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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 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #09-1301]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:5-1-6. Stream water permit application and administration fees [AMENDED]

785:5-1-9. Dam safety and inspection fees [AMENDED]

785:5-1-10. Groundwater application and administration fees [AMENDED]

785:5-1-11. Well driller and pump installer licensing fees [AMENDED]

785:5-1-14. Stream water and groundwater petition fees [AMENDED]

SUMMARY:

Staff proposes to recommend that the Board amend the rule on fees relating to stream water permit applications and administration by increasing the existing amounts for each category of fee by \$5.00, to eliminate the additional late fee for filing annual water use reports, and to provide that failure to file the annual water use report by the date specified in the report form may be considered a failure to comply with terms of a permit to trigger an administrative proceeding to cancel the permit. The circumstance creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program to process applications in light of the reduction of appropriations, the need to increase water use reporting to gain an accurate account of statewide water demands for water planning purposes, and to put holders of permits on notice that failure to file annual water use reports on time will trigger more serious sanctions including the potential loss of the water right.

A recommendation is also proposed to amend the rule on fees for dam safety and inspection to increase fees for filing application to construct a new or modify an existing dam, and to add new fees for review of required inspection reports and for verification of hazard potential. The circumstance creating the need for the proposed amendments is to ensure the Board can maintain and improve its dam safety program for the protection of the public health, safety and welfare and to protect property.

A recommendation is also proposed to amend the rule on fees for groundwater application to increase amounts for

each category of fee by \$5.00, and to add a new fee of \$50.00 effective January 1, 2011, to be submitted with each annual water use report for water rights administration, and to provide that failure to file the annual water use report by the date specified in the report form may be considered cause to initiate proceedings to cancel the permit. The circumstance creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program to process applications in light of the reduction of appropriations, the need to increase water use reporting to gain an accurate account of statewide water demands for water planning purposes, and to put holders of permits on notice that failure to file annual water use reports on time will trigger more serious sanctions including the potential loss of the water right.

A recommendation is also proposed for well driller and pump installer licensing fee to delete language that provides a reduced fee amount as an incentive for early submittal of applications to renew a license and operator certification, and to advance the time within which an application to renew must be filed. The circumstance creating the need for the proposed amendments includes the increased number of licenses and operator certifications being renewed each year and the additional requirement and review of compliance with continuing education added to the rules a few years ago. There has been no increase in staff for the additional workload for renewals and advancing the date by which an application to renew must be filed before the license and certification expiration date will help ensure proper processing of renewal applications. The Well Driller Advisory Council has indicated its support for the amendment.

A recommendation is also proposed to amend the rule on fees for stream water and groundwater petition fees to increase each category of fee by \$5.00. The circumstance creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program to process petitions to amend water rights, in light of the reduction of appropriations.

Other amendments may be considered as a result of public comments.

AUTHORITY:

82 O.S. Section 1085.2; 82 O.S. Section 1085.4; 82 O.S. Section 1020.16

COMMENT PERIOD:

Persons may submit written comments to Julie Cunningham, Chief, Planning and Management Division, by mailing written comments to 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, during the period from

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November 15, 2009, to January 11, 2010. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments are scheduled to be presented to the Board for adoption on February 9, 2010. The Board may consider additional comments at its February 9, 2010 meeting.

PUBLIC HEARING:

A public hearing will be held during the regular meeting of the Board that is scheduled to being at 9:30 a.m. on January 12, 2010, at the offices of the Oklahoma Water Resources Board, 3800 North Classen Boulevard in Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or others costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing from November 15th, 2009 through January 11, 2010 to Dean Couch, General Counsel, Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, or on the Board's web site, www.owrb.state.ok.us.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and will be available on and after November 15, 2009, at the same location above listed for reviewing and obtaining copies of the proposed rules.

CONTACT PERSON:

Julie Cunningham, Chief, Planning and Management Division, 405-530-8800 or at jmcunningham@owrb.ok.gov.

[OAR Docket #09-1301; filed 10-23-09]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #09-1302]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:20-1-6. Who should file an application [AMENDED]

Subchapter 3. Application Requirements and Processing

785:20-3-2. General application requirements
[AMENDED]

Subchapter 7. Permits

785:20-7-1. Classes of stream water permits

Subchapter 9. Actions After Stream Water Right Obtained
785:20-9-1. Construction of works [AMENDED]

Appendix A. Application for a Permit to Use Surface or
Stream Water [REVOKED]

Appendix A. Application for a Permit to Use Surface or
Stream Water [NEW]

SUMMARY:

Staff proposes to recommend that the Board amend the rule on who should file a permit by adding language to provide that if an application is filed after use of the water has begun, the instance of unauthorized use will be addressed before the application will be processed. The circumstance creating the need for the amendment is to provide more strict enforcement of the law that requires persons to obtain a permit before using water, instead of simply filing the application after use begins and even sometimes after use has ended. This amendment will affect all permit applications, including provisional temporary permit applications. A potential method of addressing unauthorized use to encourage stricter compliance is to enter into stipulation and agreements whereby the applicant agrees to immediately discontinue use until proper authorization is obtained and to pay a surcharge for the application processing.

A recommendation is also proposed to amend the rule on general application requirements to allow new applications to be submitted by electronic mail, but clarifying that the application fees must be submitted to the Board before processing can commence. The circumstance creating the need for the amendment is to provide greater flexibility to the public on methods to file applications.

A recommendation is also proposed to revoke and re-enact the Appendix A that contains the application form to streamline, eliminate redundant and unnecessary requirements, and clarify the information elicited for an application. The circumstance creating the need for the amendment include comments about the length and complexity of the application that requests information that may not be pertinent and helpful to analyze the application for compliance with the law and rules.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; stream water use law in 82 O.S. Section 105.1 and following.

COMMENT PERIOD:

Persons may submit written comments to Julie Cunningham, Chief, Planning and Management Division, by mailing written comments to 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, during the period from November 15, 2009, to January 11, 2010. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments are scheduled to be presented to the Board for adoption on its monthly meeting scheduled for February 9, 2010. The Board may consider additional comments at its February 9, 2010, meeting.

PUBLIC HEARING:

A public hearing will be held during the regular meeting of the Board that is scheduled to being at 9:30 a.m. on January 12, 2010, at the offices of the Oklahoma Water Resources Board, 3800 North Classen Boulevard in Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2009 through January 11, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, 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. Business entities may submit this information in writing to Dean Couch at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.ok.gov.

CONTACT PERSON:

Julie Cunningham, Chief, Planning and Management Division, at (405) 530-8800, or jmcunningham@owrb.ok.gov.

[OAR Docket #09-1302; filed 10-23-09]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS**

[OAR Docket #09-1303]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:25-1-2. Definitions [AMENDED]
 - 785:25-1-4. Variances and waivers [AMENDED]
- Subchapter 3. Responsibility, Classification and Design Standards
 - 785:25-3-3. Classification of size and hazard potential [AMENDED]
 - 785:25-3-4. Dams considered unsafe and a menace to life and property [AMENDED]
 - 785:25-3-5. Minimum design standards (other than spillway) [AMENDED]

- 785:25-3-10. Prohibited vegetation and erosion [AMENDED]
- Subchapter 5. Applications and Approval of Construction
 - 785:25-5-3. Content of plans and specifications [AMENDED]
 - 785:25-5-5. Notice of application [AMENDED]
 - 785:25-5-6. Affidavit of notice publication and mailing [AMENDED]
 - 785:25-5-7. Protest and public comment [AMENDED]
- Subchapter 7. Post Approval Actions
 - 785:25-7-5. Changes to plans and specifications after approval [AMENDED]
 - 785:25-7-7. ~~Warning and evacuation~~ Emergency action plans [AMENDED]
- Subchapter 9. Actions after Construction
 - 785:25-9-1. ~~Inspections~~ Inspection of dams [AMENDED]
 - 785:25-9-9. Breach analysis for existing dams [NEW]
 - 785:25-9-10. Reclassification of the hazard potential class [NEW]
 - 785:25-9-11. Upgrading dams due to downstream development [NEW]

SUMMARY:

Staff proposes to recommend that the Board amend rules and promulgate new rules relating to dam safety based on a review and report submitted to the Study Group on Dam Safety created by House bill 1884 enacted by the Legislature in 2009. The Study Group focused on dams owned and operated by local Conservation Districts and the statewide issue of development that may occur downstream with the resulting re-classification and often very expensive upgrades to design and construction costs. The proposed amendments and new rules would provide some limited relief to the requirement to immediately upgrade based on newly stated factors.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; stream water use law in 82 O.S. Section 105.1 and following.

COMMENT PERIOD:

Persons may submit written comments to Julie Cunningham, Chief, Planning and Management Division, by mailing written comments to 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, during the period from November 15, 2009, to January 11, 2010. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments are scheduled to be presented to the Board for adoption on its monthly meeting scheduled for February 9, 2010. The Board may consider additional comments at its February 9, 2010, meeting.

PUBLIC HEARING:

A public hearing will be held during the regular meeting of the Board that is scheduled to being at 9:30 a.m. on January 12, 2010, at the offices of the Oklahoma Water Resources Board, 3800 North Classen Boulevard in Oklahoma City, Oklahoma.

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REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2009 through January 11, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, 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. Business entities may submit this information in writing to Dean Couch at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.ok.gov.

CONTACT PERSON:

Julie Cunningham, Chief, Planning and Management Division, at (405) 530-8800, or jmcunningham@owrb.ok.gov.

[OAR Docket #09-1303; filed 10-23-09]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #09-1300]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:30-1-4. Requirement for a water right [AMENDED]

Subchapter 3. Permit Application Requirements and Processing

785:30-3-6. Well Spacing [AMENDED]

Appendix A. Application for a Permit to Use Groundwater [REVOKED]

Appendix A. Application for a Permit to Use Groundwater [NEW]

Appendix C. Well testing protocols and potential drawdown effects model [NEW]

SUMMARY:

Staff proposes to recommend that the Board amend the rule on the requirement for a water right, particularly the provision on who should file, by adding language to provide that if an application is filed after use of the water has begun,

the instance of unauthorized use will be addressed before the application will be processed. The circumstance creating the need for the amendment is to provide more strict enforcement of the law that requires persons to obtain a permit before using water, instead of simply filing the application after use begins and even sometimes after use has ended. This amendment will affect all permit applications, including provisional temporary permit applications. A potential method of addressing unauthorized use to encourage stricter compliance is to enter into stipulation and agreements whereby the applicant agrees to immediately discontinue use until proper authorization is obtained and to pay a surcharge for the application processing.

A recommendation is also proposed to amend the rule on well spacing to provide that the existing spacing of 1,320 feet will apply in bedrock aquifers, and to add a new spacing provision for wells in an alluvium or terrace deposits. A recommendation is also proposed to the provision on location exceptions to well spacing provide that a presumption may be made that if the well testing protocols and potential drawdown effects model in a new Appendix B is used and the model results show less than 25% drawdown impact to the historic static water level, the Board may determine that there is no excessive drawdown from a well in the proposed location pumped at the modeled amount and duration. A recommendation is also proposed to amend the rule on well spacing to add a provision to recognize that while mandatory well spacing does not apply in unstudied basins for which no maximum annual yield has been determined, the Board may consider results from use of the potential drawdown effects model evidence in a new Appendix B to determine whether there will be unreasonable interference with an existing well. The circumstance creating the need for the proposed amendment is to acknowledge that well pumping effects are different for wells located in bedrock aquifers and alluvium aquifers, and to reduce the ad hoc case by case evidence and decision making for location exceptions that depend on whether there is excessive drawdown predicted, and to utilize an accepted simple model for determining the potential amount of drawdown based on provided inputs.

A recommendation is also proposed to revoke and re-enact the Appendix A that contains the application form to streamline, eliminate redundant and unnecessary requirements, and clarify the information elicited for an application. The circumstance creating the need for the amendment include comments about the length and complexity of the application that requests information that may not be pertinent and helpful to analyze the application for compliance with the law and rules.

A recommendation is also proposed to add a new Appendix B to describe well testing protocols and an accepted hydrologic model for estimating potential drawdown impacts from pumping a well and effects on areas around such a well. The circumstance creating the need for the new appendix is to provide information to the public as to the protocols and model acceptable to the Board and to help avoid ad hoc or case by case

determinations on estimating potential drawdown impacts and for use in testing wells.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following.

COMMENT PERIOD:

Persons may submit written comments to Julie Cunningham, Chief, Planning and Management Division, by mailing written comments to 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, during the period from November 15, 2009, to January 11, 2010. In addition, persons may submit oral or written comments during the public hearing described below. Proposed amendments are scheduled to be presented to the Board for adoption on its monthly meeting scheduled for February 9, 2010. The Board may consider additional comments at its February 9, 2010, meeting.

PUBLIC HEARING:

A public hearing will be held during the regular meeting of the Board that is scheduled to being at 9:30 a.m. on January 12, 2010, at the offices of the Oklahoma Water Resources Board, 3800 North Classen Boulevard in Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2009 through January 11, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, 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. Business entities may submit this information in writing to Dean Couch at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.ok.gov.

