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Brad Henry, Governor
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Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #09-1244]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 7. Environmental Permit Process
Part 5. Land Protection Division Tiers and Time Lines
252:4-7-52. [AMENDED]

SUMMARY:

The purpose of the proposed rule is to add an additional Tier I approval—plans for off-site and intermediate facilities that manage hazardous secondary materials under a new Part 7 of Subchapter 19 of OAC 252:205.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106.

COMMENT PERIOD:

Written comments may be made, delivered or mailed to the contact person from September 15, 2009 through October 22, 2009. Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, October 22, 2009 and at the meeting of the Environmental Quality Board, November 19, 2009.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 22, 2009 at 10:00 a.m. at the Oklahoma City office of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 19, 2009, at 9:30 a.m. in the Regents Room, East Central University, 1100 E. 14th Street, Ada, Oklahoma 74820.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by these modifications provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other compliance with the proposed rule.

COPY OF PROPOSED RULE:

The proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPrules.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPrules.htm>.

CONTACT PERSON:

Jon Roberts (405) 702-5153, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is jon.roberts@deq.ok.gov.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #09-1244; filed 8-25-09]

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

[OAR Docket #09-1242]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Incinerators
Part 1. General Provisions
252:100-17-1. Purpose [AMENDED]
252:100-17-1.1. Reference to 40 CFR [AMENDED]
252:100-17-1.2. Terminology related to 40 CFR [REVOKED]
252:100-17-1.3. Incinerators and fuel-burning equipment or units [NEW]
Part 3. Incinerators
252:100-17-2. Applicability [AMENDED]
252:100-17-2.1. Exemptions [AMENDED]
252:100-17-2.2. Definitions [AMENDED]
252:100-17-4. Particulate matter [AMENDED]
252:100-17-5. Incinerator design requirements [AMENDED]

Notices of Rulemaking Intent

252:100-17-5.1. Alternative incinerator design requirements [AMENDED]
252:100-17-7. Test methods [AMENDED]
Part 4. Biomedical Waste Incinerators [NEW]
252:100-17-8. Applicability [NEW]
252:100-17-9. Definitions [NEW]
252:100-17-10. Design and operation [NEW]
252:100-17-11. Emission limits [NEW]
Subchapter 31. Control of Emission of Sulfur Compounds
Part 1. General Provisions
252:100-31-1. Purpose [AMENDED]
252:100-31-2. Definitions [AMENDED]
252:100-31-4. Excess emission reporting and alternative reporting schedule [NEW]
Part 2. Ambient Air Concentration Limits or Impacts for New and Existing Equipment, Sources, or Facilities
252:100-31-7. Ambient air concentration limits or impacts [AMENDED]
Part 3. Existing Equipment Standards
252:100-31-13. Sulfuric acid plants [AMENDED]
252:100-31-15. Kraft pulp mills [AMENDED]
252:100-31-16. Fossil fuel-fired steam generators [AMENDED]
Part 5. New Equipment Standards
252:100-31-25. Fuel-burning equipment [AMENDED]
252:100-31-26. Petroleum and natural gas processes [AMENDED]
252:100-31-27. Pulp mills [AMENDED]
Appendix A. Allowable Emissions for Incinerators with Capacities of 100 Lb/hr or Greater [REVOKED]
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]
Appendix B. Allowable Emissions for Incinerators with Capacities less than 100 Lbs/hr [REVOKED]
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to amend Parts 1 and 3 of OAC 252:100-17, Incinerators, to remove obsolete language and clarify the remaining provisions. In addition, the Department is proposing to revoke Appendix A, Allowable Emissions for Incinerators with Capacities in Excess of 100 lb/hr and Appendix B, Allowable Emissions for Incinerators with Capacities Less than 100 lb/hr. The current provisions of both appendices are proposed to be rolled into a new Appendix A, Allowable Particulate Matter Emission Rate for Incinerators.

The Department is proposing to add a new Part 4, Biomedical Waste Incinerators, to Subchapter 17, Incinerators. The new part will incorporate the control technology requirements for this type of incinerator originally established under the authority of Subchapter 41, Control of Emission of Hazardous and Toxic Air Contaminants, which was revoked in 2007. In addition, the Department has identified regulatory gaps in Subchapter 17, Part 7, Hospital, Medical and Infectious Waste Incinerators, when pathological waste, low-level radioactive waste, and chemotherapeutic waste is incinerated.

The addition of Part 4 will reestablish the Department's authority to require design and emission standards for biomedical waste incinerators and close the regulatory gap in Part 7 of Subchapter 17.

The Department is proposing changes to Subchapter 31, Control of Emission of Sulfur Compounds, to clarify the language and add a requirement that all new sources of sulfur dioxide (SO₂) must meet the same ambient air standards currently applicable to any facility that existed before July 1, 1972, and any petroleum and natural gas processing facility built or modified after December 31, 1974. As part of that change, the Department is proposing to drop the five-minute SO₂ ambient air standard, which has been found to be difficult to enforce and less protective than the other standards. In addition, the Department is proposing to add requirements for fuel-burning equipment that use an alternative fuel.

The Department is proposing to update Appendix Q, Incorporation By Reference, to incorporate by reference the latest changes to U.S. Environmental Protection Agency regulations. Included are changes to New Source Performance Standards (NSPS) and Part 63 National Emissions Standards for Hazardous Air Pollutants (NESHAP).

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on October 21, 2009. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the October 21, 2009 hearing and at the November 19, 2009 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 21, 2009, at the DEQ headquarters, 707 N. Robinson St., Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on Thursday, November 19, 2009, East Central University, Regents Room, 1100 E. 14th Street, Ada, Oklahoma 74820.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 of the U.S. Environmental Protection Agency regulations and 27A O.S. § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping,

equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

PERSONS WITH DISABILITIES:

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

[OAR Docket #09-1242; filed 8-25-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

[OAR Docket #09-1243]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 252:205-1-2. [AMENDED]
- Subchapter 3. Incorporation by Reference
 - 252:205-3-1. [AMENDED]
 - 252:205-3-2. [AMENDED]
- Subchapter 19. Additional Rules for Recycling
 - Part 7. Requirements for Off-site HSM Facilities, Intermediate Facilities, and Generators of Hazardous Secondary Materials [NEW]
 - 252:205-19-71. [NEW]
 - 252:205-19-73. [NEW]
 - 252:205-19-75. [NEW]
 - 252:205-19-77. [NEW]
 - 252:205-19-79. [NEW]

SUMMARY:

The purposes of the proposed amendments are to incorporate by reference the federal hazardous waste

regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2009 and to enact a new Part 7 to Subchapter 19, establishing additional requirements for facilities that generate or manage hazardous secondary materials.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106.

COMMENT PERIOD:

Written comments may be made, delivered or mailed to the contact person from September 15, 2009 through October 22, 2009. Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, October 22, 2009 and at the meeting of the Environmental Quality Board, November 19, 2009.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 22, 2009 at 10:00 a.m. at the Oklahoma City office of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 19, 2009, at 9:30 a.m. in the Regents Room, East Central University, 1100 E. 14th Street, Ada, Oklahoma 74820.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by these modifications provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other compliance with the proposed rule.

COPY OF PROPOSED RULE:

The proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/LPDnew/LPProrules.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/LPDnew/LPProrules.htm>.

CONTACT PERSON:

Jon Roberts (405) 702-5153, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is jon.roberts@deq.ok.gov.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #09-1243; filed 8-25-09]

Notices of Rulemaking Intent

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

[OAR Docket #09-1247]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Regulation of Physician and Surgeon
Practice

435:10-7-2. Use of Board certification [AMENDED]

SUMMARY:

The proposed rule amendments set out which allopathic physicians may claim to be "Board Certified" or "Certified by" or a "Diplomat" or "Fellow"

AUTHORITY:

TITLE 59 O.S., Section 489, State Board of Medical
Licensure and Supervision

COMMENT PERIOD:

The comment period will run from October 1, 2009 to
November 13, 2009. Written comments may be sent to the
office of the Board, PO Box 18256, Oklahoma City, OK
73154-0256.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity
for persons to orally present their views on November 18,
2009, 6:00 p.m. at the office of the Board, 101 NE 51st,
Oklahoma City, Oklahoma. Written notice of intent to make
oral comment must be received by this office no later than
November 13, 2009.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the office
of the Board, 5104 North Francis Avenue, Suite C, Oklahoma
City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and available after
September 30, 2009 at the office of the Board, 5104 North
Francis Avenue, Suite C, Oklahoma City, Oklahoma 73118.

