriate test fee to CLEET not less than fifteen (15) days prior to testing.

(d) All applications must be completely filled out and be accompanied by two (2) full-body, color photographs of the applicant canine team and any other information required by CLEET. The photographs shall include the full side-body of the dog and the face of the handler.

(e) Normally, no more than ten (10) applicant dogs shall be scheduled for testing on any date.

(f) Upon completion of CDS detector canine team testing, the owner/handler of each dog shall be informed as to the examiner's evaluation of the canine team's performance.

(g) Canine teams that fail to successfully complete the CDS detector tests in accordance with the required standards of performance may not be retested until sixty (60) days from the last attempt, and must submit the retest fee to CLEET prior to testing.

(h) Canine teams that successfully complete CDS Detections tests in accordance with the required standards of performance shall be notified in writing by CLEET.

(i) When CLEET has determined that all application procedures are fully complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a CDS detector canine team certificate shall be issued by CLEET.

(j) Any time a certified CDS detector canine team is being employed or otherwise utilized in CDS detection activities, the CLEET CDS detector canine team certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(k) CLEET CDS detector canine team certification shall remain effective for one (1) year from the date it was issued.

(l) CDS detector canine teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than fifteen (15) days prior to the expiration date of the previous certificate.

(m) All CDS detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an expired certification is not initiated by the canine team within

thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full two hundred dollars (\$200.00) certification test fee to reinstate the certification status of the canine team concerned. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(n) When any canine team certified under these laws and rules will no longer be utilized in the performance of CDS detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(o) CDS detector canine teams owned by or used solely by a bona fide law enforcement agency for CDS detection activities in the service of the public shall be exempt from the certification fees herein, but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified annually by the United States Custom Service.

[OAR Docket #09-1118; filed 6-1-09]

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

[OAR Docket #09-1119]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. License Requirements
390:35-5-1 [AMENDED]
390:35-5-2 [AMENDED]
390:35-5-13 [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 59 O.S., Section 1750.3(B)(4); 59 O.S., Section 1750.1 et seq.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments would clarify that notices of address or telephone changes will not be accepted over the phone by agencies or individuals, change a statutory reference, and establish a time frame for accepting college credit hours towards mandated training required for license renewal.

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 11, 2009:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-1. Agency license requirements

(a) All licensed security guard and private investigative agencies, shall maintain a place of business within the State of Oklahoma, and shall maintain an operative telephone having a published listing, in the agency name. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state. The phone number shall be on file with CLEET. The office of such business may be maintained at the personal residence of the executive officer, manager, or supervisor of such office. Such notification shall include both the geographical location (street address) and the mailing address. Any changes in the above shall be submitted to CLEET within 10 days of the effective date of the change. Notice of change of address will not be accepted over the phone.

(b) The executive officer, manager, or other person in charge of supervising security guards and/or private investigators shall be a resident of the State of Oklahoma.

(1) The executive officer, manager, or other person in charge of supervising security guards in the performance of their duties shall be a licensed security guard.

(2) The executive officer, manager, or other person in charge of supervising private investigators in the performance of their duties shall be a licensed private investigator.

(c) Agency licenses are not transferrable upon the sale of a company. The Council may approve the transfer of a license to a new entity providing that one or more of the original licensees retain ownership in the new entity, and the new licensee meets the qualifications listed in (d) of this section. The licensee shall notify CLEET in writing within ten (10) days of any change of identity of the licensee, or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, officers and registered agents (branch managers); and any substitute in the person enumerated must satisfy the requirements listed in (d) of this section; and be approved by CLEET.

(d) Every applicant for an agency license, or any of its owners, partners, directors, or in the case of a corporation, each officer and registered agent (branch manager), shall meet the following qualifications before it may engage in any business licensed under this chapter:

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- (1) be 21 years of age;
  - (2) be a citizen of the United States or a resident alien;
  - (3) not have been convicted of a felony or crime involving moral turpitude unless waived by the Council pursuant to O.S. Title 59, Section 1750.5 (H);
  - (4) not have had his license revoked or application for such license denied by CLEET;
  - (5) be of good moral character; and
  - (6) in the case of a corporation, be incorporated under the laws of this state, or shall be duly qualified to do business within this state.
- (e) Alarm Companies who respond to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, or hold-up are required to be licensed as a Security Agency, and individually license employees as security guards, or armed security guards, who provide the response.
- (f) Temporary employment agencies who provide guards or private investigators to its clients on a contractual basis falls within the definition of a contract security or investigative company and must be licensed pursuant to the Act, and individually license employees utilized in this service.
- (g) Employee leasing services who provide an administrative service only for handling the payroll, employee's salaries, and benefits, who do not make assignments, supervise or direct the work of the employee, or select the employees, but who lease the employee back to the licensed agency, do not fall within the definition of a contract security or investigative company and are not required to obtain an agency license. Licensed agencies who utilize the employee leasing services, are responsible for the duties such as reporting employments, terminations, address changes to our agency, providing appropriate liability insurance coverage, etc., as if the employee were paid by the agency.

### **390:35-5-2. Security guard, armed security guard, and private investigator licenses**

- (a) Applicants for security guard, private investigator, or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.5 59 O.S. Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act.
- (b) Applicants for Armed Security Guard or firearms authorized licenses must further:
- (1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.
  - (2) Successfully complete the firearms phase of private security training;
  - (3) Be twenty-one (21) years of age, and
  - (4) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.
- (c) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

(d) No licensee shall brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law, and the rules of this Chapter.

(e) Continuing education training is required for renewal of an individual license.

(1) Private Investigators must complete a minimum of sixteen (16) hours of continuing education training from an approved source, during the licensing period to maintain their license.

(2) Security Guards must complete a minimum of eight (8) hours of continuing education training from an approved source, during the licensing period to maintain their license.

(3) A person holding both a security guard license and private investigator license or a combination license must complete a total of sixteen (16) hours of continuing education training during the licensing period to maintain their license.

(4) Any expenses incurred for continuing education courses by any licensee shall be the responsibility of the licensee.

(5) For purposes of continuing education requirements, "licensing period" shall mean (730) calendar days from the date the license was issued.

(6) Firearms requalification courses will not count towards mandate training. Approved sources for mandated training are:

(A) College credit hours. Fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report. Requests for credit must be submitted within one (1) calendar year from the date the college credit is obtained;

(B) Established Entities (Recognized county, state, and federal associations, professional associations, vocational-technical schools). One hour of training will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. Proof of attendance needed is a copy of a certificate, sign-in roster, electronic notification or other proof from the sponsor accepted by CLEET; or

(C) CLEET Accredited Schools, Seminars, and Conferences. One hour of mandate training credit will be granted for each hour of instruction. For approval to conduct mandate training, sponsors must:

(i) Submit a written request for program accreditation to CLEET;

(ii) Provide course outline, and course objectives;

(iii) Provide Resume for Instructors; and

(iv) After training, submit a roster of attendees completing the training to CLEET.

(D) Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license.

(7) Continuing education training may be reported to CLEET as it is completed or at the time of license renewal. Verification of the minimum hours of continuing education training will be made by CLEET when the licensee requests renewal. A licensee will be subject to the following disciplinary sanctions for failure to comply with the mandate training requirements:

- (A) Written Reprimand
- (B) Denial
- (C) Suspension
- (D) Revocation and/or
- (E) Disciplinary penalty or fine

(8) A renewal license will be issued only after CLEET receives a request for renewal, the renewal fee, current photographs, verification of current insurance or bond coverage, verification of the minimum hours of continuing education training for the license period.

(9) A licensee who has timely submitted a request for renewal with payment and has failed to meet the minimum training requirements will be issued official notification of CLEET's intent to impose a disciplinary action for failure to meet the mandated training requirements in compliance with Chapter 2 of this Title.

(10) This official notification shall provide that the licensee may temporarily continue to work for forty-five (45) days during which time the licensee must complete the training requirements and submit proof of such training to CLEET. The temporary work provisions of the Notice may be extended or cancelled by CLEET, as necessary to complete the administrative hearing process.

(f) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:

(1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks.

(2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state.

(3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.

(4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.

(5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the

applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.

(6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the "Armored Car Industry Reciprocity Act of 1993."

**390:35-5-13. Notification of change of address or telephone number**

(a) Private investigators, armed security guards, and unarmed security guards shall maintain, with the Council, current residential addresses. Notice of change of address or telephone number must be made within ten (10) days of the effected change. Notices will not be accepted over the phone.

(b) The Agency owner or branch manager (in the instances of national corporations) shall notify the Council of changes in the business address and/or telephone number within 10 days of the effective date of the change. Notices will not be accepted over the phone.

(c) Failure to notify the Council of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation.

(d) If failure to comply with this Chapter results in Council Action, the use of "lack of notice" shall not be deemed as a valid defense in any proceeding.

*[OAR Docket #09-1119; filed 6-1-09]*

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 50. PENALTY ASSESSMENT FEES**

*[OAR Docket #09-1120]*

**RULEMAKING ACTION:**

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**RULES:**

390:50-1-3 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 20 O. S., Section 1313.2

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**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Currently CLEET is allowed to make rounding adjustments to correct errors in amounts on court reports up to \$ .25 per error. Calculation errors occur in reports from the courts for Penalty Assessment Fees due to the different methods of rounding used by the various court reporting systems. This amendment would increase the amount from \$ 0.25 to \$ 1.00 to be adjusted off as rounding errors because the costs for labor, postage and envelope to notify the court of an error and the court cost to respond exceed \$ 1.00. Based on the current rounding adjustments, increasing the allowed rounding adjustments to \$ 1.00 should have a negligible effect on collections as both positive and negative errors occur and they should offset each other over time.

**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 11, 2009:**

**390:50-1-3. Definitions**

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

**"Adjustment"** means a credit or debit adjustment due to calculation and reporting errors.

**"CLEET"** means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

**"Council"** means the appointed members of the Council on Law Enforcement Education and Training, as defined in 70 O. S., §3311.

**"Court"** means any state or municipal court having jurisdiction to impose a criminal fine or penalty.

**"Convicted"** means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgement or suspended sentence.

**"Director"** means the Director of the Council on Law Enforcement Education and Training, or his designated agent.

**"Late Fee"** means a fee imposed for failure to make timely deposits.

**"Penalty Assessment Fee"** means a separate fee in addition to and not in substitution for any and all fines and penalties otherwise provided for by law as defined in 20 O. S., §1313.2.

**"Rounding Adjustment"** means an adjustment to zero balances of \$ ~~0.25~~ one dollar ( \$ 1.00) or less as the result of rounding errors on a report.

*[OAR Docket #09-1120; filed 6-1-09]*

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

*[OAR Docket #09-1121]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:55-1-15 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S. 3311(B)(13) and 70 O.S. 3311 et seq.

**DATES:**

**Comment period:**

February 2, 2009 - March 10, 2009

**Public hearing:**

March 10, 2009

**Adoption:**

March 20, 2009

**Submitted to Governor:**

March 27, 2009

**Submitted to House:**

March 27, 2009

**Submitted to Senate:**

March 27, 2009

**Gubernatorial approval:**

May 4, 2009

**Legislative approval:**

Failure of legislature to disapprove the rules resulted in inactive approval on May 20, 2009.

**Final adoption:**

May 20, 2009

**Effective:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

This amendment would clarify the liability agreement for sponsors entering into agreements to use the facilities at the K.O. Rayburn Training Center in Ada, Oklahoma.

**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 11, 2009:**

**390:55-1-15. Liability**

Sponsors of approved events shall agree ~~to~~with and accept the liability for injury or death of the user's representative, CLEET staff, or any other person(s) as a result of the negligent or malicious acts of any individuals involved in the usage.

Reservation agreements shall include a hold harmless and indemnification section to be signed by the event sponsor or covenant even if not specifically set out in the body of the agreement.

[OAR Docket #09-1121; filed 6-1-09]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #09-1131]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

420:10-1-5. Permits [AMENDED]

420:10-1-14. Standards for the storage and handling of liquefied petroleum gas [AMENDED]

AUTHORITY:

Oklahoma Liquefied Petroleum Gas Board; Pursuant to statute 420.3. Oklahoma Liquefied Petroleum Gas Board - Rules, regulations and specifications. Subsection (G)(H).

DATES:

Comment period:

February 17, 2009 through March 20, 2009

Public hearing:

March 23, 2009

Adoption:

March 23, 2009

Submitted to Governor:

March 31, 2009

Submitted to House:

March 31, 2009

Submitted to Senate:

March 31, 2009

Gubernatorial approval:

May 6, 2009

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2009.

Final adoption:

May 22, 2009

Effective:

July 11, 2009

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the legislature in 52 O.S. 1991, Section 420.3 (e) and shall be accepted standards for the State of Oklahoma.

Incorporating rules:

420:10-1-14

Availability:

Oklahoma Liquefied Petroleum Gas Administration, Jim Thorpe Building, 2102 N. Lincoln Blvd., Suite B-45, Oklahoma City, Oklahoma, 73105-4990. Office hours are from 7:30 a.m., to 4:30 p.m., Monday through Friday.

ANALYSIS:

The proposed rule amendment to 420:10-1-5 would add new language that gives the Administrator the authority to assess a truck re-inspection fee of \$150.00. Currently, the Administrator can only charge \$25.00 if a Safety Code Enforcement Officer has to travel to re-inspect a truck, which is not sufficient to defray the cost and expenses of administering and enforcing this act. Brings the fee in-line with the current annual inspection fee of \$150.00. The proposed

amendments would also bring the rules in compliance with the statutes and change the title of LP Gas Inspector to Safety Code Enforcement Officer.

The proposed rule amendments in 420:10-1-14 would delete existing language and refer permit holders to the national standards adopted by the National Fire Protection Association and published in Pamphlet No. 58 including current and subsequent editions and any subsequent changes and/or additions to the pamphlet, as currently adopted by the Board. This will help clarify the rules and provide uniformity to enforcement of this act. The proposed amendments would also delete the requirement that a cylinder exchange cabinet shall have the Class VII Permit Number affixed to it. This is no longer a necessary requirement and has no bearing on safety. The proposed amendments would delete language that mandates that a cylinder for sale or exchange, in exchange locations, shall each contain a minimum 35% water weight capacity of propane. This in effect deletes the requirement that specifies that a minimum amount of propane must be included in a cylinder for sale or exchange, in an exchange location. The proposed amendments would require that the cylinder exchange cabinet have the Net Weight of the cylinder in pounds displayed on the front of the cabinet in letters not less than 2 inches high. This will provide the customer with the knowledge of how much propane is contained in the cylinder that they are purchasing at any exchange location.

CONTACT PERSON:

Mr. Bill Glass, Administrator, (405)521-2458.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

420:10-1-5. Permits

(a) Permits required. No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) Permit classifications. The permits required for engaging in business shall be divided into the following classifications:

(1) Class I - Dealer permit. The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is Five Hundred Dollars (\$500.00). The annual fee for the Class I permit is Two Hundred Dollars (\$200.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

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- (i) A minimum of \$500,000.00 general liability insurance, as per 420:10-1-18;
  - (ii) Worker's Compensation shall be required as per state requirements;
  - (iii) Motor vehicle insurance must meet State and Federal requirements.
- (C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.
- (2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is Three Hundred Dollars (\$300.00). The annual fee for a Class II permit is Two Hundred Dollars (\$200.00).
- (3) **Class III - DOT Cylinder Transporter Permit.** The Class III DOT Cylinder Transporter Permit permits the holder to operate DOT cylinder filling station and cylinder delivery service. The annual fee for a Class III permit is One Hundred Fifty Dollars (\$150.00).
- (4) **Class IV - Installer permit.**
- (A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or an Oklahoma licensed plumber, and then shall be required to pass a written examination. Exception from two (2) week training period would be anyone already licensed by Oklahoma as a licensed plumber. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. The annual fee for a Class IV permit is Fifty Dollars (\$50.00).
  - (B) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.
  - (C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.
- (5) **Class IV-D - Driver/Installer Permit.**
- (A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars (\$50.00).
  - (B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.
  - (C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.
- (6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.** The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder charging station and/or a motor fuel dispenser for resale. Applicant shall be required to pass an approved written examination. Examination shall be administered by ~~an LP Gas Inspector~~ a Safety Code Enforcement Officer, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars (\$10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Dollars (\$100.00).
- (7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, Class VI, and Class X. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by ~~an LP Gas inspector~~ a Safety Code Enforcement Officer, or by Class X manager. In either case, the test fee for the Class VI-A

permit is Ten Dollars (\$10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is Twenty-Five Dollars (\$25.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. Applicant shall be required to pass an approved written examination. One person can be tested for multiple locations. Examination shall be administered by ~~an LP Gas Inspector~~ a Safety Code Enforcement Officer, or by a Class X Manager. In either case, the test fee for the Class VII permit is Ten Dollars (\$10.00). A permit is required for each bottle exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars (\$50.00).

(9) **Class VIII - Appliance Dealer Permit.** The Class VIII Appliance Dealer Permit permits the holder to sell LP Gas appliances. The annual fee for a Class VIII permit is Seventy Dollars (\$70.00).

(10) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars (\$70.00).

(11) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars (\$70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(12) **Class X - Manager's Permit.** A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars (\$150.00).

(13) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the

employees of a Class I dealer, or as may be required by future Board action.

(14) **Truck inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of One Hundred Fifty Dollars (\$150.00) for each LP Gas bulk delivery truck or trailer belonging to a person who holds a permit authorizing the use of such truck or trailer and One Hundred Fifty Dollars (\$150.00) for each such truck or trailer belonging to a person who does not hold a permit. All requirements imposed subsequent to these inspections must be met within thirty (30) days of the initial inspection. Failure to comply will necessitate a re-inspection at a charge of One Hundred Fifty Dollars (\$150.00) for each inspection. The inspection fee shall increase to Three Hundred Dollars (\$300.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(15) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars (\$3.00) each, and on all other containers, a fee of Ten Dollars (\$10.00) each.

**420:10-1-14. Standards for the storage and handling of liquefied petroleum gas**

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S. 1991, Section 402.3 (e) and shall be accepted standards for the State of Oklahoma. All Class I permit holders must have a current copy of NFPA 58 and 54 on file at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must." The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

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(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system or any type is installed.

(2) **Submittal of plans.**

(A) Prior to the installation of new, or the modification of liquefied petroleum gas plumbing systems, excluding tank change outs, in school buildings, churches, courthouses, office building and other building to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, by the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas, they shall be physically inspected and approved by a licensed installer and a report made by him to the State Liquefied Petroleum Gas Administrator on LPG Form 4, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas. These plans must be submitted to the Administration office along with the proper fee, and an on site inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the dispenser can be placed into service. A Ten Dollar (\$10.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and on site inspection performed by ~~an LP Gas inspector~~ a Safety Code Enforcement Officer prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.

(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed.

(4) **Piping - including pipe, tubing and fittings.**

(A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules and regulations of the State Liquefied Petroleum Gas Administrator relative to liquefied petroleum gas piping.

(B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58.

(C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Container charging.** Containers, including DOT cylinders, with water capacity less than 300 pounds shall be charged by weight, except containers covered by Ch. 4-4.3, 1998 Edition of NFPA 58 or later revisions as made by NFPA 58.

(7) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight and deliveries of LP Gas vapor through vapor meters otherwise, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The

customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved annually by an approved meter tester/inspector and have written certification on file at permit holders place of business. All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by a Safety Code Enforcement Officer, an approved meter tester, or a person approved by the Administrator. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.

(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(8) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(9) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

(10) **Basement installations.** No appliance shall be installed in any basement or semi-basement unless it is fully automatically controlled and properly vented and must have the approval of the State Liquefied Petroleum Gas Administrator.

(11) **Standards for containers.**

(A) In accordance with 52 O.S. Sec. 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a manufacturers date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a five year warranty covering workmanship and material. This

warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; and

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

(12) **Underground containers.**

(A) Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of \$25.00 paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer.

(B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.

(C) Any person installing an underground container must notify the Administrator prior to installation.

(13) **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. Current active Class I permit holders, as of September 1, 1994, are not required to meet this minimum storage requirement. After a change of ownership the new Class I permit holder must secure the minimum storage requirement within one year.

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(14) **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.

(15) **Lettering bulk storage and dispensers.**

(A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.

(B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.

(C) For all size bulk storage containers the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.

(16) **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.

(17) **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.

(18) **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of Liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.

(19) **Filling unapproved truck or trailer tanks prohibited.**

(A) An inspection form (LPG Form No. 9), when properly completed, and a LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the design, construction, assembly and mounting of the liquefied petroleum gas truck or trailer tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize

the filling of such truck or trailer tank with liquefied petroleum gas.

(B) The LPG registration decal shall be displayed at all times in an easily visible location on the left front head of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck or trailer tank.

(C) No person, firm or corporation shall operate a truck or trailer tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued a LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.

(D) The LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are issued or from one truck to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I permit becomes inactive.

(20) **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

(21) **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation shall be provided and operated continuously or adequate means shall be provided to purge the room before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices providing an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(22) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(23) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(24) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at 100 degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

- (i) Hydrostatic Test;
- (ii) Ultrasonic thickness test;
- (iii) Wet particle fluorescent or magnaflux.

(25) **Testing, leakage and visual inspection, and meter calibration.**

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

- (i) Hold a Federal C.T. number;
- (ii) Include in their testing the use of a calibrated pressure chart recorder;
- (iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

- (i) Inspectors shall hold a Federal C.T. number;
- (ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Meters shall be tested in accordance to Oklahoma Rules and Regulations, Section 420:10-1-14(7);

(ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;

(iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;

(iv) Meter calibrators shall hold a Class IV permit.

(v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(26) **Cylinder exchange program.**

(A) ~~Cylinder exchange cabinets shall be constructed of steel and be lockable so that cylinders cannot be removed and valves cannot be tampered with when unattended. The cabinets shall be otherwise configured in compliance with as per NFPA 58.~~

(B) The cabinet shall have the following signs affixed to it and readily visible to the public:

(i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;

(ii) ~~Class VII Permit number; "Net Weight \_\_\_\_\_ lbs."~~ with the net weight of the cylinders to be specified, all of which shall be displayed on the front of the cabinet in letters not less than two (2) inches high;

(iii) Name of Class I permit holder who supplies the cylinders;

(iv) 24-hour Emergency telephone number.

(C) The cabinet shall be located for distance and number of cylinders as per NFPA 58 with a minimum five (5) feet distance away from any source of ignition.

(D) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location as per NFPA 58.

(E) ~~An approved serviceable portable fire extinguisher of not less than eighteen (18) lbs. dry chemical, B:C or A:B:C rating, and shall be readily available within a fifty (50) foot radius of the exchange cabinet. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once a year by an authorized inspector such as Fire Departments or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher. A fire extinguisher shall be provided as per NFPA 58.~~

(F) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."

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(G) All employees who exchange cylinders shall be properly trained and know how to check for leaks and what emergency procedures to take if a leak is discovered. Only properly trained employees can remove or install exchange cylinders from the cylinder exchange cabinets. This training shall be provided by the Class I permit holder who is supplying the exchange cylinders. This documentation will be kept at the Class VII location.

(H) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

~~(I) Cylinders for sale or exchange, in exchange locations, shall each contain a minimum 35% water weight capacity of propane.~~

~~(J) A busy sidewalk and thoroughfare, as referenced in NFPA 58, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.~~

(27) **Recreational vehicles.** Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

[OAR Docket #09-1131; filed 6-2-09]

## TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 1. ADMINISTRATION AND ORGANIZATION

[OAR Docket #09-1098]

### RULEMAKING ACTION:

PERMANENT final adoption.

### RULES:

435:1-1-7. Fees [AMENDED]

### AUTHORITY:

Title 59 O.S., §§ 489 et seq, State Board of Medical Licensure and Supervision

### DATES:

#### Comment period:

February 17, 2009 through March 19, 2009

#### Public hearing:

March 26, 2009

#### Adoption:

March 26, 2009

#### Submitted to Governor:

March 31, 2009

#### Submitted to House:

March 31, 2009

#### Submitted to Senate:

March 31, 2009

#### Gubernatorial approval:

May 6, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2009.

#### Final adoption:

May 22, 2009

#### Effective:

January 1, 2010

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATED BY REFERENCE:

n/a

### ANALYSIS:

These amendments set the amount of fees paid by licensees regulated by the Board, individuals disciplined by the Board, and fees for other services offered to the public by the Board as provided in Title 59 O.S., §§ 489 et seq.

### CONTACT PERSON:

Kathy Plant, Executive Secretary, (405) 848-6841, extension 122

## PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2010:

### 435:1-1-7. Fees

(a) **Fee schedule.** The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering the provisions as set for in Title 59 O.S., Section 495c and 511 of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act provided, the Board shall not set the fees at an amount in excess of the amounts listed in this subsection.

(1) **Licensure/registration.** The following fees shall be assessed for licensure and registration:

(A) Medical Doctor - Full license

(i) Application processing fee - ~~\$400.00~~  
\$500.00

(ii) Reprocessing fee - ~~\$100.00~~ \$125.00

(iii) Temporary license - ~~\$200.00~~ \$250.00

(B) Medical Doctor - Special license

(i) Special training application processing fee - ~~\$200.00~~ \$250.00 (This fee may be applied toward the application processing fee in (a)(1)(A)(i) of this section when the special license was issued for first year post graduate training purposes.)

(ii) Special training reprocessing fee - ~~\$100.00~~  
\$150.00

(C) Physician Assistants

(i) Initial application for licensure - ~~\$100.00~~  
\$150.00

(ii) Application to practice fee - \$50.00

(iii) Disciplinary hearing fee - actual cost of proceedings (including probation and other fees) as determined by the Board.

(D) Physical Therapist

(i) Application processing fee - ~~75.00~~ \$100.00

(ii) Reprocessing fee - ~~25.00~~ \$50.00

(iii) License - 50.00

(iv) Temporary permit - 25.00

(E) Physical Therapist Assistant

(i) Application processing fee - ~~75.00~~ \$100.00

(ii) Reprocessing fee - ~~25.00~~ \$30.00

(iii) License - ~~50.00~~ 35.00

(iv) Temporary permit - 25.00

(F) Athletic Trainer

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- (i) Application processing fee - ~~100.00~~ \$120.00
- (ii) Reprocessing fee - ~~25.00~~ \$35.00
- (iii) License - 25.00
- (G) Apprentice athletic trainer
  - (i) Application processing fee - ~~20.00~~ \$25.00
  - (ii) Transfer processing fee - ~~15.00~~ \$20.00
  - (iii) License - 5.00
- (H) Licensed Dietitian
  - (i) Application processing fee - ~~50.00~~ \$60.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
  - (iii) License - ~~50.00~~ \$60.00
- (I) Provisional licensed dietitian
  - (i) Application processing fee - ~~40.00~~ \$15.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
  - (iii) License - ~~40.00~~ \$15.00
- (J) Occupational therapist
  - (i) Application processing fee - ~~50.00~~ \$70.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
  - (iii) License - 50.00
- (K) Occupational therapy assistant
  - (i) Application processing fee - ~~50.00~~ \$70.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
  - (iii) License - 50.00
- (L) Registered electrologists
  - (i) Application processing fee - ~~25.00~~ \$30.00
  - (ii) License - ~~25.00~~ \$30.00
  - (iii) Examination fee - ~~65.00~~ \$75.00
- (M) Respiratory Care - Full license
  - (i) Application processing fee - ~~75.00~~ \$100.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
- (N) Respiratory Care - Provisional license
  - (i) Application processing fee - ~~75.00~~ \$100.00
  - (ii) Reprocessing fee - ~~25.00~~ \$30.00
- (O) Licensed Pedorthists application processing fee - ~~150.00~~ \$180.00
- (P) Licensed Orthotist/Prosthetist application processing fee - ~~250.00~~ \$300.00
- (Q) Registered Orthotist/Prosthetist Assistant application processing fee - ~~75.00~~ \$100.00
- (R) Registered Orthotist/Prosthetist Technician application processing fee - ~~50.00~~ \$60.00
- (S) Radiologist Assistant application processing fee - \$100.00
- (T) Anesthesiology Assistant application processing fee - \$150.00
- (2) **Renewal/reregistration of license/registration.**  
The following fees shall be assessed for renewal/reregistration:
  - (A) Medical License - Full
    - (i) Application for annual reregistration fee - ~~150.00~~ \$200.00
    - (ii) Reactivation processing fee - ~~275.00~~ \$350.00
    - (iii) Reinstatement of license - ~~400.00~~ \$500.00
  - (B) Medical License - Special
    - (i) Application for annual reregistration fee for special training - ~~100.00~~ \$150.00
    - (ii) Application for annual reregistration fee for special limited - ~~125.00~~ 175.00
    - (iii) Reactivation processing fee for special training - ~~150.00~~ \$200.00
    - (iv) Reactivation processing fee for special limited - ~~200.00~~ \$250.00
    - (v) Reinstatement processing fee for special training - ~~200.00~~ \$250.00
  - (C) Physical Therapist
    - (i) Annual renewal fee - ~~75.00~~ \$50.00
    - (ii) Renewal processing fee - \$40.00
    - (~~ii~~ iii) Late fee (After January 31) - ~~40.00~~ \$20.00
  - (D) Physical Therapist Assistant
    - (i) Annual renewal fee - ~~50.00~~ \$35.00
    - (ii) Renewal processing fee - \$25.00
    - (~~ii~~ iii) Late fee (After January 31) - ~~40.00~~ \$15.00
  - (E) Physician Assistants
    - (i) Annual renewal fee - ~~75.00~~ \$125.00
    - (ii) Late renewal fee - ~~125.00~~ \$225.00
  - (F) Athletic Trainer
    - (i) Application processing fee - ~~35.00~~ \$45.00
    - (ii) Annual renewal fee - 10.00
    - (iii) Late fee (After August 30) - ~~50.00~~ \$60.00
  - (G) Apprentice athletic trainer
    - (i) Application processing fee - ~~5.00~~ \$10.00
    - (ii) Annual renewal fee - 5.00
    - (iii) Late fee (After August 30) - ~~5.00~~ \$10.00
  - (H) Licensed Dietitian/provisional licensed dietitian
    - (i) Annual renewal fee - ~~75.00~~ \$100.00
    - (ii) Penalty (after October 31) - ~~37.50~~ \$50.00
    - (iii) Penalty (after January 31) - ~~75.00~~ \$100.00
  - (I) Occupational therapist/occupational therapy assistant
    - (i) Application processing fee - ~~55.00~~ \$80.00
    - (ii) Annual renewal fee - 20.00
    - (iii) Late renewal (after October 31) - 20.00
  - (J) Registered electrologists
    - (i) Application processing fee - ~~20.00~~ \$25.00
    - (ii) Annual renewal fee - ~~20.00~~ \$25.00
  - (K) Respiratory Care - Full license
    - (i) Biennially renewal fee - ~~75.00~~ \$100.00
    - (ii) Reinstatement - renewal fee plus ~~400.00~~ \$120.00
  - (L) Respiratory Care - Provisional license - six month renewal fee - ~~75.00~~ \$100.00
  - (M) Licensed Pedorthist
    - (i) Annual renewal fee - ~~50.00~~ \$60.00
    - (ii) Late fee (up to 30 days late) - ~~25.00~~ \$30.00
    - (iii) Late fee (30 days to 1 year late) - ~~50.00~~ \$60.00
    - (iv) Reinstatement fee - ~~150.00~~ \$180.00
  - (N) Licensed Orthotist/Prosthetist
    - (i) Biennial renewal fee - ~~125.00~~ \$150.00
    - (ii) Late fee (up to 30 days late) - ~~50.00~~ \$60.00
    - (iii) Late fee (30 days to 1 year late) - ~~400.00~~ \$120.00
    - (iv) Reinstatement fee - ~~250.00~~ \$300.00

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- (O) Registered Orthotist/Prosthetist Assistant
  - (i) Biennial renewal fee - ~~75.00~~ \$100.00
  - (ii) Late fee (up to 30 days late) - ~~50.00~~ \$60.00
  - (iii) Late fee (30 days to 1 year late) - ~~100.00~~ \$120.00
  - (iv) Reinstatement fee - ~~75.00~~ \$100.00
- (P) Registered Orthotist/Prosthetist Technician
  - (i) Biennial renewal fee - ~~50.00~~ \$60.00
  - (ii) Late fee (up to 30 days late) - ~~50.00~~ \$60.00
  - (iii) Late fee (30 days to 1 year late) - ~~100.00~~ \$120.00
  - (iv) Reinstatement fee - ~~50.00~~ \$60.00
- (Q) Radiologist Assistants
  - (i) Biennial renewal fee - \$200.00
  - (ii) Late renewal fee - \$300.00
- (R) Anesthesiology Assistants
  - (i) Biennial renewal fee - \$150.00
  - (ii) Late renewal fee - \$250.00
- (3) **Duplication or modification of license/registration.** The following fees shall be assessed for duplication or modification of a license/registration:
  - (A) Medical License (Full) - ~~50.00~~ \$60.00
  - (B) Physician Assistant - ~~25.00~~ \$30.00
  - (C) Physical Therapist - ~~50.00~~ \$60.00
  - (D) Physical Therapy Assistant - ~~25.00~~ \$30.00
  - (E) Athletic Trainer - ~~25.00~~ \$30.00
  - (F) Apprentice Athletic Trainer - ~~15.00~~ \$20.00
  - (G) Licensed Dietitian - ~~25.00~~ \$30.00
  - (H) Provisional Licensed Dietitian - ~~25.00~~ \$30.00
  - (I) Occupational Therapist - ~~25.00~~ \$30.00
  - (J) Occupational Therapy Assistant - ~~25.00~~ \$30.00
  - (K) Special license - ~~25.00~~ \$30.00
  - (L) Respiratory Care - ~~25.00~~ \$30.00
  - (M) Licensed Podiatrist - ~~25.00~~ \$30.00
  - (N) Licensed Orthotist/Prosthetist - ~~25.00~~ \$30.00
  - (O) Registered Orthotist/Prosthetist Assistant - ~~25.00~~ \$30.00
  - (P) Registered Orthotist/Prosthetist Technician - ~~25.00~~ \$30.00
  - (Q) Radiologist Assistant - \$60.00
  - (R) Anesthesiologist Assistant - \$60.00
- (4) **Miscellaneous fees.** The following miscellaneous fees shall be assessed by the Board:
  - (A) Certification of scores - ~~40.00~~ \$50.00
  - (B) Written verification of license/registration - ~~20.00~~ \$25.00
  - (C) Credentialing service - ~~100.00~~ \$125.00 per licensee
  - (D) Web based services
    - (i) On-line monthly fee - ~~50.00~~ \$60.00 (Three hundred (300) query returns included)
    - (ii) 301 to 350 queries per month - ~~0.50~~ .60 per return
    - (iii) 351 to 400 queries per month - ~~0.25~~ .30 per return
    - (iv) 401 and above queries per month - ~~0.10~~ .15 per return
    - (v) Database, statistical reports, mailing labels on floppy disks, CDs or by electronic mail - ~~100.00~~ 120.00/hour, minimum of one (1) hour. Fee is for one set of labels per order. Multiple labels may be printed for \$50.00 each additional set.
  - (E) Duplicate renewal/registration card - ~~10.00~~ \$15.00
  - (F) Certification of public records (per page) - 1.00
  - (G) Duplication of public records (per page) - .25
  - (H) Unofficial transcript of public Board/Committee meetings (per page) - ~~1.50~~ \$2.00
  - (I) Issuance of subpoena - ~~5.00~~ \$6.00
  - (J) ~~Returned check processing fee - 25.00~~ Payment reprocessing fee - \$30.00
  - (K) Rate for Investigations for other agencies or bodies - at cost with deposit of ~~\$100.00~~ \$120.00 required to initiate investigation
  - (L) Premedical or Medical Education Qualifications Review - at cost with deposit of ~~\$100.00~~ \$120.00 required to initiate action
  - (M) Monitoring fees for Agreements: Actual costs of any testing or monitoring provided for in the Agreement.
  - (N) Disciplinary action fees:
    - (i) Probation fees - ~~100.00~~ \$150.00 per month.
    - (ii) Investigation/Prosecution fees - actual cost incurred.
  - (O) Filing of motions:
    - (i) Rehearing or reconsideration of any disciplinary case - ~~100.00~~ \$120.00
    - (ii) Rehearing or reconsideration of any licensing case - ~~100.00~~ \$120.00
    - (iii) Terminate or modify probation/agreement - ~~100.00~~ \$120.00
    - (iv) Request for Specialty Board Certification under 435:10-7-2 - ~~100.00~~ \$120.00
    - (v) Priority issuance of subpoena or duces tecum subpoena within seven (7) days of hearing - ~~10.00~~ \$15.00
    - (vi) Request for exception as allowed by law/rules - ~~100.00~~ \$120.00
  - (P) Reproduction of Board meeting video ~~tape recording~~ (per ~~tape recording~~) - ~~45.00~~ \$20.00
  - (Q) Reproduction of Board meeting audio ~~tape recording~~ (per ~~tape recording~~) - ~~45.00~~ \$20.00
  - (R) Administrative fine for practicing after revocation of license pursuant to 59 O.S. 491B - ~~5,000~~ \$6,000/day
  - (S) Letter of Incorporation - \$5
  - (T) Annual continuing education course application fee - \$40.00 per course
  - (U) Board publications fee - at printing cost
  - (V) Website advertisements limited to sub-pages on [www.okmedicalboard.org](http://www.okmedicalboard.org) and [www.awoman-srighttoknowok.org](http://www.awoman-srighttoknowok.org) websites. Vendor to sign a contract and agree to terms and conditions as set forth by the Board. Fee for six months advertising per page equals \$500.