CONTACT PERSON:

Julie Cunningham, Chief, Planning and Management Division, at (405) 530-8800, or jmcunningham@owrb.ok.gov.

[OAR Docket #09-1300; filed 10-23-09]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING**

[OAR Docket #09-1304]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:35-1-2. Definitions [AMENDED]
- Subchapter 3. Licensing and Certification
 - 785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
- Subchapter 7. Minimum Standards for Construction of Wells
 - 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
 - 785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
- Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
 - 785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

SUMMARY:

Staff proposes to recommend that the Board amend rules to add the definition of a Direct Push Monitoring Well and set forth minimum construction standards for such wells; to streamline the renewal process by amending renewal and grace period dates; to allow certain online continuing education credits to be accepted by the Board; to allow an alternative surface seal standard for water well construction; and to include plugging requirements for Direct Push Monitoring Wells. The circumstance creating the need for the proposed amendments include the comments from the Well Drillers and Pump Installers Advisory Council and issues arising in the implementation of the program by staff during the preceding year.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following, particularly Section 1020.16 on well driller and pump installer licensing.

COMMENT PERIOD:

Persons may submit written comments to Julie Cunningham, Chief, Planning and Management Division, by mailing written comments to 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, during the period from November 15, 2009, to January 11, 2010. In addition, persons may submit oral or written comments during the public hearing

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described below. Proposed amendments are scheduled to be presented to the Board for adoption on February 9, 2010. The Board may consider additional comments at its February 9, 2010 meeting.

PUBLIC HEARING:

A public hearing will be held during the regular meeting of the Board that is scheduled to begin at 9:30 a.m. on January 12, 2010, at the offices of the Oklahoma Water Resources Board, 3800 North Classen Boulevard in Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2009 through January 11, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, 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. Business entities may submit this information in writing to Kent Wilkins at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.ok.gov.

CONTACT PERSON:

Kent Wilkins, Well Driller Licensing Administrator, 405-530-8800.

[OAR Docket #09-1304; filed 10-23-09]

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

[OAR Docket #09-1305]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 45. Oklahoma's Water Quality Standards
[AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, various provisions of Oklahoma Administrative Code ("OAC") 785:45 as follows:

OAC 785:45-1-2, Definitions, is proposed to be amended. First, a definition for "CWAC" will be added. The circumstance which created the need for this amendment is that this acronym is used in several places in OAC 785:45 without being defined. The intended effect of this amendment is to clarify that this acronym refers to Cool Water Aquatic Community. Second, a definition of "naturally occurring condition" will be added. The circumstance which created the need for this amendment is that the term "naturally occurring condition" is used in OAC 785:46, while the term will be used in OAC 785 45 and the definition is required by the U.S. Environmental Protection Agency ("EPA") pursuant to the federal Clean Water Act in order to promulgate criteria recognizing naturally occurring conditions. The intended effect of this amendment is to satisfy published guidance from EPA and to facilitate development in the future of site specific criteria related to naturally occurring conditions.

Subsections (a) and (b) of OAC 785:45-5-3, Beneficial uses: default designations, are proposed to be amended to delete language regarding "industrial and municipal process and cooling water". The circumstance which created the need for this amendment is that OAC 785:45-5-15, the section relating to the beneficial use classification of "Industrial and Municipal Process and Cooling Water", was revoked in 2007. The intended effect of this amendment is to make the assignment of default beneficial uses consistent with the beneficial uses described in Subchapter 5 of OAC 785:45.

OAC 785:45-5-4, Applicability of narrative and numerical criteria, is proposed to be amended with a new clause establishing the naturally occurring condition as the applicable criteria for beneficial uses other than "Public and Private Water Supply" and "Fish Consumption". The circumstance which created the need for this amendment is that in several locations, naturally occurring conditions are believed to exceed the promulgated criteria. The result in such a situation would require site specific criteria. The intended effect of this amendment is to satisfy published guidance from EPA and to facilitate development in the future of site specific criteria related to naturally occurring conditions.

OAC 785:45-5-19, Aesthetics, is proposed to be amended in (c)(1) relating to "Color" by limiting the applicability of the numerical criteria to discharge permits. The circumstance which created the need for this amendment is that as an ambient criterion, the numerical criterion is not related to impacts to the aquatic environment. The intended effect of this amendment is to limit implementation of the numerical criterion to those circumstances where it will benefit water quality.

Appendix E, Requirements for Development of Site-Specific Criteria for Certain Parameters, is proposed to be revoked and reenacted to add (1) site specific criteria for Ninemile Creek and the unnamed tributary of Ninemile Creek for total dissolved solids, chloride and sulfate and (2) a section establishing minimum requirements for a site specific criteria development study for setting criteria at the naturally occurring condition. These amendments are needed because an affected discharger has completed studies which indicate that criteria

more appropriate and site specific than otherwise provided in OAC 785:45 can and should be applied in their respective circumstances. Another discharger intends to initiate a study regarding naturally occurring conditions to establish site specific criteria, and guidelines must first be promulgated to satisfy EPA requirements before such a study can be allowed. The intended effect of these amendments is to provide for increased specificity in the criteria and standards which apply to these receiving streams, while maintaining water quality, as permitted by EPA and federal law and to satisfy EPA requirements to allow setting criteria at the naturally occurring condition.

Appendix G, Numerical Criteria to Protect Beneficial Uses, is proposed to be revoked and reenacted with several changes. New criteria for acrolien and revised criteria for Phenol will be added. Acrolein is used as a pesticide to control algae, weeds, bacteria, and mollusks. It is also used to make other chemicals. Phenol has multiple industrial and health related applications. Both compounds affect human health above certain concentrations and the EPA has released new guidance on protective water quality criteria. The circumstance which created the need for these amendments is the absence of water quality standards for these compounds, and the publication of the new or revised guidance documents assisting states in promulgating appropriately protective criteria for acrolien phenol. The intended effect of these amendments is to provide state environmental agencies appropriately protective criteria for these compounds on which to base decisions pertinent to their individual areas of jurisdictional responsibility.

Appendix H, Beneficial Use Designations for Certain Limited Areas of Groundwater, is proposed to be revoked and reenacted with a few changes. The amendments and new language are proposed to provide beneficial use designations for certain limited areas of groundwater that are more appropriate and accurate than the default designations prescribed in 785:45-7-3. The circumstance which created the need for these amendments is that the default designated uses for certain areas of groundwater are not existing uses and likely cannot be supported due to natural conditions or irreversible human-induced impacts such as pollution. The intended effect of these amendments is to provide more accurate and appropriate designations of the uses of the groundwater in these limited areas. The descriptions of four of the existing listings need to be corrected. The circumstance which created the need for this amendment is a request from the Department of Environmental Quality to correct the descriptions in question. The intended effect of this amendment is to accurately reflect the legal description in four of the areas of contaminated groundwater. The chemical names in several of the listings

need to be corrected. The circumstance which created the need for this amendment is a request from the Department of Environmental Quality to correct chemical names previously submitted by that agency.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

PUBLIC HEARING:

A public hearing will be held January 12, 2010 at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment Period from November 16, 2009 through January 11, 2010, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, 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. Business entities may submit this information in writing to Phillip Moershel at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed at the OWRB's office location at 3800 North Classen, Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge. The proposed amendments may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Phillip Moershel, Water Quality Standards Section Head, 405/530-8800.

[OAR Docket #09-1305; filed 10-23-09]

Submissions for Review

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

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

**TITLE 325. OKLAHOMA HORSE RACING
COMMISSION
CHAPTER 75. OKLAHOMA-BRED
PROGRAM**

[OAR Docket #09-1299]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULE:

325:75-1-15 [AMENDED]

SUBMITTED TO GOVERNOR:

October 21, 2009

SUBMITTED TO HOUSE:

October 21, 2009

SUBMITTED TO SENATE:

October 21, 2009

[OAR Docket #09-1299; filed 10-23-09]

Gubernatorial Approvals

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

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

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

[OAR Docket #09-1294]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 15. Motor Vehicle Pollution Control Devices
[REVOKED]

252:100-15-1. Purpose [REVOKED]

252:100-15-2. Definitions [REVOKED]

252:100-15-3. Scope [REVOKED]

252:100-15-4. Prohibitions [REVOKED]

252:100-15-5. Maintenance, repair or testing [REVOKED]

252:100-15-6. Liquefied petroleum gas [REVOKED]

Appendix E. Primary Ambient Air Quality Standards
[REVOKED]

Appendix E. Primary Ambient Air Quality Standards
[NEW]

Appendix F. Secondary Ambient Air Quality Standards
[REVOKED]

Appendix F. Secondary Ambient Air Quality Standards
[NEW]

GUBERNATORIAL APPROVAL:

October 2, 2009

[OAR Docket #09-1294; filed 10-16-09]

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

[OAR Docket #09-1295]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-3 through 340:10-2-4 [AMENDED]

Subchapter 3. Conditions of Eligibility - Need

Part 3. Income

340:10-3-33 [AMENDED]

(Reference APA WF 09-15)

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; and the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for state Temporary Assistance for Needy Families (TANF) programs as Section 403(c) of the Social Security Act.

DATES:

Adoption:

September 29, 2009

Approved by Governor:

October 8, 2009

Effective:

December 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 there is a compelling public interest to access American Recovery and Reinvestment Act (ARRA) TANF Emergency Contingency Fund monies that will allow OKDHS to enhance services to TANF families through access to employment in Subsidized Employment Program (SEP) and provide incentives to employers to employ SEP participants during these difficult economic times.

ANALYSIS:

The proposed revisions to Chapter 10 change: (1) the name of the Work Supplementation Program (WSP) to SEP; and (2) participation requirements for participants and employers in order to access ARRA TANF Emergency Contingency Fund monies to enhance services to TANF families and provide incentives to prospective employers.

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 DECEMBER 1, 2009:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-3. Employability planning

(a) **Scope and applicability.** The employability planning process begins at intake and continues as long as there are employment barriers or family circumstances which interfere with the participant obtaining and retaining employment. The worker and the participant initiate Form 08TW002E, TANF Work/Personal Responsibility Agreement. In the development of the employability plan, the worker takes into consideration the need for English as a second language, basic education, literacy, learning disabilities, counseling or treatment for substance abuse or mental health issues, and crisis intervention for domestic violence.

(1) Substance abuse screening is required for every new Temporary Assistance for Needy Families (TANF) participant.

(2) Literacy screening is required for individuals who have not obtained a high school diploma or General Educational Development (GED) certificate and have demonstrated a lack of literacy skills.

(b) **Interest and ability assessments.** Assessments are required to determine the participant's skills, abilities, and barriers. Assessment tools used are the Washington State Learning Disability Screen, the Test of Adult Basic Education (TABE) locator, the TABE battery, the Career Occupation Preference System (COPS), Key Train, and Career Readiness Certification.

(1) The use of these assessments provides the worker, participant, assessment specialist, and/or community partners with:

- (A) an indication of possible learning disabilities;
- (B) a measurement of the participant's skills, abilities, interests, and aptitude; and

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- (C) meaningful information to create a valid employability plan.
- (2) Participants referred for testing are informed of the use that is made of the test results. Test scores are kept confidential but may be shared with community partners. Referrals for testing are made by use of Form 08TW003E, Interagency Referral and Information. Participants in formal assessments are eligible for participant allowances and child care.
- (c) **Employability planning.** The worker and the participant use the information from the assessment and other relevant information to develop a plan for securing employment. The employability plan includes establishing both short and long term goals, including specific occupational goals, activities, and services which are necessary to achieve the goals.
- (1) The employability plan may include staffing with other community partners for assignment to specific work activities, collaboration with other agencies for services such as job placement, training, and education, and the provision of social services. The plan must identify specific needs and activities required to reach the occupational goal and estimated dates for achievement. The plan may include more than one activity at a time based on the participant's specific needs and the hours available. The employability plan is a part of the social services plan for the entire family. It must be realistic and within the participant's ability to complete.
- (2) The participant is informed that the employability plan is updated as necessary to account for situational changes. The employability plan is reviewed with the participant and updated as changes occur and at the completion of any work activity. If no changes have occurred, the worker reviews the employability plan within six months.
- (3) Participants who are employed with income insufficient to close the case must have a plan designed to upgrade employment. These plans must not interfere with current employment.
- (d) **Work activities.** Participants are assigned to one or more activities and scheduled the minimum number of hours as required. The participant signs Form 08TW002E, when any work activity other than the Work Experience Program or ~~Work Supplemental~~ Subsidized Employment Program (SEP) is approved.
- (1) Assignments must be within the scope of the participant's employability plan.
- (2) The assignment must be related to the capability of the participant to perform the task on a regular basis.
- (3) The daily commuting time to and from home to the assigned education, employment, or training site is normally less than two hours. Commuting time does not include the time required to transport a child to and from a child care facility. Where longer travel time is normal in the community, the round trip commuting time may not exceed the general community standards.
- (4) When child care is required, it must be of the participant's choosing. It must be available during the hours the

participant is engaged in any work activity, plus any additional commuting time.