CONTACT PERSON:

Kathy Plant (405) 848-6841, ext.

[OAR Docket #09-1247; filed 8-26-09]

Emergency Adoptions

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

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

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

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

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

[OAR Docket #09-1236]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Requirements to Practice Public Accountancy

10:15-3-2 [AMENDED]

10:15-3-3 [AMENDED]

Subchapter 18. Computer-Based Examination

10:15-18-1 [AMENDED]

10:15-18-4 [AMENDED]

Subchapter 21. Reciprocity

10:15-21-1 [AMENDED]

Subchapter 22. Substantial Equivalency

10:15-22-1 [REVOKED]

Subchapter 23. Registration

10:15-23-1 [AMENDED]

10:15-23-2 [AMENDED]

Subchapter 25. Permits

10:15-25-1 [AMENDED]

10:15-25-2 [AMENDED]

10:15-25-3 [AMENDED]

10:15-25-4 [AMENDED]

Subchapter 27. Fees

10:15-27-7.1 [REVOKED]

10:15-27-8 [AMENDED]

10:15-27-9 [AMENDED]

Subchapter 30. Continuing Professional Education

10:15-30-5 [AMENDED]

Subchapter 32. Standards for Continuing Professional Education (CPE)

10:15-32-2 [AMENDED]

10:15-32-5 [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

June 26, 2009

Approved by Governor:

August 6, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

HB 1779 amended the Oklahoma Accountancy Act effective April 14, 2009. The bill provided for national criminal history record checks for applicants to qualify to sit for the CPA/PA examination and for applicants for certification or licensure. Amendments to Subchapters 3, 18, and 21 provide for this requirement. Failure to promulgate these proposed emergency rules could result in the certification or licensure of individuals who have been convicted of such crimes as embezzlement, which could cause great harm to the public of Oklahoma.

The Board considers the amendment to the education requirements for sitting for the CPA/PA examination an emergency because it has come to the Board's attention that some students have taken internal auditing or forensic auditing courses, for example, in place of an auditing course with a concentration on external auditing standards. Such courses do not prepare these students for the auditing section of the CPA/PA examination. The auditing section of the examination costs candidates over \$226 plus an application fee of \$50. It is a disservice to these candidates to allow them to meet the requirements for sitting for the examination with a course that will not prepare them to pass the auditing section. Failure to include this amendment in the emergency rules would mean it would be another year before the change could become effective. This could cause even more students to pay a significant fee for an examination section for which they are not prepared and could delay these students from passing the examination and becoming certified, thus affecting their income. In addition to the cost of the examination section, students would have paid the tuition for a college course that does not prepare them for the examination.

It is an emergency that the notification requirement in the Substantial Equivalency subchapter be revoked because the amendments to the Act effective April 14, 2009, removed the requirement for notification when an individual from another jurisdiction comes into Oklahoma to practice. Failure to revoke this section would be in violation of the Act.

The Board finds the amendments to Subchapters 23, 25 and 27 an emergency because amendments to HB 1779 effective April 14, 2009, changed the registration and permit renewal filing deadlines for individuals. Effective January 1, 2010, the individual renewal deadlines will be based on the registrants' birth months rather than on the fiscal year basis that has been used in the past. The agency must have rules in place to start the transition process. Additional amendments to Subchapter 25 are necessary because HB 1779 also changed the filing deadlines for firms from May 31 to June 30 and because of the mobility provisions in the Act that became effective April 14, 2009.

In addition, the revocation of the substantial equivalence fee provision in Subchapter 27 is necessary at this time because HB 1779 amended the Act effective April 14, 2009, eliminating the requirement for notification or the payment of fees for individuals entering Oklahoma to practice under the substantial equivalence provisions.

The amendment to the CPE filing requirement is also an emergency because of the changes made in HB 1779 to the permit and registration filing deadlines. CPE is reported at the same time and in the same filing process as registration and permit renewals. Because those filing dates were changed in HB 1779, the CPE reporting date must also be changed.

The revision to the CPE standards for CPE program sponsors is considered an emergency because the current language in the rule limits registrants to taking self-study courses only from providers registered with NASBA's National Registry of CPE Sponsors, the AICPA or other such organizations as determined by the Board. It leaves out NASBA's QAS Sponsor Registry, which had been thought to be a division of the National Registry of CPE Sponsors. It is, in fact, a separate registry. Registrants of the OAB would not understand the

Emergency Adoptions

distinction and will be taking CPE from providers registered with NASBA's QAS Registry. If this amendment is not passed as an emergency rule, many Oklahoma registrants will have taken CPE in good faith that might not qualify under the current rule, which would be a disservice to these registrants. Since not all QAS sponsors are listed in the National Registry, it is important to add this amendment at this time so Oklahoma registrants do not lose CPE that should qualify. In addition, the proposed amendment would allow for the possibility of successor registry names.

ANALYSIS:

HB 1779, effective April 14, 2009, amended the Act significantly. It amended the substantial equivalency provisions of the Act so that Oklahoma is now a full mobility state, in accordance with the AICPA's Uniform Accountancy Act. Unless an individual or firm is performing audits or reviews, practicing accounting across state lines on the basis of licensure by another jurisdiction will be much like driving across state lines with a driver's license issued by another state in that no fee is required and no notification must be given to the State of Oklahoma. As in the case with the driver crossing state lines, the individual or firm entering the state is subject to Oklahoma statutes. In addition, the Act was amended so that registration and permit renewals will now be due annually on the last day of the registrants' birth months rather than being due on July 31. CPE reporting, which is done in conjunction with registration and permit renewals, is changed in the proposed rules to coincide with the filing deadlines for those renewals. This will spread out the work load and make better use of the OAB's staffing resources. In addition, the Act was amended to provide for national background checks for individuals who apply to sit for the CPA/PA examination or apply for certification or licensure in Oklahoma. Because of these amendments to the Act, emergency rules must be promulgated to provide for the new requirements. The change to the CPE standards is made to avoid circumstances of registrants paying for CPE courses in good faith that might not qualify under the current rules. It was always the Board's intention that registrants be allowed to take self-study courses from the AICPA or from providers registered with either NASBA's National Registry of CPE Sponsors or with NASBA's Quality Assurance Services Registry. They were thought to be two parts of the same registry, but are, in fact, two different registries. CPE courses can be expensive. The Board does not wish to penalize registrants for taking CPE courses that should be acceptable because of a misunderstanding of the way NASBA's CPE registries are organized.

CONTACT PERSON:

Edith Steele (405) 521-2397 or Nicole Prieto Johns (405) 521-2397

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

SUBCHAPTER 3. REQUIREMENTS TO PRACTICE PUBLIC ACCOUNTANCY

10:15-3-2. Certificate as a certified public accountant

A certificate may be issued to a qualified applicant only after:

- (1) The examination has been satisfactorily completed;
- (2) Evidence, by means established in ~~40:15-37-11(e)~~ Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;
- (3) Effective with all initial examination candidates for the November 2003 examination, documentation must be provided that the certification applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior

to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

- (4) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

10:15-3-3. License as a public accountant

A license may be issued to a qualified applicant only after:

- (1) The examination has been satisfactorily completed;
- (2) Evidence, by means established in ~~40:15-37-11(e)~~ Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;
- (3) Effective with all initial examination candidates for the November 2003 examination, documentation must be provided that the licensure applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as defined in Title 59, Section 15.9.D. of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided on a form prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and
- (4) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

SUBCHAPTER 18. COMPUTER-BASED EXAMINATION

10:15-18-1. Applications for examination

- (a) An application for qualification on a form prescribed by the Board, will not be considered filed until the application and all required examination fees as provided by §15.8 of the Act and supporting documents, including photographs and official transcripts as proof that the applicant has satisfied the education requirement, are received by the Board.