- (b) **Submission of fees.**
  - (1) All fees assessed by the Board as set out in the fee schedule in (a) of this section shall be received prior to processing an application for licensure or certification.
  - (2) All fees are non-refundable.

[OAR Docket #09-1098; filed 5-28-09]

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

[OAR Docket #09-1099]

**RULEMAKING ACTION:**

PERMANENT final adoption.

**RULES:**

435:55-5-3. Continuing education requirements for renewal [AMENDED]

**AUTHORITY:**

Title 59 O.S., Section 489, Board of Medical Licensure and Supervision

**DATES:**

**Comment period:**  
February 2, 2009

**Public hearing:**  
March 26, 2009

**Adoption:**  
March 26, 2009

**Submitted to Governor:**  
April 1, 2009

**Submitted to House:**  
April 1, 2009

**Submitted to Senate:**  
April 1, 2009

**Gubernatorial approval:**  
May 6, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009.

**Final adoption:**  
May 23, 2009

**Effective:**  
July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**

The amendment allows licensees to avoid duplication of continuing education hours in the case of those maintaining current national certification.

**CONTACT PERSON:**

Kathy Plant, Executive Secretary, 405-848-6841, ext. 122

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. ANNUAL RENEWAL/CONTINUING EDUCATION**

**435:55-5-3. Continuing education requirements for renewal**

(a) ~~Every two years individuals seeking to renew licensure/registration must obtain the required continuing education hours. No continuing education hours may be carried over from one compliance period to another. Every two years individuals seeking to renew licensure/registration must show proof of current certification by the American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or obtain continuing education hours as follows:~~

- (1) Orthotists and/or prosthetists must obtain thirty (30) continuing education hours. Dual disciplined licensees must obtain at least fifteen (15) hours in each discipline.
- (2) Registered assistants must obtain ten (10) continuing education hours.
- (3) Registered technicians must obtain six (6) continuing education hours.
- (4) No continuing education hours may be carried over from one compliance period to another.

(b) Any applicant for renewal who cannot meet the requirements for continuing education may make a written request for an extension from the Board. The request shall include a plan for completion of the continuing education requirements within the requested extension period. An extension for a period of up to one calendar year may be granted if circumstances make it impossible or extremely difficult for the applicant to obtain the required continuing education hours. Such circumstances may include, but are not limited to, extended illness, family emergency, etc.

(c) Each applicant is responsible for maintaining evidence/proof/record of participation in a continuing education experience for a minimum of six years. Such proof shall include documented evidence as provided by the American Board for Certification or Board for Orthotist/Prosthetist Certification or evidence submitted by the applicant including:

- (1) date, place, course title, schedule, presenter(s), etc.,
- (2) number of contact hours for activity,
- (3) proof of completion, such as abstracts, certificates of attendance, or other certification of completion.

(d) New licentiates or registrants will be required to obtain continuing education hours on a pro rata basis based upon when the license or registration was issued during the accounting period. Furthermore, no continuing education hours will be required during the full calendar year of initial licensure or registration.

(e) The Advisory Committee on Orthotics and Prosthetics shall conduct random audits of the continuing education records of the number of licensees or registrants that time and resources permit. The Committee may appoint a sub-committee to review audits and requests for approval of continuing education experiences and make recommendations to the Committee for disposition.

(f) Penalties for failure to comply with continuing education requirements may be assessed after notice and hearing as required by law. Penalties may include imposition of additional

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continuing education hours, probation, suspension, or revocation of license or registration.

[OAR Docket #09-1099; filed 5-28-09]

## **TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 60. RADIOLOGIST ASSISTANTS**

[OAR Docket #09-1100]

### **RULEMAKING ACTION:**

PERMANENT final adoption.

### **RULES:**

- 435:60-1-1. Purpose [NEW]
- 435:60-1-2. Interpretation of rules and regulations [NEW]
- 435:60-1-3. Definitions [NEW]
- 435:60-1-4. Advisory Committee on Radiologist Assistants - terms of members - removal from Committee [NEW]
- 435:60-1-5. Method of operations - Committee meetings - quorum - advise Board [NEW]
- Subchapter 3. Application for Licensure [NEW]
- 435:60-3-1. License required [NEW]
- 435:60-3-2. Qualifications for licensure [NEW]
- 435:60-3-3. Application for licensure/renewal of license - procedures [NEW]
- 435:60-3-4. Required documentation [NEW]
- 435:60-3-5. Authorization to practice temporarily [NEW]
- 435:60-3-6. Licensure by endorsement [NEW]
- Subchapter 5. Biennial Renewal [NEW]
- 435:60-5-1. Requirements for renewal of license [NEW]
- 435:60-5-2. Renewal procedure [NEW]
- 435:60-5-3. Late renewal [NEW]
- 435:60-5-4. Submission of fees [NEW]
- Subchapter 7. Regulation of Practice [NEW]
- 435:60-7-1. Supervision [NEW]
- 435:60-7-2. Supervision; physician responsibility; independent care prohibited [NEW]
- 435:60-7-3. Health care services performed [NEW]

### **AUTHORITY:**

Title 59 O.S., Section 541.1, and Section 541.3(B)(4), Board of Medical Licensure and Supervision

### **DATES:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009.

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### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded rules:**

- 435:60-1-1. Purpose [NEW]
- 435:60-1-2. Interpretation of rules and regulations [NEW]
- 435:60-1-3. Definitions [NEW]
- 435:60-1-4. Advisory Committee on Radiologist Assistants - terms of members - removal from Committee [NEW]

435:60-1-5. Method of operations - Committee meetings - quorum - advise Board [NEW]

Subchapter 3. Application for Licensure [NEW]

435:60-3-1. License required [NEW]

435:60-3-2. Qualifications for licensure [NEW]

435:60-3-3. Application for licensure/renewal of license - procedures [NEW]

435:60-3-4. Required documentation [NEW]

435:60-3-5. Authorization to practice temporarily [NEW]

435:60-3-6. Licensure by endorsement [NEW]

Subchapter 5. Biennial Renewal [NEW]

435:60-5-1. Requirements for renewal of license [NEW]

435:60-5-2. Renewal procedure [NEW]

435:60-5-3. Late renewal [NEW]

435:60-5-4. Submission of fees [NEW]

Subchapter 7. Regulation of Practice [NEW]

435:60-7-1. Supervision [NEW]

435:60-7-2. Supervision; physician responsibility; independent care prohibited [NEW]

435:60-7-3. Health care services performed [NEW]

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### **INCORPORATED BY REFERENCE:**

n/a

### **ANALYSIS:**

The proposed rules will assist the Board in carrying out the licensing provisions set forth in HB1647, which created the Radiology Assistant Licensure Act.

### **CONTACT PERSON:**

Kathy Plant, Executive Secretary, 405-848-6841, #122

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## **SUBCHAPTER 1. ADMINISTRATION AND ORGANIZATION**

### **435:60-1-1. Purpose**

The rules of this Chapter have been adopted to assist in the implementation and enforcement of the Oklahoma Radiologist Assistant Licensure Act.

### **435:60-1-2. Interpretation of rules and regulations**

If any section, sentence, clause, or phrase of this Chapter shall be held, for any reason, to be inoperative or unconstitutional, void, or invalid, the validity of the remaining portion of the rules shall not be affected thereby, it being the intention of the Oklahoma State Board of Medical Licensure and Supervision in adopting the rules that no portion or provision herein shall become inoperative or fail by reasons of the unconstitutionality or invalidity of any portion or provision, and the Oklahoma State Board of Medical Licensure and Supervision does hereby declare it would have severally passed and adopted the provisions contained in this Chapter separately and apart one from another.

**435:60-1-3. Definitions**

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

**"A.C.R."** means the American College of Radiology.

**"Act"** means the Radiologist Assistant Licensure Act.

**"A.R.R.T."** means the American Registry of Radiologic Technologists.

**"A.S.R.T."** means the American Society of Radiologic Technologists.

**"Board"** means the State Board of Medical Licensure and Supervision.

**"Committee"** means the Radiologist Assistant Committee.

**"Direct Supervision"** means the radiologist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. The radiologist is not required to be present in the room when the procedure is performed.

**"General Supervision"** means the procedure is furnished under the radiologist's overall direction and control, but the radiologist's presence is not required during the performance of the procedure.

**"Personal Supervision"** means the radiologist must be in attendance in the room during the performance of the procedure.

**"Radiologist"** is a physician licensed by the State Board of Medical Licensure and Supervision or by the State Board of Osteopathic Examiners and certified by the American Board of Radiology or the American Osteopathic Board of Radiology.

**"Radiologist Assistant"** means an advanced-level certified radiologic technologist, licensed by the Board, who works under the direct supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment and shall be certified and registered with the A.R.R.T. as a Registered Radiologist Assistant and credentialed to provide radiology services and have completed a radiologist assistant program approved by the A.R.R.T. and passed the A.R.R.T. certification examinations. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies or obtain informed consent.

**"Registered Radiologist Assistant" or "R.R.A."** means a Radiologist Assistant registered by the American Registry of Radiological Technologists (ARRT).

**"Unprofessional Conduct"** includes, but is not limited to, a departure from or failure to conform to the minimal standards of acceptable and prevailing radiologist assistant practice; any radiologist assistant practice that may create unnecessary danger to a patient's life, health, or safety; or any practice that is contrary to the ethical conduct appropriate to the professional that results in the termination from employment. Actual injury to a patient or the public need not be established.

**435:60-1-4. Advisory Committee on Radiologist Assistants - terms of members - removal from Committee**

(a) Except as provided in the Act for the initial Committee appointments, the Radiologist Assistant Advisory Committee shall consist of seven (7) members appointed as follows:

(1) One member shall be a physician appointed by the Board from its membership;

(2) One member shall be a radiologist appointed by the Board from a list of qualified individuals submitted by the Oklahoma State Medical Association and who is not a member of the Board;

(3) One member shall be a physician appointed by the State Board of Osteopathic Examiners from its membership;

(4) One member shall be a physician appointed by the State Board of Osteopathic Examiners from a list of qualified individuals submitted by the Oklahoma Osteopathic Association and who is not a member of the State Board of Osteopathic Examiners;

(5) One member shall be a radiologist appointed by the Board from a list of qualified individuals submitted by the Oklahoma State Radiological Society and who is not a member of the Board; and

(6) Two members shall be radiologist assistants appointed by the Board from a list of radiologist assistants submitted by the Oklahoma State Radiological Society, and shall have engaged in rendering radiologist assistant services to the public, teaching, or research for at least two (2) years immediately preceding their appointments. Except for members first appointed to the Committee, these members shall at all times be holders of valid licenses as radiologist assistants in Oklahoma.

(b) Members of the Committee shall be appointed for terms of four (4) years, except for the initial committee members whose terms shall begin either on September 1, 2008, or the date of their appointment, whichever is later, and shall continue for the following periods:

(1) Two physicians and one radiologist assistant for a period of three (3) years; and

(2) Three physicians and one radiologist assistant for a period of four (4) years.

(c) Upon expiration of a member's term of office, the appointing authority for that member shall appoint a successor pursuant to the provisions of this section. Vacancies on the committee shall be filled in like manner for the balance of an expired term. No member shall serve more than three (3) consecutive terms. Each member shall serve until a successor is appointed and qualified.

(d) Upon expiration or vacancy of the term of a member, the respective nominating authority may, as appropriate, submit to the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, a list of three persons qualified to serve on the Committee to fill the expired term of their respective member. Appointments may be made from these lists of the appointing Board, and additional lists may be provided by the respective organizations if requested by the State Board of Medical Licensure and Supervision.

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(e) The Board may remove any member from the Committee for neglect of any duty required by law, for failure to attend at least 50% of the regularly scheduled meetings in a calendar year, for incompetency, or for unethical or dishonorable conduct.

### **435:60-1-5. Method of operations - Committee meetings - quorum - advise Board**

(a) The Committee shall meet at least twice each year and shall elect biennially during odd-numbered years a chair and vice-chair from among its members. The Committee may convene at the request of the chair, or as the Committee may determine for such other meetings as may be deemed necessary.

(b) A majority of the members of the Committee, including either the chair or vice-chair, shall constitute a quorum at any meeting, and a majority of the required quorum shall be sufficient for the committee to take action by vote.

(c) The Committee shall advise the Board in developing policy and rules pertaining to the Radiologist Assistant Licensure Act.

## **SUBCHAPTER 3. APPLICATION FOR LICENSURE**

### **435:60-3-1. License required**

Effective April 1, 2009, any person who practices as radiologist assistant or holds himself/herself out to be a Licensed Radiologist Assistant or uses the title Radiologist Assistant, R.A., L.R.A., or R.R.A. must possess a valid license issued by the Board. Radiology Technologists and Technicians are not required to be licensed under this Act.

### **435:60-3-2. Qualifications for licensure**

Applicants for licensure must:

(1) Be certified and registered as a R.R.A. with the American Registry of Radiologic Technologists and credentialed to provide radiology services;

(2) Have completed a radiologist assistant program accredited by the American Registry of Radiologic Technologists;

### **435:60-3-3. Application for licensure/renewal of license - procedures**

(a) The Board directs staff to prepare and create new forms or modify existing forms to be used in the application process for licensure and renewal of license. Application forms shall require applicants to submit all information required by the Act.

(b) The application and forms shall be submitted to the Board accompanied by fees as set by the Board. Any incomplete or missing information, documentation or fees shall render the application incomplete. No license shall be issued unless all application requirements have been met. Incomplete applications will be considered abandoned after one year.

(c) Any applicable fees paid shall not be refunded. The applicant shall be forthright and open in the provision of information to the Board in the application process. The Board may deny a license to any applicant who does not provide the Board with complete, open and honest responses to all requests for information.

(d) A Committee member or Board member, based on any response to any question or request for information on the application form, may request an applicant to provide any additional information that the Board member feels is necessary or useful to determine the applicant's ability to practice as a radiologist assistant.

(e) The Board may require a criminal background check on all applicants for licensure. The fee shall be paid by the applicant.

(f) Fraud or misrepresentation in applying for or procuring a license or in connection with applying for or procuring renewal of a license may be grounds for denial or revocation by the Board.

(g) No person shall be licensed by the Board unless and until that person first fully complies with all licensure provisions of the Act and has satisfied the Board of the ability of that person to practice as a radiologist assistant with reasonable skill and safety.

### **435:60-3-4. Required documentation**

(a) Applicants must submit the following:

(1) Application form and appropriate fee(s);

(2) Verification of A.R.R.T. certification and registration to provide radiology services;

(3) Verification of completion of a radiologist assistant program accredited by the

(4) A.R.R.T. to be completed by the educational organization and submitted directly to the Board;

(5) Verification of licensure from each state from which a license is currently or has been held to practice in a medically related field.

(6) Background check.

(b) Applicants who have never held an Oklahoma license and who have not practiced as a Radiologist Assistant within the previous twelve (12) months wishing to obtain a license shall be required to make a personal appearance before the Committee and practice under the personal supervision of a licensed radiologist for up to ninety (90) days with an evaluation provided to the Committee at the end of the supervised period. The Committee also may require additional continuing education units.

### **435:60-3-5. Authorization to practice temporarily**

For the purpose of safeguarding the health, safety and welfare of the public, the Secretary of the Board may authorize the temporary practice, under the supervision of a licensed radiologist assistant, in the interim between acceptance of completed application and issuance of a license.

**435:60-3-6. Licensure by endorsement**

The Board may issue a license to practice as a radiologist assistant by endorsement to:

- (1) Applicants for licensure by endorsement who are currently licensed to practice as a radiologist assistant under the laws of another state, territory, or country if the qualifications of the applicant are deemed by the Board to be equivalent to those required in this state;
- (2) Applicants who are certified and registered with the American Registry of Radiologic Technologists as an R.R. A. and have completed a RA program accredited by the American Registry of Radiologic Technologists, provided such certification and registration are not suspended or revoked;
- (3) Applicants applying for licensure by endorsement must provide a complete application as set out in OAC 435:60-3-3 and OAC 435:60-3-4. In addition, applicants must certify under oath that their credentials have not been suspended or revoked.

**SUBCHAPTER 5. BIENNIAL RENEWAL**

**435:60-5-1. Requirements for renewal of license**

- (a) Licensees must renew their licenses biennially on or before March 31<sup>st</sup>.
- (b) The application and fee for the renewal of the license shall be submitted, postmarked or hand delivered to the Board office no later than the expiration date. Licenses not renewed will be made inactive and the licensee may not practice.
- (c) Each licensee is responsible for renewing the license on or before the required date and shall not be excused from paying additional fees or penalties.

**435:60-5-2. Renewal procedure**

- (a) Each licensee will be required to renew in a form required by the Board. Licensees will be notified at least thirty (30) days prior to the expiration date of the process to renew and required fee.
- (b) The license renewal application for all licensees shall require in addition to other information, the preferred mailing address and primary practice address.
- (c) The board shall not consider a license to be renewed until it receives the completed license renewal application, the required fees set by the Board and proof of current ARRT registration.
- (d) The Board shall issue a renewal of license identification card to a licensee who has met all requirements for renewal.

**435:60-5-3. Late renewal**

- (a) The Board shall notify a person who has not renewed a license after a period of more than thirty (30) days that their license is inactive.
- (b) A person whose license is inactive for not more than thirty (30) days may renew the license by paying the required renewal fee and reinstatement fee of \$100, if received within thirty (30) days of the end of the renewal period.

(c) A person whose license has been lapsed more than thirty (30) days shall meet all application requirements in effect at the time reinstatement is requested. In addition, the applicant may be required to meet one or more of the following:

- (1) Personal appearance before the Committee;
  - (2) Additional continuing education units;
  - (3) Practice under the personal supervision of a licensed radiologist for up to ninety (90) days with an evaluation provided to the Committee at the end of the supervised period.
  - (4) After a period of 12 months of continuous inactivity as a Radiologist Assistant, an applicant for reinstatement may be required to retake the test for initial licensure.
- (d) A licensed radiologist assistant who does not intend to engage in the practice must notify the Board of intent not to practice.
- (e) The Board will replace a lost, damaged or destroyed license certificate or license identification card upon application by the licensee and payment of fees established by the Board. Applications must include an affidavit detailing the loss or destruction of the licensee's original license or license identification card, or be accompanied by the damaged certificate or card.

**435:60-5-4. Fees.**

- (a) **Fee schedule.**
  - (1) Application for initial licensure - \$100.00
  - (2) Biennial renewal fee - \$200.00
  - (3) Late renewal fee - \$300.00
  - (4) Duplication or modification of license - \$60.00
- (b) All fees assessed by the Board shall be received prior to processing an application for licensure or renewal of licensure.
- (c) All fees are non-refundable.

**SUBCHAPTER 7. REGULATION OF PRACTICE**

**435:60-7-1. Supervision**

A licensed radiologist may not be the general, direct or personal supervisor for more than two (2) radiologist assistants at any one time. A radiologist assistant working under personal supervision may assist a radiologist in any procedure for which the radiologist has full privileges and credentials.

**435:60-7-2. Supervision; physician responsibility; independent care prohibited**

- (a) The health care services performed by a radiologist assistant shall be done under the supervision of a radiologist who retains responsibility for patient care.
- (b) A radiologist assistant must function only under the supervision of a licensed and board certified radiologist. Nothing in the Radiologist Assistant Act shall be construed to permit radiologist assistants to provide health care services independent of radiologist supervision. Radiologist supervision shall be conducted in accordance with the following standards:

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- (1) The supervising radiologist is responsible for the formulation or approval of all orders and protocols (whether standing orders, direct orders, or any other orders or protocols) that direct the delivery of health care services, and the supervising radiologist shall periodically review such orders and protocols.
- (2) The supervising radiologist regularly reviews the health care services provided by the radiologist assistant and any problems or complications encountered.
- (3) The radiologist assistant is an agent of the supervising radiologist and shall not be the employer of the supervising radiologist.
- (4) The supervising radiologist is available physically or through direct telecommunications for consultation, assistance with medical emergencies or patient referral.
- (5) The supervising radiologist routinely is present in the facility to provide radiologic services to patients.

### **435:60-7-3. Health care services performed**

**(a) Health care services allowed under general supervision.** A radiologist assistant may perform the following health care services under general supervision at the direction of the supervising radiologist. Such services are limited to the following, except as provided in (c) and (d) of this subsection:

- (1) Review the patient's medical record to verify the appropriateness of a specific exam or procedure.
- (2) Interview patient to obtain, verify, or update medical history.
- (3) Explain procedure to patient, significant others, and/or other health care providers including a description of risks, benefits, alternatives, and follow-up.
- (4) Determine patient compliance, if needed, with pre-examination/procedure preparations (diet, medications).
- (5) Assess risk factors that may effect the examination/procedure (medications, pregnancy, pre-existing diseases, etc).
- (6) Obtain and evaluate vital signs.
- (7) Perform history and physical examination with assessment of related laboratory results.
- (8) Evaluate electrocardiograms for the purpose of recognizing abnormalities that might impact the procedure/examination.
- (9) Performing urinary catheterization.
- (10) Perform venipuncture for phlebotomy or IV access.
- (11) Monitor IV for flow rate and complications.
- (12) Position and physically prepare patient for a procedure.
- (13) Observe and assess patients during conscious sedation.
- (14) Recognize and respond to medical emergencies (e.g., drug reactions, cardiac arrest, hypoglycemia), activate emergency response systems, and notify appropriate personnel.
- (15) Administer oxygen as required.
- (16) Operate a fluoroscopic unit and document fluoroscopy time.

- (17) Administer contrast media, radioactive materials, or other medication as directed by the supervising radiologist and monitor for any adverse effects.
- (18) Evaluate images for diagnostic quality and report clinical observations to the radiologist.
- (19) Communicate the radiologist's report to the referring physician consistent with American College of Radiology guidelines.
- (20) Provide physician prescribed post-examination/procedure instruction to the patient.
- (21) Perform follow-up patient evaluation and communicate findings to the radiologist
- (22) Document the appropriate records for review and co-signature by the supervising radiologist.
- (23) Assist with data collection and review for clinical trials or other research.

**(b) Health care services allowed under direct supervision.** A radiologist assistant may perform the following health care services under direct supervision at the direction of the supervising radiologist. Such services are limited to the following, except as provided in (c) and (d) of this subsection:

- (1) Upper GI, esophagram, small bowel follow-through
- (2) Small bowel enteroclysis
- (3) Barium enema
- (4) Cystogram, nephrostogram via existing catheter, loopogram, and retrograde cystourethrogram
- (5) Fistulogram/sinogram
- (6) Swallowing study
- (7) Cholangiogram through existing catheter
- (8) Lumbar puncture under fluoroscopic guidance
- (9) Cervical, thoracic and/or lumbar myelogram via lumbar puncture
- (10) Imaging for hysterosalpingography
- (11) Arthrogram and joint aspiration
- (12) Paracentesis and thoracentesis with appropriate image guidance
- (13) Vascular access
  - (A) Central line placement
  - (B) Tunneled central line placement and removal
  - (C) Dialysis access catheter management
  - (D) Port access and injection
  - (E) Lower and upper extremity venography
  - (F) PICC placement
- (14) Nasoenteric and oroenteric feeding tube placement/manipulation

**(c) Other health care services allowed.**

- (1) A radiologist assistant may perform the following procedures under direct supervision after documentation of ten cases with satisfactory outcomes and demonstrated competency performed under the personal supervision of the supervising radiologist who must have a full and unrestricted license in the state of Oklahoma:
  - (A) Implantation of infusion ports
  - (B) Explantation of infusion ports
  - (C) Ultrasound guided random liver biopsy
- (2) Other procedures not listed in this subsection may be approved to be performed by the Radiologist Assistant

under the direct supervision of the supervising radiologist after review by the Committee for demonstrated competency and approval by the Board.

**(d) Review of health care services performed. The Committee will, at least on an annual basis, review the structure and content of the list of health care services contained in this subsection and make recommendations for approval of revisions to the Board of Medical Licensure and Supervision.**

*[OAR Docket #09-1100; filed 5-28-09]*

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION  
CHAPTER 65. ANESTHESIOLOGIST ASSISTANTS**

*[OAR Docket #09-1101]*

**RULEMAKING ACTION:**

PERMANENT final adoption.

**RULES:**

- 435:65-1-1. Purpose [NEW]
- 435:65-1-2. Interpretation of Rules and Regulations [NEW]
- 435:65-1-3. License required [NEW]
- 435:65-1-4. Application for initial licensure/renewal of license [NEW]
- 435:65-1-5. Supervision [NEW]
- 435:65-1-6. Disciplinary action [NEW]
- 435:65-1-7. Student anesthesiologist assistants [NEW]
- 435:65-1-8. Fees [NEW]

**AUTHORITY:**

Title 59 O.S., Section 3204, State Board of Medical Licensure and Supervision

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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009.

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- 435:65-1-1. Purpose [NEW]
- 435:65-1-2. Interpretation of Rules and Regulations [NEW]
- 435:65-1-3. License required [NEW]
- 435:65-1-4. Application for initial licensure/renewal of license [NEW]
- 435:65-1-5. Supervision [NEW]
- 435:65-1-6. Disciplinary action [NEW]
- 435:65-1-7. Student anesthesiologist assistants [NEW]
- 435:65-1-8. Fees [NEW]

**Gubernatorial approval:**

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08-1354

**INCORPORATED BY REFERENCE:**

n/a

**ANALYSIS:**

The rules were adopted to carry out the licensing provisions set forth in HB1577. The fees adopted are for applying for the initial license and for biennial renewal.

**CONTACT PERSON:**

Kathy Plant, Executive Secretary, 405-848-6841, #122

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**435:65-1-1. Purpose**

The rules of this Chapter have been adopted to assist in the implementation and enforcement of the Oklahoma Anesthesiologist Assistant Act.

**435:65-1-2. Interpretation of rules and regulations**

If any section, sentence, clause, or phrase of this Chapter shall be held, for any reason, to be inoperative or unconstitutional, void, or invalid, the validity of the remaining portion of the rules shall not be affected thereby, it being the intention of the Oklahoma State Board of Medical Licensure and Supervision in adopting the rules that no portion or provision herein shall become inoperative or fail by reasons of the unconstitutionality or invalidity of any portion or provision, and the Oklahoma State Board of Medical Licensure and Supervision does hereby declare it would have severally passed and adopted the provisions contained in this Chapter separately and apart one from another.

**435:65-1-3. License required**

Any person who practices as an anesthesiologist assistant or holds himself/herself out to be a Licensed Anesthesiologist Assistant or uses the title Anesthesiologist Assistant or common variants of that title must possess a valid license issued by the Board.

**435:65-1-4. Application for initial licensure/renewal of license**

(a) The Board directs staff to prepare and create new forms or modify existing forms to be used in the application process for licensure and renewal of license. Application forms shall require applicants to submit all information required by the Oklahoma Anesthesiologist Assistant Act.

(b) The application and forms shall be submitted to the Board accompanied by fees as set by the Board. Any incomplete or missing information, documentation or fees shall render the application incomplete. No license shall be issued unless all application requirements have been met. Incomplete applications will be considered abandoned after one year. Any applicable fees paid shall not be refunded.

(c) The applicant shall be forthright and open in the provision of information to the Board in the application process. No

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applicant shall be awarded a license who does not provide the Board with complete, open and honest responses to all requests for information.

(d) Any Board member, based on any response to any question or request for information on the application form, may request an applicant to provide any additional information that the Board member feels is necessary or useful to determine the applicant's ability to practice as an anesthesiologist assistant.

(e) The Board may require a criminal background check on all applicants for licensure. The fee shall be paid by the applicant.

(f) Fraud or misrepresentation in applying for or procuring a license or in connection with applying for or procuring renewal of a license may be grounds for denial or revocation by the Board.

(g) No person shall be licensed by the Board unless and until that person first fully complies with all licensure provisions of the Act and has satisfied the Board of the ability of that person to practice as an anesthesiologist assistant with reasonable skill and safety.

## **435:65-1-5. Supervision**

(a) An anesthesiologist assistant may only perform medical services under the direct supervision of a licensed anesthesiologist.

(b) Direct supervision requires the on-site, personal supervision by the supervising anesthesiologist who is at all instances immediately available to provide assistance and direction to the anesthesiologist assistant while anesthesia services are being performed.

(c) A licensed anesthesiologist may supervise up to four (4) anesthesiologist assistants concurrently. The limitation on the number of anesthesiologist assistants that an anesthesiologist may supervise in no way restricts the number of other qualified anesthesia providers that an anesthesiologist may concurrently supervise.

## **435:65-1-6. Disciplinary action**

(a) The Board may reprimand or place on probation any holder of an anesthesiologist assistant license, or may limit, suspend or revoke any license issued to an anesthesiologist assistant for unprofessional conduct as defined in the Medical Practice Act, Title 59 O.S., §509 and OAC 435:10-7-4.

(b) The Board may impose as a condition of any disciplinary action, the payment of costs expended by the Board for any legal fees and costs and probation and monitoring fees including but not limited to, staff time, salary and travel expense, witness fees and attorney fees.

## **435:65-1-7. Student anesthesiologist assistants**

(a) A student in any anesthesiologist assistant training program shall be identified as a "Student Anesthesiologist Assistant" or as an "Anesthesiologist Assistant Student".

(b) Student anesthesiologist assistants are authorized to clinically train under the supervision of an anesthesiologist licensed by the Board provided that the student anesthesiologist assistant is participating in a training program accredited by

the Commission on Accreditation of Allied Health Education Programs or its successor organization.

## **435:65-1-8. Fees**

### **(a) Fee schedule.**

(1) Application for initial licensure - \$150.00

(2) Biennial renewal fee - \$150.00

### **(b) Submission of fees.**

(1) All fees assessed by the Board shall be received prior to processing an

application for licensure or renewal of licensure.

(2) All fees are non-refundable.

*[OAR Docket #09-1101; filed 5-28-09]*

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

*[OAR Docket #09-1165]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 2. General Provisions

580:10-2-2 [AMENDED]

580:10-2-4 [AMENDED]

Subchapter 5. Use of Public Areas of Capitol and Plazas

580:10-5-2 [AMENDED]

580:10-5-3 [AMENDED]

580:10-5-6 [AMENDED]

580:10-5-10 [NEW]

Subchapter 7. Use of State Capitol Park

580:10-7-3 [AMENDED]

580:10-7-5 [NEW]

### **AUTHORITY:**

Department of Central Services; 74 O.S., Section 63

### **DATES:**

#### **Comment Period:**

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### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **ANALYSIS:**

Revisions provide minor clean-up and clarification to the rules, including the definition of public purpose in order to ensure consistent application of rules providing guidelines for events held in the Capitol, Capitol Plazas and

State Capitol Park, extending reservation period from six months to twelve months prior to an event, prohibiting blocking of entrance ways to common hallways used for emergency exits, and provision for collection of expenses to repair damages caused from violation of rules. Statutory language adopted in House Bill 1616, effective April 30, 2007, has been added for information purposes.

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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, 2009:**

**SUBCHAPTER 2. GENERAL PROVISIONS**

**580:10-2-2. Definitions**

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

"**Art**" means fine art of museum quality representing the highest quality of art objects available to include paintings, graphic arts, art photography and sculpture, aesthetically aligned with recognized values, created by the conscious use of skill and creative imagination.

"**Art exhibit**" means an exhibit composed primarily of art.

"**Capitol**" means the State Capitol Building.

"**Capitol Complex**" means the property and buildings of the State of Oklahoma bordered by 28th Street on the north, south bound Lincoln Boulevard on the west, 18th Street on the South, and north bound Lincoln Boulevard on the east, to the point of beginning on 28th Street.

"**Capitol Conference Center**" means Room 104 of the Capitol.

"**Commercial activity**" means selling or offering merchandise, food or services for the benefit of an individual or business entity organized for profit.

"**Concourse Theater**" means Room C50 located in the concourse between the Will Rogers Building and the Sequoyah Building.

"**CPC**" means the State Capitol Preservation Commission.

"**Demonstration**" means a gathering of persons which may include demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication or expression of views engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers.

"**Department**" means the Department of Central Services.

"**Director**" means the Director of Central Services.

"**Event**" means an assembly or gathering of people for a single purpose.

"**Exhibit**" means a display whether free standing or affixed to structures.

"**Plaza**" means the outdoor area adjacent to the Capitol under the authority of the Department of Central Services.

"**Private purpose**" means an event or exhibit subject to special admission requirements.

"**Public area**" means those portions of the property for general visitation or use under the control of the Department of Central Services.

"**Public purpose**" means an event or exhibit for general public visitation or use.

"**Reservation**" means an accommodation the Department approves and a sponsor secures in advance for an event, art exhibit, demonstration, exhibit or meeting.

"**Sponsor**" means an individual that requests use of a public area on behalf of an individual, group or state agency.

"**State agency**" means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, or the Office of the Governor.

"**State Capitol Park**" or "**park**" means all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol Complex, including the Governor's Mansion and all properties within the public right-of-way along Lincoln Boulevard north from the north boundary line of Northeast 13th Street to the south boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plat filed in the office of the Secretary of state as File Number 155 in the State Property Records. [74 O.S., §1811.4]

**580:10-2-4. Forms**

Forms or instructions will be developed for use by the general public and state agencies to facilitate requirements of this chapter. The Department shall publish the forms on the agency website and provide forms upon request.

**SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS**

**580:10-5-2. Capitol access, operating hours and access requirements**

(a) Capitol operating hours are from 6:00 a.m. to 7:00 p.m., Monday through Friday, excluding state holidays and 9:00 a.m. to 4:00 p.m., Saturdays, Sundays and state holidays.

(b) During operating hours, the Capitol may be accessed by the public through the west entrance, the east entrance, the southeast entrance on the ground level, and the tunnel entrance on the southeast side of the Capitol.

(c) Capitol entrances are open from 6:00 a.m. to 7:00 p.m. or until one hour following adjournment of legislative session, Monday through Friday.

(d) All persons entering the Capitol shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and

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other container in the immediate possession of all persons shall be subject to inspection.

(e) After 7:00 p.m. or one hour following adjournment of the legislative session, Monday through Friday, and on Saturdays, Sundays and state holidays, persons may enter the Capitol through the west entrance only.

(1) Persons entering the west entrance of the Capitol after 7:00 p.m., Monday through Friday, and on Saturdays, Sundays and state holidays shall check in with a Capitol Patrol Officer, produce a valid form of picture identification and state their intended destination inside the Capitol.

(2) Persons shall check out with a Capitol Patrol Officer at the west entrance when exiting the Capitol.

(f) All state agencies located in the Capitol shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Capitol Patrol security personnel.

(1) The list shall state the name, established location of employment in the Capitol and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the Capitol.

(2) The list shall be filed and maintained by Capitol Patrol security personnel.

(3) Information provided on the list shall be reviewed regularly and revisions filed with Capitol Patrol security personnel immediately.