(5) Assignments which are discriminatory in terms of age, sex, race, religion, ethnic origin, or physical or mental disability are not made.

(6) The site of the assignment must not be in violation of established and applicable health and safety standards.

(7) The participant is not referred for a work activity unless supportive services necessary for participation are available. The cessation or withdrawal of such services constitutes good cause for refusal to participate.

(8) When the agreed upon employability plan requires hours in excess of the minimum requirement, the participant must participate the agreed upon number of hours.

340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to assist the participant in obtaining employment to achieve economic self-sufficiency. Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs which provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in paragraph (1) through (5) of this subsection.

(1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.

(2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.

(3) A participant is not required to accept employment if the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.

(4) A participant is not required to work for an employer if this is contrary to the conditions of membership in the union governing that occupation. Employment not governed by the rules of the union to which the participant belongs may be appropriate.

(5) A participant is not required to accept employment that results in the net loss of income.

(b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Department of Human Services (OKDHS), in cooperation with other state agencies and the Office of Personnel Management, coordinates job placements for those TANF participants who are referred for the program by Form 08TW023E, State Work Incentive Referral.

(A) Employment of eligible participants can be considered for positions of unclassified status for a two year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.

(B) Participants hired under this program are eligible for leave and other benefits that are available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while they are in the program.

(C) Participants hired are exempt from probationary hiring procedures. They can be considered for conversion to the permanent classified status after two years of continuous participation in the program.

(D) Requirements for placing employees in permanent status include:

- (i) completing satisfactory performance ratings which are conducted during employment; and
- (ii) having possession of the minimum requirements stated in the job specifications

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The ~~Work Supplementation Subsidized Employment Program (WSPSEP)~~, on-the-job training (OJT), and Supported Transitional Employment Program (STEP) are examples of subsidized employment. The employment criteria in subsection (a) apply.

(1) ~~WSPSEP.~~ WSPSEP is a subsidized employment ~~opportunity program~~ through which a TANF participant is hired in full-time employment with OKDHS reimbursing the employer for partial wages paid at a maximum of \$250 per month for up to ~~six~~ four months. Public agencies, nonprofit private agencies, and private employers are eligible to participate. ~~Payments to employers and supplemental payments to WSP participants are made from a wage pool created by diversion of the TANF participant's cash assistance.~~ State agencies expressing an interest in participating in the program are informed that the \$250 subsidized employment reimbursement cannot be used to claim matching federal funds. If, for any reason in any given month, a ~~WSPSEP~~ participant is paid less than the amount of his or her cash assistance at the time of entry into the program, the ~~WSPSEP~~ participant ~~will receive~~ receives a supplemental ~~check~~ TANF benefit. ~~WSPSEP~~ participants are entitled to all benefits from the employer which are available to other employees. ~~Participation is limited to one adult per assistance unit and to a six month period during the lifetime of the participant. The six month period may or may not be consecutive or with the same employer.~~ Participants are assigned based on their employability plan and the availability of appropriate and willing employers. ~~The employer retains the satisfactory WSP participant on a permanent basis following the contract period.~~

(A) **Participant requirements.** TANF participants must be:

- (i) ~~be~~ included in a the cash assistance unit; and
- (ii) ~~be~~ available for immediate employment;
- (iii) ~~have participated in Job Search; and~~
- (iv) ~~be assigned to a job at a salary exceeding their cash assistance.~~

(B) **Position requirements.** ~~Positions~~ Position requirements must include information listed in (i) through (vi):

- (i) ~~be permanent, not less than 30 hours per week, and pay at least 65 cents above the federal minimum wage full-time with an average of 35 hours per week;~~
- (ii) be at a salary not less than \$10 per hour;
- (iii) provide the same wages, benefits, and working conditions as provided to other employees who are performing a substantially equivalent job. ~~Tips are:~~
- (iv) ~~not considered~~ consider tips as part of the wages. ~~All:~~
- (v) ~~contracts~~ must conform to the Equal Employment Opportunity Commission and fair employment practices, for example, nondiscrimination regarding age, race, sex, national origin, or disability; and
- (vi) ~~Contracts~~ contracts are not written for positions:

- (i) ~~when there is a strike, lockout, or the contract would cause displacement of other employees;~~
- (ii) ~~that involve commission sales when the federal minimum wage at least \$10 per hour is not guaranteed; or~~
- (iii) ~~that are casual, intermittent, or seasonal labor.~~

(C) **Recruitment of employers.** Human services center (HSC) designated staff will recruit employers interested in SEP. The employer ~~can be~~ is asked to ~~identify~~ notify HSC designated staff of potential positions ~~during the initial interview to facilitate contract negotiations and with job specifications and qualifications in order to match the employer with an appropriate TANF participants with employers participant referral.~~ All SEP referrals are made by HSC designated staff using Form 08TW011E, Subsidized Employment Program (SEP) Referral.

- (i) The program explanation emphasizes that employers are expected to retain the ~~WSPSEP~~ participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful ~~WSPSEP~~ participant's employment without good cause are not granted subsequent contracts. Good cause reasons for dismissal are:
 - (I) lay-off due to economic reasons which result in a reduction in force;

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- (II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or
 - (III) the employee is unable to perform at an acceptable skill level.
- (ii) Before new or additional contracts are written with an employer, ~~WSPSEP~~ employees or other employees in lay-off status must be recalled.
 - (iii) ~~Human services center (HSC) designated staff~~ has the responsibility for ensuring the employer is complying with the contract.
- (D) **WSPSEP placements.** The ~~worker~~ HSC designated staff arranges interviews between participants and potential employers. ~~WSPSEP~~ participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant has completed the first month after the cash assistance is diverted to the wage pool 30 calendar days of employment.
- (i) Following the employer's agreement to participate and ~~the employer's selection of a TANF participant, the worker~~ HSC designated staff negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation must include the beginning date of employment, the salary the employee will be paid, and the planned number of months the subsidy will be received hours per week the participant will be employed.
 - (ii) Upon receipt of the contract, ~~the county director~~ HSC designated staff reviews it for completeness and, if approved, signs and dates the contract. ~~The worker HSC designated staff~~ delivers the employer's copy of the contract with a supply of and Form 08TW018E, Work Supplementation Program Invoice, and a copy of the instructions for the form Subsidized Employment Program (SEP) Invoice, for requesting reimbursement.
 - (iii) ~~The worker~~ HSC designated staff contacts the participant and to complete and sign Form 08TW006E, Work Supplementation Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement, is completed in duplicate and signed by the worker and participant.
 - (iiiiv) If a contract is not approved, a letter is mailed by the HSC designated staff to the employer explaining the reason for the disapproval. The HSC designated staff notifies the participant is notified by either telephone or letter that the contract was not approved and that a placement will be negotiated with a new employer.
- (E) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used.
- (i) **Cash TANF cash assistance.** Under ~~WSPSEP~~, eligibility for ~~cash~~ assistance TANF

cash assistance is frozen. During the period of participation, the ~~cash~~ TANF assistance unit cannot be determined ineligible.

- (ii) **Medical benefits.** ~~WSPSEP~~ participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless found ineligible for a reason other than earned income.

- (iii) **Food benefits.** ~~WSPSEP~~ participants may be eligible for food benefits. Eligibility for food benefits is determined based on OAC 340:50-7-29 whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits in accordance with OAC 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the period of participation as long as household composition remains the same. Once SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits accordance with OAC 340:50-11-27.

- (iv) **Child care.** Child care plans must be explored with each ~~WSPSEP~~ participant. During the SEP participation period while the TANF cash assistance is frozen and the child is still considered a TANF recipient, the child remains predetermined eligible for child care subsidy benefits with a zero family share co-payment in accordance with OAC 340:40-7-1. When purchased child care services are required Once the SEP participation period ends and the TANF benefit closes, the participant's earnings are considered income, and family share co-payments are computed in accordance with OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart.

(F) **Wage pool payments.** Under ~~WSP~~, the diversion of the cash assistance creates a wage pool from which payments are made to employers and cash assistance supplemental payments are issued to ~~WSP~~ participants.

- (i) **Payment of employers.** Employers are eligible for reimbursement of the first \$250 of the gross wages paid to each WSP participant. Payment to the employer is made the month following the month the cash assistance is diverted to the wage pool.

- (i) reimbursement of 100% of the employee's gross wages for the first 30 days of employment capped at a maximum of 40 hours per week at \$12 per hour;

- (I) Employers are eligible to apply for reimbursement 30 calendar days following the date of hire.

- (II) Employers file for reimbursement by submitting Form 08TW018E directly to Family Support Services Division (FSSD) TANF Section the HSC at the first of the month with

proof of the participant's earnings for the last six months attached.

(III) When a business changes ownership, the WSPSEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for that the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement.

(ii) reimbursement of 50% of the employee's gross wages based on hourly wage up to the maximum of \$12 per hour the following three months, provided employee remains employed a minimum of 35 hours per week and earning at least \$10 per hour up to 40 hours per week;

(iii) a bonus equal to 100% of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period provided the SEP employee remains employed a minimum of 35 hours per week, earning a minimum \$10 per hour, and the employer retains the employee for a minimum period of six months after the subsidized agreement ends.

(#G) Supplemental payments to WSPSEP participants. The Family Support Services Division (FSSD) automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the WSPSEP participant's cash assistance prior to entering the program.

(H) SEP contract period completions. At the end of the fourth month of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(G) Terminations SEP contract terminations. The closing date of the authorization is the last day of employment under the contract. When employment ends prior to the end of the contract, the authorization must be closed prior to the next deadline for cash assistance changes. At any time the SEP placement is terminated during the four months of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(2) **OJT.** OJT is subsidized employment in which a participant is hired by a private or public employer and, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of that job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the employee.

(A) Participants who have successfully completed the Work Experience Program, have a recent history of employment, or who have been through a job readiness activity are the primary candidates for OJT referral.

(B) Income from OJT is considered as any other earned income. Transitional child care and medical

benefits are explained to the participant at the time of entry into OJT.

(3) **STEP.** STEP is a subsidized employment program which provides comprehensive support services that lead to permanent employment placements for TANF participants. These services are contracted with specified vendors who provide temporary paid work experience to program participants in a supportive work environment. When the participant is accepted into the program, his or her TANF benefit remains active with no cash benefit issued. If eligible, the participant continues to receive other program benefits.

(d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a credit on their federal income tax when workers from certain groups are hired. The WOTC is equal to 40% of the first year wages up to \$6,000. To claim the credit, the employee must be retained at least 180 days or work at least 400 hours.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

- (A) cash assistance recipients who have received assistance for nine months out of the last 18 months;
- (B) qualified veterans;
- (C) qualified ex-felons;
- (D) designated community residents;
- (E) vocational rehabilitation recipients;
- (F) qualified summer youth employees;
- (G) qualified food benefit recipients;
- (H) qualified recipients of Supplemental Security Income (SSI); and
- (I) long-term family assistance recipients.

(2) Through an agreement with the Oklahoma Employment Security Commission, OKDHS issues WOTC conditional certification forms for recipients of OKDHS benefits.

(3) The U.S. Department of Labor Form ETA-9062, Conditional Certificate Certification Work Opportunity and Welfare-to-Work Tax Credits, Form ETA-9062, and a letter from the worker stating the number of months the participant has received OKDHS benefits must be given to the participant to present to the employer on or before the first day of employment. An explanation is given to the participant about the purpose of the form and that the tax credit may help the participant get a job.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 3. INCOME

340:10-3-33. Individual earned income exemptions

Exemptions from each individual's earned income include a monthly standard work related expense and one-half of the remaining earned income. Exemptions are also allowed for child and adult dependent care expenses the individual is responsible for paying if expenses are not paid through other

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state and federal funds and the dependent care is in a licensed facility or home. Exempt income is income which by law is not considered in determining need for financial assistance in the Temporary Assistance for Needy Families (TANF) category. Income exempt for one individual is not taken into consideration in determining the need of any other individual for assistance in the State Supplemental Payment (SSP) for the aged, blind, and disabled and TANF.

(1) **Work related expenses.** The standard deduction for work related expenses such as income tax payment, Social Security taxes, and transportation to and from work, is automatically determined monthly for each full-time or part-time employed member of the assistance unit.

(A) The standard deduction for work related expenses is:

- (i) \$240 for a recipient employed a minimum of 30 hours per week;
- (ii) \$120 for a recipient employed less than 30 hours per week; and
- (iii) \$120 for an individual whose income is considered in determining the amount of the TANF cash assistance.

(B) The standard deduction for work related expenses is not applied to earnings of participants while in the ~~Work Supplemental~~ Subsidized Employment Program (WSPSEP).