(b) Evidence, by means established in Title 59, Section 15.8 of the Act, is obtained to substantiate that the applicant is of good moral character;

(b)c) A candidate's application for examination will not be considered filed until the form prescribed by the Board and the application fee as provided by §15.10A of the Act, are received by the Board.

(e d) Failure of a candidate to furnish all information requested by the Board within the time frame set by the Board shall be grounds for denying such candidate admission to the examination.

(d e) Any candidate who gives false information to the Board in order to be eligible to take the examination shall be subject to disciplinary action by the Board.

10:15-18-4. Educational requirements

(a) A qualification applicant shall show, to the satisfaction of the Board, that the applicant has graduated from an accredited two-year or four-year college or university.

(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.

(2) When determining eligibility based on educational qualifications, the Board shall consider only educational credit reflected on official transcripts, from an accredited two-year or four-year college or university.

(3) The Board may accept as temporary consideration, an official letter signed and sealed by the registrar's office of any two-year or four-year college or university attesting to the completion of educational qualifications of any qualification applicant, provided that official transcripts be submitted to the Board prior to any score release.

(4) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing or assurance course taken for credit from an accredited two-year or four-year college or university. Such course must have a concentration on external auditing standards including but not limited to Statements on Auditing Standards (SAS).

(b) When determining eligibility of a qualification applicant, the Board shall not consider any combination of education and experience.

(c) The Board will also consider a qualification applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by a national credential evaluation service, as approved by the Board, certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.

(d) On and after July 1, 2003, one hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.C. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-1-2, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession.

However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.C.

(e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Section 15.8.B, is not subject to subparagraph (d) of this subsection.

SUBCHAPTER 21. RECIPROCITY

10:15-21-1. Application for certificate or license

An applicant seeking to obtain an Oklahoma reciprocal certificate or license, who holds a valid certificate or license pursuant to the laws of another jurisdiction shall provide the Board with:

(1) written proof of test scores received on all examinations from the examining jurisdiction;

(2) written information that the applicant met or currently meets all Oklahoma requirements for eligibility as provided by statute, §15.13, Title 59, Oklahoma Statutes and these rules;

(3) a current certificate of good standing from the jurisdiction who issued the certificate or license upon which the reciprocal certificate or license is based;

(4) written proof of having met all Oklahoma continuing professional educational requirements for those applicants seeking a permit to practice public accounting;

(5) Evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

(6) An applicant shall file for a reciprocal certificate or license within one hundred twenty (120) days of engaging in the practice of public accounting in Oklahoma.

(7) Evidence, by means established in Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character.

SUBCHAPTER 22. SUBSTANTIAL EQUIVALENCY

10:15-22-1. Notification [REVOKED]

~~(a) A qualified individual seeking practice privileges in this state pursuant to Section 15.12A of the Oklahoma Accountancy Act shall comply with the notice requirement as follows:~~

~~(1) Notice may be given electronically or in writing on forms prescribed by the Board;~~

~~(2) Notice is immediately due and shall be received by the Board within thirty (30) days after the individual knowingly avails him/herself of the laws of this State by:~~

~~(A) Accepting an engagement or an assignment to render professional services in this State, or~~

~~(B) Offering to render professional services through direct solicitation or marketing targeted to persons in this state.~~

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- (3) ~~In lieu of the procedure set out in paragraph (a)(2), at anytime prior to entering this State, an individual, directly or through the individual's firm, may be included in a master notice to all participating substantially equivalent jurisdictions including the Board by giving notice to the NASBA National Qualification Appraisal Service or other comparable service designated by the Board; and, provided the firm accepts responsibility for each individual's compliance with the accountancy laws and rules of this State for as long as the individual is included in the firm's master notice, keeps the master notice reasonably current and renews the notice annually. In any event, the individual seeking practice privileges is responsible for complying with the requirement that the notification required under this Section has been made.~~
- (4) ~~Staff will inform the individual if he/she must withdraw based on findings. Withdrawal must be immediate. Individuals may appeal, and practice in this State may continue during the appeal process.~~
- (b) ~~Notice shall be renewed annually on the anniversary date of the original notice for so long as the individual intends to use Substantial Equivalency privileges in this State.~~
- (e) ~~Notice shall be amended within thirty (30) days after the individual changes his/her principal place of business or within 30 days after the certificate or license has been denied, revoked, or suspended in any jurisdiction.~~
- (d) ~~A non resident individual shall not be deemed to have entered this State for purposes of the Section and notice is not required under this Section if the individual's contact with this State is limited to any of the following activities:~~
- ~~(1) teaching either a college or continuing professional education course;~~
 - ~~(2) delivering a lecture;~~
 - ~~(3) moderating a panel discussion;~~
 - ~~(4) rendering professional services to the individual's employer or to persons employed by the individual's employer, including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients.~~
- (e) ~~No notice shall be required for a certificate or license holder of a jurisdiction that does not require notice by an Oklahoma certificate or license holder entering that jurisdiction to practice public accounting.~~

SUBCHAPTER 23. REGISTRATION

10:15-23-1. Registration of individuals

- (a) On or before July 31, all individuals shall register biennially as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board on a form prescribed by the Board.
- (b) All registration statements shall be accompanied by a registration fee.
- (1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.

- (2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.
- (3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.
- (4) The Board shall use its discretion in determining the conditions required for retirement or disability.
- (c) In addition to the regular registration fee paid by an individual, there shall be a fee for registering after July 31 but within twelve (12) months after the lapse date of the certificate or license.
- (d) In addition to the regular registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.
- (e) Effective January 1, 2010, all individuals shall register annually on staggered dates of the last day of the individuals' birth months as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board on a form prescribed by the Board. The certificate or license shall be considered lapsed after the last day of the birth month.
- (f) All registration statements shall be accompanied by a registration fee.
- (1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.
 - (2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.
 - (3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.
 - (4) The Board shall use its discretion in determining the conditions required for disability.
- (g) In addition to the registration fee paid by an individual, there shall be a fee for registering after the last day of the renewal month but within twelve (12) months after the lapse date of the certificate or license.
- (h) In addition to the registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.
- (e)j) Evaluation of qualifications and approval of registrations filed by individuals shall be performed by the Executive Director, subject to the review and supervision of the Board.
- (f)j) Denial of individual registrations shall be by the Board.
- (g)k) During the period when a certificate or license is suspended by the Board, the suspended registrant shall be required to file annually with the Board an informational report ~~on a form~~ in a format prescribed by the Board. No fee shall be required with such filing.
- (h)l) Biennial filings mailed to the Board office by United States postal service with a postmark on or before July 31 shall be deemed timely filed.
- (m) Renewal forms delivered to the Board office via carrier service with a postmark or ship date on or before the set expiration date as provided in this subsection shall be deemed timely filed.

10:15-23-2. Registration of firms

- (a) On or before ~~May 31~~ June 30 of each year all firms of certified public accountants and all firms of public accountants qualified to register shall file a registration statement with the Board ~~on a form in a format~~ prescribed by the Board.
- (b) The registration statement filed on behalf of a firm of certified public accountants shall be made by a partner or shareholder.
- (c) The statement filed on behalf of a firm of public accountants shall be made by a partner or shareholder.
- (d) Evaluation of qualifications and approval of registrations filed by firms shall be performed by the Executive Director, subject to the review and supervision of the Board.
- (e) Denial of firm registrations shall be by the Board.
- (f) Except for sole proprietorships, all registration statements filed on behalf of a firm shall be accompanied by an annual registration fee and the applicable permit fee for the firm, as provided in Subchapter 27.
- ~~(g) Firm filings mailed to the Board office by United States postal service with a postmark on or before May 31 shall be deemed timely filed.~~
- (g) Firm filings delivered to the Board office via carrier service with a postmark or ship date on or before June 30 shall be deemed timely filed.