(g) Persons in the Capitol and ~~on~~ the Capitol Complex shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(h) Public entrances, operating hours and access requirements for the Capitol are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.

### 580:10-5-3. Use of public areas

(a) **Reservation requests.** All events, exhibits and art exhibits to be in the public areas of the Capitol or plazas, whether for a public or private purpose, require prior written approval of the Department.

(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees (Reference 580:10-5-5) to the Department at least ten (10) working days but no more than ~~six~~ twelve (12) months prior to the beginning date of the proposed event or exhibit. The application must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall specify the desired date, time period, public use area, a description of the event or exhibit. The Department may request additional information as determined necessary to facilitate the reservation.

(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Department.

(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public areas or plazas.

(c) **Reservation limitations.** Reservations authorize events only in the public areas or plazas specified in the approved application. Event participants shall not block or inhibit passage through the Capitol public areas or plaza common areas, sidewalks, hallways, aisles or passageways.

### 580:10-5-6. Provisions for events, exhibits and art exhibits

(a) The following provisions apply to all events, exhibits or art exhibits:

(1) Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Department grants prior approval.

(2) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(3) Use of cooking or heating elements of any kind is prohibited.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Department may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.

(A) Plaza. Use of handheld signs and signs on hand sticks are allowed.

(B) Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.

(6) No individual or group may restrict access to, from or within the Capitol or a plaza, including but not limited to blocking entrance ways to common hallways used for emergency exits.

(7) No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.

(8) The Department prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that

sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(9) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited except as otherwise provided by law. Display of business cards or other means the Department considers promotional are prohibited.

(10) Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.

(11) The Department may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Department, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(12) A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(13) Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.

(16) All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.

**(b) Requirements at end of event, exhibit or art exhibit.**

A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.

**(c) Unauthorized events or activities.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized events or activities.

**(d) Damages.** The Department may collect necessary expenses to repair any damages caused due to a violation of the requirements of this section.

**580:10-5-10. Enforcement of rules**

*The rules for the "Use of the Public Areas of the Capitol and Plazas" and for the "Use of the State Capitol Park", as promulgated by the Department of Central Services and set out in Subchapters 5 and 7 of Chapter 10 of Title 580 of the Oklahoma Administrative Code, are applicable to the State Capitol Park and State Capitol Complex. The Department of Public Safety shall have the exclusive authority to enforce these rules. A violation of a rule shall be a misdemeanor and, upon conviction, shall be punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment. [74 O.S. §1811.4C]*

**SUBCHAPTER 7. USE OF STATE CAPITOL PARK**

**580:10-7-3. Park use information**

**(a) Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.

(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.

(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.

(3) Digging, which includes driving stakes into the ground, is prohibited.

(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.

(5) Contained fires may be authorized based upon intended use and climatological conditions.

(6) Discharging or setting off fireworks is prohibited. The Department may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.

(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.

(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other ~~like devices~~ weapons is prohibited.

(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.

(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.

(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Department.

(12) Burial of human or animal remains is prohibited.

(13) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited, except as otherwise provided by law. Display of business cards or other means the Department considers promotional are prohibited.

**(b) Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.

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(c) **Unauthorized demonstrations and events.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized demonstrations or activities.

(d) **Damages.** The Department may collect necessary expenses to repair any damages caused due to a violation of the requirements of this section.

## **580:10-7-5. Enforcement of rules**

*The rules for the "Use of the Public Areas of the Capitol and Plazas" and for the "Use of the State Capitol Park", as promulgated by the Department of Central Services and set out in Subchapters 5 and 7 of Chapter 10 of Title 580 of the Oklahoma Administrative Code, are applicable to the State Capitol Park and State Capitol Complex. The Department of Public Safety shall have the exclusive authority to enforce these rules. A violation of a rule shall be a misdemeanor and, upon conviction, shall be punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment. [74 O.S. §1811.4C]*

[OAR Docket #09-1165; filed 6-9-09]

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

[OAR Docket #09-1163]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 2. General Provisions  
580:15-2-2. [AMENDED]  
Subchapter 4. Supplier Provisions  
580:15-4-2 [AMENDED]  
580:15-4-5 [AMENDED]  
580:15-4-6 [AMENDED]  
580:15-4-7 [AMENDED]  
580:15-4-11 [AMENDED]  
580:15-4-14 [AMENDED]  
Subchapter 6. State Agency Provisions  
580:15-6-6 [AMENDED]

### **AUTHORITY:**

Department of Central Services; 74 O.S., Section 85.5

### **DATES:**

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April 1, 2009

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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009

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### **SUPERSEDED EMERGENCY ACTIONS:**

#### **Superseded rules:**

Subchapter 2. General Provisions  
580:15-2-2. [AMENDED]  
Subchapter 4. Supplier Provisions  
580:15-4-5 [AMENDED]  
580:15-4-6 [AMENDED]  
580:15-4-7 [AMENDED]  
580:15-4-11 [AMENDED]  
Subchapter 6. State Agency Provisions  
580:15-6-6 [AMENDED]

### **Gubernatorial approval:**

November 12, 2008

### **Register publication:**

26 Ok Reg 418

### **Docket number:**

08-1493

### **INCORPORATIONS BY REFERENCE:**

NA

### **ANALYSIS:**

Statutory amendments enacted by House Bill 3325, effective November 1, 2008, eliminate and/or add language related to procurement documents that compliment the use of technology in procurement practices. These proposed rules replace 2008 emergency rules adopted to administer the statutory changes and provide information and revisions related to procurement processes and to ensure agencies and suppliers comply with the new mandates. Minor clean-up of scribes' errors and some clarification are included in addition to the emergency rules to be superseded.

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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, 2009:**

## **SUBCHAPTER 2. GENERAL PROVISIONS**

### **580:15-2-2. Definitions**

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

**"Acceptable Electronic Signature Technology"** means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

**"Acquisition authority"** means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

**"Affiliates"** means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

**"Aircraft"** means any device now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

**"All or none bid"** means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

**"All or none solicitation"** means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

**"Alteration"** means a written modification to a contract.

**"Alternate bid"** means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

**"Amendment"** means a written change, addition, alteration, correction, or revision to a solicitation issued by the state agency responsible for making the acquisition. The terms addendum and amendment are synonymous.

**"Authorized signature"** means a manual, electronic or digital signature or other identifier uniquely linked to a person the supplier authorizes to sign documents the supplier submits to the State Purchasing Director.

**"Bid bond", "performance bond" or "surety bond"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

**"Business days"** means Monday through Friday and is exclusive of weekends and state holidays.

**"Certified procurement officer or CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

**"Clarification"** means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

**"Closing date"** means the date and time a solicitation specifies after which a bid is considered late and the Purchasing Division or state agency will not accept a bid.

**"Commodity classification"** means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

**"Commodity list"** means a list of all items and services in a commodity classification.

**"Competitive bidding"** means a process of acquisition wherein bidders submit bids to the Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirement of the statutes and/or rules are met.

**"Days"** means calendar days unless otherwise specified.

**"Debar" or "debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the suppliers list, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers.

**"Department" or "DCS"** means the Department of Central Services.

**"Director"** means the Director of the Department of Central Services.

**"Electronic Record"** means a record created, generated, sent, communicated, received, or stored by electronic means.

**"Electronic Signature"** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

**"Emergency acquisition"** means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life, safety poses imminent danger to significant property or is condition certified by the Governor as a serious environmental situation.

**"Firm bid"** means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

**"Fiscal year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

**"Fixed rate"** means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.

**"Forms"** means documents the Director prescribes and requires suppliers and state agencies to use to provide information to the Department or Purchasing Division.

**"Indefinite quantity contract"** means a contract the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.

**"Information technology" or "IT"** means any *electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text.* [62 O.S., Section 41.5t.1]

**"Internet"** means the global information network of both federal and nonfederal systems that are linked together by a globally unique address and includes the subnetwork called the World Wide Web.

**"Invitation to bid"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

**"Life Cycle Costing"** means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, usage, resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

**"Material deficiency" or "material deviation"** means failure to provide information necessary to evaluate a solicitation.

**"Minor deficiency" or "minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived

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without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

**"Noneollusion affidavit Non-collusion certification"** means a ~~document~~ certification required of a supplier submits to be submitted pursuant to the Oklahoma Central Purchasing Act with any competitive bids bid or for acquisitions by contract executed by the state for goods or services.

**"Nonresponsive"** means a bid that does not conform to essential requirements in a solicitation.

**"Office of State Finance"** or **"OSF"** means the Oklahoma Office of State Finance.

**"Oklahoma Central Purchasing Act"** means 74 O.S., Sections 85.1 et seq.

**"Oklahoma Correctional Industries"** or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

**"Oklahoma Information Technology Accessibility Standards"** or **"IT Accessibility Standards"** or **"Standards"** means the accessibility standards adopted by the Office of State Finance together with the Department of Central Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998 to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

**"Online Bidding"** means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

**"Original Signature"** means a ~~manual handwritten symbol or mark by a person that serves as an identifier of that person, or an authorized electronic signature, from which a copy may be made.~~

**"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

**"Purchasing Division"** or **"Division"** means the Purchasing Division of the Department of Central Services.

**"Ratification"** means the act of approving an unauthorized commitment made by a state agency.

**"Reciprocity"** means a preference, which the State Purchasing Director shall apply against the price an out of state bidder submits for an acquisition whose home state applies a similar preference against Oklahoma bidders.

**"Registered supplier"** means a supplier that registers with the Purchasing Division pursuant to 580:15-4-2.

**"Remedy"** means to cure, alter, correct or change.

**"Request for proposal"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

**"Request for quotation"** means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

**"Requisition number"** means an identifier the state agency or Purchasing Division assigns to a requisition.

**"Requisitioning unit"** means the unit in a state agency responsible for making acquisitions.

**"Responsive offer"** means an offer a supplier submits, which conforms in all material respects to requirements a solicitation states.

**"Responsible supplier"** means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but not limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

**"Reverse Auctioning"** means a procurement method wherein bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

**"Scheduled acquisition"** means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

**"Services"** means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance.

**"Settlement agreement"** means a document that reflects an agreement between the state and an individual or business entity that ratifies an unauthorized commitment.

**"Solicitation"** means *a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or a request for quotation. [74 O.S., Section 85.2 (34)]*

**"State official"** means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

**"State Purchasing Director"** means the director of the Purchasing Division of the Department of Central Services appointed by the Director of the Department or the Purchasing Director's designee.

**"State Use Committee"** means a committee that certifies severely disabled individuals and sheltered workshops as qualified organizations that contract with the state to provide products and services made by severely disabled individuals, and establishes the State Use Committee procurement schedule for state agency use pursuant to 74 O.S., Sections 3001 et seq.

"Statement of Work" means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.

"Supplier complaint" or "performance evaluation" means information a state agency or the Purchasing Division provides to the State Purchasing Director, in a manner the Director prescribes, that documents supplier performance.

"Supplier registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

"Suppliers list" means a list of individuals or business entities that desire notification of solicitations for specified commodity lists.

"Suspension" means action by the State Purchasing Director to exclude an individual or business entity from the suppliers list.

~~"Written, Writing, and in Writing" shall include handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, other materials, or any electronic medium, that can be read, retrieved, and reproduced. When used in these rules, a writing may include an electronic writing.~~

#### SUBCHAPTER 4. SUPPLIER PROVISIONS

##### 580:15-4-2. Supplier registration

(a) **General.** The Purchasing Division shall place a registered supplier on the suppliers list for each commodity class for which a supplier registers. The Division shall provide the supplier information for each commodity class for which the supplier desires to register. Except in an emergency acquisition declared in accordance with Oklahoma statutes or pursuant to a waiver approved in accordance with 580:15-2-11, the Division shall notify registered suppliers of invitations to bid or requests for proposal for each commodity class for which a supplier registers.

(b) **Registration.** Suppliers shall submit supplier registration forms to the Purchasing Division. The State Purchasing Director shall not place a supplier on the supplier list if the supplier provides incomplete information or if the State Purchasing Director determines the supplier is not responsible.

(c) **Registration fee.** Suppliers shall pay an annual fee as set by 74 O.S., §85.33 to the Purchasing Division for each commodity class for which the supplier registers.

(d) **Voluntary removal from suppliers list.** Suppliers may request the Purchasing Division remove them from the suppliers list for a commodity.

(e) **Registration fee refunds.** The Purchasing Division shall not refund supplier registration fees.

##### 580:15-4-5. Bid solicitation

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may also notify suppliers recommended by a state agency recommends for a solicitation.

(3) **Emergency notification.** For an emergency acquisition ~~pursuant to 74 O.S., §85.7(4)~~ authorized by Oklahoma statutes, the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the ~~State Purchasing~~ Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce.

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

- (1) lowest and best; or,
- (2) best value.

(e) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(f) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

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- (2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.
- (3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.
- (4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.
- (g) **Affidavit Non-Collusion certification.** The Purchasing Director shall include a ~~noncollusion affidavit form~~ non-collusion certification statement in a solicitation. ~~The noncollusion affidavit non-collusion certification shall be included submitted to the Division with any bid or proposal submitted to the Purchasing Division. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~
- (h) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or non-mandatory.
- (i) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.
- (j) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the Director of Central Services may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.
- (k) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.
- (1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.
- (2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.
- (3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.
- (4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.
- (5) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.
- (6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.
- (7) **Unsuccessful bidder samples.**
- (A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.
- (B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.
- (C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.
- (8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.
- (9) The State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.
- (l) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

### 580:15-4-6. Bid preparation

- (a) **General.** A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.
- (b) **Forms the Purchasing Director requires suppliers to submit.** The Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.
- (c) **Additional form requirements.**
- (1) **Data the supplier submits.**
- (A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.
- ~~(B) All form information entries shall be in ink.~~
- ~~(C) Information the supplier submits shall be legibly hand written, typewritten, or printed or electronically conveyed 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 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 and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved 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 or surety 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 or surety until the successful completion of the purpose for which the bond or surety 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.

**580:15-4-7. Bid submission**

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete

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address of the bidder, bid number and closing date shall be prominently displayed as stated in the solicitation.

~~(c) **Submission of noncollusion affidavit non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions. When electronic submission of the bid is allowed, an original noncollusion affidavit must be submitted to the Central Purchasing Division as prescribed in the solicitation. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photo copy of an original signature will not be accepted.~~

(d) **Purchasing Division bid receipt.** Upon receipt, the Purchasing Division shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

~~(e) **Signatures on solicitation documents.** All signatures required on any bid document shall be original unless otherwise authorized by state law and approved by the State Purchasing Director. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

(f) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the Director of the Department of Central Services has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

### 580:15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is nonresponsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (j) (i) of this Section, the State Purchasing Director may reject a bid that is nonresponsive or a bid from a nonresponsible bidder for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **Form entries improper.** If information provided in the solicitation documents is not in ink, legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered nonresponsive.

(7) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, the bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond or other surety.** If a bidder fails to include a bid bond or other surety specified as a requirement by a solicitation, the bid shall be considered nonresponsive.

(9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, the bid may be considered nonresponsive.

(13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered nonresponsive.

(15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid shall be considered nonresponsive.

(16) **Past performance.** If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.

(17) **Signatures on solicitation documents.** If a ~~an authorized signature is omitted from~~ facsimile or photocopy signature appears in any solicitation document that requires an original authorized signature [Reference 580:15-4-7.(e)], the bid ~~shall~~ may be considered nonresponsive. ~~An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

(18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(ed) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(fe) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(ef) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(fg) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(fh) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(ji) **Other factors in determination of award.**

(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:

- (A) failure to ~~sign a bid~~ have an authorized signature;
- (B) failure to obtain a notary signature, stamp or seal;
- (C) failure to sign or initial amendments to bid.

(kj) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

**580:15-4-14. Supplier Contract performance**

(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) **Inspection.** Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(c) **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items.

(e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(f) **Contract changes.** If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 15-6-6(e)(2).

(hg) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization without written approval of the State Purchasing Director.

**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~~

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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.~~

(A) The state agency shall provide a complete set of specifications, terms and conditions for the acquisition to all notified suppliers each supplier selected for notification.

(B) Any competitive bid for goods or services shall contain a non-collusion certification.

(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 a non-collusion certification~~ pursuant to 74 O.S., Section ~~85.23~~ 85.22 (~~DCS/Purchasing Form 003~~). ~~The affidavit certification shall have the original an authorized signature of an authorized person, signed in ink, and notarized certifying the non-collusion statement 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.~~

(C) **Services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall provide a sworn statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) 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. [Reference 74 O.S. §85.4]

(iii) Each contract for services shall include an affidavit certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(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~~ 580:15-6-3 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 a complete set of specifications, terms and conditions for the acquisition to all notified suppliers each supplier selected for notification.~~ 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 certification~~ pursuant to 74 O.S., Section 85.22 and the provisions of ~~(d)(4) of this Section~~ 580:15-4-7(c).

(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 certification.** ~~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. Any state agency solicitation that is competitively bid shall contain a non-collusion certification statement pursuant to 74 O.S., Section 85.22. A supplier shall complete and submit the non-collusion affidavit certification 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. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.~~

(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 the contract must include the non-collusion certification, signed and submitted with the solicitation pursuant to 580:15-4-7(c) and 74 O.S., Section 85.23 85.22 (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.~~

(C) **Services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall provide a sworn statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) 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. [Reference 74 O.S. §85.4]

(iii) Each contract for services shall include an affidavit certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(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 #09-1163; filed 6-9-09]

## TITLE 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 25. RISK MANAGEMENT PROGRAM

[OAR Docket #09-1164]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Casualty or Liability Incident Management

580:25-3-2. [AMENDED]

Subchapter 5. Casualty or Liability Claims Management, Payment and Reports

580:25-5-1 [AMENDED]

Subchapter 9. Driver and Vehicle Safety Standards for Motor Vehicle Operations

580:25-9-1 [AMENDED]

Subchapter 11. Coverage for State Owned Buildings, Contents and Other

580:25-11-2 [AMENDED]

### AUTHORITY:

Department of Central Services; 74 O.S., Section 85.58A

### DATES:

#### Comment Period:

February 17, 2009 to March 20, 2009

#### Public Hearing:

March 20, 2009

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March 26, 2009

#### Submitted to Governor:

April 1, 2009

#### Submitted to House:

April 1, 2009

#### Submitted to Senate:

April 1, 2009

#### Gubernatorial approval:

May 4, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009

#### Final adoption:

May 23, 2009

#### Effective:

July 11, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

Revisions provide minor clean-up and clarification of submittal of a Scope of Employment form whenever reporting a vehicle liability incident, which must include a full and accurate description of the specific work activity or assignment of the employee involved in the accident. The threshold amounts for claim settlements were increased to mirror the statutory changes made by Laws 2006, SB 1860, c. 102, §2, eff. November 1, 2006.

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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, 2009:**

## SUBCHAPTER 3. CASUALTY OR LIABILITY INCIDENT MANAGEMENT

**580:25-3-2. Functions of Program**

Each Agency Risk Management Program shall have assigned to it sufficient personnel to fulfill each of the following functions:

(1) **Incident scene management.**

(A) **General.** The Agency Risk Management Coordinator shall be responsible for assuring that proper steps are taken at the scene of any liability incident to ensure the safety and security of personnel and property, and to otherwise manage the scene in the best interest of the Oklahoma Risk Management Program. Employees of all agencies and other covered entities must be informed and encouraged to promptly report any potential liability incident in which they might be involved, or which they might witness, to proper supervisory and security personnel.

(B) **Reports by witnesses.** Any employee or officer of any agency or other covered entity who is involved in any potential liability incident, as a witness or otherwise, must immediately notify his or her immediate supervisor, as well as the security office or law enforcement officer with responsibility for the area where such incident occurs, if any. In case of any liability incident involving motor vehicles, the following procedure specified in paragraph (2) of this section, shall be followed.

(2) **Reporting vehicle liability incidents.**

(A) The operator of a vehicle involved in a reportable vehicle incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area where such incident occurs, unless incapacitated by injury to the extent that notification is impractical. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(B) The operator shall remain at the scene until completion of all acts required by law or the rules in 580:25-3 to be performed at the scene, unless injuries sustained require treatment or other extenuating circumstance exist preventing the operator from remaining at the scene.

(C) The operator shall fill out a required "In Case of Accident" form furnished in the glove compartment or other applicable designated place of all vehicles. This form shall be given to the Agency Risk Management Coordinator who will fill out a "Standard Liability Incident Report" from which, together with the "In Case of Accident" form, and "Scope of Employment" form shall be forwarded to the Risk Management Division as soon as the Risk Management Coordinator has completed an investigation of the liability incident.

(D) Any liability incident involving a fatality, personal injury or property damage must be reported

immediately to the Risk Management Division. An answering service is available 24 hours a day, seven days a week.

(3) **Statements by parties involved.**

(A) Employees of any agency or other covered entity, whose conduct or performance of duty give rise to a "Liability Incident" shall be required to cooperate in good faith with the defense of any claim which may be presented in connection with the "Liability Incident". Any such employee's cooperation shall include, but not be limited to refraining from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, any law enforcement authority investigating the "Liability Incident" at the scene, or by statute. No employee involved in a "Liability Incident" has the authority to agree to or promise to settle any claim

(B) Any employee who is a witness to a "Liability Incident", but who did not commit or perform any act or omission contributing to the occurrence giving rise to the "Liability Incident" shall refrain from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, or any law enforcement authority investigating the "Liability Incident" at the scene. Providing, however, that all such employees shall remain free to make any statement or comment concerning agency operations which are protected by 74 O.S. Section 841.7 and 841.8.

(4) **Investigation.** The Agency Risk Management Coordinator shall ensure that each liability incident involving the property or personnel of the agency or other covered entity is promptly investigated and that such investigation shall, at a minimum, involve ascertainment of the identities of all possible claimants and all known witnesses. A description of the occurrences giving rise to damages including the date time and location, shall be provided and an estimate of the possible amount of damages shall be made. Photographs of the accident scene or property damage should be taken as close to the date and time of the liability incident as possible. The identification of a party or a witness shall include full name, address, home and business phone numbers, date of birth, social security number and brief summary of what is known or reported by such witness.

(5) **Records keeping.** The Agency Risk Management Coordinator shall keep orderly records, organized so as to be readily retrievable by date, location of incident and names of parties potentially giving rise to liability, of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep a monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incident,

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nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Management Division.

(6) **Reporting procedures.** The Agency Risk Management Coordinator shall:

(A) **Give telephone notice to the Risk Management Division.** The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Division not later than the next working day following the occurrence of any such incident.

(B) **Fill out "Standard Liability Incident Report".** The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Liability Incident Report" form furnished by the Administrator to all agencies and other covered entities by the Risk Management Division. This report should include but not be limited to the following information:

- (i) The time, date, and location of accident.
- (ii) The department involved, and where a vehicle is involved, vehicle number or tag number, year and make, operator's name and telephone number at home and work. Owner's name if leased or rented.
- (iii) A description of other property or vehicle, if any, year and make, name and address of operator and owner and telephone numbers.
- (iv) The names of injured persons and the name of hospital(s) where such persons may receive treatment.
- (v) The damage to the vehicle, if any, and the vehicle's location.
- (vi) The name of the investigating officer.
- (vii) A brief description of the incident.
- (viii) The names, addresses and telephone numbers of all witnesses.
- (ix) Photographs of the incident scene.

(C) **Forward "In Case of Accident Form" and "Scope of Employment Form" to the Risk Management Division.** The Agency Risk Management Coordinator shall send to the Risk Management Division the "In Case of Accident" form filled out by the operator of any vehicle involved in a reportable vehicle incident. Be sure to place a new "In Case of Accident" form in the vehicle as soon as possible if the vehicle is to be subsequently used to conduct business after applicable repairs have been procured and the agency or other covered entity is satisfied the vehicle is safe to operate.

(D) **Send informational material to the Risk Management Division.** The Agency Risk Management Coordinator shall complete all preliminary investigations following a liability incident and send a completed "Standard Liability Incident Report",

the "In Case of Accident" report, if any, and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(7) **Training and notices.** Every Agency Risk Management Program shall make adequate provision for training and notification to all employees regarding their responsibilities under the Oklahoma Risk Management Program. Employees shall be trained or notified regarding necessary reporting requirements in the event they may witness or be participants in a liability incident. Posters and signs shall be posted in conspicuous places informing employees, supervisors and other officers of their various responsibilities under the program.

(8) **Risk Management Manual.** Every agency or other covered entity shall formulate and adopt an "Agency Risk Management Procedure Manual" consistent with the minimum requirements of the rules and regulations contain in OAC 580:25-3. Such a manual shall fully describe the organization and procedures for the conduct of Risk Management activities within such agency, shall contain samples of all forms in current use, shall describe the proper reporting chain-of-command for routing necessary information to the Agency Risk Management Coordinator, shall identify all personnel having specified responsibilities for risk management activities and shall contain such other information as shall be required from time to time by the Risk Management Division or deemed pertinent by the Administrator. Agency Risk Management procedures shall be updated from time to time to maintain the currency of the information contained in the manual, and such modifications or revised editions shall be promptly filed with the Risk Management Division.

(9) **Coordination with the Risk Management Division.** One of the primary functions of the Agency Risk Management Coordinator will be to facilitate cooperation between the agency or other covered entity, the Risk Management Division, and legal counsel, when necessary, in cases where a liability incident actually gives rise to a claim for damages against the state or other covered entity. It will often be necessary for meetings, interviews, record reviews and other investigative activities to be arranged between Risk Management Division personnel and covered employees. The Agency Risk Management Coordinator will be the primary source of contact with an agency or other covered entity for purposes of arranging such matters.

(10) **Forms.** From time to time, the Risk Management Division may promulgate forms for use in the various Risk Management activities described above, including forms of notices, reports, manuals, etc. Unless a form has been prescribed by the Risk Management Division, it shall be the duty of the Agency Risk Management Coordinator to

establish standard forms for use within the other covered entity to carry out Risk Management activities under 74 O.S. Section 85.34 et seq. and the rules contained in OAC 580:25-3. In any case where such a form has been prescribed by the Administrator for any purpose, it shall be adopted and made the exclusive form for such purpose by each Agency Risk Management Coordinator. Seminars may be conducted from time to time by the Risk Management Division to inform state or other covered entities employee(s), officer(s), Agency Risk Management Coordinator(s), Director(s), manager(s), supervisor(s), and other responsible personnel of systematic changes in standard forms of notices, reports, manuals, etc. Instructions, dates, identity of personnel expected to attend, etc., will be communicated by the Risk Management Division on an as-needed basis.

**SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS**

**580:25-5-1. Claims management**

**(a) Settlement and payment of claims.**

(1) **General.** While the Risk Management Division will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

- (i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.
- (ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.
- (iii) If any State agency, or any other covered entity, or its attorney fails to ~~reasonable~~ reasonably

cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment"**. Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular

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activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding ~~\$10,000.00~~ \$25,000.00.** A claim settlement in which a payment not exceeding ~~\$10,000.00~~ \$25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding ~~\$10,000.00~~ \$25,000.00.** A claims settlement in which a payment exceeding ~~\$10,000.00~~ \$25,000.00 is agreed

upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or an other covered entity, and no self-insurance coverage shall be provided or paid.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 85.9A.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division

for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S., Section 85.9A.

**SUBCHAPTER 9. DRIVER AND VEHICLE SAFETY STANDARDS FOR MOTOR VEHICLE OPERATIONS**

**580:25-9-1. Driver and vehicle safety standards for motor vehicle operations**

In order to help protect the general public, as well as the state and other covered entities' property and their employees, the rules contained in OAC 580:25-9 shall apply:

(1) **Primary requirements.** It being imperative that in order to assure the driving public that state vehicles will be operated properly and by trained individuals, State Risk Management reserves the right to insure for liability insurance only those state employees or volunteers it deems insurable. In order to facilitate this right, Risk Management may, from time to time, request Motor Vehicle Records (MVR's) from the Department of Public Safety. Any information found on the report that may be negative towards the driving record of the individual employee may be cause for Risk Management to inform the employing agency of said employee that the driver is uninsurable and that in the event of a loss involving said employee, Risk Management will refuse to pay for such loss(es) out of the Risk Management Comprehensive Risk Pool. Losses incurred under such conditions shall be borne by the employing agency. In addition to the above, the following are minimum requirements:

- (A) To operate a vehicle of any type, an individual must have a valid driver's license. Risk Management may assist agencies in checking whether or not an employee has a valid Oklahoma drivers license.
- (B) Driver will use the vehicle only for state or other covered entity business within the scope of the driver's employment/authority.
- (C) Driver will wear his/her safety belt.
- (D) Driver will observe all traffic laws.
- (E) Driver will not allow an unauthorized person to drive the vehicle.
- (F) Consumption of alcoholic beverages or narcotics prior to the operation of a vehicle is prohibited.

(2) **General requirements.**

(A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with an assistance of a guide. If a second person is in the vehicle, he/she should guide

the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.

(B) Drivers will ensure that windows, headlights, taillights, and wipers are clean and operational at all times.

(C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.

(D) Do not "tail-gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.

(E) On hills, curves, intersections or in any area where your vision is obstructed, do not make a turn-about, i.e., u-turn.

(F) Vehicles and equipment shall not be parked or left adjacent to the roadway in such a manner as to constitute a traffic hazard to the driving public. Vehicles will not be parked where they will obstruct the sight of other drivers.

(3) **Specific requirements.**

(A) It shall be unlawful for any driver of any vehicle to operate said vehicle without a valid drivers license, pursuant to 47 O.S. 1981, Section 6-101 et seq. Drivers will carry a valid drivers license at all times, pursuant to 47 O.S. 1981, Section 6-112.

(B) Any volunteer or employee who operates a state or other covered entity vehicle regularly or occasionally is required to report suspension or revocation of his/her license to their agency. Failure of an employee or volunteer to report a change in license status may result in denial of insurance coverage by the Risk Management Division in the event of an accident, pursuant to 580:25-9-1(3)(A).

(C) All items or materials, which may move around during transport by truck or trailer, will be secured or tarped.

(D) No more than three (3) persons will ride in the front seat of a state or other covered entity vehicle. Where only two single seats exist, only one rider may ride in each seat.

(E) Drivers of state or other covered entity vehicles will drive in a courteous manner at all times.

(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. 1981, Section 11-106.

(G) Any Driver of a motor vehicle involved in an at fault accident or accidents while functioning as an agent of the State and in which the driver acted negligently (and caused personal injury and/or property damage) shall be required to attend and successfully complete a Motor Vehicle Improvement (MVI) course. Such course shall be approved by the State Risk Management Division and must be attended

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within six (6) months of the date of the ~~second~~ accident. Failure to successfully complete an approved MVI course shall result in the driver of the state vehicle being declared uninsurable by the State Risk Management Administrator until such time that the driver successfully completes the required course. The Risk Management Administrator may waive this requirement and paragraph H upon proper application and for good cause.

(H) Any driver of a motor vehicle, while functioning as an agent of the State, that is involved in two at fault accidents in a twenty four (24) month period shall, in addition to paragraph G, be declared uninsurable by the Risk Management Administrator for a period of three (3) months following the second accident.

(I) Special equipment such as tractor-trailers, mowers, construction equipment, mobile cranes, fork lifts and emergency vehicles shall not be operated without adequate training provided by the Agency and authorization by the agency in charge.

(4) **Maintenance requirements.**

(A) Before operating a state or other covered entity vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates it. These items should include;

- (i) Lights.
- (ii) Directional signals.
- (iii) Steering wheel.
- (iv) Brakes
- (v) Rear-view and side-view mirrors.
- (vi) Horn.
- (vii) Tires.
- (viii) Safety belts
- (ix) Windshield wipers.
- (x) Defroster.

(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in 580:25-9-1(4)(A) should be checked for emergency use:

- (i) Reflectors.
- (ii) Fire extinguisher, type B-C.
- (iii) First aid kit.

(C) No state or other covered entity vehicle will be operated without a current state safety inspection sticker.

(5) **Accident reporting.** Any state or other covered entity vehicle involved in an incident with a third party shall report the incident to his Agency Risk Manager or the Risk Management Division not later than the next working day following the occurrence of the incident. Risk Management, in order to adequately investigate and come to a timely determination as to whether or not a claim is valid, relies on the agency Risk Coordinator to assist them in the investigation. Risk Management may require additional information other than the initial incident report and claim report. Information request(s) by Risk Management must

be responded to within four (4) weeks of date of the request by the agency. If it is determined that an agency has not responded or is not acting in good faith to assist State Risk Management, Risk Management reserves the right to make a determination on the information received which could result in the approval of a claim when it might not otherwise be. In that case, Risk Management will pay the claim and invoice the full amount back to the responsible agency. The Risk Management Administrator reserves the right to waive this requirement for good cause.

(6) **Safety standards for other covered entities entitled to services from the Risk Management Program.**

To meet eligibility criteria for approval and participation under the State Risk Management Program, drivers and vehicles shall meet or exceed the following requirements;

(A) Drivers of fire apparatus shall have a valid drivers license to drive the vehicle.

(B) There shall be documentation of the drivers license for any individual who drives or may be required to drive a vehicle.

(C) Drivers of fire apparatus must be thoroughly trained and the training documented.

(D) Each other covered entity shall have a written policy that sets forth speed limits for its vehicles on emergency runs.

(E) All emergency vehicles shall be provided with audible and visible warning devices. These devices shall be kept in proper working order and utilized without fail on emergency runs.

(F) Every covered vehicle shall have a current state safety inspection sticker displayed on the front windshield, unless the vehicle is exempt pursuant to 47 O.S. 1981, Section 851.

(G) Wheel ~~locks~~ chocks must be used for rear wheels while using any aerial ladder apparatus to help prevent the apparatus from slipping.

(H) There shall be a preventive maintenance program in place to ensure that all emergency vehicles are maintained in a safe condition. This list is not meant to be a complete listing, but only a guide. The IFSTA 106 Manual, sixth edition, Chapter 8, provides good examples of maintenance schedules. The following items are suggested safety areas that should be checked:

- (i) Visible and audible signals
- (ii) Lighting system.
- (iii) Tires.
- (iv) Steering
- (v) Brake system air tanks.
- (vi) Brake fluid.
- (vii) Windshield wipers.
- (viii) Rear view mirrors.

(I) Applications of risk management coverage, pursuant to Section 85.34 of Title 74, are subject to review by the Administrator. The review may include a physical inspection of the vehicles and related records.

(J) Other covered entities are subject to random safety and loss prevention inspections of equipment for as long as they choose to participate in the State Risk Management Program.

(K) Non-compliance with safety standards as required by the Administrator could result in a denial to participate in the program or cancellation of coverage.

**SUBCHAPTER 11. COVERAGE FOR STATE OWNED BUILDINGS, CONTENTS AND OTHER**

**580:25-11-2. Basic coverage**

(a) **Property covered.** Property losses covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(b) **Property excluded.** Property losses excluded from coverage will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(c) **Perils covered.** Perils covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(d) **Perils not covered.** Perils not covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(e) **Amount payable for losses.**

(1) The amount payable for covered losses will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(2) The amount payable for any loss to property shall not exceed the lesser of the actual replacement cost or the reported value of the property.

(3) The amount payable for any loss shall be reduced by the amount of any delinquent premiums or fees for coverage under the Risk Management Program.

(f) **Conditions under which coverage is provided.**

(1) The building and/or contents must have been reported to Risk Management in writing prior to the date the loss occurs.

(2) For boiler explosion losses to be covered, boilers must have been reported to Risk Management and all inspections required by the Oklahoma Department of Labor must have been completed.

(3) The loss must be reported to Risk Management immediately upon learning of the occurrence of a loss ~~and, in any event, must be reported not later than ninety (90) calendar days from the date of occurrence.~~ Failure to report a loss in a timely manner may negatively impact your recovery or result in denial of coverage.

(A) The Agency Risk Management Coordinator shall give telephone notice of any property loss incident to the Risk Management Division immediately upon learning of the occurrence of such incident.

(B) The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Property Loss Report" form. This report shall be submitted within three working days

from the date of first awareness of a loss and shall include but not limited to the following information:

(i) The time, date, and location of the loss

(ii) The department involved.

(iii) A description of the property damage.