(2) **One-half remainder.** For all countable income earned by each member included in the assistance unit, as well as a stepparent who is not included in the assistance unit, one-half of the remaining earned income is exempted.—[per OAC 340:10-3-57(f)(1)]. The one-half remainder exemption is not applied to earnings received by participants while in ~~WSPSEP~~. An applicant is only eligible for one-half of the remainder exemption when:

(A) an individual in the TANF assistance unit was included in a TANF benefit in any of the 50 states in addition to the Virgin Islands, Puerto Rico, and Guam, during one of the four months preceding the application; or

(B) the total income of all members minus work related expenses and dependent care expenses is less than the TANF need standard found on Oklahoma Department of Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, for the appropriate number of individuals.

(3) **Dependent care expenses.** Dependent care expenses are applied after all other earned income exemptions.

(A) Dependent care expenses are not deducted from earnings of participants while in ~~WSPSEP~~. Dependent care expenses may be deducted when:

- (i) suitable care for a child or incapacitated adult included in the TANF assistance unit is not available from responsible individuals living in the home or through other sources;
- (ii) the employed TANF assistance unit member whose income is considered in computing the amount of the benefit must purchase care;

(iii) the gross earned income equals or exceeds the work related and dependent care expenses combined;

(iv) the child or incapacitated adult receives care in a properly licensed facility or from an approved in-home provider as required by Oklahoma law; and

(v) the stepparent of the child(ren) for whom TANF is requested is living in the home and has dependents not included in the assistance unit who are also living in the home.—[per OAC 340:10-3-57(f)(1)].

(B) Dependent care expenses must be verified. The actual amount paid per month is deducted up to a maximum of \$200 for a dependent under the age of two or \$175 for a dependent age two or older or for an incapacitated adult. In considering the dependent care expense, only actual work hours and travel time between work and the care facility is allowed. Payment for dependent care is the individual's responsibility. The individual must immediately report any changes in the plan of care.

(C) Dependent care provided by another individual in the household who is not a member of the assistance unit may be considered as an expense as long as the caregiver meets applicable state, local, or tribal law.

[OAR Docket #09-1295; filed 10-21-09]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES

[OAR Docket #09-1298]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Operational Policies
Part 39. Accounting and Distribution
340:25-5-351 [AMENDED]
(Reference APA WF 09-17)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 652, 654, and 666 of Title 42 of the United States Code; Sections 302.32, 303.6, and 303.31 of Title 45 of the Code of Federal Regulations; Section 237 of Title 56 of the Oklahoma Statutes; and Section 253 of Title 75 of the Oklahoma Statutes.

DATES:

Adoption:

September 29, 2009

Approved by Governor:

October 8, 2009

Effective:

Upon Governor's approval

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Operational Policies

340:25-5-351 [AMENDED]
(Reference APA WF # 09-09)

Gubernatorial approval:
July 21, 2009

Register publication:
26 Ok Reg 3036

Docket number:
09-1234

INCORPORATIONS BY REFERENCE:
n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as the OKDHS finds there is a compelling public interest to align the reassignment of the mandatory fee with the federal fiscal year, beginning October 1, 2009. Due to budget constraints, OKDHS is now electing to reassign this fee to be paid from collected support.

ANALYSIS:

The proposed revision to Subchapter 5 of Chapter 25 supersedes the emergency rule effective July 21, 2009 and is amended to reassign a 2006 mandatory federal annual \$25.00 fee on all child support cases where \$500.00 of child support has been collected and distributed to the custodial person, except in those cases where current or former Temporary Assistance for Needy Families (TANF) or Aid to Families with Dependent Children (AFDC) has been provided. This fee will be automatically collected from child support payments when the federally mandated requirements are met. This fee is currently paid by the Oklahoma Department of Human Services (OKDHS). Revisions in accordance with federal law, to remove the word assigned when prorating between current child support and cash medical support collections in distribution of the payments allowing more money to be distributed to families.

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) AND EFFECTIVE UPON GOVERNOR'S APPROVAL:

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-351. Allocation and distribution of collections

(a) **Basis for allocation and distribution of collections.** The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 657 of Title 42 of the United States Code after collections are allocated according to this Section. Oklahoma Child Support Services (OCSS) is also governed by Section 654 of Title 42 of the United States Code and Section 302.33 of Title 45 of the Code of Federal Regulations and Section 237 of Title 56 of the Oklahoma Statutes in the collection of the annual fee.

(b) **Annual fee.** OCSS automatically collects an annual \$25.00 fee once \$500.00 support has been collected and issued to the custodial person. A case is exempt from this annual fee when the family is currently receiving or formerly received assistance under state or tribal Temporary Assistance for Needy Families (TANF) or Aid to Families with Dependent Children program. When there is more than one IV-D child support program involved, OCSS collects the annual fee on cases when Oklahoma is the initiating state.

(c) **Overall priority of allocation and distribution.** This subsection has priority over (ed) through (hi) of this Section.

(1) ~~The OKDHS Child Support Enforcement Division (CSED)~~ Oklahoma Child Support Services (OCSS) allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If ~~CSED~~ OCSS receives a voluntary payment, ~~CSED~~ OCSS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, ~~CSED~~ OCSS allocates voluntary payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) In a non-IV-D case, ~~CSED~~ OCSS allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.

(3) Except as provided for in (ef) of this Section, ~~CSED~~ OCSS applies ~~arrears~~ arrears collections owed to the custodial parent before paying temporarily or permanently assigned arrears owed to a state.

(4) Temporarily assigned arrears are paid before permanently assigned arrears. If the support amount ordered for a prior period is less than the cumulative amount of cash assistance from the IV-A and IV-E programs, the support is permanently assigned. In cases involving unreimbursed assistance, ~~CSED~~ OCSS retains current monthly support collections in excess of the current assistance payment under ~~Temporary Assistance for Needy Families (TANF)~~ to reimburse the State of Oklahoma for past assistance.

(5) ~~CSED~~ OCSS applies payments to interest owed to a particular custodial person after current child support and the principal arrears balance is paid in full. All interest debt is referred and distributed for ~~IRS~~ Internal Revenue Service (IRS) offset as arrears owed to the custodial person and not as a state debt or as assigned cash medical support. ~~CSED does not apply interest collections from an IRS offset to state debt unless CSED~~ When OCSS has been unable to locate the custodial person after reasonable efforts; OCSS applies interest collections from an IRS offset to state debt.

(ed) **Initial allocation to monthly current support obligations.** Except as provided in (ef) of this Section, ~~CSED~~ OCSS initially allocates collections to current support obligations due each month.

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(1) If collections are less than the amount of all current support due, ~~CSED OCSS~~ allocates collections ~~to~~ between the current child support due and the cash medical support specified in the order in proportionate shares.

(2) After the current child support and cash medical support obligation is met, ~~CSED OCSS~~ allocates collections to current spousal support due.

~~(de)~~ **Allocation to monthly past-due support obligations under payment plans.** Except as provided in ~~(ef)~~ of this Section, after all current support obligations are met, ~~CSED OCSS~~ allocates collections under payment plans to fixed monthly past-due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(1) If collections are less than the amount due under the payment plan, ~~CSED OCSS~~ first allocates collections to past-due ~~monthly~~ current child support.

(2) After the past-due monthly child support obligation is met, ~~CSED OCSS~~ allocates collections to monthly past-due spousal support.

(3) ~~CSED OCSS~~ allocates collections to the total amount in arrears after fixed monthly past-due support obligations in the payment plan are met.

~~(ef)~~ **Allocation and distribution to total amount in arrears.**

(1) ~~CSED OCSS~~ allocates federal income tax refund offset collections to the total amount in arrears.

(2) Except for collections under a payment plan, ~~CSED OCSS~~ allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, ~~CSED OCSS~~ allocates remaining collections to spousal support arrearages.

~~(g)~~ **Allocation and distribution of arrears to assigned cash medical support.** After the past-due current child support, cash medical support, and spousal support are met, OCSS allocates collections to assigned cash medical support.

~~(fh)~~ **Multiple family support orders.** This subsection explains the allocation of collections when a noncustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.

(1) **Current support.** ~~CSED OCSS~~ prorates and applies support collections to each family based on the ~~fixed~~ current ~~monthly~~ child support obligation due each family. The collections are allocated within each family obligation under subsection (d) of this Section.

~~(A) If collections for current support are less than the amount of current child support due for all families, CSED prorates and allocates collections to each family based on each family's current child support due.~~

~~(B) After current child support obligations are met, CSED prorates and allocates collections to current spousal support obligations based on the amount of current spousal support due each family.~~

(2) **Past-due support under a payment plan.** ~~CSED OCSS~~ prorates and allocates collections to payment plans

for multiple families based on each family's fixed monthly payment plan obligations due.

(3) **Total arrears, including principal and interest balances.** ~~CSED OCSS~~ prorates and allocates collections to arrears, including principal and interest balances, for multiple families based on each family's total arrears due.

~~(gi)~~ **Past-due support in interstate cases.** In cases where ~~CSED OCSS~~ is collecting support for a custodial person who is receiving services from another state's child support agency, ~~CSED OCSS~~ allocates ~~arrears~~ arrearage payments based on information provided by the initiating state. After all current support obligations are met, ~~CSED OCSS~~ allocates collections to past-due support for payment plans, total arrears, and interest as follows:

(1) **Non-public assistance balance.** If any portion of the past-due balance is owed to the custodial person or will be passed through to the custodial person under federal distribution regulations, ~~CSED OCSS~~ allocates collections to that portion of the past-due balance and pays that amount to the other state's State Disbursement Unit.

(2) **Public assistance balances.** If no portion of the past-due balance is owed to the custodial person, ~~CSED OCSS~~ allocates collections first to balances owed to Oklahoma and then pro rates between balances owed to the other state(s).

~~(hj)~~ **Interest.** ~~CSED OCSS~~ distributes interest last in single family, multiple family, and interstate cases.

[OAR Docket #09-1298; filed 10-21-09]

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

[OAR Docket #09-1296]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Eligibility

340:40-7-1 [AMENDED]

(Reference APA WF 09-16)

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; 45 Code of Federal Regulations (CFR) Parts 98 and 99; and the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for state TANF Programs as Section 403(c) of the Social Security Act.

DATES:

Adoption:

September 29, 2009

Approved by Governor:

October 8, 2009

Effective:

December 1, 2009

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

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

Gubernatorial approval:

August 18, 2009

Register publication:

27 Ok Reg 21

Docket number:

09-1241

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency approval is requested as the Oklahoma Department of Human Services (OKDHS) finds there is compelling public interest that Child Care Subsidy Program rules match proposed Temporary Assistance for Needy Families (TANF) rules regarding Subsidized Employment Program (SEP) so American Recovery and Reinvestment Act (ARRA) TANF Emergency Contingency Fund monies can be accessed to enhance services to TANF families to obtain employment during these difficult economic times.

ANALYSIS:

The proposed revisions to Subchapter 7 of Chapter 40 supersede the emergency rule effective October 1, 2009 and are amended to remove outdated language regarding TANF families in the Work Supplementation Program (WSP) as the TANF Program is changing the name of the program to SEP and participation requirements.

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 DECEMBER 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.

(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 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.

[OAR Docket #09-1296; filed 10-21-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**

[OAR Docket #09-1297]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 11. Special Procedures

Part 3. Simplified ~~Food Stamp~~ Supplemental Nutrition Assistance Program (SESP-SSNAP) for Temporary Assistance For Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)

340:50-11-20 [AMENDED]
(Reference APA WF 09-18)

Emergency Adoptions

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Section 273.23 of Title 7 of the Code of Federal Regulations (CFR), the Food and Nutrition Act of 2008, and the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for State TANF Programs as Section 403(c) of the Social Security Act.

DATES:

Adoption:

September 29, 2009

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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 there is a compelling public interest for Supplemental Nutrition Assistance Program (SNAP) rules to match proposed Temporary Assistance for Needy Families (TANF) rules regarding Subsidized Employment Program (SEP). TANF proposed rules will allow OKDHS to access American Recovery and Reinvestment Act (ARRA) Emergency Contingency Fund monies to increase services to TANF families through access to employment in SEP and provide incentives to employers to employ SEP participants during these difficult economic times.

ANALYSIS:

The proposed revisions to Subchapter 11 of Chapter 50 amend the rules to remove participation in the Work Supplementation Program (WSP) as a reason why a household receiving TANF is no longer eligible for Simplified Supplemental Nutrition Assistance Program (SSNAP).

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 DECEMBER 1, 2009:

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 3. SIMPLIFIED ~~FOOD STAMP~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SFSP SSNAP) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)

340:50-11-20. Scope

(a) The Simplified ~~Food Stamp Program (SFSP) Supplemental Nutrition Assistance Program (SSNAP)~~ rules in this Subchapter are used when **ALL** food benefit household members are included in:

- (1) Temporary Assistance for Needy Families (TANF) cash assistance; or
- (2) TANF cash assistance and a companion State Supplemental Payment (SSP) case.

(b) ~~SFSP SSNAP~~ procedures do not apply when:

- (1) no household member receives TANF cash assistance;
- (2) all household members receive SSP; or
- (3) ~~a household member is participating in the Work Supplementation Program; or~~
- (4) any household member is a disqualified food benefit household member as described in OAC 340:50-5-10.1.