SUBCHAPTER 25. PERMITS

10:15-25-1. Term of permit

Each permit shall have a maximum term of one (1) year unless extended by the Board.

10:15-25-2. ~~Date of issue~~ Dates of issuance and expiration

- (a) Permits renewed on a timely basis shall bear a date of issue of July 1 for individuals and June 1 for firms except sole proprietorships. All other permits, except for ~~b (d)~~ and ~~e (e)~~ below, shall bear a date of issue based on the date the acceptable application for a permit is received in the Board office.
- (b) Except for sole proprietorships, firm permits renewed on a timely basis shall bear a date of issuance of July 1 and shall expire on the following June 30.
- (c) Sole proprietorship firm permits shall bear the same date of issuance and expiration as the sole proprietor's individual permit.
- ~~(b d)~~ When the Board has granted an extension in accordance with 10:15-30-8(3), the date of issuance will be determined on a case by case basis.
- ~~(e e)~~ If an application for a permit which has been returned to the holder for correction or completion of information is returned to the Board in acceptable form within thirty (30) calendar days of the first denial, the permit shall bear the date on which the permit application was first received in the office of the Board. Failure to resubmit an acceptable application within the thirty-day period shall cause the permit to be dated with the date the acceptable application is received in the Board office.

(f) Effective January 1, 2010, individual permits renewed on a timely basis shall bear the date of the first day of the month immediately following the individuals' birth months and shall expire the following year on the last day of the individuals' birth months.

10:15-25-3. Individual permit

- ~~(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.~~
- ~~(b a)~~ Any registrant engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit, except for a licensed attorney providing tax services who does not display the certificate or license and does not have any reference thereto on professional stationery, business cards, or printed or electronic format. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. An individual who meets the definition of retired or inactive status as defined in the Code or the Act is not considered to be in the practice of public accounting. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements.
- ~~(c) Each partner, shareholder, owner, member and certified or licensed employee of a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.~~
- ~~(d b)~~ The application for renewal of a permit shall be filed with the Board on a form prescribed by the Board prior to the expiration of the permit, ~~currently held and no later than June 30.~~
- ~~(e c)~~ At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.
- ~~(f d)~~ An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.
- ~~(g e)~~ The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.
- (f) Effective January 1, 2010, the issue dates and expiration dates for individual permits to practice public accounting, as provided in this subchapter shall be extended until such time as all registrants' permits are cycled into the staggered expiration dates on the last day of the individuals' birth months.
- (g) The Board shall provide a schedule of expiration dates and prorated fees for purposes of transitioning into the new staggered annual renewal dates.

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10:15-25-4. Firm permits

(a) Each firm permit shall have a maximum term of one (1) year ~~and shall expire on May 31 following the date of issuance unless extended by the Board.~~

(b) The application for renewal of a firm permit shall be filed with the Board ~~on a form in a format~~ prescribed by the Board prior to the expiration of the permit currently held ~~and no later than May 31.~~

(c) Each firm with an office located in Oklahoma applying for a permit to practice as a certified public accountant firm or as a public accountant firm shall submit a written affidavit signed by an owner, partner, member or shareholder demonstrating compliance with the requirements set out in Section 15.15A of the Oklahoma Accountancy Act and attesting that each partner, shareholder, owner, member and certified or licensed employee of the firm serving Oklahoma clients holds a valid individual permit or ~~has notified the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision enters the state under the provisions of Section 15.12A of the Act.~~

(d) A firm is required to hold a valid permit if that firm is serving Oklahoma clients from outside this state ~~unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.~~ only if such firm is providing any of the following services:

(1) any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(2) any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements, or

(3) any engagement to be performed in accordance with the Public Company Accounting Oversight Board (PCAOB) auditing standards.

(e) Each firm ~~that serves Oklahoma clients~~ shall be required to hold a permit ~~and~~ shall pay the applicable fee.

SUBCHAPTER 27. FEES

10:15-27-7.1. Substantial equivalence [REVOKED]

(a) ~~Each application from an individual to enter Oklahoma under the substantial equivalency provisions from a substantially equivalent state shall be accompanied by a fee equal to the amount charged by that state to an Oklahoma licensee for the equivalent privilege to practice in that state.~~

(b) ~~Each application from an individual to enter Oklahoma under the substantial equivalency provisions from a non-substantially equivalent state shall be accompanied by a fee equal to the amount of the Oklahoma annual registration and permit fees.~~

10:15-27-8. Registration

(a) The registration fee for an individual shall be Fifty Dollars (\$50.00) per year.

(1) In addition to the regular registration fee there shall be a fee for registering after July 31, but within twelve (12)

months after the lapse date of the certificate or license, of One Hundred Dollars (\$100.00).

(2) In addition to the regular registration fee, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license, of Two Hundred Dollars (\$200.00).

(b) An individual who has reached the age of sixty-five (65) shall pay a registration fee of Twenty-five Dollars (\$25.00) per year. In addition to the regular registration fee there shall be a fee for registering after July 31, but within twelve (12) months after the lapse date of the certificate or license, of Fifty Dollars (\$50.00).

(c) Effective January 1, 2010, the annual registration fee for an individual renewing the certificate or license will be Fifty Dollars (\$50.00), or Twenty-five Dollars (\$25.00) for registrants age sixty-five (65) or older, and may be extended until such time as the registrants' certificate and license renewals are cycled into the new staggered expiration dates of the last day of the individuals' birth months.

(1) In addition to the registration fee there shall be a fee for registering after the last day of the individuals' birth months, but within twelve (12) months after the lapse date of the certificate or license, of Fifty Dollars (\$50.00) or for an individual who has reached the age of sixty-five (65), the fee shall be Twenty-five Dollars (\$25.00).

(2) In addition to the registration fee, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license, of One Hundred Dollars (\$100.00) or for an individual who has reached the age of sixty-five (65), the fee shall be Fifty Dollars (\$50.00).

(e)d) The registration fee for a firm, except a sole proprietorship, of certified public accountants or public accountants shall be Fifty Dollars (\$50.00) per year.

10:15-27-9. Permit

(a) Before June 30 of each year the permit fee to renew an individual permit shall be One Hundred Dollars (\$100.00).

(b) The fee for an individual permit which is not a renewal permit shall be One Hundred Dollars (\$100.00).

(c) Effective January 1, 2010, the fee to renew an individual permit shall be One Hundred Dollars (\$100.00) which will be renewable on staggered expiration dates on the last day of the individuals' birth months and may be extended based on the registrants' previous permit expiration date until such time as the registrants' permit renewals are cycled into the new renewal period.

(e)d) A fee of One Hundred Dollars (\$100.00) shall be paid at the time a firm, except a sole proprietorship, which provides public accounting services to Oklahoma clients applies for a permit.

SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

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

(a) Certificate and license holders not otherwise exempt must complete one hundred twenty (120) hours of qualifying CPE within a rolling three (3) calendar year period. A certificate or license holder's three (3) year period begins January 1 in the year the certificate or license holder was required to earn CPE. A minimum of twenty (20) hours of acceptable CPE, shall be completed each calendar year. Effective January 1, 2009, four hours of professional ethics must be completed within each rolling three (3) calendar year period. CPE shall be reported annually by July 31 on a form prescribed by the Board.

(b) Effective January 1, 2010, CPE shall be reported annually by the last day of the certificate and license holders' birth months in a format prescribed by the Board.

~~(b)(c)~~ The professional ethics requirement as mandated in this section may be met by courses from other licensed professional disciplines that relate directly to the practice of public accounting, such as law or securities and may be met by courses on ethical codes in jurisdictions other than Oklahoma.

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

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

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

- (1) Date the in-attendance course was completed;
- (2) Date a self-study course was completed and evidenced by the date of certified mailing or date of facsimile transmission to the program sponsor;
- (3) Date an internet self-study course is transmitted to the program sponsor.