(iv) A brief description of the incident.

(v) An estimate of the amount of loss

(C) The Agency Risk Management Coordinator shall complete all preliminary investigations following a property loss incident and send a completed "Standard Party Loss Report" and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. All investigative information and loss data shall be submitted within ten working days from the date of first awareness of a loss, unless an extension of date is approved by the Administrator.

(4) Losses occurring due to the negligence of the insured or insureds contractor may result in no coverage being provided under the Risk Management property insurance program. In such case, Risk Management reserves the right to make a determination as to liability, extent of loss and amount which Risk Management may reimburse insured for the loss. It is the responsibility of the insured to determine whether contractors are adequately insured prior to any remodel, renovation or new construction.

(5) Other conditions under which coverage is provided will be specified in an annual statement of coverage issued by the Risk Management Administrator. Failure to comply with any condition in 580:25-11-2(f) or in the annual statement of coverage may result in denial of coverage.

(g) **Questions and loss reporting.** If there are any questions or to report a loss, contact the Risk Management Division.

(h) **Time Limit to File a Claim.** A final claim along with the requested supporting documentation must be submitted to Risk Management within 2 years of the date of the incident or the claim will be considered invalid.

[OAR Docket #09-1164; filed 6-9-09]

**TITLE 580. DEPARTMENT OF CENTRAL SERVICES  
CHAPTER 65. STATE SURPLUS PROPERTY**

[OAR Docket #09-1166]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 7. Acquisition of Surplus Property

580:65-7-5 [AMENDED]

580:65-7-6 [AMENDED]

**AUTHORITY:**

Department of Central Services; 74 O.S., Section 62.3

**DATES:**

**Comment Period:**

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**Public Hearing:**

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## Adoption:

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## Submitted to Governor:

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## Submitted to House:

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## Gubernatorial approval:

May 4, 2009

## Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2009

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May 23, 2009

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July 11, 2009

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

Revisions provide clarification and information related to methods of payment acceptable by the State Surplus Property program, including payments made through the on-line auction site. New language provides criteria for the Department's right to refuse service to certain patrons.

## CONTACT PERSON:

Gerry Smedley, Administrative Rules Liaison, (405) 522-8519; Department of Central Services, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105 or gerry\_smedley@dcs.state.ok.us

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2009:**

## SUBCHAPTER 7. ACQUISITION OF SURPLUS PROPERTY

### 580:65-7-5. Payment provisions

(a) **General requirements for purchases.** Payment made by the public shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 45 days following the purchase and removal of the property. The following provisions apply to all sale transactions prior to the release of property by an agent:

(1) **State agency, political subdivision, school district.** A state agency, political subdivision or school district shall:

(A) Provide a purchase order for the mutually agreed purchase price at the time of purchase; and,

(B) Submit a billing invoice which contains the name and address of the purchasing agency or authorized entity and the name of the representative making the purchase on behalf of the agency or authorized entity with the payment; or,

(C) Make payment with a state approved purchase card.

(2) **Private business.** A private business shall provide a business tax identification number and a tax-exempt certificate, if applicable, at the time of payment. Otherwise, local sales tax shall be charged.

(3) **General public.** Sales tax shall be collected for all purchases made by the general public unless a tax-exempt certificate is presented at the time of payment.

(4) **Non-governmental entities.** Non-governmental entities that are not-for-profit organizations shall provide a copy of the letter issued by the Internal Revenue Service granting its tax exempt status at the time of its first purchase.

(b) **Form of payment from non-governmental entities and general public.** Payment may be in the form of certified funds, business check, personal check, money order, cashier's check or credit card approved for use by the Department.

(1) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.

(2) A check for vehicles, heavy machinery or other equipment requiring a transfer of legal title must be guaranteed by a letter of credit issued by the financial institution and may not be accepted for amounts exceeding \$2,500.00.

(3) Unguaranteed checks and 2-party checks shall not be accepted.

(4) Online auction payments are limited to only debit and credit cards approved for use by the Department.

(c) **Payment refunds.** All payments received for the purchase of surplus property are nonrefundable.

(d) **Cash.** Cash for exact purchase amounts may be accepted at a public auction.

### 580:65-7-6. Conditions of service

(a) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency.

(1) Accounts delinquent for more than 120 days shall be subject to suspension by the Director. Suspension of an account bars the agency from the purchase of additional surplus property until payment is received and the account is no longer in arrears.

(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.

(b) **Insufficient checks.** If a check from the general public is returned by a financial institution for "insufficient funds", "account closed" or other reason, the Department shall send written notice to the debtor stating that the debtor has fifteen (15) days to pay the amount owed with cash, a money order or cashier's check, including any and all additional fees associated with the collection process, such as returned check fees.

(1) Any customer who presents the Department with an insufficient check will be notified in writing of the requirement to make payment by cash, money order or cashier's

check for any future surplus property purchases made for twelve (12) months following the date of such notice.

(2) The Administrator may waive the payment requirement in paragraph (1) of this subsection.

(c) **Right to refuse service.** The Department of Central Services reserves the right to refuse service to any patron who exhibits or has exhibited unprofessional or inappropriate behavior or has failed to act in good faith, in the conduct of business with the agency.

*[OAR Docket #09-1166; filed 6-9-09]*

**TITLE 605. OKLAHOMA REAL ESTATE COMMISSION  
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES**

*[OAR Docket #09-1030]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Education and Examination Requirements
- 605:10-3-1. Prelicense education requirements [AMENDED]
- 605:10-3-5. Examinations [AMENDED]
- 605:10-3-6. Continuing education requirements [AMENDED]
- Subchapter 5. Instructor and Entity Requirements and Standards
- 605:10-5-1. Approval of prelicense course offerings [AMENDED]
- 605:10-5-2. Approval of continuing education offerings [AMENDED]
- 605:10-5-3. Standards for Commission approved real estate courses [AMENDED]
- Subchapter 7. Licensing Procedures and options
- 605:10-7-2. License terms and fees; renewals; reinstatements [AMENDED]
- 605:10-7-9. Nonresident licensing [AMENDED]
- 605:10-7-10. Resident applicants currently or previously licensed in other states [AMENDED]
- Subchapter 13. Trust Account Procedures
- 605:10-13-1. Duty to account; broker [AMENDED]
- Subchapter 15. Disclosures
- 605:10-15-4. Residential Property Condition Disclosure Act forms [AMENDED]

**AUTHORITY:**

Oklahoma Real Estate Commission; 59 O.S. §858-208

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July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 3. Education and Examination Requirements
- 605:10-3-5. Examinations [AMENDED]
- Subchapter 5. Instructor and Entity Requirements and Standards
- 605:10-5-1. Approval of prelicense course offerings [AMENDED]

**Gubernatorial approval:**

December 11, 2008

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26 Ok Reg 428

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 7. Licensing Procedures and options
- 605:10-7-9. Nonresident licensing [AMENDED]
- 605:10-7-10. Resident applicants currently or previously licensed in other states [AMENDED]
- Subchapter 15. Disclosures
- 605:10-15-4. Residential Property Condition Disclosure Act forms [AMENDED]

**Gubernatorial approval:**

September 18, 2008

**Register publication:**

26 Ok Reg 70

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08-1271

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

**605:10-3-1. Prelicense education requirements** Adding language clarifying that a broker examination shall include a review of the practice knowledge of a licensee as it relates to the subject matter content required for a provisional sales associate.

**605:10-3-5. Examinations** Amending the rule to explain: 1) the testing procedure to be utilized by the outsourced examination vendor, 2) how special accommodations will be handled to comply with the Americans with Disabilities Act, 3) how to view a failed test, 4) challenge a test or test questions, and 5) the validity time period of an examination application.

**605:10-3-6. Continuing education requirements** Allowing additional course options to count for required continuing education for any licensee. Requiring that a licensee who maintains the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of a license term shall be required to successfully complete the Broker in Charge course, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection.

**605:10-5-1. Approval of prelicense course offering** Decrease the instructor applicant's application fee and require failed instructor applicants to pay for re-examinations.

**605:10-5-2. Approval of continuing education offerings** Adding language stating that any improper conduct or activity of the director, instructor, or school entity shall be reason for investigation and possible removal of approved status.

**605:10-5-3. Standards for Commission approved real estate courses** Clarifying that notices that are posted by real estate school entities must advise real estate applicants of the following notice: "If you have been convicted of any crime, or if charges are pending, or if you have delinquent unpaid child support or student loans, please check with the Real Estate Commission before enrolling in this class. The Commission will allow you to seek preapproval prior to enrolling in a prelicense course."

**605:10-7-2. License terms and fees; renewals; reinstatements** Clarifying that any person who was licensed prior to the requirement of a criminal history background check shall be allowed to become relicensed so long as they comply with all licensing requirements as stated by the Commission; however, such person can proceed with relicensing and not have to wait on the criminal history background check.

**605:10-7-9. Nonresident licensing** Amend all sections that contain the word state to jurisdiction, convert the consent to service of jurisdiction to become part of the application, abolish language pertaining to application

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fee, and include information advising of either taking the state portion of the examination or the entire real estate examination.

**605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions** Amend language for applicants who have been licensed in other jurisdictions and desiring to be licensed as a resident of this jurisdiction by requiring that they must at the least successfully complete the jurisdiction specific examination.

**605:10-13-1. Duty to account; broker** Include language stating the proper procedure for destroying files of the brokerage.

**605:10-15-4. Residential Property Condition Disclosure Act forms** Clarifying that when a change occurs to the Residential Property Condition Disclosure Form that all executed forms in existence at the time of the change are valid throughout the 180 day time period as stated in the Act.

## CONTACT PERSON:

Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 2401 N.W. 23<sup>rd</sup> 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, 2009:**

## SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

### 605:10-3-1. Prelicense education requirements

(a) On and after July 1, 1993, as evidence of an applicant's having satisfactorily completed those education requirements as set forth in Sections 858-302 and 858-303 of the Code, each applicant for licensure shall present with his or her application a certification showing successful completion of the applicable course of study approved by the Commission as follows:

(1) To qualify an applicant for examination and licensure as a provisional sales associate, the course shall consist of at least ninety (90) clock hours of instruction or its equivalent as determined by the Commission. In order for a provisional sales associate to obtain a sales associate license, the provisional sales associate must, following issuance of a provisional license, complete additional education as required in Section 858-302 of the Code. The prelicense course of study shall be referred to as the Basic Course of Real Estate, Part I of II and shall encompass the following areas of study:

- (A) Real Estate Economics and Marketing
- (B) Nature of Real Estate
- (C) Rights and Interest in Real Estate
- (D) Legal Descriptions
- (E) Title Search, Encumbrances, and Land Use Control
- (F) Transfer of Rights
- (G) Service Contracts
- (H) Estimating Transaction Expenses
- (I) Value and Appraisal
- (J) Marketing Activities
- (K) Fair Housing
- (L) Contract Law Overview
- (M) Contract Law and Performance
- (N) Offers and Purchase Contracts

- (O) Financing Real Estate
- (P) Closing a Transaction
- (Q) Regulations Affecting Real Estate
- (R) Disclosures and Environmental Issues
- (S) Property Management and Leasing
- (T) Risk Management
- (U) Professional Standards of Conduct
- (V) Law of Agency

(2) To qualify an applicant for examination and licensure as a broker, the course shall consist of at least ninety (90) clock hours of instruction or its equivalent as determined by the Commission. Such course of study shall be referred to as the Advanced Course in Real Estate and shall encompass the following areas of study:

- (A) Laws and Rules Affecting Real Estate Practice
- (B) Broker Supervision
- (C) Establishing a Real Estate Office
- (D) Professional Development
- (E) Business, Financial, and Brokerage Office Management
- (F) ~~Office Financial Management~~ Oklahoma Broker Relationships
- (G) Anti-Trust and Deceptive Trade
- (H) Risk Management and Insurance
- (I) Mandated Disclosures, Hazards, and Zoning
- (J) Real Estate Financing
- (K) Specialized Property Operations and Specialty Areas
- (L) ~~Transaction Management~~ Trust Accounts and Trust Funds
- (M) Closing a Real Estate Transaction
- (N) Closing Statements
- (O) Professional Standards of Conduct
- (P) Property Ownership
- (Q) Land Use Controls and Regulations
- (R) Valuation and Market Analysis
- (S) Law of Agency
- (T) Contracts
- (U) Transfer of Property
- (V) Practice of Real Estate
- (W) Real Estate Calculations

(b) As evidence of an applicant's having successfully completed those education requirements as set forth in Section 858-304 of the Code, each applicant shall present a certified transcript from an institution of higher education, accredited by the Oklahoma State Regents for Higher Education or the corresponding accrediting agency of another ~~state~~ jurisdiction.

(1) The basic course of real estate shall be limited to Basic Real Estate Principles and Practices; provided, however, that a course or combination of courses not so titled may be accepted if the course content has been determined by the Commission to be equivalent as one and the same as enumerated in this Section.

(2) The advanced course of real estate shall be limited to Advanced Real Estate Principles and Practices; provided that a course or combination of courses not so titled may be accepted if the course content has been determined

by the Commission to be equivalent as one and the same as that enumerated in this Section.

(3) The Commission shall accept in lieu of a certified transcript a course completion certificate as prescribed by the Commission.

(c) **Entities allowed to seek approval.** The education courses required of this Section shall be satisfied by courses approved by the Commission and offered by:

- (1) The Commission
- (2) An area vocational-technical school
- (3) A college or university
- (4) A private school
- (5) The Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof,
- (6) The Oklahoma Bar Association, American Bar Association, or any affiliate thereof; or
- (7) An education provider.

(d) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements to include an examination.

(e) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

**605:10-3-5. Examinations**

(a) **Applicant must appear in person.** When an application for examination has been submitted to the Commission, the applicant shall be required to appear in person, at a time and place to be designated by the Commission, and answer questions based on the required subject matter as prescribed elsewhere in the rules of this Chapter. ~~Unless otherwise directed by the Commission, all examinations will be conducted in Oklahoma City.~~ On and after August 1, 2001, each broker examination fee shall be Seventy-five Dollars (\$75.00) and each provisional sales associate/sales associate examination fee shall be Sixty Dollars (\$60.00).

(b) **Computer and written examinations Special Accommodations.** ~~In the event a computer is available and in working order, the Commission shall administer the examination by computer. If an applicant requests to take the examination in a written form and a computer is available, a charge of Twenty Dollars (\$20.00) in addition to the regular examination fee will be assessed the applicant. In the event a written request is made by a handicapped individual, the Commission may waive the fee.~~ In cases where special accommodations are necessary under the requirements of the Americans with Disabilities Act, applicants must notify the examination supplier in advance by submitting a written request, on a form prescribed by the Commission, describing the disability and necessary accommodations.

(c) **Failure to pass examination.** If an applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of a new examination fee for each examination to be attempted.

(d) **Applicant request to view failed examination.** ~~An applicant who fails the examination may, within thirty (30) days of the date of the examination, personally visit the Commission office and view his or her has the option of reviewing their missed questions at the end of their examination. If, as a result of such viewing, the applicant is of the opinion incorrect grading was the cause for his or her receiving a failing grade, he or she may within ten (10) days request a review by the Commission of his or her examination. The purpose of such a review by the Commission shall be to determine whether or not such examination was correctly graded. An applicant may challenge the validity of any question(s) they identify as incorrectly graded. A challenge to a question that pertains to the Oklahoma law portion of the examination will be sent to the Commission by the examination supplier. A challenge to a question that pertains to the national portion will fall under the review policy of the examination supplier. In either case, both the examination supplier and/or the Commission shall have five (5) business days in which to review and issue a response to the applicant.~~ Applicants will be allowed up to one (1) hour to review their exam and the applicant will not be allowed to test on the same day they review a failed examination. No notes, pencils, or electronic devices will be allowed during review nor will they be allowed to leave the examination area with the examination questions.

(e) **Application valid for one year.** The original examination application shall be valid for one (1) year from date of filing. ~~A request to write an examination submitted more than one (1) year from the most recent original application filing must be accompanied by a new original application form. After such date, an applicant must complete a new original application form.~~

(f) **Passing percentile of examination.** A score of seventy-five percent (75%) or more shall be considered a passing grade on the broker or provisional sales associate/sales associate examination.

(g) **Validity period of examination results.**

(1) ~~Approved or incomplete application.~~ The results of an examination wherein an applicant scored a passing grade shall be valid for ~~ninety (90) days~~ one (1) year from the date of such examination.

(2) ~~Unapproved application.~~ The results of an examination wherein an applicant scored a passing grade shall be valid for ~~ninety (90) days~~ from the date the application has received final approval but shall not be valid for more than one year from the date of examination.

(h) ~~Extension of examination grade validity period.~~ An applicant may request in writing for an extension of the validity period, showing cause why such period should be extended. At the discretion of the Commission, such validity period may be extended.

(i) ~~Disciplinary examination fee.~~ A fee shall be charged for an examination which is directed by Order of the Commission as disciplinary action.

(j) ~~Broker applicants.~~ A broker applicant who completes an entire broker examination and who is unsuccessful, may, if he or she retakes the examination within thirty (30) days, elect not to complete the written closing statement portion again, but be

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~~given his or her first written closing statement and re-enter his or her multiple choice closing statement answers.~~

### 605:10-3-6. Continuing education requirements

(a) **Definition.** Continuing education shall be defined as any real estate oriented education course or equivalent, hereinafter called offering(s) intended:

- (1) To improve the knowledge of licensees.
- (2) To keep licensees abreast of changing real estate practices and laws.
- (3) To help licensees meet the statutory requirements for license renewal.

(b) **Purpose.** The purpose of continuing education is to provide an educational program through which real estate licensees can continually become more competent and remain qualified to engage in real estate activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(c) **Goals.** The goals of continuing education are:

- (1) To provide licensees with opportunity for obtaining necessary current information and knowledge which will enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.
- (2) To assure that the licensees are provided with current information regarding new and/or changing laws and regulations which affect the real estate business.
- (3) To ensure that the consumers interest is protected from unknowledgeable licensees.

(d) **Objectives.** The objectives of continued education are as follows:

- (1) For licensees to expand and enhance their knowledge and expertise so as to be continually effective, competent, and ethical as they practice real estate.
- (2) For licensees to review and update their knowledge of federal, state and local laws and regulations which affect real estate practices.

(e) **Entities allowed to seek approval.** The Commission may approve and/or accept any offering provided by an entity which meets the purposes, goals, and objectives of the continuing education requirement. The Commission may accept the following offerings as proof of meeting the continuing education requirement:

- (1) Any offering which is approved and presented by those entities enumerated in paragraph B, of 858-307.2 of the "Code".
- (2) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.
- (3) Any offering in real estate, or directly related area, not accepted in paragraphs (1) or (2) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.
- (4) Completion of an approved ~~seventy five (75)~~ ninety (90) hour prelicense broker course or an approved

forty-five (45) hour provisional sales associate postlicense course, or its respective equivalent as determined by the Commission shall suffice for 21-hours of continuing education credit for a licensee. An individual segment of an approved prelicense broker course or an approved provisional sale associate postlicense course shall suffice for continuing education credit provided such individual segment has also been separately approved for continuing education credit.

(f) **Ineligible courses.**

(1) The following offerings will not be considered by the Commission to meet continuing education requirements:

- (A) General training or education not directly related to real estate or real estate practices.
- (B) Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, and personal motivation that is not directly related to real estate.
- (C) Sales promotion or other meetings held in conjunction with the general real estate brokerage business.
- (D) Meetings which are a normal part of in-house training.
- (E) That portion of any offering devoted to breakfast, luncheon, dinner, or other refreshments.
- (F) Prelicense general training and education to obtain a provisional sales associate or sales associate license or license examination refresher courses for provisional sales associate/sales associate or broker.

(2) The list in (1) of this subsection does not limit the Commission's authority to disapprove any offering which fails to meet the adopted purposes, goals and objectives.

(g) **List of approved entities.** The Commission shall maintain a list of approved entities.

(h) **Licensee responsible for notification to Commission.** Each licensee shall be ultimately responsible to the Commission to furnish evidence of having successfully completed the continuing education requirements for license renewal, activation, or reinstatement, as set forth elsewhere in this Chapter. Each licensee shall present to the Commission evidence of completion of a minimum of twenty-one (21) clock hours of continuing education offerings acceptable by the Commission. As evidence of having completed the requirement each licensee shall present:

- (1) A certificate, and/or documents, statements and forms, as may reasonable be required by the Commission, or
- (2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(i) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements.

(j) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

(k) **Course limitations.**

(1) A particular course offering may not be taken for continuing education credit more than once from the same entity and/or instructor during a renewal period.

(2) Educational courses taken for disciplinary reasons shall not count towards the normal continuing education requirements for licensees.

(l) **Required number of continuing education hours.** The required number of continuing education hours for a licensee shall be as follows:

~~(1) Beginning July 1, 1996, the number of continuing education hours needed by a licensee for license renewal, reinstatement or activation, with the exception of those exempt as set out in Title 59, O.S. Section 858-307.2, shall be twenty one (21) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Each licensee shall be required to complete and include as part of said twenty one (21) clock hours of continuing education nine (9) clock hours of courses conducted on required subjects as approved by the Commission.~~

~~(2) As a condition of an active license renewal, each license with an expiration date of June 30, 2005 and thereafter, with the exception of those exempt as set out in Title 59, 858-307.2, shall provide evidence of completion of twenty one (21) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Such hours shall have been taken during the license term preceding the license term for which the license is to be renewed, and wherein such hours have not been used for license activation or active reinstatement.~~

~~(3) As a condition of a license activation or active reinstatement, each license with an expiration date of June 30, 2005 and thereafter, with the exception of those exempt as set out in Title 59, 858-307.2, shall provide evidence of completion of twenty-one (21) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Such hours shall have been taken in the same license term for which the license is to be issued, with the exception of a licensee whose hours were not used in the preceding license term. In that case, the hours taken in the preceding license term shall count towards an applicable license activation or active reinstatement.~~

~~(4) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education twelve (12) clock hours of required subject matter as directed by the Commission.~~

~~(5) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, and Current Issues including Code and Rule Updates. The remaining~~

nine (9) clock hours may consist of elective subject matter as approved by the Commission.

~~(4) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.~~

~~(5) A licensee who maintains the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of a license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection.~~

## SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

### 605:10-5-1. Approval of prelicense course offerings

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

- (1) Completed course application.
- (2) Application fee of One Hundred Twenty-five Dollars (\$125.00) for each course.
- (3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use the OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

- (1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.
- (2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.
- (3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section is refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

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(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Twenty-Five Dollar (\$25.00) ~~One Hundred Dollar (\$100.00)~~ application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

- (1) A bachelor's degree with a major in real estate from an accredited college or university.
- (2) A bachelor's degree from an accredited college or university, and at least two (2) years active experience within the previous ten (10) years as a real estate broker.
- (3) A real estate broker licensed in Oklahoma with a minimum of five (5) years active experience within the previous ten (10) years as a real estate broker and proof of high school education or its GED equivalent.
- (4) An individual determined by the Commission to possess a combination of education and/or active broker experience in real estate or real estate related fields which ~~constitute~~ constitutes an equivalent ~~to~~ of one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has paid the appropriate examination fee and successfully completed an applicable Commission administered course content examination with a passing score of 80% or more. ~~An instructor shall be allowed to successfully complete the applicable examination one time without charge; thereafter, the applicable examination fee shall be charged for each examination.~~ If an instructor applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of the applicable examination fee for each examination to be taken. If an instructor applicant has successfully taken an applicable license examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, such passing score may be utilized to meet the applicable examination requirement in this section. If however, the instructor applicant does not obtain approval within 90 days of filing an instructor application, due to no fault on the part of the Commission, the instructor will be required to take the applicable examination again.

(g) **Instructor renewal requirements.**

- (1) In order to maintain approved status, an instructor must comply with the following:
  - (A) Attend a Commission directed Instructor Renewal Course every twelve (12) months. Instructors

approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved prelicense course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain ~~a record of~~ enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar (\$75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(k) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

**605:10-5-2. Approval of continuing education offerings**

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education offering shall make application for the approval or renewal of each offering. Such approval or renewal shall expire at the end of the twenty-fourth (24) month including the month of issuance.

(b) **Application form.** Each application by a sponsoring entity for approval of an offering or group of offerings not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable Seventy Dollar (\$70.00) application fee. Such application shall be made on a form prescribed by the Commission. The application shall include, but not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the offering.

(2) The title(s) of the course offering or offerings.

(3) A complete description of or copies of all materials to be distributed to the participants except that if materials provided by the Commission are to be used, a complete description shall not be required.

(4) The number of hours in each course offering.

(5) The tuition/registration fee and cancellation/refund policy.

(6) A copy of each offering's curriculum, or revised curriculum with revisions noted, including comprehensive course objectives, detailed outline of the course subject matter, instructor for each segment, and teaching technique used in each segment.

(7) The method of evaluation of the course offering which will be used by the entity.

(8) The procedure for monitoring attendance.

(9) A personal resume indicating name(s) and qualifications of the instructor(s).

(10) The number of years the entity has been offering real estate related education.

(11) Any other relevant information useful in determining that the entity is presenting an offering which will meet the definition, purposes, goals and objectives adopted by the Commission.

(12) A statement attesting to the fact that in accepting approval as a continuing education offering entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(d) **Course renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollars (\$70.00) for a twenty-four (24) month period. Renewal applications shall be subject to the same requirements as original applications, but may cross-reference an earlier application regarding previously approved course offerings to the extent that items have not changed since a previous application.

(e) **Change of information notice requirement.** Whenever there is any change in an offering, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising an offering as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit."

(g) **Course requirements and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an offering shall, within five (5) days of the completion thereof, submit to the Commission on a form prescribed by the Commission, a list of the names and license numbers of those licensees who successfully completed the said offering, along with other information which may reasonably be required.

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- (5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.
- (6) Each offering shall be presented in such facilities and on such premises as shall be necessary to properly present the course as determined by the Commission.
- (7) An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved course offering which is delivered to the licensees by way of television, the Commission may require that each delivering entity have a monitor in lieu of a Commission approved instructor.
- (h) **Recruitment disallowed.**
- (1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any company. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."
- (2) An instructor shall not wear any identification relating to a specific name or identity of a real estate company, a group of companies or franchises while in the class or on the premises.
- (i) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Ten Dollar (\$10.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:
- (1) Possession of a bachelor's degree in a related field.
- (2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction.
- (3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction. (4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.
- (j) **Denied application; appeal.** If the Commission shall be of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after such decision. Upon written request from such party, filed within thirty (30) days after receipt of such notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of such request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."
- (k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:
- (1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.
- (2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.
- (3) Falsification of records and/or applications filed with the Commission.
- (4) False and/or misleading advertising.
- (5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.
- (6) Failure to maintain proper classroom order and decorum.
- (7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.
- (8) Failure to comply with any portion of the Code or rules of this Chapter.
- (9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.
- (l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.
- (m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.
- (n) **Licensee/Instructor course credit.**
- (1) A licensee who shall instruct an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.
- (2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.
- (3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.
- (o) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

**605:10-5-3. Standards for Commission approved real estate courses**

(a) **Approved instructor.** Each in-class course offering shall be conducted by a Commission approved instructor. Each entity conducting a distance education course offering shall have available a Commission approved instructor. The instructor shall be available during normal business hours as posted by the instructor to answer questions about the course material and provide assistance as necessary.

(b) **Student must attend entire in-class instruction or complete all modules required for distance education instruction.** In order for an entity to certify a student as passing an approved course the student must either:

- (1) attend the required number of hours of in-class instruction; or
- (2) complete all instructional modules required for distance education instruction.

(c) **Student must successfully complete a prelicense, postlicense or distance education course offering examination.** In order for an entity to certify a student as passing an approved prelicense, postlicense or distance education course, the student must successfully complete an examination covering the contents of the course material.

(d) **Student transfers.** Except with the prior approval of the Commission, a student transferring from one course to another may not count any portion of the student's attendance or work in the former course toward passing the course. A student who enrolls in an entity which offers a Commission approved course may not transfer credit for a course or courses completed in that series to another entity unless the new entity offers the identical series of courses.

(e) **Course examinations.** Every approved prelicense and postlicense course offering shall conclude with an end-of-course examination consisting of no less than one hundred and thirty (130) questions administered by the approved entity. Every approved distance continuing education course offering shall conclude with an end-of-course examination consisting of no less than ~~ten (10)~~ seven (7) questions for each clock hour. End-of-course examination questions may not be the same as any previously used questions covering the respective course content.

(f) **Successful completion.** In order for a student to successfully complete a prelicense, postlicense or distance education course, the entity must require that the student complete all class material and/or modules and achieve a passing score of at least seventy-five percent (75%) on final examination. An entity shall require the student to complete sufficient material or modules to ensure mastery of the course offering, and shall require the student to complete the end-of-course examination. An entity may allow any student who fails to achieve a passing score the opportunity to take another examination without repeating instruction.

(g) **Grading standards.** In order for an entity to certify a student as passing an approved course, the student must meet the minimum grading standards established by this Section and the entity. On graded examinations for which this Section sets specific requirements, the entity's policy shall at least equal those requirements as listed in this Section. Other grading

standards shall be in accordance with generally accepted educational standards. An entity shall publish grading standards and give them to a student in a written form at the beginning of the course.

(h) **Commission may impose sanction.** The Commission may impose any sanction permitted by law or Rules of the Commission on the approval of any entity, director and/or instructor which fails to provide proper security for their course evaluation or examination and for failing to comply with standards as set out in this Chapter.

(i) **Each entity must post notice.** Each entity must post or provide a notice that is easily observed by any person desiring to enroll in a prelicense course. The notice must at least include the following language: "If you have been convicted of any crime, or if charges are pending, or if you have delinquent unpaid child support or ~~unpaid~~ student loans, please check with the Real Estate Commission before enrolling in this class. The Commission will allow you to seek preapproval prior to enrolling in a prelicense course."

(j) **Additional distance education course requirements.**

(1) Each course shall contain suitable learning objectives.

(2) Overview statements must be included for each course providing a quick preview of what is contained in the offering.

(3) An answer key for all examinations must be provided to the Commission with each course application. An answer key for examinations may not be included in any course materials provided to the student.

(4) From the date of enrollment, the course shall have a validity period of six (6) months in which to allow successful completion to be attained.

(5) Entities must include information with the course material that clearly informs the student of the completion time frame, passing and examination requirements, and any other relevant information necessary to complete the course.

(6) Each course must include a statement that the information presented in the course should not be used as a substitute for competent legal advice.

(7) Course offerings must be sufficient in scope and content to justify the hours requested for approval.

(k) Each entity shall promote the Basic Course of Real Estate as Part I of a two part series and the Provisional Postlicense Course of Real Estate as Part II of that series. Applicants are to be advised that Part II of the series is not to begin until after license issuance and shall be completed prior to their first license expiration.

**SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS**

**605:10-7-2. License terms and fees; renewals; reinstatements**

(a) **License term and fees.** Each original license issued under the Code on and after July 1, 1981, shall be issued to expire at the end of the thirty-sixth (36) month including the

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month of issuance. Each original provisional sales associate license issued under the Code on and after August 1, 2001 shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. On and after August 1, 2001:

- (1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars (\$210.00).
  - (2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars (\$125.00.) In order to activate such license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars (\$130.00.) Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
  - (3) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars (\$150.00.)
  - (4) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars (\$95.00.) In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars (\$100.00.) Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
  - (5) For a non-renewable original provisional sales associate license the fee shall be Seventy Dollars (\$70.00.)
  - (6) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars (\$125.00.)
  - (7) For each duplicate license or pocket card, where the original license is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents (\$7.50) shall be charged.
  - (8) An additional Fifteen Dollar (\$15.00) fee, the Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and subsequent license renewal for each license with the exception of a provisional sales associate license which fee shall be Five Dollars (\$5.00) for their twelve (12) month license term and a branch office which shall not pay the fee.
- (b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.
- (c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.
- (d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working

day shall be considered the due date for all renewals except electronic online renewal wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars (\$10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such a case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

- (1) **Lapsed less than one year.** In the case of a license lapsed less than one year:
  - (A) License and late penalty fee.
  - (B) Reinstatement fee.
  - (C) Documents as required by the Commission.
- (2) **Lapsed more than one year but less than two years.** In the case of a license lapsed more than one year but less than two years.
  - (A) License and late penalty fee.
  - (B) Reinstatement fee.
  - (C) A completed reinstatement application.
  - (D) A statement that the applicant has read a current License Code and Rules booklet.
  - (E) If applicable, a statement as to why the license fee was not paid in a timely manner.
  - (F) Documents as required by the Commission.
- (3) **Lapsed more than two years.** In the case of a license lapsed more than two years.
  - (A) License and late penalty fee(s).
  - (B) Reinstatement fee(s).
  - (C) A completed reinstatement application.
  - (D) Successful completion of the appropriate licensing examination.
  - (E) Documents as required by the Commission.
- (4) **Lapsed more than five years.** If such late application is submitted more than five (5) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.
- (5) **May apply as an original if lapsed more than two years.** In the case of a license lapsed more than two (2) years but less than five (5) years, the applicant may at his or her option apply as an original applicant provided evidence is submitted to show that the applicant has successfully completed the appropriate prelicense course(s). A person who does not possess a valid license may be considered for re-license only through the provision for reinstatement unless such license has been lapsed more than two (2) years. In the case of a provisional sales associate,

the applicant would be required to repeat and successfully complete the postlicense requirement. If this option is elected by a previously licensed sales associate, the sales associate shall be regarded as an original applicant.

(g) **Reinstatement of a provisional sales associate license wherein postlicense education was completed prior to license expiration date.** On and after June 1, 1996, an applicant who successfully completed the postlicense education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (5).

(h) **Reinstatement of a provisional sales associate license wherein postlicense education was not completed prior to license expiration date.** On and after June 1, 1996, an applicant who has not successfully completed the postlicense educational requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled applicant whose license term is still current:

- (A) Applicable reinstatement fee.
- (B) Re-issuance fee.
- (C) Documents as required by the Commission.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled applicant whose license term has expired shall be required to comply with the requirements of (f) of this Section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

- (A) If a provisional sales associate completed the postlicensing requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through (5).
- (B) If a provisional sales associate did not complete the postlicensing requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(k) **Continuing education requirement.** On and after July 1, 1984, each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that he or she has completed the continuing education requirements enumerated in Section

858-307.2 of Title 59. Further, on and after July 1, 1984, an applicant seeking active reinstatement of a lapsed license must submit evidence that he or she has completed continuing education requirements. The applicant must meet the continuing education requirement for each term in which an active license is requested.

(l) **Sales to broker license fee prorated.** If a real estate sales associate or provisional sales associate shall qualify for a license as a real estate broker, the unused license fee shall be credited to the broker license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(m) **Licensed prior to effective date of national criminal history check and license expires ~~however eligible for reinstatement.~~**

(1) A Any licensee who allows their license to expire after January 1, 2008, shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If, the Commission does not receive a completed Part A of the application, completed finger print card and fee within thirty (30) days from the date their license was reinstated, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Therefore, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in the rules, have been received by the Commission.

(2) A Provisional Sales Associate who fails to renew and/or complete the post licensing education requirement shall be eligible to apply under the requirement under paragraph (m) (1) of this section. However, after a period of five (5) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(n) **Issuance of license from provisional sales associate to sales associate if licensed on and after August 1, 2001.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Postlicense Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Postlicense Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has successfully completed the Provisional Postlicense Course of Real Estate, Part II of II education requirement and has initiated a renewal for a renewable sales associate license.

(o) **Active status requested, however, Commission unable to activate for reasons as stated in statutes elsewhere.**

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In the event a licensee requests an active original license or subsequent license renewal to be issued on active status and for reasons beyond the Commission's control the licensee is unable to obtain an active license at that time, the fees as received by the Commission shall be retained and not refunded. Once the licensee corrects the problem with the appropriate regulatory agency and such agency authorizes the issuance of an active license, the Commission will then, upon receipt of an activation fee and required documentation, initiate the issuance of an active license within the respective license term.

(p) **Active sales associate to inactive broker license - no remaining credit to be given.** On and after August 1, 2001, in the event an active sales associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not credit the difference in the license fees.