[OAR Docket #09-1297; filed 10-21-09]

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

[OAR Docket #09-1290]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors

365:25-3-14. Insurance adjusters continuing education [AMENDED]

Subchapter 5. Bail Bondsmen

Part 7. Specific Financial Circumstances Warranting Release of Professional Deposit [NEW]

365:25-5-50. Authority and scope [NEW]

365:25-5-51. Specific financial circumstances enumerated [NEW]

365:25-5-52. Time governing release of professional deposit [NEW]

365:25-5-53. Limitations upon release of professional deposit below applicable limits [NEW]

365:25-5-54. Review of bail bondsmen's administrative history before release of professional deposit [NEW]

365:25-5-55. Denial of request if bail bondsman has prior forfeitures [NEW]

365:25-5-56. Limits on outstanding liabilities [NEW]

365:25-5-57. Commissioner discretion to release amount less than requested [NEW]

365:25-5-58. Approval of final order by Commissioner [NEW]

Subchapter 9. Prepaid Funeral Benefits

365:25-9-3. Forms [AMENDED]

Appendix C. Application For Original Permit [NEW]

Appendix M. Application for Renewal of Permit [NEW]

Appendix X. Sellers Notice to the Insurance Commissioner [NEW]

Appendix Y. Assumption Affidavit [NEW]

AUTHORITY:

Insurance Commissioner, 36 O.S. §§307.1 and 6123; 59 O.S. §§ 1302(A) and 1306(A)(5)

DATES:

Adoption:

September 14, 2009

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October 2, 2009

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November 1, 2009

Expiration:

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

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest requires emergency rules, because rules are necessary to implement amendments to the laws of Oklahoma relating to insurance adjusters in Section 6217(B) of Title 36 as enacted in S.B. 1022.

A compelling public interest requires emergency rules to implement amendments to the laws of Oklahoma relating to bail bondsman in Section 1306(A)(5) of Title 36 as enacted in Senate Bill 406.

A compelling public interest requires emergency rules to implement amendments to the Prepaid Funeral Benefits Act, 36 O.S. 6121-6136.18, as enacted in Senate Bill 1231.

ANALYSIS:

The amendments to Section 365:25-3-14 set forth the requirements for continuing education which an Oklahoma insurance adjuster must meet.

New Part 7 of Subchapter 5, Specific Financial Circumstances Warranting Release of Professional Deposit, establishes standards and guidelines for "the specific circumstances" the Insurance Commissioner may consider when reviewing a professional bail bondsman's request for the partial release of deposit, as now allowed by amendments to Section 1306(A)(5) of Title 36 enacted in Senate Bill 406.

The amendments to Section 365:25-9-3 and Appendices C and M as well as new Appendices X and Y incorporate statutory changes, revoke existing forms from the appendices, re-enact new versions of the revoked forms and add newly created forms as prescribed by Senate Bill 1231 which increase the background information, including requiring biographies from all parties seeking a Prepaid Funeral benefits permit, and provide that the process of assumption of a prepaid funeral trust will be more transparent and provide more information about the assumption process and the financial fitness and strength of purpose of the acquiring party.

CONTACT PERSON:

Kelley Callahan, Oklahoma Insurance Department, (405) 521-2746

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. PRODUCERS, BROKERS, LIMITED LINES PRODUCERS AND VEHICLE PROTECTION PRODUCT WARRANTORS

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

- (1) **"CEC"** means continuing education credit.
- (2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.
- (3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.
- (4) **"Credit hour"** means at least fifty (50) minutes of classroom instruction, unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** Continuing education requirements shall not apply to non-resident ~~adjuster—adjusters~~ licensed in ~~a this~~ state ~~if the adjuster~~: that has a continuing education requirement for adjusters.

(1) ~~Holds an active license as an adjuster in his or her resident (home) state, and the state has a credit hour based continuing education requirements; or~~

(2) ~~Has designated a state that licenses adjuster as his or her "home state", and the state has a credit hour based continuing education requirements for non-resident adjusters.~~

(d) **Continuing education requirements.**

(1) **Twelve hours of CEC during twenty-four month period.** All licensees shall complete ~~twelve (12) credit hours of continuing education during each twenty-four month period~~ the required hours of continuing education as set forth in Section 6217(B) of Title 36 of the laws of this state during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the adjuster is licensed. ~~Courses taken in excess of twelve (12) hours will not carry forward. However, courses taken in excess of twelve (12) hours may be applied retroactively in order to bring a lapsed license into compliance. Six (6) credit hours in excess of the minimum twenty-four month period requirement shall carry forward to the next twenty-four month period. Excess hours may be applied to bring a lapsed license into compliance.~~

(2) **Certificates of course completion required for license renewal.** If course completion is not reflected on the license renewal form issued by the Insurance Department, each adjuster shall attach, if requested by the Commissioner, an approved course completion certificate to the license renewal form returned to the Department for verification of course completion. The Commissioner shall maintain a cumulative total of continuing education credit hours to insure compliance within the twenty-four (24) month period.

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- (3) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.
- (4) **Prerequisite for renewal or reinstatement.** As a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must submit the appropriate forms as specified in this section that establish the educational requirements have been met if not currently recorded by the Oklahoma Insurance Department.
- (e) **Approval of continuing education providers.**
- (1) **Information required.** Each provider shall apply for approval by the Commissioner. All providers, including publicly funded educational institutions, federal agencies, or Oklahoma state agencies, shall provide:
- (A) Name and address of the provider.
 - (B) Contact person and his or her address and telephone number(s).
 - (C) The location of the courses or programs, if known, unless it is an individual self-study course.
 - (D) The number of CEC hours requested for each course.
 - (E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials.
 - (F) The names and qualification of instructors. An instructor shall have one of the following qualifications:
 - (i) Three (3) years of recent experience in the subject area being taught; or
 - (ii) A degree related to the subject area being taught; or
 - (iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.
 - (G) If a prior approved course has materially changed, a summarization of those changes.
- (2) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.
- (f) **Courses; approval; records.**
- (1) **Course approval timeline.** A provider shall apply to the Commissioner for course approval by submitting forms and materials to the Commissioner the first day of the month one full month prior to the date of the first course offering. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.
- (2) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.
- (3) **Written approval required.** All courses shall require written approval by the Commissioner.
- (4) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.
- (5) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.
- (6) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.
- (7) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.
- (8) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.
- (9) **List of adjusters completing course to Commissioner.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance adjusters who completed the course on the Course Completion Form. This list shall contain the course number, date of completion and license numbers of all insurance adjusters completing the course. If the list is not reported within ten (10) business days, a late report fee of \$50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.
- (10) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.
- (11) A non-refundable course review fee of thirty dollars (\$30.00) per course shall be submitted by all continuing education providers at the time the course submission is first submitted for review and upon submission for renewal at expiration with the exception of publicly funded educational institutions, federal agencies, Oklahoma state agencies, non-profit organizations, and not-for-profit organizations.
- (g) **Approved professional designation programs.**
- (1) **Definitions.**
- (A) **Participation.** As used in 36 O.S. § 1435.29(B)(3), participates means successfully completing any part of a course curriculum totaling twenty (20) classroom or equivalent classroom hours of an approved professional designation program.

(B) **Approved professional designation program.** As used in 36 O.S. § 1435.29(B)(3), an approved professional designation program means an educational insurance program approved by the Commissioner with a sponsoring organization that administers curriculum requirements and testing standards for candidates.

(2) **Requirements.** A professional designation program shall satisfy the following criteria to receive initial and ongoing approval for the program:

- (A) The program shall have a sponsoring organization;
- (B) The program's sponsoring organization shall maintain and govern a code of conduct;
- (C) The program shall be relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma;
- (D) Each course of the professional designation course curriculum shall be a minimum of twenty (20) hours of classroom instruction or equivalent classroom instruction; and
- (E) The program shall include an examination requirement that students shall pass before earning the designation.

(3) **Submissions.** The sponsoring organization shall submit the following to the Commissioner for its professional designation program to be considered for initial and ongoing approval for the program:

- (A) The sponsoring organization's code of conduct;
- (B) The sponsoring organization's membership requirements;
- (C) The professional designation program's course requirements; and
- (D) The professional designation program's examination requirements.

(4) **Submission exemptions.** Professional designation programs recognized by the National Association of Insurance Commissioners (NAIC) for waiver/exemption of pre-licensing education training shall receive initial and continuing approval without submission by the sponsoring organization.

(h) **Presumptive continuing education credit approval.**

(1) **Requirements.** A professional association may receive presumptive approval of the association's continuing education courses by satisfying the following requirements:

- (A) The association shall have a mission statement that includes a commitment to enhance the professional, educational, or ethical skills of its members;
- (B) The association shall maintain and govern a code of member conduct;
- (C) The association shall offer educational programs relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma; and
- (D) The association shall perpetuate its continuity through the election of officers.

(2) **Submissions.** Each professional association shall submit the following to be considered for initial and ongoing presumptive course approval:

- (A) The association's mission statement;
- (B) The association's code of member conduct;
- (C) The chapter officers, the responsibilities for each officer, and the term of office for each officer;
- (D) The mailing address and primary contact for the association; and
- (E) The list of continuing education courses approved in Oklahoma and offered by the professional association in the past twenty-four (24) months.

(3) **Notification of approval or disapproval.**

(A) The Commissioner shall notify the association within ninety (90) days from the receipt of submission whether presumptive approval for continuing education courses was granted. The notification shall indicate the reasons for disapproval.

(B) Submissions to the Commissioner by an association seeking presumptive approval of continuing education courses shall include the course summary, instructor name, course date and location and shall be submitted to the Commissioner at least fifteen (15) business days prior to the presentation of the course.

(C) If the Commissioner receives a report or reports that the content of a continuing education course may violate paragraph 65:25-3-1(f)(7) of this section, the Commissioner may review the content and determine if the course should be disapproved for noncompliance. The Commissioner shall notify the association if the course has been disapproved due to non-compliance, and the association shall immediately cease offering the course upon receipt of the notification. The association may then make corrections to a disapproved course to bring the course into compliance with paragraph 365:25-3-1(f)(7) of this section and submit the course for approval by the Commissioner in the manner of an original submission for presumptive continuing education course approval.

(D) Should an association receive notification of three (3) disapproved courses within a twenty-four (24) month period, the association's presumptive approval for continuing education courses shall be rescinded for twenty-four (24) months after which time the association may re-apply for presumptive approval.

(4) **Assignment of course number.** The Commissioner shall assign a course number once the presumptive approval for continuing education courses has been granted and shall notify the association of the assigned course number. All future correspondence relating to that course shall reference the assigned course number.

(5) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted.

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- (6) **Review.** Course approval shall be reviewed every three (3) years. The association shall re-submit the items required in subparagraph 365:25-3-14(H)(3)(B) of this section during the fourth quarter of the last approval year.
- (7) **Agency management courses.** Agency management courses shall not be considered for presumptive continuing education approval.
- (i) **Self study and distance learning courses.** The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed and updated as appropriate and published on the Commissioner's website annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the adjuster and revocation of the course approval and or provider status for the Provider.
- (j) **Repeating courses.** An insurance adjuster may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twelve month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits designated for the course.
- (k) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.
- (l) **Continuing education advisory committee.**
- (1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Agents Licensing Division, and representatives from the industry (not to exceed three (3) individuals) as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.
- (2) Prior to the Commissioner's approval or disapproval of a course in subsection 365:25-3-14(e), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted pursuant to

subsection 365:25-3-14(e) and additional information regarding the course, if necessary. Each course approval shall be valid for a period of no longer than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course materials may be resubmitted as requested for review at the time of expiration. All existing courses previously approved and current with the Commissioner shall be submitted in accordance with the expiration date as granted by the Commissioner unless the course has a material change, as previously detailed.

- (m) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBCHAPTER 5. BAIL BONDSMEN

PART 7. SPECIFIC FINANCIAL CIRCUMSTANCES WARRANTING RELEASE OF PROFESSIONAL DEPOSIT

365:25-5-50. Authority and scope

This regulation is promulgated by the Insurance Commissioner pursuant to Section 1306(A)(5) of Title 59 of the laws of this state to describe the nature and scope of the specific financial circumstances warranting a release of a bail bondsman's professional deposit.

365:25-5-51. Specific financial circumstances enumerated

(a) For purposes of Section 1306(A)(5) of Title 59 of the laws of this state, the specific financial circumstances warranting release of a professional deposit are:

- (1) Fire that damages or destroys either the office or residence of the bondsman;
 - (2) Flood that damages or destroys either the office or residence of the bondsman;
 - (3) Other natural disaster that damages or destroys either office or residence of the bondsman;
 - (4) Medical problem or illness sustained by either the bondsman or a member of the immediate family of the bondsman.
 - (5) The bondsman has unused bail writing capacity of at least forty percent (40%) of their liability limit, and has at least twelve (12) consecutive months of being at sixty percent (60%) or below this writing limit.
- (b) The bondsman shall have the burden of showing the Commissioner by clear and convincing evidence the existence or occurrence of the circumstances, as well as providing to the Commissioner any necessary supporting documentation or other evidence the Commissioner requires.