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

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

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

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

10:15-32-2. Standards for CPE Program Sponsors

(a) CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(b) CPE program sponsors may have to meet specific CPE requirements of state licensing bodies, other governmental entities, membership associations, and/or other professional organizations or bodies. Professional guidance for CPE program sponsors is available from the AICPA and NASBA; state-specific guidance is available from the state boards of accountancy. CPE program sponsors should contact the appropriate entity to determine requirements.

(c) Self-study courses considered for CPE credit must be:

- (1) offered by sponsors registered with NASBA ~~NASBA's National Registry of CPE Sponsors~~; or
- (2) courses offered by the AICPA or other such organizations as determined by the Board.

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

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

(1) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

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

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

- (A) Semester System 15 credits; and
- (B) Quarter System 10 credits;

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

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

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

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

- (1) offered by sponsors registered with NASBA's National Registry of CPE Sponsors; or
- (2) courses offered by the AICPA or other such organizations as determined by the Board.

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

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

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

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

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

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

the time devoted to the learning activities and may be less than the actual time involved.

[OAR Docket #09-1236; filed 8-11-09]

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

[OAR Docket #09-1238]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
160:45-1-2 [AMENDED]
Subchapter 5. Closed-End Credit
160:45-5-1 [AMENDED]
160:45-5-3 [AMENDED]

AUTHORITY:

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and (2)

DATES:

Adoption:

July 8, 2009

Approved by Governor:

August 6, 2009

Effective:

Immediately upon Governor's approval or July 30, 2009, whichever is later

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Administrator of Consumer Credit finds that there is a compelling public interest requiring emergency amendments to existing rules. The Federal Reserve Board approved final rules on May 7, 2009, that implement the Mortgage Disclosure Improvement Act and are effective on July 30, 2009. The compelling public interest is maintaining Oklahoma's exemption from federal regulation.

ANALYSIS:

The amended rules incorporate federal changes.

CONTACT PERSON:

Roy John Martin, 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 EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 30, 2009, WHICHEVER IS LATER:

SUBCHAPTER 1. GENERAL PROVISIONS

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.

(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), 160:45-5-3(a)(2) 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;

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

(c) Basis of disclosures and use of estimates.

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

(2) Estimates and per-diem interest.

(A) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is

provided to the consumer, and shall state clearly that the disclosure is an estimate.

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

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

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

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

(C) That months have different numbers of days.

(D) The occurrence of leap year.

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

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

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

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

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

(6) **Multiple advances.**

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

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

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

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation

of this chapter although new disclosures may be required under paragraph (f) of this section, 160:45-5-3, or 160:45-5-4.

(f) **Early disclosures.** If disclosures required by this subchapter are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation ~~(except that, for certain mortgage transactions, 160:45-5-3(a)(2) permits redisclosure no later than consummation or settlement, whichever is later).~~ (subject to the provisions of 160:45-5-3(a)(2) and 160:45-5-3(a)(5)(C): 39/

(1) Any changed term unless the term was based on an estimate in accordance with 160:45-5-1(c)(2) 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

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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.~~Reserved

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

(a) Mortgage transactions subject to RESPA.

(1) Time of disclosures.

(A) In a 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 or mortgage transaction subject to paragraph (a)(5) of this section, the creditor shall make good faith estimates of the disclosures required by 160:45-5-2 ~~before consummation, or~~ and shall deliver or place them in the mail not later than ~~three business days~~ the third business day after the creditor receives the consumer's written application, ~~whichever is earlier.~~

(B) **Imposition of fees.** Except as provided in paragraph (a)(1)(~~iii~~C) 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~~A) of this section before the consumer has received the disclosures required by paragraph (a)(1)(~~i~~A) 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~~A) 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.~~ Waiting periods for early disclosures and corrected disclosures.

(A) The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(A) of this section not later than the seventh business day before consummation of the transaction.

(B) If the annual percentage rate disclosed under paragraph (a)(1)(A) of this section becomes inaccurate, as defined in 160:45-5-6, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(3) **Consumer's waiver of waiting period before consummation.** If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or the three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by 160:45-5-2. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(4) **Notice.** Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraphs (a)(1) or (a)(2) of this section.

(5) **Timeshare plans.** In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 USC 2601 et seq.) that is secured by a consumer's interest in a timeshare plan described in 11 USC 101(53(D)):

(A) The requirements of paragraphs (a)(1) through (a)(4) of this section do not apply.

(B) 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.

(C) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)(5)(B) of this section 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.

[OAR Docket #09-1238; filed 8-24-09]

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

[OAR Docket #09-1239]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 3. Conditions of Eligibility - Need
Part 5. Assistance Payments
340:10-3-56 [AMENDED]
Subchapter 15. Conditions of Eligibility - Citizenship and Alienage
340:10-15-1 [AMENDED]
(Reference APA WF 09-12)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Section 230.65 of Title 56 of the Oklahoma Statutes; Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)]; Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006; Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008; and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act of 2009.

DATES:

Adoption:
July 28, 2009

Approved by Governor:
August 18, 2009

Effective:
November 1, 2009

Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as rules are revised to comply with changes in state statute and federal law.

ANALYSIS:

The proposed revisions amend Chapter 10 rules to: (1) increase the number of months an Afghan in special immigrant status can receive Temporary Assistance for Needy Families (TANF) benefits; (2) update legal cites for aliens in special immigrant status; and (3) remove reference to voucher benefits for a child born ten months from the date of application.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2009:

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 5. ASSISTANCE PAYMENTS

340:10-3-56. Structure of the assistance unit

(a) The structure of the assistance unit is defined in this Section.

- (1) Persons whose needs **must** be included in the assistance unit, unless otherwise excluded in accordance with paragraph (3) of this subsection, are:
 - (A) at least one Temporary Assistance for Needy Families (TANF) eligible child;
 - (B) the natural or adoptive parent(s); and
 - (C) all blood-related minor siblings living in the home with the TANF eligible child(ren), including half brothers and half sisters unless eligibility for the half brothers and half sisters does not exist. This does not apply to siblings of a minor parent when the minor parent is the adult in the assistance unit.
- (2) Persons whose needs **may** be included are:
 - (A) the caretaker relative-payee other than the natural or adoptive parent(s) with whom the child(ren) resides, if this person meets the definition of needy and is of the specified degree of relationship. A caretaker other than stepparent may be included in the assistance unit only when the natural or adoptive parent(s) is absent from the home. A stepparent may be included in the assistance unit when the natural or adoptive parent(s) is incapacitated or absent;
 - (B) the caretaker relative or the natural or adoptive parent when the only dependent child(ren) residing in the home:
 - (i) receives Supplemental Security Income (SSI); or

- (ii) has been removed from the home by a child protection action and the plan for the child(ren) is impending reunification;
- (C) the caretaker relative when the only child(ren) in the home receives federal or state foster care maintenance payments;
- ~~(D) the natural parent(s) when the only child(ren) in the home received benefits in the form of a voucher and has been removed from the cash benefit as a result of attaining 36 months of age;~~
- ~~(E)~~ the adoptive parent(s) when the only dependent child(ren) receives a Title IV-E or state adoption subsidy;
- ~~(F)~~ a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months nationwide, whether or not consecutive, and a hardship extension is approved. All other conditions of TANF eligibility must be met. The hardship extensions are:
 - (i) under-employment. The participant is regularly working 30 hours or more per week and earning at least minimum wage or its equivalent, but the net income of the assistance unit is insufficient to close the TANF cash assistance;
 - (ii) chronically under-employed. The participant is under-employed over an extended period of time as a result of documented barriers;
 - (iii) pending SSI or Social Security Administration (SSA) disability application. This extension is granted only if the Oklahoma Department of Human Services (OKDHS) determines the disability application has merit and the participant pursues all appeals through a decision by the SSA Appeals Council. If an unfavorable decision is received from the SSA Appeals Council during the time period the participant is approved for a hardship extension, Family Support Services Division (FSSD), TANF Section, is notified and the TANF benefit is closed the next effective date;
 - (iv) care of a disabled child(ren) or spouse. The participant is responsible for the care of a disabled child(ren) or spouse. This extension is granted only when verification has been provided to show the participant is needed in the home to care for this disabled person and there is no alternative care available;
 - (v) a clinical diagnosis of mental illness. The participant must be diagnosed with and receiving treatment for a mental disorder listed at Part 404, Subpart P, Appendix 1 of Title 20 of the Code of Federal Regulations. This illness must interfere with the participant maintaining or obtaining gainful employment. If appropriate, the participant must participate in other work activities in conjunction with receiving treatment;
 - (vi) a substance abuse treatment plan. The participant has a treatment plan level of care which requires intensive aftercare treatment of nine hours

or more per week in conjunction with other appropriate work activities, or outpatient treatment of nine hours or more per week in conjunction with other appropriate work activities, or is in full-time inpatient treatment; or

(vii) a continuing training or educational activity. The participant, during the 60th month, is regularly attending an approved training or educational activity which will be completed in less than 12 months; or

~~(GF)~~ a child of a minor in foster care if the minor's child is not included in a foster care payment.