### 605:10-7-9. Nonresident licensing

(a) **Nonresident licensed in another state jurisdiction.** A nonresident applicant may apply to the Commission for a license to operate as a nonresident by submitting all appropriate documents as required by the Commission and furnish evidence that the applicant possesses a current active license in their resident state jurisdiction or another state jurisdiction in which the applicant has qualified for a license. All nonresidents shall be required to complete the appropriate examination as required by the Commission. If, in the opinion of the Commission, there is question as to the competence of the nonresident applicant, such individual ~~may~~ shall be required to successfully complete additional educational courses ~~and/or the Oklahoma examination.~~ No inactive license experience may be credited to qualify under this Section. The Commission, at its discretion, may issue a nonresident license if, in the opinion of the Commission, such nonresident has qualified and maintains a license in another state jurisdiction and meets the following qualifications:

(1) A nonresident applicant who has been actively licensed as a sales associate or broker respectively for a minimum of two (2) years out of the previous five (5) years.

(A) A nonresident applicant that applies under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ application(s) ~~along with application fee.~~

(ii) ~~Certificate certification~~ of licensure from the state(s) jurisdiction in which the applicant has held and/or currently holds a license.

(iii) ~~Examination fee and successfully complete the state portion of the examination.~~

(iv) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this state jurisdiction, the applicant must complete and submit the following:

(i) Appropriate license application form(s) along with license and education and recovery fund fees.

(ii) ~~Consent for service of jurisdiction form.~~

(2) A nonresident applicant who has been actively licensed less than two (2) years as a sales associate or broker respectively out of the previous five (5) years must successfully complete the appropriate examination.

(A) A nonresident applicant applying under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ application(s) ~~along with examination fee.~~

(ii) ~~Certificate certification~~ of licensure from the state(s) jurisdiction in which the applicant has held and/or currently holds a license.

(iii) ~~Successfully Examination fee and successfully complete the entire appropriate examination.~~

(iv) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this state jurisdiction, the applicant must complete and submit the following:

(i) Appropriate license application form(s) along with license and education and recovery fund fees.

(ii) ~~Consent for service of jurisdiction form.~~

(b) **Nonresident agreement.** The Commission may enter into a nonresident agreement with another state jurisdiction and thereby qualify actively licensed nonresident applicants for licensing in this state jurisdiction provided the Commission determines that the educational and experience requirements of the other state jurisdiction are equivalent or equal to this state jurisdiction.

(c) **Nonresident applicant that is inactive or unlicensed in another state jurisdiction.** A nonresident applicant that holds an inactive license in another state jurisdiction and is unable to meet the requirement under paragraph (a) of this section or an applicant who is unlicensed in another state jurisdiction may apply to the Commission for a license to operate as a nonresident provisional sales associate or broker by submitting all appropriate documents and successfully completing all requirements as required by the Commission.

(1) The nonresident applicant must complete and submit the following:

(A) Appropriate ~~application~~ application(s) ~~along with examination fee.~~

(B) Qualify as an original applicant by submitting proof of appropriate required education.

(C) ~~Successfully Examination fee and successfully complete the entire appropriate examination.~~

(D) If applicable, ~~certificate certification~~ of licensure from the state(s) jurisdiction in which the applicant has held a license.

(E) Consent for service of jurisdiction form.

(2) Upon the Commission granting approval to the nonresident applicant for licensure in this state jurisdiction, the applicant must complete and submit the following:

(A) Appropriate license application form(s) along with license and education and recovery fund fees.

(B) ~~Consent for service of jurisdiction form.~~

(d) **Consent for service of jurisdiction.** Prior to the issuance of a license to a nonresident, such nonresident shall file

with the Commission a designation in writing that appoints the Secretary-Treasurer of the Commission to act as his or her licensed agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the Secretary-Treasurer of the Commission, shall be deemed sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original thereof. In such written designation, the licensee shall agree and stipulate that any notice or instrument which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice the Secretary-Treasurer shall forthwith mail a copy of the same, by certified mail, to the last known business address of the licensee.

(e) **License history and application requirements.** Prior to the approval of the application, the nonresident must file with the Commission a certificate certification of licensure from the real estate licensing jurisdiction of the licensee's resident state jurisdiction and/or other state(s) jurisdictions in which the applicant has held or currently holds a license. The applicant shall and pay the Commission the same examination fee and license fee as provided in the "Code" "Rules" for the obtaining of a resident sales associate or broker license in this state jurisdiction. The certificate certification of licensure shall be valid for sixty (60) days from date of issuance.

(f) **Approved application valid for ninety (90) days.** An approved application shall be valid for ninety (90) days.

(g) **Stipulations.** Nonresident licenses granted under the provisions of this Section shall remain in force, ~~unless suspended or revoked by the Commission for just cause, or for failure to pay the renewal fee,~~ only as long as such nonresident remains licensed in good standing in this state jurisdiction, in his or her resident state jurisdiction and/or any other state jurisdiction in which the nonresident is or has been licensed.

(h) **Co-brokerage arrangements.** A broker of this state jurisdiction may participate in a cooperative brokerage arrangement with a broker of another state jurisdiction provided that each broker conducts real estate activities only in the state jurisdiction in which they are licensed.

(i) **Request for license transfer.** In the event a nonresident Oklahoma licensee desires to transfer the license and obtain a resident Oklahoma license or desires to transfer the license to another ~~state or~~ jurisdiction, the nonresident licensee shall be required to meet all applicable requirements and pay the appropriate change of address fee and submit all appropriate documents as required by the Commission. In the event a resident Oklahoma licensee desires to transfer the license and obtain a nonresident Oklahoma license, the licensee shall be required to pay the appropriate change of address fee and complete and submit all appropriate documents as required by the Commission.

(j) **Continuing education.** If a nonresident licensee satisfies a continuing education requirement in another state jurisdiction for license renewal, the Commission will exempt

the nonresident licensee from the continuing education requirement in this state jurisdiction. In order to qualify for the exemption, the nonresident licensee must file with the license renewal of this state jurisdiction a certificate certification from the state jurisdiction in which the continuing education was satisfied stating that the nonresident licensee has completed the continuing education requirement for license renewal in that state jurisdiction. The certificate certification from the state jurisdiction verifying the nonresident's compliance with continuing education in the other state jurisdiction must be received by the Commission within sixty (60) days of issuance by the other state jurisdiction and must be received in conjunction with license renewal.

**605:10-7-10. Resident applicants currently or previously licensed in other states jurisdictions**

(a) **Requirements.** In order to qualify under previously licensed procedures, an applicant must complete and submit all appropriate documents as required by the Commission and furnish evidence that the applicant possesses or has possessed a license in good standing in another state(s) jurisdiction. ~~No inactive license experience may be credited to qualify under this Section.~~ The Commission, at its discretion, may issue the applicant a license if such previously licensed applicant meets all of the requirements of either paragraphs (1), (2), (3) or (4) of this subsection:

(1) If a nonresident agreement exists between Oklahoma and the jurisdiction in which the applicant qualified for a license, the Commission shall qualify the licensed applicant through the nonresident agreement. In order to qualify under this paragraph an individual must furnish evidence that the license from the former state jurisdiction has not been inactive more than six (6) months prior to application to this state jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ applications(s) along with application fee.

(ii) License certification from the state(s) jurisdiction in which the applicant has held or currently holds a license.

(iii) Examination fee and successfully complete the state portion of the examination.

(B) Upon the Commission granting approval to the applicant for licensure in this state jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(2) If a nonresident agreement does not exist, the applicant shall be required to furnish evidence of two (2) years of active experience respectively as a sales associate or broker out of the previous five (5) years. In order to qualify under this paragraph an individual must furnish evidence that the license from the former state jurisdiction

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has not been inactive more than six (6) months prior to application to this state jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ application(s) ~~along with application fee.~~

(ii) License certification from the state(s) jurisdiction in which the applicant has held or currently holds a license.

(iii) Examination fee and successfully complete the state portion of the examination.

(B) Upon the Commission granting approval to the applicant for licensure in this state jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(3) An applicant who does not possess the required two (2) years active experience out of the previous five (5) years respectively as a sales associate or broker, or an applicant who does not meet all of the requirements of either paragraphs (1) or (2) of this subsection, but obtained the appropriate license in the other state jurisdiction within the past five (5) years, shall be required to take and successfully complete the entire appropriate examination.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ application(s) ~~along with examination fee.~~

(ii) License certification from the state(s) jurisdiction in which the applicant has held or currently holds a license.

(iii) ~~Successfully~~ Examination fee and successfully complete the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this state jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(4) An applicant who has not been actively licensed during any portion of the previous five (5) years in the other state jurisdiction shall be regarded as an original applicant; ~~however, if an applicant successfully completed the appropriate real estate course approved in another state for real estate licensure and such course's duration is equivalent to Oklahoma's hourly course requirements, the applicant may be granted to sit for the appropriate examination and shall be regarded as an original applicant.~~

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate ~~application~~ application(s) ~~along with examination fee.~~

(ii) License certification from the state(s) jurisdiction in which the applicant has held or currently holds a license.

(iii) Qualify as an original applicant by submitting appropriate required education.

(iv) ~~Successfully~~ complete the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this state jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate, broker associate or broker license.

(b) **May be required to submit to additional requirements.** If, in the opinion of the Commission, there is question as to the competence of the previously licensed applicant, such individual may be required to submit to additional educational courses and/or the Oklahoma examination.

~~(c) **Application requirements.** Any applicant seeking to transfer his or her license to Oklahoma from another state must pay the required examination and regular license fee, whether or not the examination from the other state is accepted for substitution. Prior to the issuance of any license, the applicant must file with the Commission a certificate of licensure from the state(s) in which the applicant has held or currently holds a license. The certificate of licensure shall be valid for sixty (60) days from date of issuance. No inactive license experience may be credited to qualify under this Section. Such approved application shall be valid for ninety (90) days.~~

### SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

#### 605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate account in a financial institution wherein the deposits are insured by an agency of the federal government.

(B) The broker is required to be a signor on the account.

(C) The account must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(D) All escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.

(E) The broker shall maintain such funds in said account until the transaction involved is consummated or terminated and proper accounting made.

(F) The broker shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse

the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents furnished to all parties.** A broker shall insure the delivery of a copy of all instruments to any party or parties executing the same, where such instrument has been prepared by the broker or his or her associates and relates to the agreement with his or her principal or pertains to the real estate transaction in which he or she or one of the associates has participated.

(j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursement of funds. Records as referenced in this paragraph shall be destroyed in a secure manner.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

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- (7) A broker shall maintain no less than two (2) copies of the alternative media.
- (n) **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:
- (1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:
    - (A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.
    - (B) Release forms must be filed for all licensees affiliated with the firm.
    - (C) The broker must either transfer to a new firm or place his or her license on inactive status.
  - (2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.
  - (3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.
  - (4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursement of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.
  - (5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursement of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.
  - (6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:
    - (A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.
    - (B) The name and address of the authorized broker, entity or legal representative.
    - (C) A trust account reconciliation sheet indicating ledger balance and financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.
    - (D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts

to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

## SUBCHAPTER 15. DISCLOSURES

### 605:10-15-4. Residential Property Condition Disclosure Act forms

- (a) **Development and amendment of forms.** In accordance with Oklahoma Statutes, Title 60, Section 833 the Commission shall develop and amend by rule the forms for the Residential Property Condition Disclosure Statement and Residential Property Condition Disclaimer Statement. Effective ~~November 1, 2003~~ July 11, 2008 the disclosure statement is amended and all disclosure forms executed prior to ~~November 1, 2003~~ July 11, 2008 will remain in force and valid until expiration of the 180 days from the date noted thereon.
- (b) **Availability of forms.** The forms shall be available to the public upon request on and after July 1, 1995.
- (c) **Copy of form format.** The Residential Property Condition Disclosure Statement as referenced in this section is set out in Appendix A at the end of this Chapter. The Residential Property Condition Disclaimer Statement as referenced in this section is set out in Appendix B at the end of this Chapter.

*[OAR Docket #09-1030; filed 5-27-09]*

## TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 1. OPERATIONS AND PROCEDURES

*[OAR Docket #09-1083]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 15. Hunter Education Rules  
800:1-15-1. General requirements [AMENDED]  
800:1-15-2. Hunter education certification requirements [AMENDED]  
800:1-15-3. Instructors [AMENDED]  
Subchapter 19. Aquatic Education Rules [NEW]  
800:1-19-1. Instructors [NEW]  
800:1-19-2. Administrative requirements [NEW]

### AUTHORITY:

Title 29 O.S., Sections 3-103 and 4-112A; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

### DATES:

#### Comment period:

December 1, 2008 - January 16, 2009

#### Public hearings:

Public Hearings were held at the following locations:

#### Date:

**January 12, 2009**

**Time: 7:00 p.m.**

Clinton - City Hall, 415 Gary Blvd

Enid - Central Fire Stations, 410 W. Garriott

Jenks - Tulsa Technology Center, 801 East 91<sup>st</sup> Street

Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd

Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar Room B

Poteau - Kiamichi Vo-Tech, 1509 S. McKenna

**Date:**

**January 13, 2009**

**Time: 7:00 p.m.**

Ada - Pontotoc Technology Center, 601 West 33rd

Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259

Lawton - Lawton Public Library, 110 SW 4th

Muskogee - Muskogee Public Library, 801 W. Okmulgee

Ponca City - Pioneer Vo-Tech, 21-1 N. Ash

Woodward - Northwest Electric - 2925 Williams Ave.

**Date:**

**January 15, 2009**

**Time: 7:00 p.m.**

Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo

Hwy

Guymon - OSU Extension Center, 301 N. Main

Hugo - Kiamichi Tech Center, 107 South 15th St.

**Adoption:**

March 2, 2009

**Submitted to Governor:**

March 4, 2009

**Submitted to House:**

March 4, 2009

**Submitted to Senate:**

March 4, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.

**Final adoption:**

April 29, 2009

**Effective:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

These proposed rule amendments: 1)Bring rules in line with state law; provide more hunter education options; provide more options for certifying hunter education volunteers, sets up volunteer incentive program. 2) Set up a new Subchapter 19 in Chapter 1 of Title 800 for Aquatic Education Rules.

**CONTACT PERSON:**

Nels Rodefeld, Chief of Information & Education Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3855 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2009:**

**SUBCHAPTER 15. HUNTER EDUCATION RULES**

**800:1-15-1. General requirements**

~~(a) Under Title 29, Section 4-112-A no person born on or after January 1, 1972, upon reaching sixteen (16) years of age and through thirty five (35) years of age, may purchase or receive any hunting license or hunting tag unless said person possesses and can exhibit a certificate of competency and safety in~~

~~the use and handling of firearms from the Oklahoma Department of Wildlife Conservation. The Department shall charge no fee for the issuance of such certificate.~~

~~(b) A hunter safety certificate issued by another state or country and approved by the Department of Wildlife Conservation shall be deemed to meet the requirements of this section (effective January 1, 1987). No person under sixteen (16) years of age may purchase a gun deer tag or hunt large game with any firearm without first obtaining a hunter safety certification (effective September 1, 1993).~~

~~(c) The provisions of this section shall not apply to any person who has an honorable discharge from the United States Armed Forces. In addition, the provisions of this subsection shall not apply to any person who is a resident landowner or a resident tenant, while hunting game other than deer or antelope, upon land owned or leased by such person. The provisions of this subsection shall not exempt nonresidents owning land in this state nor any person leasing land for the purpose of hunting. Requirements shall be according to 29 O.S., Section 4-112(A).~~

**800:1-15-2. Hunter education certification requirements**

(a) While attending a hunter education course, students are required to meet a set of requirements.

(1) Students must have a minimum of eight (8) hours of instruction per course, no more than 2 hours of which may be range instruction.

(2) Students must score at least 70% on all examinations.

(3) Students shall not exhibit disruptive classroom behavior or refuse to abide by hunter education curriculum.

(4) The student examination(s) shall be written, except an oral examination may be given to those who have difficulty reading, or are unable to complete the examination due to mental or physical reasons.

(5) All students, regardless of age, shall receive their hunter education certification upon completing the course and passing the examination.

(6) Replacement or duplicate certification cards shall be issued by the Department.

(b) The course shall include, but is not limited to, the following topics: basic firearm safety and handling, firearms cleaning and storage, muzzle loading, bowhunting, wildlife management and conservation, hunter responsibility, survival and wilderness first aid, wildlife identification, laws and regulations.

(c) Requirements for students failing to pass the examination.

(1) Those students failing to pass the examination with a score of 70% or better or failing to demonstrate an attitude of responsibility toward hunting safety will be required to retake the entire hour course and examination at a later date.

(2) However, if the volunteer instructor and/or Oklahoma Game Warden determine that the failing student(s) didn't understand the questions on the examination, the volunteer instructor or the Game Warden may elect to go

## Permanent Final Adoptions

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over missed questions with the student. If the student can correctly answer the question(s) they missed, the student may be issued their student card so long as the total score equals or exceeds 70%.

(d) Students may participate in a Home Study or internet version of the class. If the student completes the required material at home, they are given four (4) hours credit to apply toward the eight hour minimum certification requirement. ~~Students For Home Study classes students~~ must complete the remaining of four (4) hours under direct supervision of a certified instructor, and students who score at least 70% on the exam and comply with the requirements of paragraph (a), will receive their student certification. The internet version will be available to residents 10 years of age and older and will be available through the Department's Web site.

~~(e) State residents who are exempt from hunter education as defined in Title 29, Section 4-112(A) are eligible for proficiency testing only (as verified by a valid driver's license) born before Jan. 1, 1972 and state residents 36 years of age and older, are eligible to receive hunter education certification through an on-line proficiency testing program administered through the Department's Web site. In addition, any resident who has an honorable discharge from the United State Armed Forces, currently on active duty in the United States Armed Forces or a member of the National Guard, is also eligible for this certification.~~

### 800:1-15-3. Instructors

(a) Game Wardens are the official Department Hunter Education representative in their assigned area. All Wildlife Department employees may serve as instructors and the Department may allow members of the general public to serve as volunteer instructors for the Hunter Education Certification courses at its discretion.

(b) Game Wardens conduct the Hunter Education courses independently or they may request assistance from other Game Wardens or a volunteer instructor certified by the Department.

(c) Volunteer instructors may conduct Hunter Education courses without the assistance of a Game Warden so long as the county Game Warden or Warden Supervisor and the Program Coordinator are notified of the time and location of the course in advance. One Department certified instructor shall be present for the duration of all courses conducted by volunteer instructors.

(d) Volunteer instructors must be at least 21 years of age, possess a Hunter Education Certificate approved by the Department, be interviewed by a Game Warden or other approved Department employee, and undergo a background investigation.

(1) The background investigation and interview will be completed within sixty (60).

(2) After an interview and investigation is completed, the applicant will be notified of the Department's decision with thirty (30) days.

~~(e) Volunteers shall serve at the discretion of the Department, but in no event shall persons convicted of a felony, a misdemeanor crime of domestic violence, or fish and game violations be certified as a Hunter Education volunteer.~~

(1) Review of complaints shall be handled by the coordinator.

If the complaint warrants review of volunteer status, the accused volunteer will be given notice of the allegation against him or her and an opportunity to be heard within a reasonable time.

(2) After investigation of a complaint, the coordinator will report findings to the Director. The Director will make the final decision regarding volunteer status.

(f) All volunteer instructors shall comply with the following requirements:

(1) Complete all Departmental report forms prior to conducting a Hunter Education course.

(2) Attend and complete the Orientation/Teaching Methods/Techniques Instructor Workshop or be recommended by a Game Warden or Department employee, who is an instructor, for certification prior to conducting a Hunter Education course.

(3) Report to the Program Coordinator of the Oklahoma Hunter Education Program and the Game Warden or Warden Supervisor in the county where the volunteer is teaching a course.

(4) Follow the procedures outlined in the Instructor's Procedures Manual while conducting a Hunter Education course.

(5) Within a two year period, either complete additional training through the Department or outside courses approved by the Department or teach a minimum of one class per year, or submit a letter of support from a Game Warden.

(A) Volunteers who fail to meet this requirement will be classified as inactive and will be ineligible to conduct Hunter Education courses.

(B) Volunteers may be reactivated by notifying the Program Coordinator.

(g) The Department may administer a volunteer incentive program. Incentives will be equipment that can be used as teaching aids and will become the property of the volunteer. Points will be accumulated for classes taught and students certified. The volunteer will accumulate 15 points for each workshop they attend, 10 points for each class taught and one point per student assigned to the volunteer up to 25 points per class.

(1) Incentive levels are as follows: 100 points = shot shell ID kit, 150 = earmuffs, 200 points = training flipchart, 250 points = training flipchart, 300 points = binoculars, 400 points = compass, 500 points = knife, 750 points = gun cleaning kit, 1000 points = hunter education collector print, 1,500 points = survival kit, 2,000 points = pocket tool, 2,500 points = pen set, 3,500 points = compound bow kit, 4000 = pellet rifle, 5,000 = rifle or shotgun.

(2) The Department reserves the right to replace the incentives with items of a similar value based on availability or other factors, or deny the issuance of incentives.

## SUBCHAPTER 19. AQUATIC EDUCATION RULES

**800:1-19-1. Instructors**

(a) Volunteer instructors must be at least 18 years of age, complete the instructor workshop, complete all required forms and undergo a background investigation.

(b) Volunteers shall serve at the discretion of the Department.

(c) All volunteer instructors shall comply with the following requirements:

(1) Complete all Department report forms prior to conducting an Aquatic Resources Education course.

(2) Attend and complete an instructor-training workshop prior to conducting an Aquatic Resources Education course.

(3) Report to the Program Coordinator of the Aquatic Resources Education Program.

(4) Follow the procedures outlined in the Volunteer Instructor Handbook while teaching an Aquatic Resources Education class.

(5) Within a two-year period, help with or conduct two Aquatic Education Clinics.

(A) Volunteers who fail to meet this requirement will be classified as inactive and will be ineligible to conduct Aquatic Education Classes.

(B) Volunteers may be reactivated at the discretion of the Program Coordinator.

(d) The Department may administer a volunteer incentive program. Incentives will be equipment that can be used as teaching aids and will become the property of the volunteer. Points will be accumulated for classes organized and taught, introducing new volunteers to the program and overall activity by the volunteer. The volunteer will accumulate 15 points for each clinic they organize, 5 points for each clinic they assist with, 5 points for each new volunteer they introduce to the program, 5 points for attending a special topics course, 5 points for each year they are active and 20 points for helping with or organizing 10 or more clinics in a year.

(1) Incentive levels are as follows: First clinic = Coffee Cup, 30 points = Fillet Knife, 60 points = Hand Towel, 100 points = Tackle Pack, 150 points = Tackle Pack, 250 points = Multipurpose Pliers, 300 points = Spinnerbait Box with Spinners, 400 points = Digital Scales, 550 points = Fly Rod and Reel Combo, 700 points = Float Tube, 1000 points = Baitcast Reel, 1400 points = Rubber Boots, 1800 points = Rain Gear, 2200 points = Trolling Motor.

(2) The Department reserves the right to replace the incentives with items of a similar value based on availability or other factors, or deny issuance of incentives.

**800:1-19-2. Administrative requirements**

Clinic report forms and volunteer time sheets shall be submitted to the Program Coordinator by the volunteer(s) at each course.

(1) The clinic report form shall include the following information: location, Hours, dates, city and address of clinic.

(2) The form shall also include the number of participants attending the clinic.

(3) Clinic report forms are to be dated and signed by the instructor verifying that the clinic was conducted in compliance with program requirements.

(4) Clinic reports and volunteers time sheets are to be submitted to the Program Coordinator's office in a timely manner.

(5) An estimate of the ethnic background and gender of the participants in attendance shall also be included.

*[OAR Docket #09-1083; filed 5-27-09]*

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

*[OAR Docket #09-1084]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Harvest and Possession Limits

800:10-1-4. Size Limits on Fish [AMENDED]

800:10-1-5. Bag limits on fish [AMENDED]

Subchapter 3. Methods of Taking

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]

Subchapter 5. Area Restrictions and Special Fees

800:10-5-1.1. Definitions [NEW]

800:10-5-2. Department fishing areas [AMENDED]

800:10-5-3. Designated trout areas [AMENDED]

**AUTHORITY:**

Title 29 O.S., Sections 3-103, 4-101, 4-110, 5-401, 6-301, 6-302, 6-303; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

**DATES:**

**Comment period:**

December 1, 2008 - January 16, 2009

**Public hearings:**

Public Hearings were held at the following locations:

**Date: January 12, 2009**

**Time: 7:00 p.m.**

Clinton - City Hall, 415 Gary Blvd

Enid - Central Fire Stations, 410 W. Garriott

Jenks - Tulsa Technology Center, 801 East 91<sup>st</sup> Street

Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd

Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar Room B

Poteau - Kiamichi Vo-Tech, 1509 S. McKenna

**Date: January 13, 2009**

**Time: 7:00 p.m.**

Ada - Pontotoc Technology Center, 601 West 33rd

Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259

Lawton - Lawton Public Library, 110 SW 4<sup>th</sup>

Muskogee - Muskogee Public Library, 801 W. Okmulgee

Ponca City - Pioneer Vo-Tech, 21-1 N. Ash

Woodward - Northwest Electric - 2925 Williams Ave.

**Date: January 15, 2009**

**Time: 7:00 p.m.**

Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo

**Hwy**

Guymon - OSU Extension Center, 301 N. Main

Hugo - Kiamichi Tech Center, 107 South 15<sup>th</sup> St.

**Adoption:**

March 2, 2009

**Submitted to Governor:**

March 4, 2009

**Submitted to House:**

March 4, 2009

# Permanent Final Adoptions

## Submitted to Senate:

March 4, 2009

## Gubernatorial approval:

March 24, 2009

## Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.

## Final adoption:

April 29, 2009

## Effective:

January 1, 2010

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 3. Methods of Taking

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]

## Gubernatorial approval:

October 17, 2008

## Register publication:

26 Ok Reg 203

## Docket number:

08-1311

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

These proposed rule amendments: 1) Delete Optima Lake from 14 inch black bass length limit and add tailwaters to the list of lakes that have 14-inch minimum length limits on walleye, sauger and saugeye (Altus-Lugert, Ellsworth, Fort Cobb, Foss and Lawtonka, and Murray lakes). Add Lone Chimney to the list of lakes with 14 inch black bass length limit. 2) Restrict angler harvest to one (1) blue catfish greater than or equal to (>) 30 inches. Delete creel limits for northern pike and muskellunge; delete hybrid limits on Optima, Ft. Supply, and Great Salt Plains. 3) Add seining and minnow traps to the list of legal means of collecting bait for personal use. 4) Add definitions of "artificial lures and flies", "barbless hooks", and "glass beverage containers". 5) (1) Prohibit the possession of glass beverage containers at Department owned lakes, access areas and designated trout areas except in designated camp sites and parking lots. (2) Make fishing "catch & release only" for impoundments on the new Cimarron Bluff WMA. (3) Allow cast netting for shad in the Lower Illinois River designated trout area from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge.

## CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2010:**

## SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

### 800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from these waters:

(A) **Lakes and Reservoirs** - Adair Recreation Area, Altus-Lugert, Arcadia, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line,

Greenleaf, Hefner (applies to largemouth bass only), Heyburn, Hudson, Hugo, Kaw, Keystone, Lone Chimney, Oologah, ~~Optima~~, Overholser (including tailwaters and downstream to NW 10th St. bridge), Pine Creek, Sardis, Skiatook, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one-half mile above county road bridge number 156, on Holson Creek).

(B) **McClellan-Kerr Arkansas River Navigation System** - All lakes, cutoffs and oxbows from the Oklahoma-Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.

(C) **Department of Wildlife Conservation fishing areas** - Lakes Burtschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Wayne Wallace, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Okmulgee, (excluding the Deep Fork River), Pushmataha, Robbers Cave, Robert S. Kerr, Sandy Sanders, Spavinaw, Stringtown, and all ponds and lakes in the Ouachita National Forest.

(D) Lower Illinois River below Tenkiller Dam, including the old river channel.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Birch, Chimney Rock (W.R. Holway), Arbuckle, Lone Chimney, Okmulgee, Vanderwork and Hall.

(3) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from Broken Bow Lake (downstream from the slab at the Narrows), Tenkiller Lake (downstream from Horseshoe Bend boat ramp), and from Lake Elmer Thomas.

(4) All crappie (*Pomoxis* sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(5) All flathead catfish (*Pylodictis olivaris*) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(6) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the

Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(7) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Lake Nanih Waiya, Lake Raymond Gary, Dripping Springs Lake and Crowder Lake (Washita County).

(8) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(9) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(10) All smallmouth bass less than eighteen (18) inches in total length must be returned to the water unharmed immediately after being taken from Lake Hefner.

(11) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(12) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

(13) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

**800:10-1-5. Bag limits on fish**

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except at Lake Hefner where the limit on smallmouth bass is one (1) fish 18 inches or longer, in "Close

To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs Lake, Lake Raymond Gary and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer at Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate, of which only one (1) smallmouth bass may be twelve (12) inches or longer, in Glover River from the confluence with Little River upstream to the "Forks of the Glover River" where the limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate of which only three (3) may be smallmouth bass, and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (*Pomoxis* sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately 1/2 mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower

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Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

~~(6) One (1) Northern pike.~~

~~(7) One (1) muskellunge.~~

~~(86) Five (5) walleye, sauger and/or saugeye, or five (5) in aggregate.~~

~~(97) Fifteen (15) striped bass of which only five (5) may be twenty (20) inches or longer, except in the discharge area of Sooner Reservoir where the daily bag limit is five (5) and at Great Salt Plains Reservoir where the daily bag is twenty (20) of which only five (5) may be twenty (20) inches or longer (no culling).~~

~~(408) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.~~

~~(449) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.~~

~~(4210) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Great Salt Plains, Konawa, Ft. Supply, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.~~

~~(4311) Five (5) striped bass hybrids of which only two (2) may be 20 inches or longer in Skiatook Lake.~~

~~(4412) Five (5) striped bass hybrids in Lake Carl Etling.~~

~~(4513) Five (5) striped bass hybrid and/or white bass in Optima Reservoir and the discharge area of Sooner Reservoir.~~

~~(4614) Twenty-five (25) white bass in Lake Texoma.~~

~~(4715) One (1) paddlefish (*Polydon spathula*) per day, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's paddlefish permit number. Paddlefish or their parts must remain tagged until~~

the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.

~~(4816) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or its authorized agency, an annual paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.~~

~~(4917) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).~~

~~(2018) One (1) alligator gar (*Atractosteus spatula*) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.~~

~~(2419) Other fish do not have bag or possession limits.~~

### SUBCHAPTER 3. METHODS OF TAKING

#### 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

- (2) Black Fork Creek is closed except that portion from the old Heavener Fish Hatchery Dam downstream to the confluence with Poteau River shall be open during the period beginning December 1 and continuing through May 15 of the following year.
- (3) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.
- (4) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.
- (5) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.
- (6) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.
- (7) The following portions of Grand River:
  - (A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.
  - (B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately  $\frac{1}{2}$  mile) is closed throughout the year with the next  $\frac{1}{2}$  mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.
- (8) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
- (9) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.
- (10) The taking of paddlefish by bow and arrow is prohibited from May 16 through March 14 of the following year, statewide.
- (11) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper throughout the year during daylight hours only.
- (12) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.
- (b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters except, within waters of Delaware and Mayes Counties (excluding reservoir tailwaters which are closed) divers equipped with scuba gear may use a grabhook for taking nongame fish only from June 15 through July 31.
- (c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:
  - (1) Rivers and streams from December 1 through March 31, except:
    - (A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.
    - (B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.
    - (C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.
    - (D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.
    - (E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.
    - (F) The following portions of Grand River:
      - (i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.
      - (ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.
    - (G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.
    - (H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.
  - (2) Lakes and reservoirs throughout the year, except:
    - (A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.
    - (B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.
    - (C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.
    - (D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.
  - (3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

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(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and Wister and Hudson (Markham Ferry) which are open from 10 p.m. to 6 a.m.; shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately  $\frac{1}{2}$  mile) is closed throughout the year with the next  $\frac{1}{2}$  mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Black Fork Creek within the boundaries of LeFlore County is closed throughout the year, except during the period from April 15 through May 15 each year when snagging shall be lawful.

(I) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(J) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(K) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish only throughout the year in all:

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10<sup>th</sup> St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Only nets defined as gill nets, trammel nets, hoop nets or haul seines may be used, provided:

(1) Hoop nets shall be no longer than ten (10) feet in length with mesh size no smaller than three (3) inch square, constructed of nonmetallic mesh only, having no more than seven (7) hoops three (3) feet in diameter or smaller.

(2) Mesh size for gill nets and trammel nets, or seines shall be no smaller than four (4) inch square mesh.

(3) All nets must be attended once every twenty-four (24) hours.

(4) Each license holder shall be limited to a maximum of three hundred (300) feet of net or a total of four (4) hoop nets in the water at any time.

(5) Each net shall have the name and address of the owner attached thereto, if the net is to be left unattended.

(6) It shall be unlawful to sell, barter, or trade, ship or transport from the State of Oklahoma any fish taken under the noncommercial netting provisions.

(7) Noncommercial netting is prohibited statewide during April and May annually.

(8) Only nongame fish may be taken in waters that are open for noncommercial netting.

(9) The following lakes and reservoirs are closed to all such netting for game and/or nongame fish except under commercial fishing license:

- (A) Canton;
- (B) Wister;
- (C) Fort Gibson;
- (D) Lugert;
- (E) Oologah;
- (F) Grand Lake;
- (G) Wash Hudson;
- (H) Eufaula;
- (I) Texoma;
- (J) Arbuckle;
- (K) Carl Blackwell;
- (L) Fort Cobb;
- (M) Fort Supply;
- (N) Foss;
- (O) Greenleaf;
- (P) Heyburn;
- (Q) Hulah;
- (R) Keystone;
- (S) Murray;
- (T) Salt Plains;
- (U) Tenkiller;
- (V) Thunderbird;
- (W) Broken Bow;
- (X) Pine Creek;
- (Y) Robert S. Kerr;
- (Z) Webbers Falls;
- (AA) W.D. Mayo;
- (BB) Chouteau;
- (CC) Kaw;
- (DD) Newt Graham;
- (EE) Carl Albert;
- (FF) Hugo;
- (GG) Sooner;
- (HH) Konawa;
- (II) Ellsworth;
- (JJ) Lawtonka;
- (KK) Copan;
- (LL) Sardis;
- (MM) Optima;
- (NN) Atoka;
- (OO) Clayton State Park Lake;
- (PP) Eucha;
- (QQ) Spavinaw;
- (RR) Arcadia;
- (SS) McGee Creek;

(TT) all Department Fishing Areas and all ponds and lakes in the Ouachita National Forest;

(UU) all waters within the boundaries of the Wichita Mountains Wildlife Refuge; and

(VV) all new Federal Reservoirs.

(WW) all "Close To Home" fishing waters are closed.

(XX) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10<sup>th</sup> St. bridge) and Draper are closed.

(10) The following rivers and streams are closed to all such netting for game and/or nongame fish except under commercial fishing license:

- (A) Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland Co.;
- (B) Kiamichi River above Hugo Lake and from Hugo Dam downstream to the Red River;
- (C) Caney River;
- (D) Little River upstream from Highway 98 Bridge;
- (E) Glover River upstream from State Highway 7;
- (F) Mountain Fork River upstream from U.S. Highway 70 Bridge;
- (G) Washita River upstream to U.S. Highway 77 Bridge, south of Davis;
- (H) Red River from the Choctaw/Bryan County line upstream to Interstate 35 Bridge;
- (I) Blue River;
- (J) Illinois River;
- (K) Barren Fork River;
- (L) Pennington Creek;
- (M) Lukfata Creek;
- (N) Black Fork Creek;
- (O) Lee Creek;
- (P) Deep Fork River upstream from Lake Eufaula to Arcadia Reservoir dam;
- (Q) Poteau and Fourche Maline Rivers in LeFlore County;
- (R) McGee Creek;
- (S) Sans Bois tributary of R.S. Kerr Reservoir;
- (T) all cutoffs, oxbows, side channels and tributaries of the streams and rivers named in (A) through (S);
- (U) All the old oxbows and cutoffs of the Arkansas River in LeFlore and Sequoyah Counties;
- (V) Arkansas River;
- (W) Cimarron River and its tributaries;
- (X) Salt Creek in Osage County;
- (Y) Salt Fork River;
- (Z) the Canadian River from Eufaula Dam downstream to the confluence with Robert S. Kerr Reservoir;
- (AA) the Neosho River from the Kansas border downstream to the confluence with Webbers Falls Reservoir;
- (BB) Verdigris River; and
- (CC) Spring River.