365:25-5-52. Time governing release of professional deposit

The Commissioner shall release the professional deposit no earlier than ninety (90) days following the receipt of the request for release.

365:25-5-53. Limitations upon release of professional deposit below applicable limits

The Commissioner shall not release any portion of the professional bondsman deposit that results in the deposit dropping below the applicable limit set by Section 1306(A)(2) of Title 59 of the laws of this state.

365:25-5-54. Review of bail bondsmen's administrative history before release of professional deposit

The Commissioner shall review the bondsman's administrative history to determine if the bondsman owes any outstanding fines to the Commissioner or has any pending or concluded disciplinary action for unpaid bail bond forfeitures. The Commissioner shall not release the deposit if outstanding fines are owed or if forfeitures were unpaid in the time allowed by Section 1332 of Title 59 of the laws of this state. The Commissioner also shall not release the deposit if there are more than three (3) final Insurance Department administrative actions in the twelve (12) months preceding the release request.

365:25-5-55. Denial of request if bail bondsman has prior forfeitures

The Commissioner shall refuse the bondsman's deposit release request if the Commissioner was ever ordered by a Hearing Examiner to pay any forfeiture from the bondsman's professional deposit.

365:25-5-56. Limits on outstanding liabilities

The bondsman's outstanding liabilities cannot exceed sixty percent (60%) of the professional deposit writing limit for at least one year prior to making application for partial release of deposit.

365:25-5-57. Commissioner discretion to release amount less than requested

The Commissioner shall have the authority to release an amount less than requested by the professional bondsman, if the bondsman's requested amount will cause the remaining deposit to be insufficient to cover additional bail liabilities incurred by the bondsman.

365:25-5-58. Approval of final order by Commissioner

The final deposit release order shall be approved by the Commissioner or the Commissioner's designee, pursuant to Section 1306(A) (6) of Title 59 of the laws of this state.

SUBCHAPTER 9. PREPAID FUNERAL BENEFITS

365:25-9-3. Forms

(a) **General requirements.**

(1) **Application for prepaid funeral benefits permit form.** An Application for Prepaid Funeral Benefits Permit, Form PFB-1, application for Prepaid Funeral Benefits permit shall be filed using the Prepaid Funeral Benefits Permit Original Application as set forth in Appendix C of this chapter. The application must be filed with and approved by the Insurance Commissioner before any contracts covered by this act may be marketed. The statutory fee of \$50.00 must accompany this application. An NAIC UCAA Biographical Affidavit must be submitted for each owner(s) of the organization and each "designated agent" as defined by Section 6126 of the "Act".

(2) **Bond form requirements.** Appendix D of this chapter is a sample bond to be used in connection with "The Act". Any variance from this form must have the prior written approval of the Insurance Commissioner. If any bond required by "The Act" is canceled for any reason, a thirty (30) day written notice must be given by the insurer to the Insurance Commissioner.

(3) **Conversion Forms.** Applications for Conversion from a trust funded prepaid funeral benefit to an insurance-funded prepaid funeral benefit shall be filed with and approved by the Insurance Commissioner before any contracts covered by "The Act" may be converted. Applications for Conversion shall be filed using the Application for Conversion form as set forth in Appendix R of this chapter. Any variance from this form must have prior written approval by the Insurance Commissioner.

(4) **Notice of Sale.** The seller of a prepaid funeral benefits permit holding funeral home must make application forty-five (45) days prior to the transfer of ownership using the Sellers Notice to the Insurance Commissioner (PFSN 2009) form as set forth in Appendix X of this chapter. In addition to the notice, the seller must also submit a listing of unrealized prepaid funeral contracts. Insurance funded contracts should be listed independently from trust funded contracts. The listing will, at minimum, reflect the contract holder's name, contract number, contract value, the name of the insurer and the policy's face value (when applicable), and the trust value at the time of notice (when applicable).

(5) **Assumption Affidavit.** The buyer of a prepaid funeral benefits permit holding funeral home must notify the Commissioner of their intent to purchase thirty (30) days prior to transfer of ownership using the Assumption Affidavit (PFAA 2009) form as set forth in Appendix Y of this chapter.

(6) **Application for Renewal.** The application for renewal of a prepaid funeral benefits permit must be filed with the Commissioner no later than December 31 of each year, using the Application for Renewal (PFBR 2009) form as set forth in Appendix M of this chapter, in order

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to renew the permit for the succeeding calendar year. The statutory fee of \$50.00 must accompany the application.

~~(b) **Additional general requirements.** Withdrawal forms, individual refunds, renewal applications, and the annual statement of financial condition shall be submitted to the Insurance Commissioner for review by submitting one copy of the withdrawal form and individual refund. Submit the original renewal application and annual statement of financial condition.~~

~~(1) **Withdrawal forms.** Appendix E of this chapter is the application which must be submitted to the Insurance Commissioner in order to withdraw funds after a contract has been fulfilled.~~

~~(2) **Individual refunds.** Appendix F of this chapter, must be submitted to the Insurance Commissioner when a person desires to withdraw any funds deposited for pre-paid funeral expenses prior to fulfillment of the contract.~~

~~(3) **Annual reports.**~~

~~(A) Annual reports must be filed in accordance with Section 6128 of "The Act". Such reports should be submitted in columnar form in alphabetical order according to the last name of the contract holder. Appendix G of this chapter is included for the sole purpose of establishing guidelines for this report. A complete annual report shall be composed of the following items arranged in the order shown below:~~

- ~~(i) PF-1-a~~
- ~~(ii) PF-1-b~~
- ~~(iii) PF-1-c~~

~~(iv) PF-1-d~~

~~(v) PF-2-a~~

~~(vi) PF-2-b~~

~~(vii) PF-2-c~~

~~(viii) PF-3~~

~~(B) Computer print-outs may be submitted in lieu of the reports listed above so long as each legibly provides no less information than shown in the Insurance Commissioner's sample forms. Not less than one page of each annual report form shown above, other than the PF-2-b, shall be submitted. However, where a particular form is not relevant to the operations of a given permitholder, it may be submitted clearly marked, "Not Applicable".~~

~~(C) All itemized statements of charges must be submitted with the annual report in accordance with Section 6123 of Title 36 of the Oklahoma statutes.~~

~~(42) **Annual statement of financial condition.** An Annual Statement of Financial Condition-(Reconciliation of Trust Accounts)(form PF-3) must be filed in accordance with Section 6129 of "The Act". Appendix H of this chapter (Form PF-3) is included for the sole purpose of establishing guidelines for this statement.~~

~~(5) **Renewal application.** A renewal application (PFB-2) must be filed with the Commissioner no later than December 31 of each year in order to renew the permit for the succeeding calendar year. The statutory fee must accompany this renewal application.~~

APPENDIX C. APPLICATION FOR ORIGINAL PERMIT [NEW]

PREPAID FUNERAL BENEFITS PERMIT ORIGINAL APPLICATION

General Information

Name of Organization:

include True name and if applicable Doing Business As name)

Type of Organization: Sole Proprietor* Partnership* Corporation*

State Tax ID: Federal Tax ID:

*Each Proprietor or member of the Partnership/Corporation must submit a Biographical Affidavit

Physical Address:

Mailing Address:

Phone Number: Alt Phone Number: Fax Number: (if applicable)

Email Address: Web Address:

Funeral Director in Charge:

General Interrogatories

1. Has the owner or any principal employees of the organization been admonished, censored, suspended or fined within the last year by the Oklahoma Funeral Board for violations involving funeral home activities?

Yes No If yes, please attach statement of explanation.

2. Have any of the principals (owner[s], manager, employees with fiduciary duties, ect.) ever been convicted of a felony or misdemeanor involving moral turpitude?

Yes No If yes, explain:

3. Have you or your organization ever applied for a permit from this Department?

Yes No Were you approved or denied? Approved Denied If denied, please attach statement of explanation. If approved, did your permit lapse, was it sold or other? Please attach statement of explanation.

Prepaid Funeral Contract Funding

Insurance Assignment Only

Does the establishment offer an in-house insurance agent? If yes, please provide agent's Name and License Number

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APPENDIX X. SELLERS NOTICE TO THE INSURANCE COMMISSIONER [NEW]

APPENDIX X. Sellers Notice to the Insurance Commissioner

Permit Number

KNOW ALL BY THESE PRESENTS that I, _____, (Seller) current
owner of _____ doing business as a Prepaid Funeral Benefits
organization in the State of Oklahoma and required by OKLA. STAT. TIT. 36 § 6124.1 to
provide notice of Transfer in Ownership hereby submit to you the following;

- (Current Owner)
(Name of Funeral Establishment)
- a) Name of Acquiring Organization _____
b) Date Acquiring Organization Assumes Control _____
c) Attached and made part of this Notice is the required listing of
outstanding Prepaid Funeral Contracts

The Seller, now obligates the acquiring organization to apply for and receive a permit of sameness from the Insurance Commissioner of the State of Oklahoma, prior to acting as the Prepaid Funeral Benefits organization for all prepaid funeral contracts included in the transfer of ownership.

Seller further agrees that all monies paid into Trust as part of the prepaid funeral contract remain under the control of Seller until the Insurance Commissioner, in order to safeguard the rights and interests of the individual prepaid funeral contract holder, expressly authorizes the transfer of said Trust monies to the Buyer.

I, _____ hereby affirm that all information provided in this notice
(Current Owner)
and inscribed on the attached listing of outstanding Prepaid Funeral Contracts is true and correct. I further affirm that I have disclosed any adverse change foreseen due to the transfer in Ownership.

State of _____

County of _____

Signed and affirmed before me on _____ by _____
(Date) (Current Owner)

(Signature of Notarial Officer)

(seal)

(Title)

(Commission Expiration)

PFSN 2009

APPENDIX Y. ASSUMPTION AFFIDAVIT [NEW]

Assumption Affidavit

KNOW ALL BY THESE PRESENTS that I, _____, (Acquirer), acting
Acquirer of Funeral Establishment)

in accordance with OKLA. STAT. TIT. 36 §6124.1, now make notice of intent to
purchase _____, a provider of prepaid funeral services and/or merchandise.
(Name of Funeral Establishment)

Application has been made to the Insurance Commissioner of the State of Oklahoma to
enter into contracts and receive payments thereon for prepaid funeral services
and/or merchandise, in accordance with OKLA. STAT. TIT. 36 §6121 et seq.

As the Acquirer, I have been made aware of existing insurance funded and trust
funded contracts for prepaid funeral services and/or merchandise underwritten by the
Seller and accept the Sellers identification and itemization of said contracts.

Acquirer further agrees that all monies accrued in the Seller's Trust remain under
the Sellers control until the Insurance Commissioner, as means of safeguarding the
rights and interests of the individual prepaid funeral contract holder, expressly
authorizes transfer of said Trust monies to the Acquirer.

I, _____ hereby affirm that all information provided in this
(Acquirer of Funeral Establishment)
affidavit is true and correct. I further affirm that I have disclosed any adverse
change foreseen due to the transfer in Ownership.

State of _____

County of _____

Signed and affirmed before me on _____ by _____
(Date) (Buyer)

(Signature of Notarial Officer)

(seal)

(Title)

(Commission Expiration)

PFAA 2009

[OAR Docket #09-1290; filed 10-12-09]

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TITLE 365. INSURANCE DEPARTMENT CHAPTER 45. HEALTH CARE FOR OKLAHOMANS REGULATION

[OAR Docket #09-1291]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Plan Requirements [NEW]

365:45-1-1. Standard health benefit plan requirements [NEW]

365:45-1-2. Standard health benefit plan disclosure requirements [NEW]

Subchapter 3. Product Certification Requirements [NEW]

365:45-3-1. Certification of insurance programs for recommendation by the Health Care for the Uninsured Board [NEW]

Subchapter 5. Producer Education Requirements [NEW]

365:45-5-1. Training and education requirements for producers to market Health Care for the Uninsured Board (HUB) certified products [NEW]

AUTHORITY:

Insurance Commissioner: 36 O.S. §§ 307.1 and 4601, et seq.

DATES:

Adoption:

September 14, 2009

Approved by Governor:

October 2, 2009

Effective:

November 1, 2009

Expiration:

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

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest requires an emergency rule to implement amendments and additions to the laws of Oklahoma as enacted in House Bill 2026, which directs the Insurance Commissioner in collaboration with the Oklahoma Health Care Authority to initiate a program to encourage enrollment of individuals not covered by insurance or Medicaid in health insurance programs. These laws were enacted at Sections 4601 through 4603 of Title 36.

ANALYSIS:

House Bill 2026 directs the Insurance Commissioner in collaboration with the Oklahoma Health Care Authority to initiate a program to encourage enrollment of individuals not covered by insurance or Medicaid in health insurance programs. This program includes the creation of a Health Care for the Uninsured Board ("HUB"). The laws enacted in House Bill 2026 direct the affected agencies to establish a system of certification for insurance programs offered to be recommended by the HUB and to provide training and education requirements for producers to market HUB certified products.