(3) Persons whose needs **may not** be included are:

(A) a person who has received a State Supplemental Payment (SSP) for the same month;

(B) a person who has received or is included in an SSI payment for the same month;

(C) the spouse of the payee if the payee is not the natural or adoptive parent;

(D) a child(ren) who is receiving foster care;

(E) an adopted child(ren) receiving an adoption subsidy;

(F) an alien who is not legally admitted to the United States (US) for permanent residence or does not meet alienage requirements;

(G) a caretaker other than a stepparent when the natural or adoptive parent is in the home;

(H) a person whose period of ineligibility due to receipt of a lump sum payment has not expired;

(I) a stepparent when the natural or adoptive parent is in the home and not incapacitated;

(J) a person in a household that is eligible to receive benefits under a tribal TANF program;

~~(K) a child(ren) born to a recipient after ten months from the date of application.~~

~~(i) Any such child(ren) is not eligible for the parent to receive cash benefits but is eligible for the parent to receive a non-cash voucher in the incremental amount the cash benefits would have been increased had the child(ren) been eligible for cash benefits. This voucher is issued for items of necessity for newborns until the age of 36 months.~~

~~(ii) If a recipient gives birth to an additional child(ren) during the period in which the family is eligible for benefits or during a temporary penalty period of ineligibility, the increase in the amount of benefits is issued as a voucher. A child(ren) born within ten months of application is not considered an additional child(ren) for this provision.~~

~~(iii) The first child(ren) born after ten months from the date of application to a minor child(ren) of an applicant or a recipient family is not considered an additional child(ren) for this provision and is added to the cash payment. Any subsequent child(ren) born to a minor child(ren) is added for voucher benefits;~~

~~(LK)~~ a fugitive felon;

~~(ML)~~ a probation and/or parole violator;

~~(NM)~~ a person convicted of having fraudulently misrepresented residence in order to obtain assistance in more than one state. The person is ineligible for a ten year period that begins on the date of conviction;

~~(ON)~~ a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months, whether or not consecutive, and a hardship extension is not approved; or

~~(PO)~~ a minor unmarried payee who has a dependent child(ren) in the minor's care and does not reside with a parent(s), legal guardian, or other adult relative age 18 or older. For the minor payee to be eligible for TANF benefits, the minor must live with the minor's natural or adoptive parent(s) or a stepparent, legal guardian, or other adult relative age 18 or older, or live in a foster home, maternity home, or other supportive living arrangement supervised by an adult. A supportive living arrangement is where a private family setting is maintained and an adult assumes the responsibility for the care and control of the minor and the minor's dependent child(ren) or provides supportive services such as counseling and guidance. The minor payee can reside elsewhere and be eligible for TANF if good cause is established because the:

(i) minor has no living parent or legal guardian whose whereabouts are known;

(ii) parent(s), legal guardian, or other adult relative does not allow the minor to live in the home;

(iii) physical or emotional health or safety of the minor or the minor's dependent child(ren) is jeopardized if the minor or the minor's dependent child(ren) lives in the home with the parent(s), legal guardian, or other adult relative age 18 or older;

(iv) minor parent has lived apart from the minor's parent(s), legal guardian, or other adult relative age 18 or older, for at least one year before the birth of any dependent child(ren), or before the minor applied for benefits; or

(v) minor parent is legally emancipated pursuant to Chapter 4, Title 10 of the Oklahoma Statutes. A minor is legally emancipated when the district court must have granted the minor the authority to act on the minor's own behalf.

(b) In general, when a person whose needs are included in a TANF assistance unit is temporarily absent from the home for the purpose of receiving training or education for employment, or certain medical services, he or she is considered part of the family and the budgetary requirements are not changed unless needs change by reason of circumstances unrelated to the temporary absence. Persons temporarily absent from the home but included in the assistance unit are:

(1) a person receiving training or education for employment during the period of time the training or educational activities are taking place;

(2) a child(ren) attending boarding school during the school term;

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- (3) a child(ren) absent from the home on visitation to the absent parent up to a maximum of three months. This consideration applies only to visitation and does not apply if the absent parent has physical and legal custody of the child(ren) during these three months;
 - (4) a child(ren) absent in order to attend school, other than boarding school. Factors considered in making this determination include the maintenance of normal ties between home and the child(ren) during the period of absence; whether the child(ren) continues under the control and guidance of the payee during the absence; and assumption of responsibility by the relative-payee for meeting the child(ren)'s expenses during the school term. A child(ren) who attends the School for the Blind or the School for the Deaf is considered temporarily absent from the home in determining TANF eligibility;
 - (5) a person absent from the home because of entrance into a private facility for counseling, rehabilitation, behavioral problems, or special training. If an assessment indicates care is projected for a period exceeding four months, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the person cannot be included in the assistance unit;
 - (6) a person absent from the home for medical services, other than institutionalization for treatment of mental illness, mental retardation, or tuberculosis, for up to six months. Six-month extensions may be allowed when verification indicates the person may return to the home within the next six months;
 - (7) a person absent from the home to receive substance abuse treatment for up to four months. A four-month extension may be allowed when verification indicates the person will return to the home within the next four months; or
 - (8) a person absent from the home to receive nursing care approved by the Oklahoma Health Care Authority, Level of Care Evaluation Unit. If it appears that the person is disabled, an application for State Supplemental Payment is taken and a referral made to the SSA district office for an SSI application.
- (c) A change in benefit is not made during a temporary absence from Oklahoma for three months or less, unless a change is necessary by reason of some change in circumstances not relating to such absence from Oklahoma.

SUBCHAPTER 15. CONDITIONS OF ELIGIBILITY - CITIZENSHIP AND ALIENAGE

340:10-15-1. Citizenship and alien status

- (a) A person eligible to be included in a Temporary Assistance for Needy Families (TANF) benefit, must be either:
- (1) a citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa and Northern Mariana Islands. A person may be a citizen of the U.S. by being born in the U.S. or by being

born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS) a bureau of the U.S. Department of Homeland Security; or

- (2) a qualified alien described as:
 - (A) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
 - (B) an alien who is paroled into the U.S. under Section 212(d)(5) of INA for a period of at least one year;
 - (C) an alien who is granted conditional entry pursuant to Section 203(a)(7) of INA as in effect prior to April 1, 1980;
 - (D) an alien who is granted asylum under Section 208 of INA;
 - (E) a refugee who is admitted to the U.S. under Section 207 of INA;
 - (F) an alien whose deportation is withheld under Section 241(b)(3) of INA;
 - (G) an alien who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
 - (H) battered aliens and their children or parents as defined in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended; [8 U.S.C. 1641(c)]
 - (I) an alien and his or her eligible relatives who are victims of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000 which was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003;
 - (J) an Iraqi admitted ~~under in~~ special immigrant status ~~pursuant to Section 525 of Division G of Public Law (P.L.) 110-161 of the Consolidated Appropriations Act of 2008, as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)], and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181, of the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008. An Iraqi~~ The person must be treated as a refugee for a time-limited period and may be eligible for benefits for up to eight months from the date he or she is granted special immigrant status if the person meets all other program requirements. After the time-limited eligibility period ends, the Iraqi is ineligible for a TANF benefit for a five year period beginning on the date of the ~~alien's~~ Iraqi's entry into the U.S. with a qualified alien status ~~unless the Iraqi's status changes to one shown in (b) of this Section;~~ or
 - (K) an Afghan admitted ~~under in~~ special immigrant status ~~pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act of 2008 and as defined in~~ Section 101(a)(27) of the

INA [8 U.S.C. 1101(a)(27)] and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009. The person must be treated as a refugee for a time-limited period and may be eligible for benefits for up to ~~six~~ eight months from the date he or she is granted special immigrant status if the person meets all other program requirements. After the time-limited eligibility period ends, the Afghan is ineligible for a TANF benefit for a five year period beginning on the date of the ~~alien's~~ Afghan's entry into the U.S. with a qualified alien status unless the Afghan's status changes to one shown in (b) of this Section.