~~(11) Cast netting, trawl netting and dip netting bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 10-5-3, 10-5-6. Cast~~

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nets shall have a mesh size no greater than three eighths (3/8) inch square mesh. Trawl nets pulled by motor driven boats may not exceed three (3) feet in diameter with no greater than three eighths (3/8) inch square mesh.

(g) Collecting Bait for personal use. Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eighths (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half (1/2) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half (1/2) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

### SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

#### 800:10-5-1.1. Definitions

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

(1) "artificial flies and lures" means artificial flies or lures constructed of any material excluding those containing, constructed with or used in conjunction with:

(A) Soft plastic fish eggs, worms, grubs and larvae.

(B) Any natural fish food such as bait fish, fish parts, crayfish, frogs, grubs, insects, larvae, worms and fish eggs.

(C) Any human food substances such as cheese, corn and garlic.

(D) Any dough bait, putty or paste-type bait.

(E) Any substance, either chemical or natural, designed to attract fish by taste or smell regardless if the substance is added in the manufacturing process or applied afterward.

(2) "barbless hooks" means any hook manufactured without a barb for the purpose of keeping a fish attached to the hook or hooks having manufactured barbs that have been removed or pinched down in a manner that renders the barb ineffective in holding a fish to the hook.

(3) "glass beverage containers" means any container made partially or entirely of a glass product for the purpose of containing a consumptive beverage.

#### 800:10-5-2. Department fishing areas

The following rules and restrictions govern public use on all Department Fishing Areas, including:

(1) **Department owned lakes and access areas.** The following rules apply:

(A) Camping is permitted, but limited to three (3) days duration at all areas, except at the Kiamichi River Access Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit where no overnight camping is permitted and at Lakes Watonga, Carl Etling, Wayne Wallace, and the Illinois River Access Areas where camping shall be limited to fourteen (14) consecutive days. Camping is permitted only in designated camping areas.

(B) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the areas longer than the limit on camping.

(C) Water skiing is prohibited.

(D) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(E) Glass beverage containers are prohibited at Department fishing areas except in designated camping and parking areas.

(~~EF~~) Commercial concessions and private developments on Department property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(~~FG~~) Dogs must be kept on a leash at all times, except when used to hunt with, during legal open hunting seasons on those areas where hunting is permitted.

(~~GH~~) Boat houses, ramps, docks and other facilities may not be constructed on Department property without specific approval of the Oklahoma Wildlife Conservation Commission.

(~~HI~~) It shall be unlawful to drive, occupy or park any motor driven vehicle, including automobiles, trucks, mini bikes, motorcycles, etc., except on maintained roads, (unless posted as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone." Operators must be licensed drivers.

(~~IJ~~) Cutting or defacing of trees and vegetation shall be prohibited. Removal of any vegetation, soil, rocks, water or minerals is prohibited except under written approval of the Department Director.

(~~JK~~) Vandalism, theft, and damage to State property is prohibited.

~~(KL)~~ No person shall use threatening, abusive, or indecent language, participate in a disorder assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

~~(LM)~~ After 10:00 p.m., and until 5:00 a.m., all Department fishing areas will be restricted to fishing and fishing related activities only, and hunting if permitted by Commission.

~~(MN)~~ Swimming is not permitted unless a designated swimming area is established by the Wildlife Conservation Commission.

~~(NO)~~ Hunting is permitted on the following lakes: Hall, Jap Beaver, Burtschi, Nanih Waiya, Ozzie Cobb, Schooler, Evans-Chambers, American Horse and Vanderwork during the period of September 1 through Spring Turkey Season, including migratory bird seasons. Hunting regulations and restrictions for lakes Dahlgren and Vincent are the same as those listed for Lexington WMA (Dahlgren) and Ellis County WMA (Vincent). The following lakes are closed to hunting or taking of wildlife by any means: Elmer, Etling, Raymond Gary, Watonga, and Wayne Wallace. Hunting is restricted to shotguns or archery only. These lakes are closed to antlerless deer harvest, except during archery season. Hunting and shooting other than that provided above is prohibited. The Director may designate "closed areas" for purposes of safety and/or security.

~~(OP)~~ Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1. The Director may designate "closed areas" for purposes of safety and/or security.

~~(PQ)~~ No person may fish with more than two (2) poles, except during trout seasons at "Designated Trout Areas" where no person may fish with more than one (1) pole.

~~(QR)~~ Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of any fish by noodling and the taking of bait minnows by any method is prohibited, except cast nets may be used to take bait for personal use at Lake Carl Etling.

~~(RS)~~ No person shall possess, consume or use any intoxicating beverage or low-point beer, as defined in Title 37, except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

~~(ST)~~ No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63 on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(U) All impoundments are catch and release only on the following Department property unless determined otherwise as published in the Oklahoma Fishing Guide: Cimarron Bluff WMA.

(2) **Blue River Public Fishing and Hunting Area.**

The following rules apply:

(A) Hunting shall be permitted during regular hunting seasons and is restricted to shotgun and long bow and arrow only. No other use or other firearms are permitted.

(B) Blue River PFHA is closed to all except emergency traffic from 10:00 p.m. to 6:00 a.m. throughout the year.

(C) Glass beverage containers are prohibited at Blue River PFHA except in designated camping and parking areas.

~~(CD)~~ Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1.

~~(DE)~~ Trotlines, throwlines, noodling, limblines, spearguns, juglines, nets, seines, and yo-yo's are prohibited throughout the year.

~~(EF)~~ No person may fish with more than two (2) poles, except only one (1) pole and line or rod and reel is permitted during the designated trout season.

~~(FG)~~ The following special rules pertain to the Carl R. and Ruth Walker Landrum Wilderness and Plaster Wildlife Management Unit:

- (i) no camping
- (ii) areas closed from 10:00 p.m. to 6:00 a.m.
- (iii) no swimming
- (iv) walk-in access only (except where wheelchair access is provided).

(GH) The Blue River Campground Area is closed to swimming, effective January 1, 1990, unless suitable agreement can be reached between the Department and an acceptable second party who would be responsible for managing a designated swimming area for a three month season, annually. The Department will assume no cost or liability for development and operation of a designated swimming area.

(HI) Effective July 1, 2000 the following rules apply to camping at the Blue River Campground Area:

- (i) Camping is restricted to 14 days in a 30 consecutive day period. The Area Manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon degree of area use, anticipated weekend or holiday occupancy and recreation season. Extensions shall be requested 48 hours prior to the requested date of the extension.
- (ii) Camping is permitted only in designated camping areas.
- (iii) No person shall leave a vehicle, camper, tent or any personal property unattended for more than a 48-hour period without approval of the Area Manager.
- (iv) If property must be removed, it will be at owners expense and liability. The unauthorized

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placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(H) Each person, not otherwise exempt by statute, entering or using the Blue River Public Fishing and Hunting Area shall be required to have a "Blue River Conservation Passport" in their possession while in the area. The Wildlife Commission hereby establishes and assesses an annual fee for the Passport which shall be one dollar (\$1.00) above the cost of an annual resident fishing license. No fishing or hunting privileges of any kind are provided or implied with the Passport.

(3) **Arcadia Conservation Education Area**

(A) Walk-in fishing permitted on all parts of the lake shoreline. No fishing in any ponds or wetland areas unless part of an ODWC sanctioned education event.

(B) Camping prohibited except as authorized by ODWC.

**800:10-5-3. Designated trout areas**

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. However, while fishing in this portion of the Mountain Fork River, a valid annual trout license is required to have trout in possession. Trout season is year-round.

(5) The North Fork of the Red River from Altus-Lugert Dam downstream to the low water dam at State Highway 44A, trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter (1  $\frac{1}{4}$ ) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Lake Pawhuska trout season is from November 1 through March 31 of the following year; season is annual.

(b) **Trout license requirement.** It shall be unlawful for any person, regardless of residency, age or disability, to fish in "Designated Trout Areas" during trout seasons without having secured from the Department of Wildlife Conservation or its authorized agent, a special, annual trout license. The special trout license shall be in addition to the regular fishing license requirements. The special trout license requirement shall apply only during the November 1 through March 31 special trout season on the Blue River, annually on the Illinois River and Mountain Fork River, from November 1 through March 31 on Lake Watonga, from November 1 through March 15 below Altus-Lugert Dam, from November 1 through April 30 on Lake Carl Etling, from November 1 through March 15 in the Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary, and from November 1 through March 31 on Lake Pawhuska. All persons possessing trout caught downstream of the Robbers Cave State Park boundary or in tributaries to the designated trout stream are also required to have a trout license during the season; no exceptions.

(c) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(~~3~~4) Fishing in the lower Mountain Fork River trout stream below Broken Bow dam from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, is restricted to artificial flies and lures only and barbless hooks only.

(~~5~~6) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

(~~6~~7) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately  $\frac{1}{2}$  mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

[OAR Docket #09-1084; filed 5-27-09]

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

[OAR Docket #09-1085]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Commercial Mussel Harvest 800:15-7-4. Mussel sanctuaries [AMENDED] Subchapter 9. Commercial Turtle Harvest 800:15-9-3. General; operating provisions [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103, 4-101, 4-103, 4-103A, 4-103B, 4-104A, 4-129, 6-204; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 1, 2008 - January 16, 2009

Public hearings:

Public Hearings were held at the following locations:

Date: January 12, 2009

Time: 7:00 p.m.

Clinton - City Hall, 415 Gary Blvd Enid - Central Fire Stations, 410 W. Garriott Jenks - Tulsa Technology Center, 801 East 91st Street Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd

Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar Room B

Poteau - Kiamichi Vo-Tech, 1509 S. McKenna

Date: January 13, 2009

Time: 7:00 p.m.

Ada - Pontotoc Technology Center, 601 West 33rd Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259 Lawton - Lawton Public Library, 110 SW 4th Muskogee - Muskogee Public Library, 801 W. Okmulgee Ponca City - Pioneer Vo-Tech, 21-1 N. Ash Woodward - Northwest Electric - 2925 Williams Ave.

Date: January 15, 2009

Time: 7:00 p.m.

Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo Hwy

Guymon - OSU Extension Center, 301 N. Main Hugo - Kiamichi Tech Center, 107 South 15th St.

Adoption:

March 2, 2009

Submitted to Governor:

March 4, 2009

Submitted to House:

March 4, 2009

Submitted to Senate:

March 4, 2009

Gubernatorial approval:

March 24, 2009

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.

Final adoption:

April 29, 2009

Effective:

January 1, 2010

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

These rules will add R.S. Kerr (Pool 15) of the McClellan-Kerr Arkansas River Navigation System to the list of mussel sanctuaries; add painted turtles

(western and southern) and the razor-back musk turtle to list of prohibited species for commercial harvest.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2010:

SUBCHAPTER 7. COMMERCIAL MUSSEL HARVEST

800:15-7-4. Mussel sanctuaries

The following areas are established as mussel sanctuaries. No commercial mussel harvest is allowed within a mussel sanctuary.

- (1) The first two (2) miles of any river entering Oklahoma and the first two (2) river miles below any impoundment structures are designated sanctuaries and closed to all mussel harvest. (2) No harvesting shall ever take place in Tenkiller Lake. (3) The Kiamichi and Illinois Rivers are closed to commercial mussel harvest. (4) The Poteau River from State Highway 9 Bridge upstream to the old Pocola Highway Bridge, and the Poteau River from the new State Highway 112 Bridge upstream to the southern-most confluence with the Lost Poteau, and the Poteau River from US Highway 59 Bridge upstream to the Kerr Ranch bridge crossing.

(5) Pool 15 (Robert S. Kerr Reservoir) of the McClellan-Kerr Arkansas River Navigation System is closed to commercial mussel harvest.

SUBCHAPTER 9. COMMERCIAL TURTLE HARVEST

800:15-9-3. General; operating provisions

Harvest, sale and purchase of aquatic turtles for commercial purpose shall be in accordance with 29 O.S., Sections 4-103A, 4-103B and 6-204 and the following:

- (1) The application for an aquatic turtle harvest license must be signed by a Game Warden, and must list the county or counties from which turtles will be harvested. (2) The harvest, collection, sale or purchase of the following turtle species is prohibited: (A) Alligator Snapping Turtle (Macrolemys temminckii); (B) Chicken Turtle (Deirochelys reticularia); (C) Map Turtle (Graptemys geographica); (D) Painted Turtles (Chrysemys picta belli and Chrysemys picta dorsalis)

# Permanent Final Adoptions

(E) Razor-backed Musk Turtle (*Sternotherus carinatus*)

(D) All State and/or Federal threatened or endangered species;

(E) All soft shell turtles, except as provided in Title 29 O.S., Section 4-102, greater than eighteen (18) inches in length when measuring the carapace only from the anterior (front) end to the posterior (rear) end shall not be kept in possession or sold or purchased and must be returned to the water immediately.

(3) The possession, buying and/or selling of any terrestrial turtles commonly known as "box turtles", is prohibited.

(4) All traps and nets used in the harvest of turtles for commercial purposes must have an identification tag with the owner's name and license number attached and the name and license number of all persons authorized to operate the traps and nets. All such traps and nets must be shown to the county Game Warden at the time the Game Warden signs the license application.

(5) Private ponds, municipal lakes and streams on or crossing private land that are open to commercial turtle harvest may be fished for turtles only upon permission of the landowner or municipality. Written permission for municipal lakes outside the city limits must be on the municipal letterhead stationary, signed by the municipal authority.

(6) All persons licensed as a commercial turtle buyer must keep accurate records of all turtles purchased within and exported from the State of Oklahoma. These records shall be available for inspection by any agent of the Department at any time. A copy of each turtle purchase transaction must be given to the seller by the buyer at the time of the sale on forms provided by the Department. A copy of all turtle purchase transactions and turtle exports shall be submitted to the Department as follows:

(A) Each turtle buyer shall complete and submit to the Department a true and accurate purchase record for each turtle purchase transaction. Each purchase record must contain:

- (i) the buyer's name and license number;
- (ii) seller's name and license number;
- (iii) the total number of each species purchased;
- (iv) the total amount paid for each species;
- (v) the total amount paid for the transaction.
- (vi) the total pounds of red-eared, common snapping and soft shell turtles purchased;

(B) A copy of each transaction along with a monthly summary must be mailed to the Department by the 15th of each month by each turtle buyer.

(C) Each turtle buyer must supply to the Department shipping bills of lading of all turtles exported from the state during the monthly reporting period. A copy of all shipping bills of lading must accompany all turtle shipments from the state.

(D) The shipping bill of lading must contain:

- (i) total number of turtles in shipment;

(ii) number of each species of turtles in shipment;

(iii) date of shipment;

(iv) person firm or corporation's name transporting turtles out of Oklahoma;

(v) person firm or corporation's name(s) that sold or otherwise provided the turtles to be transported out of Oklahoma;

(vi) total pounds of turtles in the shipment;

(vii) total pounds of each species of turtles in the shipment;

(viii) turtle harvest season dates and turtle species legal for harvest;

(ix) state, if other than Oklahoma, where turtles were harvested;

(x) destination of shipment; and

(xi) total purchase price of turtles in shipment.

(E) Each turtle buyer must supply to the Department an annual summary report of all turtles, by species, purchased within and exported from the State of Oklahoma. This report shall contain:

(i) total number of turtles of each species purchased or received;

(ii) total purchase value of turtles purchased or received;

(iii) total number and pounds of turtles of each species exported from Oklahoma.

(iv) total pounds of red-eared, common snapping and softshell turtles purchased or received;

(7) Inaccurate or incomplete records or delinquent reports shall be violations of this rule.

[OAR Docket #09-1085; filed 5-27-09]

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

[OAR Docket #09-1086]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Restricted Exotic Fish

800:20-1-2. List of restricted exotic species [AMENDED]

Subchapter 4. Aquatic Nuisance Species Restrictions [NEW]

800:20-4-1. Purpose [NEW]

800:20-4-2. Movement of aquatic plants [NEW]

800:20-4-3. List of restricted aquatic nuisance species [NEW]

800:20-4-4. Penalties [NEW]

### AUTHORITY:

Title 29 O.S., Sections 3-103, 6-601, 7-401; 7-801 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

### DATES:

#### Comment period:

December 1, 2008 - January 16, 2009

#### Public hearings:

Public Hearings were held at the following locations:

**Date: January 12, 2009**

**Time: 7:00 p.m.**

Clinton - City Hall, 415 Gary Blvd
Enid - Central Fire Stations, 410 W. Garriott
Jenks - Tulsa Technology Center, 801 East 91st Street
Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd
Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar Room B
Poteau - Kiamichi Vo-Tech, 1509 S. McKenna
Date: January 13, 2009
Time: 7:00 p.m.
Ada - Pontotoc Technology Center, 601 West 33rd
Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259
Lawton - Lawton Public Library, 110 SW 4th
Muskogee - Muskogee Public Library, 801 W. Okmulgee
Ponca City - Pioneer Vo-Tech, 21-1 N. Ash
Woodward - Northwest Electric - 2925 Williams Ave.
Date: January 15, 2009
Time: 7:00 p.m.
Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo Hwy
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.

Adoption: March 2, 2009
Submitted to Governor: March 4, 2009
Submitted to House: March 4, 2009
Submitted to Senate: March 4, 2009
Gubernatorial approval: March 24, 2009
Legislative approval: Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.
Final adoption: April 29, 2009
Effective: January 1, 2010

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

These rule proposals create a subchapter dealing specifically with aquatic nuisance species regulations. Restrict movement of aquatic plants between waters of this state. Prohibit possession of zebra and quagga mussels. Allow stocking of triploid grass carp only in private waters.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2010:

SUBCHAPTER 1. RESTRICTED EXOTIC FISH

800:20-1-2. List of restricted exotic species

(a) Until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful exotic species, the importation into the State and/or the possession of the following exotic fish or their eggs is prohibited:

- (1) Walking Catfish: The Walking Catfish, (Clarius batrachus) and other members of the exotic catfish family Claridae, including but not limited to species of the genera Clarias, Heteropneustes, Gymnallables, Channallabes, and Heterobranchus are prohibited. Any live specimens of Walking Catfish or other Claridae species within the boundaries of the State of Oklahoma are contraband and subject to seizure by the Department of Wildlife Conservation.
(2) Grass carp: Release of grass carp (diploid and/or triploid), also known as white amur or Chinese carp (Ctenopharyngodon idella) or their hybrids into public waters is prohibited in accordance with 29 O.S., Section 6-504. Importation, possession and introduction of grass carp or their hybrids for the purpose of stocking private waters is permitted. Only triploid grass carp or their hybrids may be imported, possessed, or introduced for the purpose of stocking private waters.
(3) Boney-tongue group: Osteoglossum spp., and Arapaima spp.
(4) Piranha group: Serrasalmus spp., Pygocentrus spp., Rooseveltiella spp., Catoprion spp., Hydrocynus spp., and Salminus spp.
(5) Electric Eel (Electrophorus electricus).
(6) Electric catfish (Malapterus electricus).
(7) Gar-pike topminnow (Belonesox belizanus).
(8) Snakehead groups: Opicephalus spp., and Channa spp.
(9) Pavon or Peacock Bass (Chichla temensis and Chichia ocellaris).
(10) Parasitic South American Catfish group (Candiru), genera & species of the Trichomycteridae family. Vandelia spp., Tridens spp., and Pygidium spp.
(11) Freshwater Stingray group: Paratrygon spp., Potomotrygon spp., and Disceus spp.
(12) Houri (from South America): Macrodon spp., and Hoplias spp.
(13) Rudd and rudd hybrids (Scardinius spp.).
(14) Bighead carp (Hypophthalmichthys molitrix).
(15) Silver carp (Aristichthys nobilis).
(16) Black carp (Mylopharyngodon piceus).
(17) Alewives (Alosa pseudoharengus).
(18) Rainbow smelt (Osmerus mordax).
(19) Blueback herring (Alosa aestivalis).

- (b) Tilapia:
(1) The sale and use of all Tilapia species as bait is prohibited.
(2) The stocking of all Tilapia species in any heated-water reservoir including Sooner, Konawa and Boomer Reservoirs is prohibited.
(3) This shall not interfere with the sale of dead and/or processed Tilapia for human food or the sale or transport of Tilapia species for the purpose of aquatic vegetation control in privately owned ponds.

SUBCHAPTER 4. AQUATIC NUISANCE SPECIES RESTRICTIONS

# Permanent Final Adoptions

## **800:20-4-1. Purpose**

The purpose of this subchapter is to describe the rules pertaining to the movement of aquatic nuisance species.

## **800:20-4-2. Movement of aquatic plants**

No person may transport aquatic plants between waters of this state. Persons leaving any water of this state must remove all aquatic plants from boat, trailer, or any other gear capable of holding aquatic plants prior to leaving the body of water from which the plants originated.

## **800:20-4-3. List of restricted aquatic nuisance species**

In addition to species listed under 800:20-1-2 and 800:20-3-2 and until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful aquatic nuisance species, the importation into the State and/or the possession of the following aquatic nuisance species is prohibited:

- (1) Zebra mussel (*Dreissena polymorpha*)
- (2) Quagga mussel (*Dreissena bugensis*)

## **800:20-4-4. Penalties**

Any person violating these Chapter provisions shall be subject to the penalties provided in 29 O.S., Section 7-602 and 8-104.

*[OAR Docket #09-1086; filed 5-27-09]*

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

*[OAR Docket #09-1087]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

- Subchapter 1. Hunting/Trapping on Oklahoma Tourism and Recreation Lands
  - 800:25-1-3. Deer archery hunting on Little River State Park [AMENDED]
  - 800:25-1-4. Waterfowl hunting on Little River State Park [AMENDED]
  - 800:25-1-5. Trapping on Little River State Park [AMENDED]
- Subchapter 5. Migratory Bird Hunting Season
  - Part 11. Waterfowl Hunting Blinds
    - 800:25-5-49. Permits for permanent or temporary blinds [AMENDED]
  - Part 25. Hunting at Tishomingo Wildlife Management Unit
    - 800:25-5-106. General Provisions [AMENDED]
- Subchapter 7. General Hunting Seasons
  - Part 1. General Provisions
    - 800:25-7-3. General Provisions [AMENDED]
  - Part 5. Upland Game
    - 800:25-7-12. Pheasant [AMENDED]
    - 800:25-7-16. Wild turkey B Fall; legal means of taking [AMENDED]
    - 800:25-7-18. Wild turkey B Spring; legal means of taking [AMENDED]
  - Part 7. Falconry
    - 800:25-7-27. General Provisions [AMENDED]
  - 800:25-7-28. Dates, open areas, bag limit, hunting hours and legal means of taking [AMENDED]
  - 800:25-7-29. License requirements [AMENDED]
  - 800:25-7-30. Facilities and inspection [AMENDED]
  - 800:25-7-31. Taking provisions [AMENDED]

- 800:25-7-32. Prohibited raptors [AMENDED]
- 800:25-7-33. General stipulations [AMENDED]
- Part 12. Antelope [NEW]
- 800:25-7-47. General Provisions for Antelope- Archery [NEW]
- 800:25-7-48. Dates, open areas, bag limits, hunting hours and regulations [NEW]
- Part 13. Deer
  - 800:25-7-51. Deer-archery [AMENDED]
  - 800:25-7-54. Legal Firearm Specifications [AMENDED]
- Part 14. Elk
  - 800:25-7-56. General provisions for elk [AMENDED]
  - 800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]
- Part 15. Furbearers
  - 800:25-7-62. Open Areas [AMENDED]
  - 800:25-7-64. General provisions for furbearers [AMENDED]
- Part 16. Black Bear [NEW]
- 800:25-7-66. General Provisions for black bear [NEW]
- 800:25-7-67. Dates, open areas, bag limits, hunting hours, legal means of take, quotas, prohibited activities [NEW]
- Part 18. Management of Private Lands
  - 800:25-7-75. General Provisions [AMENDED]
- Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
  - 800:25-7-83. Beaver River WMA [AMENDED]
  - 800:25-7-88. Canton WMA [AMENDED]
  - 800:25-7-92.1. Cimarron Bluff WMA [NEW]
  - 800:25-7-92.2. Cimarron Hills WMA [NEW]
  - 800:25-7-94. Copan WMA [AMENDED]
  - 800:25-7-94.1. Cooper WMA [AMENDED]
  - 800:25-7-100. Fort Gibson WRP [AMENDED]
  - 800:25-7-101. Fort Supply WMA [AMENDED]
  - 800:25-7-111. Hulah ~~PHAWMA~~ [AMENDED]
  - 800:25-7-112. Hulah WRP [REVOKED]
  - 800:25-7-119. Lake Thunderbird State Park [REVOKED]
  - 800:25-7-131.1. Osage WMA Rock Creek Unit [AMENDED]
  - 800:25-7-132.1. Ouachita WMA B Cucumber Creek Unit [NEW]
  - 800:25-7-134. Packsaddle WMA [AMENDED]
  - 800:25-7-137. Rita Blanca WMA [AMENDED]
  - 800:25-7-151. Tishomingo WMU/Cooperative Unit [AMENDED]
- Subchapter 9. Controlled Hunts
  - Part 1. Guidelines
    - 800:25-9-2. General provisions [AMENDED]
    - 800:25-9-3. Applications and instructions [AMENDED]
    - 800:25-9-4. Categories [AMENDED]
    - 800:25-9-5. Permits and fees [AMENDED]
  - 800:25-9-11. Cimarron and Texas County (west of Highway 136) landowner permits [AMENDED]
  - 800:25-9-12. General Antelope Regulations [AMENDED]
- Subchapter 25. Wildlife Classified as Domesticated and Exempt From Licensing and Permit Requirements
  - 800:25-25-3. Exemptions [AMENDED]

### **AUTHORITY:**

Title 29 O.S., Sections 3-103, 5-206 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

### **DATES:**

#### **Comment period:**

December 1, 2008 - January 16, 2009

#### **Public hearings:**

Public Hearings were held at the following locations:

**Date: January 12, 2009**

**Time: 7:00 p.m.**

Clinton - City Hall, 415 Gary Blvd

Enid - Central Fire Stations, 410 W. Garriott

Jenks - Tulsa Technology Center, 801 East 91<sup>st</sup> Street

Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd

Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar

Room B

Poteau - Kiamichi Vo-Tech, 1509 S. McKenna

**Date: January 13, 2009**

**Time: 7:00 p.m.**

Ada - Pontotoc Technology Center, 601 West 33rd

Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259  
Lawton - Lawton Public Library, 110 SW 4<sup>th</sup>  
Muskogee - Muskogee Public Library, 801 W. Okmulgee  
Ponca City - Pioneer Vo-Tech, 21-1 N. Ash  
Woodward - Northwest Electric - 2925 Williams Ave.

**Date:** January 15, 2009

**Time:** 7:00 p.m.

Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo

Hwy

Guymon - OSU Extension Center, 301 N. Main

Hugo - Kiamichi Tech Center, 107 South 15<sup>th</sup> St.

**Adoption:**

March 2, 2009

**Submitted to Governor:**

March 4, 2009

**Submitted to House:**

March 4, 2009

**Submitted to Senate:**

March 4, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.

**Final adoption:**

April 29, 2009

**Effective:**

July 11, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 25. Wildlife Classified as Domesticated and Exempt from Licensing and Permit Requirements

800:25-25-3. Exemptions [AMENDED]

**Gubernatorial approval:**

March 11, 2008

**Register publication:**

25 Ok Reg 802

**Docket number:**

08-454

**Superseded rules:**

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-92.1. Comarron Bluff wildlife Management Area [NEW]

**Gubernatorial approval:**

May 6, 2008

**Register publication:**

25 Ok Reg 1776

**Docket number:**

08-910

**Superseded rules:**

Subchapter 7. General Hunting Seasons

Part 14. Elk

800:25-7-56. General provisions for elk [AMENDED]

800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]

**Gubernatorial approval:**

June 2, 2008

**Register publication:**

25 Ok Reg 2622

**Docket number:**

08-1177

**Superseded rules:**

Subchapter 7. General Hunting Seasons

Part 18. Management of Private Lands

800:25-7-75. General Provisions [AMENDED]

**Gubernatorial approval:**

June 2, 2008

**Register publication:**

25 Ok Reg 2623

**Docket number:**

08-1176

**Superseded rules:**

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-132.1. Ouachita WMA - Cucumber Creek Unit [NEW]

**Gubernatorial approval:**

October 23, 2008

**Register publication:**

26 Ok Reg 206

**Docket number:**

08-1312

**Superseded rules:**

Subchapter 7. General Hunting Seasons

Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-92.2. Cimarron Hills Wildlife Management Area [NEW]

**Gubernatorial approval:**

December 15, 2008

**Register publication:**

26 Ok Reg 431

**Docket number:**

08-1587

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The proposed rule amendments are designed to simplify broadhead requirements, establish emergency rules for a new Wildlife Management Area (WMA), provide additional hunting opportunity on several WMA's, increase pheasant bag limit in the panhandle, reflect name change of a WMA, incorporate new rules outlined in MOU on timber company lands, create new archery antelope season in panhandle and on a WMA, allow antlerless harvest during muzzleloader on several WMA's, clarify landowner private land antelope controlled hunt procedures and qualifications, simplify elk regs and allow additional harvest opportunities, remove incorrect language and typos, allow duck blind drawings when needed, establish rules for a black bear season in southeast oklahoma, adjust state falconry rules to match new federal rules, and make emergency rules permanent.

**CONTACT PERSON:**

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2009:**

**SUBCHAPTER 1. HUNTING/TRAPPING ON OKLAHOMA TOURISM AND RECREATION LANDS**

**800:25-1-3. Deer archery hunting on Little River Lake Thunderbird State Park**

(a) **Dates.** Dates for deer archery hunting on Little River Lake Thunderbird State Park shall be the same as statewide seasons.

(b) **Open areas.** Areas open to hunting are to be determined annually and published in annual hunting regulation brochures. ~~In addition, areas will be open to archery hunters possessing a deer gun tag during the deer gun season. Hunters must follow specific regulations concerning the statewide deer gun season and primitive firearms season.~~

~~(c) **Deer check station.** Deer harvested must be taken to the nearest deer hunter check station.~~

# Permanent Final Adoptions

## 800:25-1-4. Waterfowl hunting on ~~Little River~~Lake Thunderbird State Park

- (a) **Dates.** Waterfowl hunting on ~~Little River~~Lake Thunderbird State Park is open during waterfowl seasons occurring between ~~October 1 and through the end of the waterfowl hunting season, September 8 and February 15.~~
- (b) **Open areas.** Areas open to hunting are to be determined annually and published in annual hunting regulation brochures.
- (c) **Bag limit.** Bag limit is same as statewide seasons.
- (d) **Hunting hours.** Hunting hours are one-half hour before official sunrise to 1:00 p.m. daily.
- (e) **Littering.** It shall be unlawful to dispose of any garbage, trash, refuse, litter, debris, or any other form of solid waste within the hunt areas. All shell casings and other disposable materials must be carried out by the hunter when leaving the hunt area. Damage or removal of any state controlled or owned property is prohibited.

## 800:25-1-5. Trapping on ~~Little River~~Lake Thunderbird State Park

The following provisions apply to trapping on ~~Little River~~Lake Thunderbird State Park:

- (1) **Species which may be trapped.** Beaver may be trapped.
- (2) **Dates.** Trapping dates are to be determined annually by ~~Little River~~Lake Thunderbird State Park ~~Superintendent~~Manager.
- (3) **Method of harvest.** The method of harvest shall be ~~smooth jawed single spring leg hold steel traps with a jaw spread of no more than 8 inches~~legal traps, as approved by the Oklahoma Department of Wildlife Conservation, to be used for water drown sets only; a water drown set is the placement of a trap so that it is completely submerged beneath the surface of the water. All traps must be identified with the trapper's name.
- (4) **Access.** Trappers must register at park headquarters prior to setting any traps. In addition, each trapper must report his harvest in person at park headquarters daily between the hours of 8 a.m. and 5 p.m. ~~Area B Hog Creek~~ campground is closed to all trapping. The park manager may limit the number of trappers and/or traps set if necessary.

## SUBCHAPTER 5. MIGRATORY BIRD HUNTING SEASON

### PART 11. WATERFOWL HUNTING BLINDS

#### 800:25-5-49. Permits for permanent or temporary blinds

- (a) Hunters wishing to construct permanent blinds for waterfowl hunting on Corps of Engineers installations in Oklahoma must first obtain a permit for construction of said blind from the Oklahoma Department of Wildlife Conservation.
- (b) No permit is required for temporary blinds.

(c) Permanent or temporary blinds may be constructed on the following reservoirs: Canton, Eufaula, Fort Gibson, Fort Supply, W. D. Mayo (Lock and Dam 14), Waurika and Webbers Falls.

(d) Temporary blinds only may be constructed on the following reservoirs: Altus-Lugert, Arbuckle, Birch, Broken Bow, Chouteau (Lock and Dam 17), Copan, Fort Cobb, Newt Graham (Lock and Dam 18), Heyburn, Hugo, Hulah, Kaw, Robert S. Kerr, Keystone, Mountain Park, Oologah, Optima, Pine Creek, Skiatook, Tenkiller, Texoma and Wister.

(e) Permanent blind permits will be issued by public drawing on ~~National Hunting and Fishing Day~~ for the following reservoirs: Eufaula, Fort Gibson, W D. Mayo (Lock and Dam 14), Waurika and Webbers Falls.

(f) To obtain a permanent blind permit after the first day of issuance, the biologist of the area of interest should be contacted.

(g) Permanent blind permits will be issued on a first come first served basis on ~~National Hunting and Fishing day~~ for Canton and Fort Supply Lakes.

## PART 25. HUNTING AT TISHOMINGO WILDLIFE MANAGEMENT UNIT

#### 800:25-5-106. General provisions

The following general provisions apply to hunting at the Tishomingo Wildlife Management Unit.

(1) All hunters must check in and out of hunt areas regardless of game being hunted. Waterfowl hunters hunting west of the Washita River will use the check station. All other hunters may use the check station or the self registration boxes located at various hunter access points.

(2) ~~Vehicle access will be restricted from October 1 through February. Gates will be open for vehicle access from March 1 through September.~~Access is limited to walk-in use only during deer muzzleloader and regular deer gun seasons.

(3) The Management Unit will be open for waterfowl hunting until 12:00 noon only on Tuesday, Thursday, Saturday and Sunday; except the Unit will be closed to waterfowl hunting on Thanksgiving day and Christmas day. The management unit will be open for waterfowl hunting until 12:00 noon only on Tuesday, Thursday, Saturday, and Sunday.

## SUBCHAPTER 7. GENERAL HUNTING SEASONS

### PART 1. GENERAL PROVISIONS

#### 800:25-7-3. General provisions

(a) Any person hunting any wildlife in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid deer, elk, bear or

antelope license appropriate for that season unless otherwise exempt. Any person hunting feral hogs in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber rimfire, must possess a filled or unfilled deer, elk, bear or antelope license appropriate for that season unless otherwise exempt.

(b) No person while in the field may possess or attempt to harvest any wildlife, except waterfowl and crane, with shotgun utilizing shot larger than conventional BB.

(c) Any person participating in primitive firearms season, deer gun seasons, elk season, ~~and~~ antelope season and bear gun season must conspicuously wear both a head covering and an outer garment above the waistline, both totaling 500 square inches or more of clothing, both consisting of daylight fluorescent orange color totaling not less than 400 square inches [Title 29 O.S., Section 5-205, Part A]. All other hunters, except those hunting waterfowl, crow or crane, or while hunting furbearing animals at night must wear either a head covering or upper garment of fluorescent orange clothing during the deer primitive firearms season, deer gun seasons, elk season, ~~and~~ antelope season and bear primitive firearms season, or bear gun season in areas where these season are open. ~~Persons hunting prairie chickens on John Dahl Wildlife Management Area are exempt.~~

(d) For purposes of pheasant, turkey, deer, elk, bear and antelope regulations, "final destination" shall be the hunter's residence or place of consumption.

