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340:75-3-7.5. . . . . [NEW] (E) . . . . . 1092
340:75-3-7.5. . . . . [NEW] . . . . . 1865
340:75-3-8. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-8. . . . . [AMENDED] . . . . . 1865
340:75-3-8.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-8.1. . . . . [AMENDED] . . . . . 1865
340:75-3-8.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-8.2. . . . . [AMENDED] . . . . . 1865
340:75-3-8.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-8.3. . . . . [AMENDED] . . . . . 1865
340:75-3-8.4. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-8.4. . . . . [AMENDED] . . . . . 1865
340:75-3-8.5. . . . . [REVOKED] (E) . . . . . 1092
340:75-3-8.5. . . . . [REVOKED] . . . . . 1865
340:75-3-8.6. . . . . [REVOKED] (E) . . . . . 1092
340:75-3-8.6. . . . . [REVOKED] . . . . . 1865
340:75-3-9.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-9.1. . . . . [AMENDED] . . . . . 1865
340:75-3-10.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-10.1. . . . . [AMENDED] . . . . . 1865
340:75-3-10.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-10.2. . . . . [AMENDED] . . . . . 1865
340:75-3-10.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-10.3. . . . . [AMENDED] . . . . . 1865
340:75-3-11. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-11. . . . . [AMENDED] . . . . . 1865
340:75-3-12. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-12. . . . . [AMENDED] . . . . . 1865
340:75-3-13. . . . . [AMENDED] (E) . . . . . 1092
340:75-3-13. . . . . [AMENDED] . . . . . 1865
340:75-4-9. . . . . [AMENDED] (E) . . . . . 1092
340:75-4-9. . . . . [AMENDED] . . . . . 1865
340:75-4-12.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-4-12.1. . . . . [AMENDED] . . . . . 1865
340:75-4-12.2. . . . . [REVOKED] (E) . . . . . 1092
340:75-4-12.2. . . . . [REVOKED] . . . . . 1865
340:75-4-13. . . . . [AMENDED] (E) . . . . . 1092
340:75-4-13. . . . . [AMENDED] . . . . . 1865
340:75-4-14. . . . . [AMENDED] (E) . . . . . 1092
340:75-4-14. . . . . [AMENDED] . . . . . 1865
340:75-6-1. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-1. . . . . [AMENDED] . . . . . 1865
340:75-6-4. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-4. . . . . [AMENDED] . . . . . 1865
340:75-6-30. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-30. . . . . [AMENDED] . . . . . 1865
340:75-6-31. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31. . . . . [AMENDED] . . . . . 1865
340:75-6-31.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31.1. . . . . [AMENDED] . . . . . 1865
340:75-6-31.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31.2. . . . . [AMENDED] . . . . . 1865
340:75-6-31.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31.3. . . . . [AMENDED] . . . . . 1865
340:75-6-31.4. . . . . [AMENDED] (E) . . . . . 44
340:75-6-31.4. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31.4. . . . . [AMENDED] . . . . . 1865
340:75-6-31.5. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-31.5. . . . . [AMENDED] . . . . . 1865
340:75-6-40. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40. . . . . [AMENDED] . . . . . 1865
340:75-6-40.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.1. . . . . [AMENDED] . . . . . 1865
340:75-6-40.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.2. . . . . [AMENDED] . . . . . 1865
340:75-6-40.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.3. . . . . [AMENDED] . . . . . 1865
340:75-6-40.4. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.4. . . . . [AMENDED] . . . . . 1865
340:75-6-40.5. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.5. . . . . [AMENDED] . . . . . 1865
340:75-6-40.6. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-40.6. . . . . [AMENDED] . . . . . 1865
340:75-6-40.7. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-40.7. . . . . [REVOKED] . . . . . 1865
340:75-6-44. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-44. . . . . [AMENDED] . . . . . 1865
340:75-6-45. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-45. . . . . [AMENDED] . . . . . 1865
340:75-6-46. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-46. . . . . [AMENDED] . . . . . 1865
340:75-6-48. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-48. . . . . [AMENDED] . . . . . 1865
340:75-6-48.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-48.1. . . . . [AMENDED] . . . . . 1865
340:75-6-48.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-48.2. . . . . [AMENDED] . . . . . 1865
340:75-6-48.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-48.3. . . . . [AMENDED] . . . . . 1865
340:75-6-49. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-49. . . . . [AMENDED] . . . . . 1865