CONTACT PERSON:

Kelley Callahan, Oklahoma Insurance Department, (405) 521-2746

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 1. PLAN REQUIREMENTS

365:45-1-1. Standard health benefit plan requirements

(a) The 'standard health benefit plan' defined in Section 4415 of Title 36 of the laws of this state shall:

(1) Comply with the general rules for individual accident and sickness policies specified in OAC 365:10-5-5(b), 'General Rules';

(2) Provide benefits at least equivalent to the category of coverage specified in OAC 365:10-5-5(f), 'Major Medical Expense Coverage'; and

(3) Be guaranteed renewable.

365:45-1-2. Standard health benefit plan disclosure requirements

A standard health benefit plan, must contain the following disclosures.

(1) The disclosure required by Section 4415(B)(2) of Title 36 of the laws of this state shall be located on the first page of the policy or included on a notice affixed to the first page of the policy.

(A) The disclosure shall be printed in bold type in a font size at least two points larger than the other text of the policy.

(B) The disclosure shall recite the statutory language verbatim.

(2) At the time of application, but not later than policy delivery, an insurer providing a standard health benefit plan shall provide the applicant or policyholder with a written disclosure statement that includes the information required by Section 4415(C) of Title 36 of the laws of this state.

(A) An insurer shall retain a signed copy of the disclosure statement referenced in this subparagraph.

(B) Upon renewal of a standard health benefit plan, an insurer shall provide the disclosure statement referenced in this subparagraph and shall request the insured to return a signed copy to the insurer.

(C) Upon request, an insurer shall provide to the Insurance Commissioner a copy of the signed disclosure statement or evidence that the statement was provided to the insured and that the insured was requested to return a signed copy to the insurer.

SUBCHAPTER 3. PRODUCT CERTIFICATION REQUIREMENTS

365:45-3-1. Certification of insurance programs for recommendation by the Health Care for the Uninsured Board

In order to facilitate the Insurance Commissioner's certification of insurance programs to be recommended by the Health Care for the Uninsured Board (HUB), any insurer desiring to have an insurance program certified shall submit information upon forms provided by the Insurance Commissioner.

(1) Both individual and group products may be certified.

(2) Insurance provided pursuant to Sections 6531-6544 of Title 36 of the laws of this state, the "Health Insurance High Risk Pool Act" is deemed certified for recommendation by the HUB.

(3) Insurance for which an individual has qualified for a subsidy under the premium assistance program established in Section 1010.1 of Title 56 of the laws of this state, the Oklahoma Medicaid Program Reform Act of 2003 is deemed certified for recommendation by the HUB.

SUBCHAPTER 5. PRODUCER EDUCATION REQUIREMENTS

365:45-5-1. Training and education requirements for producers to market Health Care for the Uninsured Board (HUB) certified products

- (a) **Initial and renewal credentialing requirements.**
 - (1) A producer licensed for the accident and health line of insurance may become credentialed to market HUB certified plans in accordance with Section 4602(C)(2) of Title 36 of the laws of this state.
 - (2) In order to maintain credentials for the HUB program, all producers credentialed to market HUB certified health plans must satisfactorily complete four (4) hours of HUB designated continuing education prior to each biennial license renewal period. Failure to complete the required continuing education shall result in the termination of the producer's HUB credential.
- (b) **Application, qualifying examination, hours of training required.**
 - (1) Insurance producers who hold an active producer license for the accident and health line of insurance may apply for HUB credentialing by completing and submitting an application specified by the Insurance Commissioner.
 - (2) Insurance producers must take a credentialing qualifying examination which will determine the number of education hours to be taken by the producer in the credentialing process.
 - (3) Qualifying examinations shall be provided at locations and times designated by the Insurance Commissioner.
 - (4) The qualifying examination shall consist of subject matter specified by the Insurance Commissioner. The examination will be closed book meaning no computer or electronic equipment was used by an applicant during the exam for the purposes of seeking information to answer examination questions. Information regarding the subject matter of the exam will be made available on the Insurance Commissioner's official web site
 - (5) Any producer who scores below 85 percent on the credentialing qualifying examination must take fourteen (14) hours of approved HUB credentialing education consisting of six (6) hours of basic credentialing education, and upon completion, take eight (8) hours of advanced credentialing education. Producers who score 85 percent or above on the qualifying examination shall be required to complete eight (8) hours of advanced credentialing education:
 - (6) The six (6) hours of basic credentialing education required by paragraph 5 of this section must be taken in

a single six (6) hour course. The hours may be taken through the internet or in a classroom environment; correspondence classes will not be approved.

(7) The eight (8) hours of advanced credentialing education required by paragraph 5 of this section must be taken in a single eight (8) hour course and shall only be available in a classroom environment. Internet or correspondence classes will not be approved.

(8) Outlines for the basic and advanced credentialing education courses shall be specified by the Insurance Commissioner.

(9) Credentialing education courses shall be subject to the continuing education course approval requirements specified in OAC 365:10-25-3-1(f).

(10) All education hours taken towards becoming credentialed to market HUB certified plans shall count toward the continuing education requirement set out in Section 1435.29 of Title 36 of the laws of this state and OAC 365:10:25-3-1.

(11) All continuing credentialing education hours required by paragraph (2) of this section must be completed via online or classroom environments; correspondence courses will not be approved.

(c) **Education provider examination administration requirements.** Individuals, providers and entities approved by the Insurance Commissioner to administer the qualifying examination shall attest that the examination was proctored and provided in a secured environment, which means that no computer or electronic equipment will be used by an applicant during the exam for the purposes of seeking information to answer examination questions. Classroom study materials may not be used to complete the examination. Individuals, providers and entities administering the qualifying examination shall keep a copy of the attestation for five (5) years. The attestation shall be made available to the Insurance Commissioner upon request.

[OAR Docket #09-1291; filed 10-12-09]

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

[OAR Docket #09-1293]

RULEMAKING ACTION:
EMERGENCY adoption

- RULES:**
- Subchapter 2. General Provisions
 - 580:15-2-7 [AMENDED]
 - Subchapter 4. Supplier Provisions
 - 580:15-4-13 [AMENDED]
 - Subchapter 6. State Agency Provisions
 - 580:15-6-5 [AMENDED]
 - 580:15-6-6 [AMENDED]
 - 580:15-6-6.1 [NEW]
 - 580:15-6-6.2 [NEW]
 - 580:15-6-10 [AMENDED]
 - 580:15-6-14 [AMENDED]
 - 580:15-6-21 [AMENDED]

Emergency Adoptions

AUTHORITY:

Department of Central Services, 74 O.S., Section 85.5

DATES:

Adoption:

August 18, 2009

Approved by Governor:

October 1, 2009

Effective:

Immediately upon gubernatorial approval

Expiration:

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

SUPERSEDED EMERGENCY ACTIONS:

n/a

GUBERNATORIAL APPROVAL:

October 1, 2009

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Department of Central Services finds that a compelling public interest requires these emergency rules be adopted to address efficient and cost-effective issues related to state government procurement. In response to the issues, the Oklahoma legislature passed revisions to the Oklahoma Central Purchasing Act in Enrolled House Bill No. 1132 (Effective August 26, 2009) to ensure timely and efficient procurement practices for state agencies and public suppliers doing business with the State.

ANALYSIS:

Statutory amendments enacted by House Bill 1132, effective August 26, 2009, increase acquisition thresholds of state agencies from a maximum of \$25,000.00 to not exceeding \$100,000.00 upon approval by the State Purchasing Director and in accordance with rules promulgated by the Department of Central Services. In addition, language related to certain procurement documents requiring notarizations were modified to compliment the use of technology in procurement practices. These proposed emergency rules provide information and revisions related to procurement processes to be consistent with the statute changes and to ensure agencies and suppliers comply with the new mandates.

CONTACT PERSON:

Gerry Smedley, Rules Liaison, 522-8519

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 2. GENERAL PROVISIONS

580:15-2-7. State Purchasing Director authority

(a) **General.** The State Purchasing Director is an employee of the Department of Central Services. The Director and the Oklahoma Central Purchasing Act prescribe the duties, responsibilities and authority of the State Purchasing Director.

(b) **New Contracting Procedures.** Whenever the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall promptly notify state agencies.

(c) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and agency personnel regarding a solicitation shall be documented and submitted to DCS for inclusion in the bid file.

(d) **Limited disclosure.** Agency staff shall not announce or reveal their decision regarding supplier evaluation or recommendation for award to Central Purchasing in any public manner or forum, including board meetings, until Central Purchasing has issued the award of contract.

(e) **Negotiation.** The State Purchasing Director or designee may negotiate contracts ~~by noting in the solicitation that negotiations may be conducted and~~ by following these rules for negotiation. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions exceeding \$10,000.00 only with the prior written approval of the State Purchasing Director.

(1) **Negotiation team.** The State Purchasing Director shall designate a negotiator or negotiation team. The State Purchasing Director or designee shall serve as the lead negotiator for a team.

(2) **Negotiation process.**

(A) The lead negotiator shall notify vendors of the date and time for negotiations.

(B) The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.

(C) The lead negotiator shall determine the location and manner of negotiation.

~~(D) Negotiations shall be recorded.~~

(ED) The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation.

~~(FE)~~ The lead negotiator may require suppliers to submit a best and final offer.

~~(GF)~~ The lead negotiator shall prepare a summary that shall document the following:

(i) an overview setting forth the solicitation number, names and titles of participants, description of the contract, date and location of the negotiation, and purpose of the negotiation; and

(ii) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

~~(HG)~~ A summary created under these rules shall become a part of the contract file ~~retained in Central Purchasing.~~

(f) **Contract management fee, levy or rebate.** Pursuant to 74 O.S., Section 85.33(B), the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Department. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S., Section 85.33(A).

SUBCHAPTER 4. SUPPLIER PROVISIONS

580:15-4-13. Supplier's ~~protests~~ protest

A supplier may protest a contract award by a state agency or the Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act ~~or the Public Building Construction and Planning Act~~ are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Central Purchasing Division within ten (10) business days of contract award. The protest notice shall state supplier facts and reasons for protest.

(2) **State Purchasing.** Director review and determination. The State Purchasing Director shall review the supplier's protest and contract award documents.

(A) The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.

(B) Written notice of the decision by the State Purchasing Director or the agency, if applicable, to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.

(C) An agency making an acquisition pursuant to 74 O.S. Section 85.5(T) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.

(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the Director of Central Services. The supplier shall file a written appeal within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the ~~protest~~ appeal or assign the supplier's appeal to an administrative law judge the Department retains.

(A) If the ~~protest~~ appeal is assigned to an administrative law judge, the administrative law judge shall review the ~~protest~~ appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.

(B) If the ~~protest~~ appeal is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(D) The cost of actions required by the provisions of this section, together with other necessary expenses

incurred pursuant to this section, shall be paid by the state agency responsible for the initial solicitation.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.

(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the supplier protesting the contract award and the Department of Central Services, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

- (i) Establish a scheduling order;
- (ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
- (iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;
- (iv) Require briefing of any or all issues;
- (v) Conduct hearings;
- (vi) Rule on the admissibility of all evidence;
- (vii) Question witnesses; and
- (viii) Make proposed findings of facts and conclusions of law to the Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

SUBCHAPTER 6. STATE AGENCY PROVISIONS

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580:15-6-5. Methods State Agencies Use to Make Acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or nonmandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Nonmandatory statewide contracts.** State agencies may use nonmandatory statewide contracts when an agency determines it is in the best interest of the state.

(2) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S., Section 3001, et seq. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

(3) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S., Section 549.1.

(A) An agency, using its procurement authority may place a direct order with OCI without competitive bidding, or issue a solicitation, which shall include OCI as a vendor. If a solicitation is issued, the award shall be made to OCI if such product or service is the lowest and best bid.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to the Purchasing Division for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.

(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the Director of the Central Services shall resolve the issue.

(4) **Standard contracts.**

(A) **Contract for definite quantity.** If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.

(B) **Contract for indefinite quantities.** If an agency is unable to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.

(C) **Contract for scheduled acquisitions.** When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(D) **Open market contracts.** State agencies may make open market acquisitions within their approved purchasing authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division and the agency's approved internal purchasing procedures.

(5) **Sole source and sole brand contracts.**

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:15-6-2 and 580:15-6-3, may requisition a sole source or sole brand acquisition within the agency's purchasing authority limit pursuant to the provisions of the Oklahoma Central Purchasing Act.

(B) The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding ~~Two Five Thousand Five Hundred Dollars (\$2,500.00)~~ (\$5,000.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.

(C) If the sole source or sole brand acquisition amount exceeds the agency's purchasing authority,

the agency shall submit the requisition to the State Purchasing Director.

580:15-6-6. State agency acquisitions

(a) **Acquisition authority.** All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S., §85.1 et. seq., other applicable statutory provisions, this Chapter and the agency's approved internal purchasing procedures.