(e) No person may possess any game bird, animal or other wildlife, or portions thereof that have been taken by another person unless such game bird, animal or other wildlife, contain information giving the taker's name, address, license number, date taken and the number and kind of game bird, animal or wildlife. In addition, information on deer, elk, antelope, bear and turkey must include ~~location of the check station where checked~~ where game was checked. The person's name and address receiving said wildlife must also appear on the written information.

(f) No person shall concentrate, drive, molest, hunt, take, capture or kill; or attempt to take any wildlife by the aid of any fire or smoke whether man-made or natural.

(g) No person may hunt, chase, capture, shoot at, wound or kill any ~~bear~~, moose or Rocky Mountain bighorn sheep, except as otherwise provided by statute or Commission rule.

(h) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(i) Dogs may be used in taking all game species in these rules except bear, deer, elk, antelope and turkey.

(j) Except as otherwise provided for by law or Commission rule, nothing shall prohibit the year round pursuit of game, which may be lawfully hunted with the use of hunting dogs, for dog training or sport only. However unless otherwise provided, no person in pursuit of game with hunting dogs outside of the regular harvest season shall have in their possession the means to harvest such game.

**PART 5. UPLAND GAME**

**800:25-7-12. Pheasant**

The following provisions apply to hunting pheasants in Oklahoma:

(1) **Dates.** The dates for pheasant hunting shall be December 1 through January 31.

(2) **Areas.** The counties open to pheasant hunting are Alfalfa, Beaver, Cimarron, Garfield, Grant, Harper, Kay, Major, Noble, Texas, Woods and Woodward; that portion of Osage County west of Highway 18; and that portion of Blaine, Dewey, Ellis, Kingfisher and Logan counties North of Highway 51.

(3) **Bag limit.** The bag limit shall be cocks only ~~—2 daily, 4 in possession after first day, 6 in possession after second day.~~ County bag limits will be determined annually and published in the current Oklahoma Hunting Guide. Persons who hunt in two states having separate daily bag limits may not exceed the largest number of birds that can legally be taken in one of the states in which they take birds.

(4) **Hunting hours.** Official sunrise to official sunset.

(5) **Legal means of taking.** Legal means of taking shall be shotgun (conventional or muzzleloading), bow and arrow, hand-propelled missile, slingshot; except as otherwise provided.

(6) **Identification.** Evidence of sex (head or one foot) must remain on the bird until it has reached final destination.

**800:25-7-16. Wild turkey - Fall; legal means of taking**

The legal means of taking turkey during the fall season shall be as follows:

(1) **Archery.** Archery hunting is by bow and arrow with the same characteristics legal for the deer archery season, ~~except that there is no minimum length required for the broadhead.~~

(2) **Gun.** Gun hunting is by the following methods and in accordance with the following provisions:

(A) Shotgun (conventional or muzzleloading), handgun or rifle; except as otherwise provided.

(B) Rimfire firearms, except .22 magnum, .17 HMR caliber, and 5 mm magnum, are illegal.

(C) Muzzleloading rifles and handguns of .36 caliber or larger are legal in all open counties, except as otherwise provided.

(D) Conventional handguns and rifles are not permitted for turkey hunting during the two day period when turkey season and deer primitive season run concurrently.

**800:25-7-18. Wild turkey - Spring; legal means of taking**

The legal means of taking turkey during the spring season shall be shotgun (conventional or muzzleloading), or bow and arrow ~~statewide;~~ with the same characteristics legal for the deer archery season, ~~statewide. except that there is no minimum length required for the broadhead.~~

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## PART 7. FALCONRY

### 800:25-7-27. General provisions

Any person licensed for falconry in the State of Oklahoma; ~~must also possess a federal falconry permit, and be in full compliance of federal and state falconry regulations. All federal falconry definitions, terms and provisions will be in effect in Oklahoma except those where state regulations are more restrictive than in federal regulation~~ [Title 50, Sections 21.28 and 21.29 and Title 29 O.S., Sections 4-108 and 5-206].

### 800:25-7-28. Dates, open areas, bag limit, hunting hours and legal means of taking

The following hunting dates, open areas, hunting hours, bag limits and legal means of taking apply to licensed falconers hunting with legal raptors:

(1) **Dates and open areas.** The following species are permitted to be hunted with legal raptors:

(A) Pheasant: The season is open statewide from October 1 through March 31.

(B) Rabbit: The season is open year-round; statewide.

(C) Prairie Chicken: The season will be open at the most liberal level allowed by the Falconry and Archery Adaptive Harvest Management Strategy (AHMS) for Prairie Chickens in Oklahoma. Season dates, open areas and bag limits are defined in the AHMS.

(D) Quail: The season is open statewide from October 1 through March 31.

(2) **Bag limit.** The bag limit during falconry hunting dates that are outside of the regular hunting season shall be two animals of each species daily, four in possession after the first day, except prairie chickens, for which the bag limit is defined in the Falconry and Archery Adaptive Harvest Management Strategy for Prairie Chickens in Oklahoma. Bag limits during regular hunting seasons shall be the same as those listed in the Oklahoma Hunting Guide.

(3) **Hunting hours.** The hunting period shall be sunrise to sunset. Non-protected wildlife may be hunted at any time.

(4) **Legal means of taking.** The legal means of taking shall be with legal raptors only.

### 800:25-7-29. License requirements

(a) No ~~resident person~~ may take, transport or possess any raptor without having first obtained an Oklahoma Falconer's license. ~~A raptor is defined as any live migratory bird of the Order Falconiformes or the Order Strigiformes, except bald or golden eagles.~~ Nonresidents must possess a falconers license from their state of residence to transport or possess any raptor in Oklahoma.

(b) Said license permits an Oklahoma resident to ~~the~~ possess ~~possession~~ and use of designated legal raptors in hunting during the regular and special falconry upland game and migratory

bird seasons. Nonresidents are required to possess an Oklahoma hunting license and a falconers license from their state of residence to possess and use designated legal raptors in hunting during the regular and special falconry upland game and migratory bird seasons.

(c) ~~A falconry license may be issued to any person 14 or more years of age, who has successfully passed a written examination covering basic biology, diseases, care and handling of raptors, literature, laws, regulations or other appropriate subject matter, with a minimum score of at least 80 percent and who has satisfied the minimum requirements for keeping raptors as determined by inspection of the applicant's facilities. Individuals failing the falconry examination may reapply after a period of six~~three months.

(d) Licenses may be renewed upon expiration without examination following submission of annual harvest reports and provided the Director of the Oklahoma Department of Wildlife Conservation is satisfied with the competency of the applicant whose license has expired. Falconers whose license has lapsed for more than five (5) years can re-apply for a falconry permit only after correctly answering 80 percent of the questions on the falconry exam.

### 800:25-7-30. Facilities and inspection

(a) Before any individual shall ~~be issued a falconry license~~ possess a bird for falconry, the applicant's housing facilities and falconry equipment shall be inspected and certified by a representative or designee of the Department.

(b) All raptor facilities and equipment shall be available for inspection by representatives of the Department at all reasonable hours.

(c) Falconry birds may be housed in either an indoor or outdoor facility.

(d) Each raptor must have clean water available for a portion of each day.

### 800:25-7-31. Taking provisions

(a) Eyas: Young birds not yet capable of flight (eyases) may only be taken from the wild by a General or Master Falconer, ~~during the period May 15 through June 30.~~ No more than two eyases may be taken by the same licensee during the taking period. At least two birds must be left in any nest form which one or more birds is removed, except in the case of birds of the genus Buteo where a minimum of one bird must be left in the nest. Removal of eggs from nests is prohibited. ~~Taking is limited to spring period.~~

(b) Passage: First-year (passage) birds, ~~on first fall migration and still in immature plumage,~~ may be taken only from ~~September 15 through January 25.~~ August 1 through May 31.

(c) Haggard: ~~An adult bird in mature plumage is called a Haggard.~~

(c) Raptors that are lost to the wild may be retrapped at any time. Raptors lost for more than ~~45~~30 days shall be considered as lost and reported as such to the Department.

~~(de) Legal raptors: Raptors that may be taken from the wild in Oklahoma are the same as those listed in CFR 50. The following raptors may be taken from the wild in the State of Oklahoma only during the indicated status of development:~~

- ~~(1) Great Horned Owl eyas passage haggard~~
- ~~(2) American Kestrel eyas passage haggard~~
- ~~(3) Red-tailed Hawk eyas passage~~
- ~~(4) Harlan's Hawk eyas passage~~
- ~~(5) Red-shouldered Hawk passage~~
- ~~(6) Rough-legged Hawk passage~~
- ~~(7) Cooper's Hawk eyas passage~~
- ~~(8) Goshawk passage~~
- ~~(9) Merlin passage~~
- ~~(10) Prairie Falcon passage~~
- ~~(11) Sharp-shinned Hawk passage~~
- ~~(12) Marsh Hawk passage~~

~~(ef) Golden eagles may be taken with permission of the U.S. Fish and Wildlife Service and the Oklahoma Department of Wildlife Conservation as allowed by pertinent state and federal statutes and regulations.~~

~~(g) Haggard birds other than Great-horned owls and Kestrels may be taken from the wild by General and Master Falconers and used for falconry when such taking has been accomplished under a Federal Depredation (or Special Purpose) Permit. This provision does not apply to threatened or endangered species.~~

~~(fh) The Director of the Department of Wildlife may authorize resident general and master falconer/falconers to take passage gyrfalcons.~~

~~(gi) The take of any state or federally listed threatened species will require prior approval from the Oklahoma Department of Wildlife Conservation.~~

~~(h) The first bird acquired by an apprentice falconer must be one in which they actively participated in capturing from the wild. This bird may only be a Red-tailed Hawk or an American Kestrel. An apprentice can acquire a bird through transfer no sooner than six months following the capture date of their first bird. An apprentice falconer may only possess a Red-tailed Hawk, American Kestrel or a Harris' Hawk.~~

**800:25-7-32. Prohibited raptors**

(a) The taking of any raptor from the wild in Oklahoma that is not listed in 800:25-7-31 (e) is prohibited.

(b) Those species not listed in 800:25-7-31 (e) as legal for taking in Oklahoma and any other captive-bred individuals or hybrids of species may be possessed and used for falconry provided the license holder can provide evidence that the bird was legally acquired.

(c) The taking or possession of endangered species or exotic birds, the import of which has been banned by the Oklahoma Department of Wildlife Conservation Commission is prohibited at all times except ~~endangered species legally held prior to November 10, 1978, or those acquired through legal means such as from a breeding facility.~~

**800:25-7-33. General stipulations**

(a) Nonresident General and Master falconers will be allowed to take legal raptors in Oklahoma provided that their

state of residence reciprocates such approval for Oklahoma falconers. Nonresidents must make written application to the Department for a falconry license and hunting license prior to attempting to take a raptor from the wild. Nonresidents are required to show proof of falconer's license in their state of residence. Nonresidents shall be limited to taking one raptor per year.

~~(b) No licensee shall purchase, offer for sale, sell or barter any native raptor acquired from the wild of Oklahoma.~~

~~(c) General and Master class falconers may buy, sell, or barter any lawfully possessed raptor which is bred in captivity under authority of a Federal Raptor Propagation Permit and banded with a numbered seamless marker issued by the U.S. Fish and Wildlife Service.~~

~~(d) Feathers that are molted may be retained and exchanged by licensees only for imping purposes.~~

~~(e) Another falconry license holder may care for the birds of a licensee, if written authorization from the licensee accompanies the birds when they are transferred: Provided, that if the period of care will exceed fifteen days, the Oklahoma Department of Wildlife Conservation must be informed in writing where the birds are being held, the reason for the transfer, who is caring for them, and approximately how many days they will be in the care of the second person.~~

~~(bf) A falconry license holder shall obtain written authorization from the Department before any species not indigenous to this State is intentionally released into the wild. Resident species may be released at any time, however, the marker must be removed and surrendered as outlined above. A standard federal bird band shall be attached to such birds by the Department or a Service authorized federal bird bander whenever possible. may release raptors native to Oklahoma at any time. Falconers may hack the bird to the wild.~~

~~(g) A person who possesses a lawfully acquired raptor before September 14, 1989 who fails to meet the license requirements shall be allowed to retain the raptor. All such birds shall be identified with markers supplied by the U.S. Fish and Wildlife Service and cannot be replaced if death, loss, release or escape occurs.~~

~~(h) A person who has legally possessed raptors before September 14, 1989 in excess of the number allowed under his or her class permit or of species not authorized under these regulations, shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the U.S. Fish and Wildlife Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of license held by the licensee.~~

~~(ci) Firearms are not permitted while hunting with raptors. shall not be used to aid in harvesting game while hunting with raptors.~~

~~(dj) Falconers shall submit any permanent address change to the Department within ~~45~~30 days.~~

~~(k) Individuals currently holding an apprentice falconry license, who petition the Department to be advanced to a General class falconer, shall submit with their request a signed letter of recommendation from their sponsor.~~

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(e) The Department may suspend or revoke a falconer's license for failure to comply with state or federal falconry rules or for improper care of birds in their possession.

(f) A falconer may transfer a wild caught falconry bird to a raptor propagation permit.

(g) No falconer may possess more than 5 raptors at any given time.

### **PART 12. ANTELOPE**

#### **800:25-7-47. General provisions for antelope - archery**

Hunters must carry written permission on their person while hunting. Landowners, operators, and immediate family thereof are exempt from written permission.

#### **800:25-7-48. Dates, open areas, bag limits and hunting hours and regulations**

The following dates, open areas, bag limits, hunting hours and regulations apply to archery antelope season:

(1) **Dates.** Hunting dates will be established annually and published in the current Oklahoma Hunting Guide.

(2) **Open Areas.** The archery antelope season is open in Cimarron County and that portion of Texas County west of Highway 136.

(3) **Bag limit.** The archery bag limit is two antelope, which may include no more than one buck. The archery antelope is not bonus and counts against the statewide bag limit for antelope.

(4) **Hunting hours.** The hunting hours are the same as those established for deer archery season.

(5) **Tagging and Checking.** The following applies to the tagging and checking of antelope:

(A) Persons taking an antelope shall securely attach their name and license number immediately to the carcass.

(B) All antelope must be checked as described in the Oklahoma Hunting Guide.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. Antelope tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Any antelope or any portion of any antelope transferred to another person must have the hunter's name, address, hunting license number and date harvested attached to the animal. The person's name and address receiving said wildlife must also appear on the written information.

(6) **Legal Means of Take:** Same as for deer archery season. Hunter fluorescent clothing requirements are the same as those required for the deer archery season.

### **PART 13. DEER**

#### **800:25-7-51. Deer - archery**

The following hunting dates, open areas, bag limits and legal means of taking apply to hunting deer with archery:

(1) **Dates.** The dates for the deer archery season shall be October 1 through January 15.

(2) **Open areas.** The season is open statewide.

(3) **Bag Limit.** Six (6) deer including no more than two (2) antlered deer. A separate tag is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit.

(4) **Legal means of taking.** The legal means of taking deer with archery shall be as follows:

(A) Legal bows. A legal bow is any bow, except the crossbow, of forty pounds or more draw weight.

(B) Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide and not less than 1 1/2 inches long, including mechanical broadheads meeting these dimensions when fully open.

(C) Any device that permits a bow to be held mechanically at full or partial draw is prohibited.

(D) Laser sights are prohibited.

(E) Hand-held releases are permitted.

(F) No person shall carry or use any firearm in conjunction with any bow and arrow during the archery deer season while hunting deer with bow and arrow, except under the provisions of the Oklahoma Self-Defense Act, or whenever the archery season is concurrent with any deer gun or deer primitive season and the hunter has the appropriate licenses and legal firearms and clothing requirements to participate in the said gun or primitive season.

(G) Crossbows. A crossbow is defined as having a draw weight of 100 pounds. Bolts must be equipped with broadhead hunting type points not less than 7/8 inches wide and bolts must be a minimum of 14 inches in length. Crossbows must be equipped with safety devices. Laser sights are prohibited. Leverage gaining devices are permitted. No crossbow may be transported in a motorized vehicle unless uncocked or disassembled.

#### **800:25-7-54. Legal firearms and archery specifications**

The following are the legal firearms specifications for rifles, muzzleloading firearms, shotguns, handguns and bows:

(1) **Rifles.** Centerfire rifles only and firing ammunition with a soft-nosed bullet are legal if firing at least a 55 grain weight bullet and having an overall cartridge case length of 1-1/4 inches or longer. Hollow point bullets are legal. Clips or magazines of all .22 caliber firearms may not be capable of holding more than seven (7) rounds of ammunition. Fully automatic firearms are prohibited.

(2) **Muzzleloading firearms.** Muzzleloading rifles and shotguns that are legal for the muzzleloading season shall also be legal in all areas open to rifles, except black powder firearms loaded from the breech are also legal. Muzzleloading pistols (single shot or revolver) with characteristics that are described for 40 caliber rifles are

permissible as a secondary firearms, but may be used only for killing a downed animal.

(3) **Shotguns.** Twenty gauge shotguns or larger, firing a single rifled slug.

(4) **Handguns.** Centerfire handguns chambered for a 24 caliber or larger, 100 grain or heavier, soft-nosed bullet having an overall cartridge case length of 1 1/4 inches or longer, any semi-automatic pistol chambered for any centerfire ammunition with a 100 grain or heavier soft-nosed bullet and having a cartridge case size of .40 caliber or larger, or any pistol chambered for any centerfire rifle ammunition with a soft-nosed bullet firing at least a 55 grain bullet and having an overall cartridge case length of 1-1/4 inches or longer. Minimum barrel length is four inches. Fully automatic firearms are prohibited.

(5) **Bows.** Legal bows and arrows. A legal bow is defined as any bow, except the crossbow, of forty (40) pounds or more draw weight. Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide, including mechanical broadheads meeting these dimensions when fully open, and not less than 1 1/2 inches long. Any device that permits a bow to be held mechanically at full or partial draw is prohibited. Laser sights are prohibited. Hand-held releases are permitted.

**PART 14. ELK**

**800:25-7-56. General provisions for elk**

Elk hunts will be held in years when warranted by the Oklahoma Wildlife Conservation Commission. ~~Hunt~~Hunts will be listed in Oklahoma Hunting ~~Regulations brochure Guide~~Regulations ~~brochure Guide~~Regulation ~~brochure Guide~~Brochure Guide in years when ~~available appropriate.~~Elk hunting tags will be issued to any person who has written landowner or operator ~~(tenant) permission to hunt on private land in the specified open areas.~~ Hunters must also provide the legal description of the lands on which they have permission to hunt and may hunt only on those lands. Elk hunting tag, license and written permission from the landowner or where appropriate the lessee ~~(tenant) permission and legal description of land~~ must be carried on the person while hunting elk. ~~No personal checks will be accepted as payment for the tags.~~

**800:25-7-57. Dates, open areas, bag limit and hunting hours**

The following dates, open areas, bag limit and hunting hours apply to elk hunting:

(1) **Dates.** Hunting dates will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting ~~Regulation~~Regulation ~~Brochure~~Brochure Guide.

(2) **Open areas.** The season is open only on private land in Caddo, ~~Comanche~~Comanche and Kiowa ~~Counties~~counties in southwest Oklahoma (West Zone) and Adair, Cherokee, Delaware, Mayes, Muskogee and Sequoyah counties in northeast Oklahoma (East Zone).

(3) **Bag limit.** The bag limit, ~~is one elk.~~ Antler ~~restriction~~restriction and sex restrictions will be established by the

Oklahoma Wildlife Conservation Commission. All such restrictions and bag limits will be published in the Oklahoma Hunting ~~Regulation Brochure~~Regulation ~~Brochure~~Brochure Guide.

(4) **Hunting hours.** The hunting hours are the same as those established for the deer gun season.

(5) **Tagging and checking.** The following provisions apply to the tagging and checking of elk:

(A) Persons taking an elk shall securely attach their name and license number immediately to the carcass.

(B) ~~Before the elk is transported from the hunt area, all~~All elk must be checked at the locations listed as described in the Oklahoma Hunting ~~Regulation~~Regulation ~~Brochure~~Brochure Guide.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Elk tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

**PART 15. FURBEARERS**

**800:25-7-62. Open areas**

The following provisions apply to areas which furbearers can be legally taken or are closed to harvest:

(1) **Open statewide.** Badger, beaver, bobcat, coyote, mink, muskrat, nutria, opossum, raccoon, red fox, striped skunk and weasel are open to harvest statewide.

(2) **Closed statewide.** ~~Black bear, ringtail~~Ringtail, spotted skunk, and swift fox are closed to harvest statewide.

(3) **Open East of Interstate 35.** Gray fox can be taken East of I-35 only.

(4) River otter may be taken in Adair, Atoka, Cherokee, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, McIntosh, Muskogee, Pittsburg, Pushmataha and Sequoyah counties.

**800:25-7-64. General provisions for furbearers**

The following general provisions apply to the taking of furbearers:

(1) **Sale of carcass.** The skinned carcass of any legal furbearer or predator may be sold, offered or displayed for sale or bartered at any time. The sale of scent glands from furbearers or predators is permitted.

(2) **Bobcat and River Otter export tag.**

(A) No bobcat or river otter pelt may be held in possession after 10 working days after the close of furbearer season by the taker or buyer, sold, purchased or bartered within Oklahoma, nor taken out of Oklahoma without having first affixed a permanent tag to the pelt, ~~and no one may possess any Oklahoma bobcat or river otter pelt without a permanent tag affixed to the pelt.~~ This tag shall serve as an export tag.

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- (B) The tag must be affixed by an authorized employee of the Oklahoma Department of Wildlife Conservation, a designated agent, or a private tagging station. Private tagging station may charge \$0.75 per tag fee.
- (C) It is the responsibility of the possessor of the bobcat or river otter pelt, not the Department, to ensure that the pelt is legally tagged.
- (D) No untagged bobcat or river otter harvested in another state may be possessed in Oklahoma.
- (3) **Possession of carcasses or hides.**
- (A) It shall be illegal to possess live animals, carcasses or raw furs of swift fox, ~~bear~~, ringtail, or spotted skunk, unless proven that each carcass or hide was taken legally outside of the State of Oklahoma.
- (B) Proof of legality or origin for carcasses or green hides shall be a tag or other marking device attached to or imprinted on each and every hide in such a way that it cannot be removed intact. The tag or marking must be the official method used by the issuing agency. If any identification is not required by the issuing agency, a hunting or trapping license appropriate to the species taken is required as proof.
- (4) **Night hunting of coyotes.** It shall be unlawful to hunt, take or attempt to take coyotes within the period of dark to daylight with the aid of any artificial light and/or any sight dog. Persons hunting at night must first obtain permission from the County Game Ranger. Anyone hunting at night must use a shotgun, utilizing size 6 shot or smaller.

### PART 16. BLACK BEARS

#### 800:25-7-66. General provisions for black bears

Bear seasons will be held when authorized by the Oklahoma Wildlife Conservation Commission. Bear seasons will be listed in the Oklahoma Hunting Guide in years when available. Archery bear license must be purchased before October 1. Primitive firearms bear license must be purchased by midnight the Friday before the deer/bear muzzleloader season. An unfilled archery bear license shall be valid for bear muzzleloader season. Lifetime license holders are not exempt from the purchase of a bear license.

#### 800:25-7-67. Dates, open areas, bag limits, hunting hours, legal means of take, quotas, prohibited activities

The following dates, open areas, bag limits, hunting hours, legal means of take, quotas, and prohibited activities apply to bear seasons:

- (1) **Dates.** The dates for bear archery season shall be October 1 through the Friday before deer muzzleloader season. The dates for bear muzzleloader season shall run concurrently with deer muzzleloader season.
- (2) **Open areas.** The counties open to bear hunting are Latimer, LeFlore, McCurtain, and Pushmataha.

(3) **Bag limit.** The bag limit is one bear, regardless of seasons hunted.

(4) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(5) **Legal means of taking.** Bear may be taken with archery equipment or muzzleloading firearms described as legal for deer for the respective season.

(6) **Tagging and checking.** The following provisions apply to the tagging and checking of bears:

(A) Persons taking a bear shall securely attach their name and license number immediately to the carcass and fill out the record of harvest.

(B) All bears must be checked as described in the Oklahoma Hunting Guide.

(C) Evidence of sex must not be removed from the carcass until the bear has been checked by ODWC personnel. However, carcass may be checked in quarters with sex organs naturally attached and head accompanying the carcass. Bear carcass tags must remain with the carcass through the processing and storage process.

(7) **Quotas.** Quotas will be set by the Wildlife Conservation Commission and listed in the Oklahoma Hunting Guide. When the quota is met, the hunt for that year is closed. Harvest totals must be checked each day either on-line or by phone to make sure the quota has not been met before hunting bear.

(8) **Prohibited activities.**

(A) No baiting allowed on Wildlife Management Areas.

(B) Shooting females with cubs is prohibited.

(C) No den shooting of bears.

(D) Shooting cubs is prohibited.

### PART 18. MANAGEMENT OF PRIVATE LANDS

#### 800:25-7-75. General provisions

The following general provisions apply to privately owned lands that are managed by the Oklahoma Department of Wildlife Conservation.

(1) An annual Special Use Permit (Access Permit) of ~~\$15.00~~\$39.00 plus \$1.00 vendor fee for resident and ~~\$24.00~~\$84.00 plus \$1.00 vendor fee for nonresident will be required of all persons who on or after January 1, 1997, hunt, fish or otherwise use private lands in 4,—000 acre blocks or larger leased an/or administrated by the Wildlife Department unless otherwise provided.

(2) Legal residents of Oklahoma who are under 18 years of age on the first day of the current calendar year or are 64 years of age or older shall be exempt from the Special Use Permit (Access Permit) requirements.

(3) A Three(3) Day Special Use Permit of ~~\$4.50~~\$9.00 plus ~~\$.50~~\$1.00 vendor fee for residents is available to allow residents to use the private land administered by the Department of Wildlife Conservation for non-hunting or non-fishing related activities unless exempt. [Oklahoma Statute as Section 4-136 of Title 29]

**PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE**

**800:25-7-83. Beaver River WMA**

The following hunting and trapping seasons apply to the Beaver River WMA:

- (1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
  - (B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except ~~controlled hunts opening weekend and the following seven days of season buck only hunting. Closed last seven days of deer gun season~~ closed to antlerless hunting and closed last seven days of deer gun season.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

**800:25-7-88. Canton WMA**

The following hunting and trapping seasons apply to the Canton WMA:

- (1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
  - (B) Gun: Same as statewide season dates, one bird either-sex , shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide dates, except closed the first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.
- (8) Crow: Same as statewide season dates except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates ~~except controlled hunts opening weekend and the remainder of season buck only hunting.~~
- (15) Deer - gun: Same as statewide season dates except controlled hunts opening weekend and the following seven days of the season buck only hunting. Closed the last seven days of the season.
- (16) Trapping: Open to watersets and live box traps only.
- (17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-92.1. Cimarron Bluff Wildlife Management Area**

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either-sex.

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- (B) Gun: Same as statewide season dates, except closed during deer muzzleloader season. One (1) bird either-sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, One (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (9) Dove: Same as statewide season dates, except closed during deer muzzleloader season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season.
- (11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (13) Deer-archery: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (14) Deer-primitive firearms: Controlled Hunts Only.
- (15) Deer-gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

### **800:25-7-92.2. Cimarron Hills Wildlife Management Area**

The following hunting and trapping seasons apply to the Cimarron Hills WMA:

- (1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
- (2) Pheasant: Open the Monday following the close of deer gun season through February 15. Hunting hours close at 12:00 noon daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
- (A) Archery: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either sex.

- (B) Gun: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either sex, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, One (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (9) Dove: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (14) Deer - primitive firearms: Controlled Hunts Only.
- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

### **800:25-7-94. Copan WMA**

The following hunting and trapping seasons apply to the Copan WMA:

- (1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
- (A) Archery: Same as statewide season dates, one bird either sex limit.
- (B) Gun: ~~Closed season.~~ Same as statewide season dates, one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-94.1. Cooper WMA**

The following hunting and trapping seasons apply to the Cooper WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
  - (B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates except closed during first nine days of deer gun season.

- (14) Deer-primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer-gun: Same as statewide season dates except ~~controlled hunts opening weekend, and the following seven days of season buck only. Closed last seven days of deer gun season.~~ closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates, Water sets and live traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

**800:25-7-100. Fort Gibson WRP**

The following hunting and trapping seasons apply to the Fort Gibson WRP. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets only:

- (1) Quail: Same as statewide season dates, except closed October 15 - January 31.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
  - (A) Archery: Controlled hunts only.
  - (B) Gun: Controlled hunts only.
- (5) Turkey-Spring: Controlled hunts only.
- (6) Squirrel: Same as statewide season dates, except closed October 15-January 31.
- (7) Rabbit: Same as statewide season dates, except closed October 15-January 31.
- (8) Crow: Same as statewide season dates, except closed October 15-January 31.
- (9) Dove: Same as statewide season dates, except closed October 15-January 31.
- (10) Rail and gallinule: Same as statewide season dates, except closed October 15-January 31.
- (11) Common snipe: Same as statewide season dates, except closed October 15-January 31.
- (12) Woodcock: Closed season.
- (13) Deer-archery: Controlled hunts only.
- (14) Deer-primitive firearms: Controlled hunts only.
- (15) Deer-gun: Closed season.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Closed season.
- (19) Waterfowl: Same as statewide season dates, except closed October 15-January 31.

**800:25-7-101. Fort Supply WMA**

The following hunting and trapping seasons apply to Fort Supply WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season. Hunting hours close at 4:30 PM daily.

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- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, except closed during the first nine days of deer gun season, either-sex.
  - (B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates except controlled hunts opening weekend and the following seven days of season buck only hunting. Closed the last seven days of deer gun season closed the last seven days and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

### 800:25-7-111. Hulah PHAWMA

The following hunting and trapping seasons apply to the Hulah PHAWMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either-sex.
  - (B) Gun: Same as statewide season dates, either sex, one (1) tom limit.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide dates except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

### 800:25-7-112. Hulah WRP [REVOKED]

The following hunting and trapping seasons apply to the Hulah WRP:

- ~~(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.~~
- ~~(2) Pheasant: Closed season.~~
- ~~(3) Prairie chicken: Closed season.~~
- ~~(4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either sex.
  - (B) Gun: Closed season.~~
- ~~(5) Turkey - Spring: Same as statewide season dates, 2 tom limit.~~
- ~~(6) Squirrel: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(7) Rabbit: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(8) Crow: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(9) Dove: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(10) Rail and gallinule: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(11) Common snipe: Same as statewide season dates, except closed October 15 January 31.~~
- ~~(12) Woodcock: Closed season.~~
- ~~(13) Deer - archery: Same as statewide season dates.~~
- ~~(14) Deer - primitive firearms: Same as statewide season dates.~~
- ~~(15) Deer - gun: Closed season.~~
- ~~(16) Trapping: Closed season.~~
- ~~(17) Pursuit with hounds: Same as statewide season dates, except closed October 15 January 31.~~

- (18) ~~Predator/furbearer calling: Same as statewide season dates, except closed October 15 January 31.~~
- (19) ~~Waterfowl: Same as statewide season dates, except closed October 15 January 31.~~

**800:25-7-119. Lake Thunderbird State Park**

**[REVOKED]**

The following hunting and trapping seasons apply to Lake Thunderbird State Park:

- (1) ~~Quail: Closed season.~~
- (2) ~~Pheasant: Closed season.~~
- (3) ~~Prairie chicken: Closed season.~~
- (4) ~~Turkey - Fall:~~
  - (A) ~~Archery: Closed season.~~
  - (B) ~~Gun: Closed season.~~
- (5) ~~Turkey - Spring: Closed season.~~
- (6) ~~Squirrel: Closed season.~~
- (7) ~~Rabbit: Closed season.~~
- (8) ~~Crow: Closed season.~~
- (9) ~~Dove: Closed season.~~
- (10) ~~Rail and gallinule: Closed season.~~
- (11) ~~Common snipe: Closed season.~~
- (12) ~~Woodcock: Closed season.~~
- (13) ~~Deer - archery: Same as statewide season dates.~~
- (14) ~~Deer - primitive firearms: Closed season.~~
- (15) ~~Deer - gun: Same as statewide season dates, except legal archery equipment only.~~
- (16) ~~Trapping: Beaver only, by permit, contact State Park Headquarters.~~
- (17) ~~Pursuit with hounds: Closed season.~~
- (18) ~~Predator/furbearer calling: Closed season.~~
- (19) ~~Waterfowl: Same as statewide season dates for all open waterfowl seasons occurring between September 8 and February 15. Hunting closes at 1:00 p.m. daily. Hunting in designated areas only.~~

**800:25-7-131.1. Osage WMA - Rock Creek Unit**

The following hunting and trapping seasons apply to the Osage WMA Rock Creek Unit:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either-sex.
  - (B) Gun: Same as statewide season dates, either-sex one (1) tom limit.
- (5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.

- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates.

**800:25-7-132.1. Ouachita WMA - Cucumber Creek Unit**

The following hunting and trapping seasons apply to the Ouachita WMA - Cucumber Creek Unit. Walk-in access only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates; either-sex.
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates. Two tom season limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Same as statewide season dates.
- (17) Pursuit with hounds: Same as statewide seasons dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

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### 800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.

- (1) Quail: Same as statewide season dates except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates, either-sex.
  - (B) Gun: Same as statewide season dates; one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates,
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except ~~controlled hunts opening weekend and the following seven days buck only. Closed last seven days of deer gun season~~ closed the last seven days of deer gun season and closed to antlerless deer hunting.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.
- (18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

### 800:25-7-137. Rita Blanca WMA

The following hunting and trapping seasons apply to the Rita Blanca WMA:

- (1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
- (2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
  - (A) Archery: Same as statewide season dates.

- (B) Gun: Same as statewide season dates, one tom only, shotgun only.
- (5) Turkey - Spring: Same as statewide season dates; one tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Closed season.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
- (15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.
- (16) Antelope: ~~Controlled hunt only.~~
  - (A) Archery: Same as statewide season dates.
  - (B) Gun: Controlled hunt only.
- (17) Trapping: Open to water sets and live box traps only.
- (18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.
- (19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
- (20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

### 800:25-7-151. Tishomingo WMU/Cooperative Unit

The following hunting and trapping seasons apply to the Tishomingo ~~WNW~~WMU/Cooperative Unit: ~~Hunting is restricted to shotgun or bow and arrow only.~~ All shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

- (1) Quail: Same as statewide season dates, except closed during ~~deer archery and dark goose season~~ first nine days of deer gun season. ~~Contact refuge for special restrictions.~~
- (2) Pheasant: closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey -Fall:
  - (A) Archery: Same as statewide season dates, either-sex
  - (B) Gun: Closed season.
- (5) Turkey - Spring: Same as statewide season dates, ~~one~~ tom limit. ~~Contact refuge for special restrictions.~~
- (6) Squirrel: Same as statewide season dates, except closed during ~~deer archery and dark goose season~~ first nine days of deer gun season. ~~Contact refuge for special restrictions.~~

- (7) Rabbit: Same as statewide season dates, except closed during ~~deer archery and dark goose season~~first nine days of deer gun season. ~~Contact refuge for special restrictions.~~
- (8) Crow: Same as statewide season dates, ~~except closed during deer archery season and dark goose season.~~
- (9) Dove: ~~Open September 1 through September 30.~~ ~~Contact refuge for special restrictions.~~Same as statewide season dates.
- (10) Rail and gallinule: ~~Open September 1 through September 30.~~Same as statewide season dates.
- (11) Common snipe: ~~Closed season.~~Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: ~~Closed season.~~Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: ~~Controlled — hunts only.~~Same as statewide season dates.
- (15) Deer - gun: ~~Controlled — hunts — only.~~Same as statewide season dates.
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: ~~Closed season.~~Same as statewide season dates, except closed during first nine days of deer gun season.
- (19) Waterfowl: ~~Contact refuge for special restrictions.~~Same as statewide season dates.