(b) A qualified alien who enters the U.S. on or after August 22, 1996, is not eligible for TANF benefits for a five year period beginning on the date of the alien's entry into the U.S. with a qualified alien status unless the alien is:

- (1) admitted to the U.S. as a refugee;
- (2) granted asylum;
- (3) one whose deportation is being withheld;
- (4) a Cuban or Haitian entrant;
- (5) admitted to the U.S. as an Amerasian immigrant;
- (6) lawfully residing in the state and is a veteran of the U.S. armed forces, on active duty, or is that person's spouse or unmarried dependent child; or
- (7) is a victim of a severe form of trafficking.

(c) A declaration of citizenship and alien status is required for all adults and children in the TANF benefit. This requirement is met when an adult member in the assistance unit completes and signs the application or review form attesting to the citizenship and alien status for all members of the assistance unit. Refer to OAC 340:65-3-1(g) for additional citizenship requirements for persons 14 years of age and older pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.

(d) Declaration on behalf of a newborn child may be delayed provided the delay does not exceed the date of the assistance unit's next eligibility redetermination.

(e) Persons determined as having satisfactory alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE). In situations which require a written inquiry to the USCIS, the worker must not delay, deny, terminate, or reduce benefits to an alien pending USCIS verification of submitted documentation.

(f) All persons born in the U.S. are, with rare exceptions, U.S. citizens. Documents of citizenship or national status of persons from certain U.S. territories or possessions listed in (a)(1) of this Section may not be in their possession nor available. Their status can usually be determined by birth certificate, passport, or other official document.

[OAR Docket #09-1239; filed 8-25-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

[OAR Docket #09-1241]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Eligibility
340:40-7-1 [AMENDED]
340:40-7-11 through 340:40-7-12 [AMENDED]
(Reference APA WF 09-11)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; Title 45 Code of Federal Regulations (CFR) Parts 98 and 99, and Section 230.65 of Title 56 of the Oklahoma Statutes.

DATES:

Adoption:

July 28, 2009

Approved by Governor:

August 18, 2009

Effective:

October 1, 2009

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as the Oklahoma Department of Human Services (OKDHS) finds compelling public interest to exempt adoption subsidy payments and household income for certain families considering adoption of children in OKDHS custody to help reduce the delay in achieving permanency goals for these children and to remove policy regarding non-cash Temporary Assistance for Needy Families (TANF) vouchers due to a change in state statute.

ANALYSIS:

The proposed revisions to Subchapter 7 of Chapter 40 amend the rules to: (1) remove language regarding non-cash TANF vouchers due to a change in state statute; (2) remove adoptions subsidy payments as countable income; and (3) add language to exempt household income for certain children adopted through OKDHS.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2009:

SUBCHAPTER 7. ELIGIBILITY

340:40-7-1. Categories of eligibility

A person may be predetermined eligible for a child care benefit, determined income eligible based on the gross income of the household, or have dual eligibility with his or her tribe.

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(1) **Predetermined eligible.** A person is predetermined eligible for a child care benefit with a zero co-payment when he or she is a recipient of public assistance or Supplemental Security Income (SSI). Public assistance is defined as a State Supplemental Payment, Temporary Assistance for Needy Families (TANF) that includes Supported Permanency ~~and non-cash vouchers a child receives from the TANF program,~~ or Refugee Cash Assistance ~~and Resettlement Program (RRP) cash assistance.~~

(A) All TANF recipients who work and are eligible for a child care benefit can choose to receive a child care benefit through the Oklahoma Department of Human Services (OKDHS) while they work or choose to pay for the child care themselves. If they choose to pay for the child care cost themselves, it can be considered as an earned income exemption for the TANF benefit.

(B) Exceptions to a person being eligible with a zero co-payment when he or she receives public assistance or SSI include when:

- (i) the recipient is a child and the parent or guardian requesting the benefit for the child is not the payee on the public assistance or SSI payment; or
- (ii) it makes a difference in whether other children in the household are income eligible for child care.

(2) **Income eligible.** Households who are not predetermined eligible for a child care benefit must meet income eligibility guidelines shown on OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, for their household size, to receive assistance with child care costs.

(3) **Transitional child care.** Per Section 230.61 of Title 56 of the Oklahoma Statutes, a TANF recipient who becomes employed is eligible for transitional child care benefits for 24 months following the date of employment as long as he or she meets income eligibility guidelines on OKDHS Appendix C-4 for his or her household size unless the:

- (A) employer provides child care benefits; or
- (B) monthly salary received from the employer exceeds the monthly allowance of assistance pursuant to the TANF program plus the cost of child care and medical insurance to which the recipient would be entitled.

(4) **TANF families in the Work Supplementation Program.** TANF families in the Work Supplementation Program are considered income eligible families and must meet income eligibility guidelines shown on OKDHS Appendix C-4 for their household size, to receive assistance with child care costs.

(5) **Dual eligibility.** A person may have dual eligibility for both the Child Care Subsidy Program through OKDHS and through his or her tribe. The child care provider may not receive payment for the same service from both programs simultaneously.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded in OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Only the portion of the cafeteria plan the client controls is counted as income.

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the person are considered as self-employment income. Self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most recent tax year can be used as reported on the person's income tax return.

(A) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
- (ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(B) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(C) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(D) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the person's actual monthly circumstances because the person has experienced a substantial increase or decrease in income, self-employment income is based on anticipated earnings.

(E) **Income from rental property.** Income from rental property is considered income from self-employment.

(F) **Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is a non-relative adult of the opposite sex, OAC 340:40-7-6(b)(4) applies.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(4) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through ~~(4)~~(10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee ~~Cash Assistance~~ Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability

benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, that are made directly to the household from non-household members are counted as unearned income.

(A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) If the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before OKDHS makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Non-recurring lump sum payments from a countable income source are considered income the month they are received. Money not expended within the month of receipt is considered a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

~~(10) Title IV-E or State Adoption Subsidy. Federal or state funded adoption subsidy payments made to adoptive parents are considered as unearned income.~~

~~(4)~~(10) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income

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unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

340:40-7-12. Sources of excluded income

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** Both one-time and recurring lump sum payments are excluded as income unless they are specifically mentioned in OAC 340:40-7-11.

(2) **In-kind income.** In-kind income is defined as any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and is excluded.

(3) **Money received from the sale of property.** Money received from the sale of property such as stocks, bonds, a house, or a car is excluded. This exclusion does not apply if the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even if used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment is excluded.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (OKDHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) are met. The:

(A) child has been adopted through OKDHS or a federally recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent who is applying for benefits;

(B) adoptive parent applying for benefits must have a fully executed Form 04AN002E, Adoption Assistance Agreement, that lists child care as an adoption assistance benefit for the child and also includes Form 04AN033E, Post Adoption Child Care Referral;

(C) adoptive parent and child are residents of Oklahoma;

(D) child is five years of age or younger; and

(E) need for child care is for employment only and proof is provided. Subsidized child care may be approved only for the days and hours the parent works. In a two-parent family, care may also be approved for sleep time when one parent works days and the other parent works during normal night time sleep hours. Refer to OAC 340:40-7-8.