(b) **Acquisitions under not exceeding \$2,500. 00 \$5,000.00.** State agencies shall make open market acquisitions not exceeding ~~Two Five Thousand Five Hundred~~ Dollars ~~(\$2500.00) (\$5,000.00)~~ that are fair and reasonable.

(c) **Acquisitions over \$2,500. 00 \$5,000.00 and under not exceeding \$10,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make acquisitions over \$5,000.00 and not exceeding Ten Thousand Dollars (\$10,000.00) pursuant to this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition.

(A) The state agency shall provide ~~a complete set of the~~ specifications, terms and conditions for the acquisition to each supplier selected for notification.

(B) Any competitive bid for goods or services shall contain a non-collusion certification.

(2) **Supplier selection.** The state agency shall solicit a price quote from a minimum of three suppliers, which may be from the registered supplier list in the appropriate commodity classification compiled by the Purchasing Division and made available to state agencies. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall ~~secure the suppliers' obtain documentation of the pricing and delivery dates in writing or document price quotation and delivery dates from the suppliers.~~

(4) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file.

(5) **Contracts Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide a non-collusion certification pursuant to 74 O.S., Section 85.22. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in

accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

~~(B) **Verification and documentation.** Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.~~

~~(C) **Services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:~~

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall ~~provide include~~ a ~~sworn~~ statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. Section 85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. Section 85.4]

(iii) Each contract for services shall include ~~an affidavit a statement~~ certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. Section 85.42]

(6) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(7) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(d) **Acquisitions over \$10,000. 00 and under not exceeding \$25,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding \$10,000.00 but not exceeding \$25,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide ~~a complete set of the~~

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specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include:

- (A) evaluation criteria for the acquisition; and,
 - (B) a non-collusion certification pursuant to 74 O.S., Section 85.22 and the provisions of 580:15-4-7(c).
- (2) **Supplier selection.** The state agency shall solicit a minimum of ten (10) suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be ~~solicited~~ awarded a contract.
- (3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, ~~telephone~~, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in writing accordance with the requirements of the solicitation.
- (4) **Non-Collusion certification.** Any state agency solicitation that is competitively bid shall contain a non-collusion certification statement pursuant to 74 O.S., Section 85.22. A supplier shall complete and submit the non-collusion certification with their response to the solicitation. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.
- (5) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.
- (6) **Contracts Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the contract must include the non-collusion certification, signed and submitted with the solicitation pursuant to 580:15-4-7(c) and 74 O.S., Section 85.22.
- (A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.
 - (B) **~~Verification and documentation.~~** ~~Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.~~

~~(C)~~ **Services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

- (i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall ~~provide~~ include a ~~sworn~~—statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. Section 85.41]
 - (ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. Section 85.4]
 - (iii) Each contract for services shall include ~~an affidavit~~ a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. Section 85.42]
- (7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.
- (8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.
- (e) **Additional information:**
- (1) **~~Split purchases.~~** ~~State agencies shall not make split purchases for the purpose of evading their approved dollar threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to the Oklahoma Central Purchasing Act.~~
 - (2) **Change orders.** ~~Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.~~
 - (A) **Acquisitions by a state agency.** ~~If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.~~
 - (B) **Acquisitions by the Purchasing Division.** ~~If a requested change order exceeds ten percent (10%)~~

in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(3) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of Oklahoma Central Purchasing Act.

(4) **Acquisitions from another governmental agency.** A state agency may contract with a political division or subdivision, agency of the United States or another state agency pursuant to 74 O.S., Section 581 or Sections 1001 through 1008. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(5) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

(6) **Trade ins.** State agencies may trade in items when they make an acquisition of a like item with prior written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade in.

(7) **OneNet acquisitions.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(8) **Authorized signature.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, purchase orders, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

Acquisitions over \$25,000.00 and not exceeding \$50,000.00. State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding \$25,000.00 but not exceeding \$50,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include:

(A) evaluation criteria for the acquisition; and,

(B) a non-collusion certification pursuant to 74 O.S. Section 85.22 and the provisions of 580:15-4-7(c).

(2) **Supplier selection.** The state agency shall solicit all suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be awarded a contract.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

(4) **Non-Collusion certification.** Any state agency solicitation that is competitively bid shall contain a non-collusion certification statement pursuant to 74 O.S. Section 85.22. A supplier shall complete and submit the non-collusion certification with their response to the solicitation. The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(5) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

(6) **Verification and documentation.** If the state agency and the supplier execute a contract for the acquisition, the contract must include the non-collusion certification, signed and submitted with the solicitation pursuant to 580:15-4-7(c) and 74 O.S., Section 85.22.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(B) **Services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study,

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the supplier shall provide a sworn statement certifying the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency.

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference: 74 O.S., Section 85.41.]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract.

(7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(f) **Acquisitions over \$50,000.00 and not exceeding \$100,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall send a written request to the State Purchasing Director to request acquisition authority exceeding \$50,000.00 but not exceeding \$100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall make acquisitions at this level in accordance with 74 O.S. Section 85.7, any other applicable state laws, and subsection (g) of this Section. All awards shall be based on lowest and best or best value criteria.

580:15-6-6.1. Acquisition limitation exception

(a) A state agency making an acquisition pursuant to 74 O.S. Section 85.5(T) must have an internal CPO and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3, in addition to the subject matter experts, legal and procurement staff required by law.

(b) Prior to making an acquisition pursuant to this subsection, a state agency shall submit in writing to the Director of the Department of Central Services, a statement of their intent to make an acquisition pursuant to 74 O.S. Section 85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.

(c) Agencies making a purchase pursuant to this section shall comply with procurement rules and policies of the Department of Central Services.

(d) An agency shall submit a report in electronic format to the State Purchasing Director on a quarterly basis, which lists all contracts issued pursuant to this section. The report shall be submitted by the 5th business day of each new quarter.

580:15-6-6.2. Additional information

(a) **Split purchases.** State agencies shall not make split purchases for the purpose of evading their approved dollar threshold for competitive bids. Split purchasing for the purpose of evading competitive bidding requirements is a felony [74 O.S. §85.7(A)(2)(a)].

(b) **Change orders.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.

(1) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(2) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(c) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of Oklahoma Central Purchasing Act.

(d) **Acquisitions from another governmental agency.** A state agency may contract with a political division or subdivision, agency of the United States or another state agency pursuant to 74 O.S., Section 581 or Sections 1001 through 1008. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(e) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

(f) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item with prior written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that

amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(g) **OneNet acquisitions.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(h) **Authorized signature.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, purchase orders, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(i) **Agency savings reporting.** On October 1, 2010 and October 1 of each year thereafter, the chief administrative officer of each state agency shall submit an electronic report to the State Purchasing Director listing savings realized by the agency in the previous fiscal year through the application of best spend practices. The State Purchasing Director will define the report content required to collect savings data from state agencies, which will include but may not be limited to:

- (1) total spend by commodity; and,
- (2) participation in mandatory statewide contracts.

580:15-6-10. State agency acquisitions processed by the Central Purchasing Division processes

(a) State agencies that do not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall submit requisitions for acquisitions exceeding ~~Two Five Thousand Five Hundred Dollars (\$2,500.00)~~ (\$5,000.00) to the State Purchasing Director. State agencies whose acquisition authority has been reduced by the Director shall submit all acquisitions exceeding the established authority dollar amount to the State Purchasing Director. All acquisitions exceeding ~~twenty five thousand dollars (\$25,000.00)~~ the state agency's authorized spending limit shall be submitted to the State Purchasing Director.

- (1) **Forms.** State agencies shall use forms for requisitions provided or approved by the State Purchasing Director.
- (2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of the Central Purchasing Act.
- (3) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.
- (4) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify

the state agency if the State Purchasing Director rejects a requisition.

(5) **Competitive bid evaluation.** The State Purchasing Director shall evaluate bids and may request assistance of the state agency.

(6) **Competitive bid award.** The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

(7) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

(b) The Department may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon request by the agency or in the event the State Purchasing Director determines the needs of the agency are such to require qualified procurement personnel. [74 O.S. §85.3] The state agency shall reimburse administrative costs to the Department for the services of employees necessary to provide procurement services pursuant to this subsection.

580:15-6-14. State travel

The State Travel Office is within the Purchasing Division. The Travel Office awards contracts to for travel and travel services. State agencies shall make travel arrangements through contract travel agencies for commercial air travel for state employees in the course of official duties or for persons traveling at state expense.

(1) **State agency travel coordinator.** The State Purchasing Director encourages state agencies to appoint one or more travel coordinators. The coordinators shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel coordinator, the state agency shall notify the Travel Office and provide the coordinator's name, mailing address, telephone number, and facsimile number.

(2) **State travel zones.** The Travel Office shall divide the state into geographic zones. The zone served by the travel agency shall be indicated in the statewide contract.

(3) **Airline ticket purchases.** State agencies shall purchase airline tickets from contract travel agencies within the zone of the state agency location.

(4) **Airline ticket purchases exceptions.** The state agency shall determine when an exception to airline ticket purchase shall apply. The state agency shall retain documents the state agency uses in exception determination pursuant to 580:15-6-4.

- (A) If the state agency can acquire air travel at less cost than the contract travel agency, the state agency may use this exception.
- (B) If air travel originates outside the state and it is impractical for the state agency, the state agency may use this exception.
- (C) If air travel is due to an emergency and time does not permit use of the contract travel agency, the state agency may use this exception.

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(D) If air travel is part of a package arrangement by an organization that schedules a meeting or conference, the state agency may use this exception.

(5) **State agency credit card for airline travel.** ~~The State Purchasing Director encourages state agencies to acquire from the Travel Office and use a state travel credit card issued in the name of the state agency to book and pay for airline travel. The Travel Office shall provide a state agency that acquires a state travel credit card provisions for credit card use. A state agency that acquires a state travel credit card to book and pay for official airline travel shall complete mandatory training as required by the Department of Central Services and comply with all State Purchase Card procedures issued by the Department.~~

580:15-6-21. Information Technology (IT)

(a) Procurement.

(1) To ensure accessibility of information technology for individuals with disabilities and compliance with Title 62, Section 41.5t, procurement of information technology shall be subject to the Oklahoma Information Technology Accessibility Standards prescribed by the Office of State Finance and maintained by the OSF Information Services Division. These standards apply to all information technology purchased after the effective date of these rules and standards, providing the solicitation process was not initiated prior to the effective date.

(2) When developing and procuring information technology products (either directly or through administration of contracts or grants) a product, each state agency, as defined in Title 62, Section 41.5t.1., shall ensure that the products comply with all applicable standards, unless an undue burden would be imposed on the agency.

(3) When procuring a product, the accessibility determination will be conducted as part of the evaluation. Accessibility will be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it will be done through review of vendor provided information submitted in the form of a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the access standards. The relative accessibility weighing may be adjusted for due cause based on the specific procurement. Agencies cannot claim a product, as a whole, is not commercially available because no product in the marketplace meets all the standards.

(b) Contract clauses.

(1) All solicitations and contracts for information technology shall include a clause, prescribed by the Director pursuant to Title 74, Section 85.7d, ensuring compliance with applicable IT Accessibility Standards, which are in effect on the date of issuance of said solicitation or contract.

(2) The information technology clause(s) and IT Accessibility Standards shall be made available at the

principle office of the DCS Central Purchasing Division and published on the DCS website.

(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, that the product or service complies with applicable IT standards required by such contracts or solicitations prior to the expenditure of state funds. An agency may also utilize a VPAT published on a supplier's primary website. A VPAT obtained from a supplier website shall be good for a one-year period.

(c) Exceptions.

(1) If a state agency determines that compliance with any provisions of the IT Accessibility Standards imposes an undue burden or qualifies as an exception pursuant to this section, the agency shall submit a written explanation of why, and to what extent, such undue burden or exception exists, with its requisition.

(A) The explanation shall be submitted on a form prescribed by the Director and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for Section 508 compliance has been delegated.

(B) The explanation shall be retained with the requisition file.

(2) Unless an exception applies, acquisitions of IT supplies and services must meet the applicable accessibility standards. Exceptions to the Standards include:

(A) IT operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics and personnel management applications);

(B) IT acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;

(C) IT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;

(D) IT requiring a fundamental alteration in the nature of a product or its components;

(E) Except as required to comply with the Standards, state departments and agencies are not required to install specific accessibility-related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;

(F) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by

the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than where the information technology is provided to the public;

(G) IT that would impose an undue burden on the agency.

(d) **Documentation of exceptions.** If an agency determines that compliance with any provision of the IT Accessibility Standards meets the criteria of a general exception, the agency shall maintain documentation in the agency acquisition file to support the procurement, which explains why, and to what extent, compliance with each such provision meets an exception or creates an undue burden on the agency. Agencies are

encouraged but not required to maintain documentation for commercial off the shelf acquisitions of ~~\$2,500.00~~ \$5,000.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.

(e) **Alternative means of access.** When compliance with these standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

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