**SUBCHAPTER 9. CONTROLLED HUNTS**

**PART 1. GUIDELINES**

**800:25-9-2. General provisions**

All permits for controlled hunts are issued by a drawing. All controlled hunts are considered bonus hunts and any game taken does not count against the regular statewide season bag limit except the landowner private land antelope controlled hunt (not bonus and does count towards statewide bag limit).

**800:25-9-3. Applications and instructions**

The following is the application and instructions for participating in controlled hunts:

- (1) The number of names allowed per application will be determined for each hunt annually.
- (2) Those persons who are drawn for elk hunts in 1985 or any year thereafter shall be disqualified from participating in elk hunts for a period of ten (10) years from the year of selection. Those persons who are drawn for antelope hunts in 1992 and any year thereafter shall be disqualified from participating in antelope hunts for a period of ten (10) years from the year of selection. Those persons drawn for an elk hunt or antelope hunt in 2002 or any year thereafter

shall be disqualified from participating in the elk or antelope hunt for the remainder of their lifetime, except for Cimarron and Texas County landowners antelope permits.

(3) Minimum age for participating in controlled hunts unless otherwise specified is 14 years (except special youth hunts and the landowner private land antelope controlled hunt) with Hunter Safety Certification. Minimum age shall be 18 years for hunts on the Wichita Mountains NWR. Proof of certification and age are required at check-in upon entering hunt areas.

(4) Applications and instructions for permits will be available annually on the Department's website or by writing the Oklahoma Department of Wildlife Conservation, P.O. Box 53465, Oklahoma City, Oklahoma 73152.

(5) Applicants must provide the personal data requested and specifying the category and hunt numbers desired.

(6) Persons may enter each category once. Any applicants appearing on more than one application in any one category may be disqualified from all current hunts and may be barred from participating in all hunt drawings for a period of five (5) years.

(7) Only persons who hold either a non-ambulatory or motor vehicle permit may apply for the Persons with Disability Category.

**800:25-9-4. Categories**

(a) The categories for controlled hunts will be determined by the Oklahoma Department of Wildlife Conservation. The deer category for controlled hunts will include all the deer archery, deer primitive firearms, and deer gun hunts pooled together.

(b) No one individual will be drawn for more than one big game hunt (elk, antelope, and deer) per year, except persons drawn for a Disabilities Deer Hunt, landowner private land antelope, or Youth Deer Hunt are eligible to be drawn in another category. Permits in the elk category will be filled first, followed by the antelope category permits, then the deer category permits.

**800:25-9-5. Permit and fees**

The following is the permit process and fee information for participation in controlled hunts:

(1) Applicants must pay a \$5.00 application fee to be entered in controlled hunt drawings. The fee is nonrefundable and there are no exemptions.

(2) An internet access fee may also be applied.

~~(3) Successful applicants in a controlled hunt must obtain the appropriate deer, antelope or elk licenses, in addition, nonresidents must obtain a \$50.00 special hunt permit.~~

~~(4) Successful hunt applicants must obtain their permits within two weeks of notification of selection by sending a money order or certified check for the required amount to the Oklahoma City office of the Department of Wildlife Conservation or pay appropriate fees through the Controlled Hunt Web Application. Envelopes will be provided each successful applicant for this purpose. No~~

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~~personal checks or cash will be accepted by mail. Applicants wishing to claim their permits at the Oklahoma City office in person may use cash. Those applicants selected for antelope hunts must purchase their tags and permit at the designated check in site. Oklahoma Department of Wildlife Conservation issued resident lifetime hunting or lifetime combination license holder will not be charged a fee for their permits or tags, however, Federal fees are required to be paid. Successful resident controlled hunt applicants must obtain their hunt permit(s) which shall include all appropriate deer, antelope or elk licenses(s) unless exempt. Successful nonresident controlled hunt applicants must obtain a \$50 permit fee and all appropriate nonresident deer, antelope, or elk license(s). Resident landowner private lands antelope controlled hunt permits transferred are subject to the applicable resident or nonresident permit/license fees. These permits/licenses are valid only for the controlled hunt the applicant was selected for. Oklahoma Department of Wildlife Conservation issued resident lifetime hunting or lifetime combination license holders will not be charged a fee for their permit or licenses. Applicable federal fees are required to be paid by all successful applicants. All permits must be obtained within two weeks, or as otherwise specified by the Department, of notification of selection. Landowner private lands controlled antelope hunts must have all fees paid and permits transferred to the hunter within four weeks of notification of selection. All permit and license fees can be paid through the Controlled Hunt Web application, in person, or by mailing a money order or certified check to the Oklahoma City office of the Department of Wildlife Conservation. Personal checks or cash will not be accepted by mail.~~

~~(54)~~ Both residents and nonresidents participating in controlled hunts on the Deep Fork NWR, Little River NWR, Tishomingo National Wildlife Refuge, Sequoyah NWR, Washita NWR, Wichita Mountains National Wildlife Refuge, Salt Plains National Wildlife Refuge and McAlester Army Ammunition Plant will be required to pay a Federal Area User Fee as established by the respective Federal area. Controlled youth hunt participants at Washita NWR are exempt from the user fee.

~~(65)~~ Prior to applying for Oklahoma Department of Wildlife Conservation controlled hunts, applicants must purchase an Oklahoma hunting license during the current calendar year of the controlled hunt drawings. Landowner private land antelope controlled hunt applicants are exempt.

~~(76)~~ Applicants must provide personal data requested and specify the category and hunt number desired.

### PART 3. ANTELOPE

#### **800:25-9-11. Cimarron and Texas County (west of Highway 136) landowner antelope permits**

(a) Minimum acreage per application shall be 160 acres and must be located in Cimarron and/or Texas County (west of Highway 136). Properties may not be split to increase number of entries. There shall be a maximum of 4 applications per property allowed in the either sex drawing.

(b) Application may only be filled out and submitted by the owners or operators of the lands contained within the application. Claimants of "hunting leases" do not qualify as either owners or operators. Applicants qualifying for drawing are owner, spouse and children and/or operator (agriculture lessee), spouse and children, ~~operators, or immediate family residing in Cimarron and/or Texas County. Immediate family members attending college out of county may apply.~~ General farm and ranch employees do not qualify as operators.

(c) Federal lands (Rita Blanca) are excluded from application.

(d) Landowner either sex permits are valid only on the lands submitted on the application for the September season. However, any unfilled permit automatically becomes valid for a doe for the December and January doe season in ~~Cimarron and/or Texas County (west of Highway 136) with written landowner permission.~~ the appropriate county, with written landowner permission. Landowner doe only permits are valid anywhere in Cimarron and/or Texas County (west of Highway 136) with written landowner permission. Landowner doe-only permits are county specific but are valid in the open area within that county with written landowner permission.

(e) Landowner permits are transferable one time only. If a landowner chooses to transfer the permit, it must be transferred no later than 14 days prior to the opening date of the September season. Upon transfer, the landowner must mail transfer information to Oklahoma Department of Wildlife Conservation; ~~3014 Lakeview, Woodward, OK 73801, Attn: Wildlife Division.~~ Transfer information must include the hunters' name, hunting license number, mailing address, telephone number and additional fees if applicable.

(f) Landowner permits are not once in a lifetime.

#### **800:25-9-12. General Antelope Regulation**

(a) General regulations for antelope shall be the same as those established for deer gun season.

(b) Any antelope or any portion of any antelope transferred to another person must have the hunter's name, address, hunting license number and date harvested attached to the animal. The person's name and address receiving said wildlife must also appear on the written information.

(c) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(d) The following provisions apply to the tagging and checking of antelope.

(1) Persons taking an antelope shall immediately attach their name and license number to the carcass.

(2) Persons taking an antelope must directly take the antelope to the check station in Cimarron or Texas County

where it will be tagged with a carcass tag that shall remain with the carcass through processing, transportation and storage.

(3) Evidence of sex (head) must not be removed until the carcass has been checked.

(e) The yearly statewide bag limit for antelope is two (2) antelope, which may include no more than one (1) buck. Antelope taken on controlled hunts are not bonus antelope and count towards the statewide bag limit.

(f) A buck antelope is any antelope, regardless of sex, with a black cheek patch.

(g) All antelope hunters are required to have written permission on property that they are hunting and must carry this permission on their person while hunting. However, landowners, operators (agriculture lessee) and their spouse or child, lessee, or immediate family hunting on their own property are exempt.

(h) Hunter fluorescent orange clothing requirements are the same as those required for deer gun season.

### SUBCHAPTER 25. WILDLIFE CLASSIFIED AS DOMESTICATED AND EXEMPT FROM LICENSING AND PERMIT REQUIREMENTS

#### 800:25-25-3. Exemptions

(a) The following wildlife species are exempt from import and export permits, commercial wildlife breeders licenses, noncommercial wildlife breeders licenses and commercial hunting area license requirements.

- (1) Alpacas, guanacos and vicuans (all similar to llamas).
- (2) Bison.
- (3) Camels.
- (4) Cats (~~except bobcats, lynx, mountain lions, tigers, lions, leopards, cheetahs, panthers, jaguars, jaguarandi, ocelots, margays, servals, any cat which will reach a weight of 50 pounds or more, and other such species normally found in the wild~~); (except native cats and bears).
- (5) Cattle (Bos sp.)
- (6) Chickens (domestic fowl, including guineas).
- (7) Chinchillas.
- (8) Dogs and hybrid wolves (~~except coyotes, jackals, foxes, pure wolves and other such species normally found in the wild~~); (except coyotes and native foxes).
- (9) Exotic tropical fish (except those prohibited from import or possession by Commission regulation or statute)
- (10) Ferrets (except black-footed, *Mustela nigripes*).
- (11) Gerbils.
- (12) Goats
- (13) Guinea pigs.
- (14) Hamsters.
- (15) Hedgehogs.
- (16) Horse, donkeys and mules.
- (17) Llamas.
- (18) Mice (except those species normally found in the wild).

- (19) Native invertebrates (except crayfish and all fresh-water mussels including Zebra mussel and Asian clam).
- (20) Peafowl.
- (21) Pigeons.
- (22) Migratory waterfowl not listed as protected by Federal Regulation 50 CFR.
- (23) Pigs except javelinas.
- (24) Rabbits (except cottontails, jackrabbits and swamp rabbits, and other such species normally found in the wild).
- (25) Rats (except those species normally found in the wild).
- (26) Salt water crustaceans and mollusks (import for human consumption).
- (27) Sheep (except dall and bighorn sheep, *Ovis sp.*).
- (28) Turkeys (except Rio Grande, Eastern, Merriam and Osceola or any subspecies).
- (29) Zebras.
- (30) Gerboa.
- (31) Sugar gliders
- (32) Civits.
- (33) Wallaby.
- (34) Kangaroo.
- (35) Fennec Fox.
- (36) Coatimundi.
- (37) Primates.

(b) The following list of birds shall be exempt from import and export requirements, with the exception of those birds imported into the State of Oklahoma from countries outside the United States, its commonwealth's, territories or possessions. Upon reaching their final destination within the State of Oklahoma, such legally documented birds shall be considered a domesticated species and exempt from wildlife breeder's license requirements.

- (1) Cockatoos, cockatiels, canaries, macaws and exotic finches.
- (2) Psittacine birds (parrots, parakeets and budgerigars).
- (3) Ratite birds (ostriches, rheas and emus).

(c) Except as otherwise provided, monotypic species and subspecies of reptiles and amphibians not indigenous to Oklahoma are exempt from import and export requirements and commercial and noncommercial wildlife breeder's license; except those which are biologically capable of establishing self-sustaining populations in the wild of Oklahoma and which may be potentially injurious or detrimental to Oklahoma's wildlife, agriculture or public safety in accordance with existing USDI or APHIS regulations. All venomous reptiles belonging to the families Elapidae (cobras, coral snakes, etc.), Hydrophiidae (sea snakes), Viperidae (vipers), Crotalidae (rattlesnakes, copperheads, cottonmouths, etc.) and the genus *Dispholidus* (boomslangs) and *Helodermatidae* (Gila monsters, beaded lizards) and are not exempt from any requirements.

(d) Licensed Commercial or Noncommercial Wildlife Breeders are exempt from obtaining import/export permits

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for quail, chuker and pheasant or eggs of same; however, such breeders must provide a monthly report of activities.

[OAR Docket #09-1087; filed 5-27-09]

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

[OAR Docket #09-1088]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Use of Department Managed Lands  
800:30-1-4. Camping [AMENDED]  
800:30-1-5. Vehicles [AMENDED]  
800:30-1-7. Livestock and feral hogs [AMENDED]  
Subchapter 3. Mineral Exploration and Production  
800:30-3-2. General Provisions [AMENDED]  
800:30-3-3. Site Development [AMENDED]

### AUTHORITY:

Title 29 O.S., Sections 3-103, 5-206 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

### DATES:

#### Comment period:

December 1, 2008 - January 16, 2009

#### Public hearings:

Public Hearings were held at the following locations:

**Date: January 12, 2009**

**Time: 7:00 p.m.**

Clinton - City Hall, 415 Gary Blvd

Enid - Central Fire Stations, 410 W. Garriott

Jenks - Tulsa Technology Center, 801 East 91<sup>st</sup> Street

Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N.

Lincoln Blvd

Okmulgee - Green County Technology Center, 1100 N. Loop 56, Seminar Room B

Poteau - Kiamichi Vo-Tech, 1509 S. McKenna

**Date: January 13, 2009**

**Time: 7:00 p.m.**

Ada - Pontotoc Technology Center, 601 West 33rd

Idabel - Kiamichi Vo-Tech, Intersection of Hwy 70 & 259

Lawton - Lawton Public Library, 110 SW 4<sup>th</sup>

Muskogee - Muskogee Public Library, 801 W. Okmulgee

Ponca City - Pioneer Vo-Tech, 21-1 N. Ash

Woodward - Northwest Electric - 2925 Williams Ave.

**Date: January 15, 2009**

**Time: 7:00 p.m.**

Durant - Durant State Fish Hatchery/Caddo Regional Office, 2021 Caddo

Hwy

Guymon - OSU Extension Center, 301 N. Main

Hugo - Kiamichi Tech Center, 107 South 15<sup>th</sup> St.

### Adoption:

March 2, 2009

### Submitted to Governor:

March 4, 2009

### Submitted to House:

March 4, 2009

### Submitted to Senate:

March 4, 2009

### Gubernatorial approval:

March 24, 2009

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 29, 2009.

### Final adoption:

April 29, 2009

### Effective:

July 11, 2009

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. Use of Department Managed Lands  
800:30-1-5. Vehicles [AMENDED]

#### Gubernatorial approval:

June 2, 2008

#### Register publication:

25 Ok Reg 2624

#### Docket number:

08-1175

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

These rule amendments are designed to update and clarify camping regulations for the Wildlife Management Areas, and increase hog hunting opportunities and clarify ATV use on timber lands managed by the Department and add specific oil and gas exploration and development requirements for Department areas with commercial or municipal fresh water production.

#### CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JULY 11, 2009:**

## SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

### 800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special ~~season~~season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(~~b~~c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(~~e~~d) No overnight camping is permitted ~~on~~ at the following areas unless otherwise authorized by the Department:

(1) Altus-Lugert WMA.

(2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.

(3) Broken Bow WMA.

(~~3~~4) Canton WMA (waterfowl refuge portion).

(~~4~~5) Cherokee (GMA portion).

(~~5~~6) Chickasaw NRA (Arbuckle).

(7) Dewey County WMA.

(8) Drummond Flats WMA.

(9) Eufaula WMA

(~~6~~10) Fort Gibson WMA.

(11) Gist WMA.

(12) Grassy Slough WMA.

(13) Hackberry Flat (waterfowl refuge portion).

- (7) ~~Heyburn (refuge portion).~~
- (8) ~~Hulah (refuge portion).~~
- (9) ~~14~~ Hugo WMA (waterfowl refuge portion).
- (~~10~~ 15) Major County Lands.
- (16) McClellan-Kerr WMA (includes waterfowl refuge portion).
- (~~11~~ 17) ~~McCurtain County Wilderness.~~
- (~~12~~ 18) ~~Okmulgee WMA (GMA portion).~~
- (19) Osage WMA (Western Wall Unit).
- (20) Ozark Plateau WMA.
- (21) Red Slough WMA.
- (~~13~~ 22) ~~Sparrow hawk~~Hawk WMA.
- (14) ~~Spavinaw Hills WMA (GMA portion).~~
- (~~15~~ 23) ~~Tenkiller WMA.~~
- (~~16~~ 24) ~~Van Osdol WMA.~~
- (17) ~~Waurika WMA (refuge portion).~~
- (25) Washita County WMA.
- (26) Whitegrass Flats WMA.
- (~~18~~ 27) ~~Wister WMA (waterfowl refuge portion).~~
- (19) ~~Gist WMA~~
- (20) ~~Red Slough WMA~~
- (de) ~~Only hunter~~Hunter and fishermen camping is permitted; ~~and~~ only in designated camping areas ~~on~~ at:
  - (1) Atoka WMA (includes PHA portion).
  - (2) Beaver River WMA.
  - (3) ~~Candy WMA.~~
  - (4) ~~3~~ Canton WMA (except waterfowl refuge portion).
  - (~~5~~ 4) Cherokee WMA (PHA portion).
  - (5) Cimarron Bluff WMA.
  - (6) Cimarron Hills WMA
  - (7) Cooper WMA.
  - (~~6~~ 8) Copan WMA.
  - (7) ~~9~~ Ellis County WMA.
  - (8) ~~Eufaula WMA.~~
  - (9) ~~10~~ Fobb Bottom WMA.
  - (~~10~~ 11) Fort Cobb WMA.
  - (~~11~~ 12) Fort Supply WMA.
  - (13) Hackberry Flat WMA (except waterfowl refuge portion).
  - (~~12~~ 14) ~~Heyburn WMA (except refuge portion).~~
  - (~~13~~ 15) Hickory Creek WMA.
  - (~~14~~ 16) Hugo WMA (except waterfowl refuge portion).
  - (~~15~~ 17) Hulah WMA.
  - (~~16~~ 18) James Collins WMA.
  - (17) ~~John Dahl WMA (camping is permitted, only during hunting seasons).~~
  - (~~18~~ 19) Kaw WMA.
  - (~~19~~ 20) Lexington WMA.
  - (20) ~~McClellan-Kerr Navigation System WMA on Lock and Dams 15, 16, and 17.~~
  - (21) Mountain Park WMA.
  - (22) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
  - (23) Oologah WMA
  - (~~23~~ 24) Optima WMA.
  - (24) ~~Ouachita WMA (Homer L. Johnston portion); camping permitted during deer and turkey seasons in designated camping areas.~~
- (25) Osage WMA (Rock Creek Unit).
- (~~25~~) ~~Packsaddle WMA, camping permitted only during open hunting seasons.~~
- (26) Pushmataha WMA.
- (27) Sandy Sanders WMA.
- (28) Schultz WMA.
- (~~28~~ 29) Skiatook WMA.
- (~~29~~) ~~Spavinaw WMA (PHA portion); camping permitted, only during open hunting seasons on area.~~
- (30) Texoma-Washita Arm WMA.
- (31) Tishomingo WMA U.
- (~~32~~) ~~Broken Bow WMA.~~
- (~~33~~) ~~Cooper WMA.~~
- (34) ~~Osage WMA (Rock Creek Unit).~~
- (32) Waurika WMA.
- (33) Yourman WMA.
- (ef) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
  - (1) ~~Robbers Cave WMA, camping only during open deer and turkey seasons.~~
  - (~~2~~ 1) Cookson Hills WMA, hunter camping only during open hunting special deer seasons on the area.
  - (2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
  - (3) John Dahl WMA, only during hunting seasons.
  - (~~3~~) ~~Osage WMA (Western Wall Primitive Area), camping only during controlled hunts.~~
  - (4) Packsaddle WMA, only during open hunting seasons.
  - (5) Robbers Cave WMA, only during open deer and turkey seasons.
  - (6) Spavinaw Hills WMA, only during open hunting seasons on the area.
- (fg) Hunter and fishermen camping is permitted only within ~~fifty~~ 50 yards of roads designated as open for public use at:
  - (1) ~~Broken Bow WMA.~~
  - (1) Deep Fork WMA.
  - (2) Gary Sherrer WMA, ~~camping permitted~~ only during open hunting ~~season~~seasons on the area.
  - (3) Keystone WMA.
  - (4) Love Valley WMA.
  - (~~5~~) ~~Oologah WMA.~~
  - (6) ~~5~~ Pine Creek WMA.
  - (7) ~~6~~ Stringtown WMA, ~~camping permitted~~ only during open hunting ~~season~~seasons on the area.
  - (8) ~~7~~ Wister WMA, (except waterfowl refuge portion).
  - (9) ~~Deep Fork WMA.~~
- (gh) Camping is permitted in accordance with U.S. Forest Service regulations at:
  - (1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
  - (2) ~~Tiak~~ Ouachita WMA - McCurtain Unit (Ouachita National Forest).
  - (3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
  - (4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.

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(hi) Camping is permitted in designated camping areas only at McGee Creek WMA.

~~(i) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.~~

### 800:30-1-5. Vehicles

(a) Except as otherwise provided, all motorized vehicles are required to stay on roads designated as open for public or hunter use. There are no exceptions for motorcycles, four-wheel drive vehicles, snowmobiles or all terrain vehicles. Travel on roads which are gated and locked or designated as closed is prohibited, unless otherwise specified in annual regulations for nonambulatory persons holding valid permits.

(b) Only those vehicles registered as legal to operate on Oklahoma public roadways may be used or parked on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except on specified areas designated for off-road use; unless otherwise provided for nonambulatory persons holding valid permits. All vehicles used by nonambulatory permittees must conspicuously display a sticker designating the vehicle is being used by a nonambulatory permittee and motor vehicle permittees must conspicuously display a sticker designating the vehicle is being used by a motor vehicle hunt permittee.

(c) Maximum speed limit shall be 25 mph unless otherwise posted.

(d) Off-highway vehicle (OHV) use on the Ouachita WMA shall be the same as U.S. Forest Service rules and regulations for the Ouachita National Forest.

(e) Off-highway vehicle (OHV) use on the Black Kettle and Rita Blanca WMAs shall be the same as U.S. Forest Service rules and regulations for the Cibola National Forest.

(f) Off-road vehicle use on the Honobia Creek WMA ~~and Three Rivers WMA~~ shall be regulated by the following:

(1) Off-Road Vehicles (ORV) and All-Terrain Vehicles (ATV) may be ridden on roads owned and maintained by John Hancock Mutual Life Insurance Company ~~or Weyerhaeuser Company~~ and managed by the Oklahoma Department of Wildlife as the Honobia Creek WMA ~~and Three Rivers WMA~~. ORV/ATV use on county or state roads within the confines of the Honobia Creek WMA ~~and Three Rivers WMA~~ must comply with state requirements for street legal vehicles.

(2) Off-road travel by any motor vehicle, including ORVs and ATVs is prohibited.

(3) Motor vehicle travel, including ORVs and ATVs, on roads which are gated and locked, closed by an earthen mound, or otherwise designed as closed is prohibited.

(g) It shall be unlawful to operate an all-terrain vehicle (ATV) or off-road vehicle (ORV) on the Three Rivers WMA except under the following restrictions:

(1) During any open deer season.

(2) Any deer hunter licensed in Oklahoma, unless otherwise exempt.

(3) Any hunter while operating an ATV/ORV shall comply with daylight fluorescent orange head and chest covering as required for hunting deer gun seasons. If a

crash helmet is worn, only the fluorescent orange chest covering is required.

(4) ATV/ORV use is restricted to WMA roads that are delineated on the current Three Rivers WMA map unless otherwise closed.

(5) Only unaltered standard manufactured ATV/ORV's with a 700 cc motor displacement or less are allowed.

(6) ATV/ORV use shall be restricted to a maximum speed of 25 mph.

(7) Operator and/or passenger under the age of 18 shall wear a crash helmet of a type which complies with standards established by C.F.R., Section 571.218.

(8) No operator of an ATV/ORV shall carry a passenger unless that ATV/ORV has been specifically designed by the manufacturer to carry passengers in addition to the operator.

(9) Leaving any ATV/ORV, treestand, or game camera unattended on the Three Rivers WMA without the owner's name and address affixed thereto in a conspicuous manner is prohibited.

(10) Use of ATV/ORV off of delineated roads for retrieval of lawfully taken deer shall be permissible only with the following restrictions:

(A) ATV/ORV's shall not travel more than 2 mile from the nearest road.

(B) ATV/ORV's shall not cross rivers and streams unless on a road with constructed stream crossing structures.

(C) ATV/ORV's used for deer retrieval shall not be used in areas otherwise closed to the use of motor vehicles (walk-in only hunting areas, etc.)

(gh) It is unlawful for any person to hunt, chase, capture, shoot, attempt to shoot, wound or kill any wildlife from a motor driven vehicle on any Department managed areas, except as provided for persons holding a nonambulatory motor vehicle hunting permit.

(hi) It is unlawful for any person to transport a loaded firearm on any Department managed area. Crossbow permittees may not transport a cocked crossbow nor may the bolt be loaded while being transported in a motor vehicle. In addition, no person may take, catch, capture, kill or pursue wildlife or otherwise attempt to use for any purpose a vehicle mounted spotlight or other powerful light at night for any purpose on Department managed lands, except as otherwise provided for hunting of furbearers and predators, taking of frogs, or for navigational purposes while in a water conveyance.

(ij) Grassy Slough WMA, Hackberry Flat WMA, Red Slough WMA, Washita Arm WDU and Whitegrass Flats WMA are closed to all air driven water craft.

(jk) It shall be unlawful for any person to use, transport, park, or unload any personal watercraft within the land and/or water boundaries of the Fort Gibson Wildlife Management Area.

### 800:30-1-7. Livestock and feral hogs

(a) **Livestock.** It is unlawful for any person to willfully or neglectfully allow unauthorized livestock to encroach upon any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) **Horses.** No person shall ride, drive, lead or keep a horse or other livestock on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except Honobia Creek WMA and Three Rivers WMA, during the period of October 1 through January 1 and spring turkey season, annually without prior written approval from the Oklahoma Department of Wildlife Conservation. Individuals or parties of less than 25 may ride on areas with prior approval of the local biologist during the closed period if no hunting seasons are in progress. U.S. Forest Service regulations shall apply to those lands owned by the Forest Service. See 800:25-7-71 [REVOKED] (renumbered to 800:30-1-20) also.

(c) **Use of horses.** Hunting on, from or with the aid of horses or mules on WMAs (except U.S. Forest Service lands, Honobia Creek WMA and Three Rivers WMA) is prohibited during daylight hours during the period of October 1 - January 1 and during spring turkey season. Persons holding nonambulatory permits or motor vehicle permits are exempt.

(d) **Feral hogs.** Feral hogs may be taken on lands owned or managed by the Oklahoma Department of Wildlife Conservation during any established hunting season with ~~weapons and methods authorized by the Department for that hunting season, except for Honobia Creek WMA, Three Rivers WMA, and Broken Bow WMA. Feral hogs may be killed during the regular deer archery and deer muzzleloading seasons and during the first nine days of the regular deer gun season on these three (3) WMAs, with weapons and methods legal for the open deer season.~~

**SUBCHAPTER 3. MINERAL EXPLORATION AND PRODUCTION**

**800:30-3-2. General provisions**

At least 30 days prior to entering to drill or moving any equipment onto Department property the operator will:

- (1) Provide the Department a copy of the approved notice of intent to drill (Corporation Commission Form 1000), an estimate of drilling time and an area plat map generally showing the proposed locations and dimension of the:
  - (A) Roads.
  - (B) Drilling Pad.
  - (C) Reserve Pit.
  - (D) Service Area (including pumps, flowlines, separator, meter house, pulsation bottle, compressor, storage tanks and water tanks).
- (2) Provide the Department a list of the names, addresses and telephone numbers of responsible personnel involved with the drilling, subsequent operation and restoration.
- (3) ~~Must obtain~~Obtain approval from the Oklahoma Archeological Survey Office (OASO) and State Historic Preservation Office (SHPO). Written approval from the OASO and SHPO must be provided to the Department before any type of soil disturbance is allowed.

(4) Enter into a written surface contract agreement on forms as provided by the Commission with the Department of Wildlife, [52 O.S., Section 318.2 - 318.9], sign a letter of stipulation and remit payment for damage and usage. Predetermined surface damages shall be paid to the Department under the surface contract agreement prior to beginning of any work activity. If additional damage and usage is determined by the Department after completion of proposed project, additional charges will be imposed.

(5) Each Operator will deposit with the Department, a performance surety bond of Ten Thousand Dollars (\$10,000) from a surety company licensed to do business in this state. Only one bond will be required from each operator if the operator has ten or fewer wells on Department property. If the operator has more than ten wells on Department property, an additional One Thousand Dollars (\$1,000) bonding per well will be required. This bond will be conditioned on the observances and compliance with the terms of the surface agreement. This bond will be maintained at Ten Thousand Dollars (\$10,000) and it shall remain in effect as long as the operator is drilling or operating a well on Department lands, or until released by the Department in writing.

(6) At no time will personnel involved in oil and gas activities (except authorized security personnel) be permitted to carry firearms or other hunting or trapping equipment onto an area unless the equipment is appropriate to a season open on the area at the time and the individual(s) would otherwise be authorized to hunt.

(7) In addition to the damage costs in (a), the full value of any merchantable timber (as determined by the Department) removed from roads, drilling pads and pit sites shall also be paid by the operator.

(8) Oil and gas activities will be avoided in or near any previously identified fragile or unique areas. However, fragile or unique areas will not preclude utilization if damage to said fragile or unique areas can be prevented. Examples of fragile and unique areas include but are not limited to:

- (A) Red-cockaded woodpecker colonies.
- (B) Potential red-cockaded woodpecker restoration sites.
- (C) Fragile environments such as natural lakes and bogs.
- (D) Turkey roosts.
- (E) Wetlands.
- (F) Wintering bald eagle roost.
- (G) Populations of endangered plants.
- (H) Prairie chicken leks.

(9) Exploration may proceed if directional drilling from adjacent areas is feasible. On Department owned leases, such areas shall be identified prior to leasing and any area with substantial quantities of such habitats will not be leased for drilling.

(10) All oil and gas construction, development and/or well reworking and servicing is extremely undesirable during high public access periods, unless otherwise approved by the Department. Routine checking or trucking

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will be strongly discouraged during the time from two hours before sunset to two hours after sunrise.

(11) Oil and gas exploration and development activities will not prevent hunters and anglers from using wildlife resources or from freely pursuing their activities in the Wildlife Management Area.

(12) Special Provisions for oil or gas exploration or production on Department lands having commercial or municipal fresh water production including the Garber-Wellington Aquifer drainage basin/recharge area particularly T7N, R1E, Secs. 15-22, 25-35, Cleveland County, Oklahoma.

(A) No oil, gas or disposal well shall be drilled, operated, or maintained, nor shall any operation in connection therewith be carried on or conducted within three hundred (300) feet of any producing freshwater well.

(B) Domestic and public water supply wells located within a radius of one-half ( $\frac{1}{2}$ ) mile of any oil/gas, enhanced recovery, injection, or disposal well shall be tested prior to beginning drilling, injection, or disposal and thereafter annually for the presence of deleterious substances. Such testing is the responsibility of the permittee and, at the permittee's expense, to be conducted by a person approved by the Department and Domestic or Public Water Supply well owner. The Department and water well owners shall be notified forty-eight (48) hours in advance of such testing and may be present therefore. Test results shall be filed with the Department and water well owner's upon completion.

(C) Casing.

(i) Suitable and sufficient surface casing or a stage collar shall be installed to a depth of at least two hundred (200) feet below treatable water strata encountered in the well, and the annular space behind the casing shall be filled with cement from the base of the surface casing, or from the stage collar, to the surface of the ground, by either pump and plug method or by the displacement method. No further drilling shall be accomplished until the cement has set for at least eight (8) hours. No braden head cement job shall be performed between the surface casing and any other casing string except by special order of the Corporation Commission.

(ii) Production casing of a size not less than four and one-half ( $4\frac{1}{2}$ ) inches outside diameter, in good condition, shall be set no higher than the top of the producing formation and cemented with a sufficient amount of cement to obtain a minimum of five hundred (500) feet of annular fillup above the casing.

(iii) The casing shall be tested before drilling the cement plug, at a minimum pressure of one thousand (1,000) pounds per square inch held for one (1) hour. Whenever the pressure drops five (5) percent within the hour, the casing will be deemed

inadequate and shall be repaired and retested until the requirements hereof are met.

(iv) Permittee shall provide documentation to the Department showing the results of the casing pressure test. The test results shall be filed with the Department upon completion of such test. The Department shall be notified in advance of the casing pressure test to enable a Department Representative to be present.

(v) Rupture in surface casing: In the event a rupture, break or opening occurs in the surface production casing, the permittee or the operator or drilling contractor shall take immediate action to repair it, and shall report the incident to the Department promptly.

### **800:30-3-3. Site development**

(a) **Roads.** Existing management area roads will be used for mineral exploration and production whenever possible. If additional roads must be constructed by the operator, they shall:

(1) Follow the natural land contour if reasonable and possible.

(2) Be a maximum of 40' in width; dimensions and location MUST be approved by the Department prior to construction. Operator will be charged only for width of road that is actually constructed.

(3) Possess a base sufficient to support vehicles and equipment using it. "Base" guidelines will be predetermined by the Department. In addition, road maintenance materials at the rate of 2,000 cubic yards or ton equivalent per mile, will be provided to the Department, on site, prior to road construction and will be used for annual road maintenance. Size and location of material shall be determined by the Department.

(4) Be sufficiently ditched with culverts, water bars, and turnoffs that will provide adequate drainage and prevent erosion.

(5) After completion of drilling, all roads not a part of the management area system will be gated, locked and, if necessary, bermed to exclude all unauthorized personnel. Locks and nonreproducible keys may be provided by the Department at cost. Such measures shall not be necessary when the operator's roads are secured by existing Department gates.

(6) Have cattleguards installed as determined by the Department.

(b) **Drilling pads.**

(1) Drilling pad shall not exceed 300 feet x 300 feet. Deviations are negotiable when justified by special conditions such as well depth and necessary equipment.

(2) When directed by the Department, drilling pad must be enclosed within a berm to prevent escape of any deleterious substance from the drilling operation. Also a diversion ditch upslope of the well site shall be constructed prior to the commencement of drilling and shall be adequate to divert surface drainage water from the location if so directed by the Department.

(c) **Reserve pit.**

- (1) Reserve pit will not exceed 160 feet x 160 feet unless justified by special conditions, such as wells over 14,000 feet deep may have a pit 200 feet x 200 feet.
- (2) If drilling mud will not provide an immediate water seal, the pit must be lined with a manufactured liner not less than 30 mils thick or with soil seal not less than 12 inches thick and a coefficient of permeability not greater than  $10^{-7}$  CM/SEC.
- (3) Pits must be constructed and maintained to not receive water from the surrounding watershed and the fluid level in each pit must be at least 18 vertical inches below the lowest point of the embankment.
- (4) After the drilling rig is moved from the site, or during activity on areas with grazing leases, pits shall be enclosed in a woven wire perimeter fence on steel posts and no less than 4 feet high.
- (5) If deleterious fluids other than fresh water drilling fluids are used in drilling or work over operations, these fluids shall be stored as required by Corporation Commission Rule 3-104 (b) in pits lined with 30 mil liner or in metal tanks.
- (6) A self contained system may be required as stipulated by the Department.

(1) Closed system steel mud or circulating pits shall be used. Such pits and contents shall be removed from the premises and the drilling site within fifteen (15) days after completion of the well.

(2) All waste oil, salt water, liquid with oil content, gasoline or other oil derivatives or by-products, sand, sludge or other waste produced in connection with the drilling, testing, cleaning, swabbing, reworking or operating of any oil, gas or disposal well shall be captured and retained in steel tanks or vessels and transported from the premises to a disposal facility.

(3) No person shall permit such substances to escape from the premises owned, leased or controlled by the persons conducting such operations by seepage, overflow or otherwise, nor flow across the surface of the ground or upon any public way, into any storm or sanitary sewer, drainage ditch, upon any gutter or paving or into any gully, stream or tributary.

*[OAR Docket #09-1088; filed 5-27-09]*