(67) **Earnings of children.** Earnings of a person 17 years of age and younger who is considered a child in the case is excluded as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. Earned income of a child who

is head of his or her own household, such as is the case for a minor parent, is treated as adult income.

(78) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(89) **Reimbursements.** Reimbursements for past or future expenses to the extent they do not exceed actual expenses are excluded.

(910) **Tax refunds.** Federal or state income tax refunds, including the state and federal Earned Income Tax Credit (EITC), and advance payments of federal EITC are excluded.

(4011) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(412) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(4213) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs is excluded.

(4314) **Educational assistance.** All education grants, work-study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.

(4415) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act is excluded.

(4516) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in SCORE and ACE is excluded.

(4617) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies which is received in-kind or in cash for rent, mortgage payments, or utilities is excluded.

(4718) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(19) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are excluded as income.

(4820) **Victims of Crime Act of 1984.** Payments made from the crime victims compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 are excluded. [42 USC 10602]

(4921) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by the Developmental Disabilities Services Division of the Oklahoma Department of Human Services (OKDHS) are excluded as income.

(2022) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to

make a direct payment to either a household's creditors or a person or organization providing a service to the household are excluded. Payments specified by a court order or other legally binding agreement to be paid directly to the client but that are instead diverted to pay a third party for a household expense are counted as income.

(2123) Money received by another household for a household member.

(A) When a child spends part of the month in two separate households and receives countable income, the worker determines which household actually receives the income. Only the portion of the income that is actually received by the household applying for or receiving a child care benefit is considered as income for that household.

(B) When a minor parent is the payee and lives with one of his or her parents or a caretaker who receives child support for the minor parent, that child support is considered income for the parent or caretaker and not considered for the child care benefit.

(2224) Income excluded by federal law. Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P. L.) 92-203, § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only if the monthly amount, when converted to an hourly rate, is less than the Oklahoma minimum wage;

(D) income derived from submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, Sec. 6];

(E) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior of the Bureau of Indian Affairs or distributed by the tribe subject to approval by the Secretary of the Interior. Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on

such funds. Any income from mineral leases, from tribal businesses investments, and the like, as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(F) income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments received by a child(ren) in the household from a program funded by participation in the Workforce Investment Act (WIA), including Job Corps income are not counted as income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990, the American Conservation and Youth Service Corps Act of 1990, and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and also utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds paid to persons under the Community Service Employment Program under Title V. [P.L. 100-175] This program is authorized by the Older Americans Act. Each State and various organizations receive some Title V funds. These organizations include:

(i) Green Thumb;

(ii) National Council on Aging;

(iii) National Council of Senior Citizens;

(iv) American Association of Retired Persons;

(v) U.S. Forest Service;

(vi) National Association for Spanish Speaking;

(vii) National Urban League;

(viii) National Council on Black Aging; and

(ix) National Council on Indian Aging;

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- (L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- (M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in interment camps during World War II;
- (N) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from exposure to radiation from nuclear testing and uranium mining;
- (O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;
- (P) payments made to persons because of their status as victims of Nazi persecution;
- (Q) payments made for the Experimental Housing Allowance Program under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937 as amended;
- (R) monetary allowances provided to certain children of Vietnam War veterans as described in Chapter 18 of Title 38 of the United States Code (USC);
- (S) federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;
- (T) the value of the food benefit allotment under the Food and Nutrition Act of 2008; and
- (U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act of 1970, both as amended by the Omnibus Budget Reconciliation Act of 1981.

[OAR Docket #09-1241; filed 8-25-09]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 60. REFUGEE RESETTLEMENT PROGRAM

[OAR Docket #09-1240]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

340:60-1-3 [AMENDED]

(Reference APA WF 09-13)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)]; Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006; Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; Section 525 of Division G of P.L. 110-161, the

Consolidated Appropriations Act of 2008; and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act of 2009.

DATES:

Adoption:

July 28, 2009

Approved by Governor:

August 18, 2009

Effective:

November 1, 2009

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as rules are revised to comply with changes in federal law.

ANALYSIS:

The proposed revisions to Chapter 60 amend the rules to update legal cites for aliens in special immigrant status.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2009:

340:60-1-3. Refugee Resettlement Program (RRP)

- (a) **The Refugee Act of 1980.** The Oklahoma Department of Human Services (OKDHS) RRP uses the international definition of refugee adopted under the Refugee Act of 1980.
- (b) **Refugee documentation.** An applicant for assistance under the RRP must provide documentation issued by the United States Citizenship and Immigration Services (USCIS). Acceptable documentation includes, but is not limited to:
 - (1) Form I-94, Departure Record;
 - (2) Form I-551, Legal Permanent Resident Card;
 - (3) a passport stamped with the classification status;
 - (4) a T-Visa; or
 - (5) a letter or order from the USCIS or court granting asylum.

- (c) **Refugee status.** Documentation from USCIS provided by the applicant must show the applicant's status is:
 - (1) paroled as a refugee or asylee under Section 212(d)(5) of the Immigration and Nationality Act (INA);
 - (2) admitted as a refugee under Section 207 of the INA;
 - (3) granted asylum under Section 208 of the INA;
 - (4) admitted as an Amerasian immigrant from Vietnam under Section 584 of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1989, as amended;
 - (5) admitted for permanent residence, provided the person previously held one of the statuses identified in this Section;
 - (6) a Cuban or Haitian entrant;
 - (7) an alien and his or her eligible relatives who are victims of a severe form of trafficking pursuant to Section

107(b) of the Trafficking Victims Protection Act of 2000 which was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003;

(8) an Iraqi admitted ~~under in~~ special immigrant status pursuant to ~~Section 525 of Division G of Public Law (P.L.) 110-161 of the Consolidated Appropriations Act of 2008, as defined in~~ Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)], and ~~per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181, of the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008;~~ or

(9) an Afghan admitted ~~under in~~ special immigrant status pursuant to ~~Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act of 2008 and as defined in~~ Section 101(a)(27) of the INA [8 U.S.C. 1101 (a)(27)] and ~~per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of~~

Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009.

(d) **Verification of alien status.** A declaration of alien status is required at application for all persons applying for RRP.

(1) Under penalty of perjury, the applicant declares the alien status of all persons applying for RRP benefits on the application form and signs the application. After certification, this declaration is made on Form 08MP022E, Declaration of Citizenship Status, before additional persons are added to the benefit.

(2) The Systematic Alien Verification for Entitlement (SAVE) process is used to verify alien status per OAC 340:65-3-4(5).

(e) **Exclusions from RRP.** Persons excluded from participation in RRP are:

(1) resident aliens who did not previously have the status of refugee or asylee; or

(2) any applicant for asylum who has not been granted asylum status.

[OAR Docket #09-1240; filed 8-25-09]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2009-30.

EXECUTIVE ORDER 2009-30

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on August 19, 2009, to honor Specialist Delana Abbott, an Oklahoma resident, who died on Friday, August 14, 2009, at age 20 while serving with the Military Entrance Processing Station and the Oklahoma National Guard.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 18th day of August, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

[OAR Docket #09-1237; filed 8-20-09]

1:2009-30a.

EXECUTIVE ORDER 2009-30 AMENDED

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on August 19, 2009, to honor Specialist Delana Abbott, an Oklahoma resident, who died on Friday, August 14, 2009, at age 21 while serving with the Military Entrance Processing Station and the Oklahoma National Guard.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 18th day of August, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1245; filed 8-26-09]

1:2009-31.

EXECUTIVE ORDER 2009-31

I, Jari Askins, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, August 26, 2009, to honor Specialist Matthew D. Hastings, an Oklahoma resident, who died on Monday, August 17, 2009, at age 23 while serving in the 582nd Medical Logistics Company in Baghdad, Iraq.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of August, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1246; filed 8-26-09]