340:75-6-50. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-50. . . . . [AMENDED] . . . . . 1865
340:75-6-85. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85. . . . . [AMENDED] . . . . . 1865
340:75-6-85.1. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-85.1. . . . . [REVOKED] . . . . . 1865
340:75-6-85.2. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85.2. . . . . [AMENDED] . . . . . 1865
340:75-6-85.3. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85.3. . . . . [AMENDED] . . . . . 1865

340:75-6-85.4. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85.4. . . . . [AMENDED] . . . . . 1865
340:75-6-85.5. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85.5. . . . . [AMENDED] . . . . . 1865
340:75-6-85.6. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-85.6. . . . . [AMENDED] . . . . . 1865
340:75-6-88. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-88. . . . . [AMENDED] . . . . . 1865
340:75-6-91. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-91. . . . . [AMENDED] . . . . . 1865
340:75-6-110. . . . . [AMENDED] (E) . . . . . 1092
340:75-6-110. . . . . [AMENDED] . . . . . 1865
340:75-6-114. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-114. . . . . [REVOKED] . . . . . 1865
340:75-6-115. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115. . . . . [REVOKED] . . . . . 1865
340:75-6-115.1. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.1. . . . . [REVOKED] . . . . . 1865
340:75-6-115.3. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.3. . . . . [REVOKED] . . . . . 1865
340:75-6-115.4. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.4. . . . . [REVOKED] . . . . . 1865
340:75-6-115.5. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.5. . . . . [REVOKED] . . . . . 1865
340:75-6-115.6. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.6. . . . . [REVOKED] . . . . . 1865
340:75-6-115.7. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.7. . . . . [REVOKED] . . . . . 1865
340:75-6-115.8. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.8. . . . . [REVOKED] . . . . . 1865
340:75-6-115.9. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.9. . . . . [REVOKED] . . . . . 1865
340:75-6-115.10. . . . . [REVOKED] (E) . . . . . 1092
340:75-6-115.10. . . . . [REVOKED] . . . . . 1865
340:75-7-2. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-2. . . . . [AMENDED] . . . . . 1865
340:75-7-12. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-12. . . . . [AMENDED] . . . . . 1865
340:75-7-14. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-14. . . . . [AMENDED] . . . . . 1865
340:75-7-15. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-15. . . . . [AMENDED] . . . . . 1865
340:75-7-18. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-18. . . . . [AMENDED] . . . . . 1865
340:75-7-24. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-24. . . . . [AMENDED] . . . . . 1865
340:75-7-37. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-37. . . . . [AMENDED] . . . . . 1865
340:75-7-37.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-37.1. . . . . [AMENDED] . . . . . 1865
340:75-7-41. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-41. . . . . [AMENDED] . . . . . 1865
340:75-7-52. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-52. . . . . [AMENDED] . . . . . 1865
340:75-7-65. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-65. . . . . [AMENDED] . . . . . 1865
340:75-7-94. . . . . [AMENDED] (E) . . . . . 1092
340:75-7-94. . . . . [AMENDED] . . . . . 1865
340:75-8-1. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-1. . . . . [AMENDED] . . . . . 1865
340:75-8-6. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-6. . . . . [AMENDED] . . . . . 1865
340:75-8-7. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-7. . . . . [AMENDED] . . . . . 1865
340:75-8-9. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-9. . . . . [AMENDED] . . . . . 1865
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340:75-8-10. . . . . [AMENDED] . . . . . 1865
340:75-8-13. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-13. . . . . [AMENDED] . . . . . 1865
340:75-8-14. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-14. . . . . [AMENDED] . . . . . 1865
340:75-8-40. . . . . [AMENDED] (E) . . . . . 1092
340:75-8-40. . . . . [AMENDED] . . . . . 1865
340:75-11-230. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-230. . . . . [AMENDED] . . . . . 1865
340:75-11-233. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-233. . . . . [AMENDED] . . . . . 1865
340:75-11-233.1. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-233.1. . . . . [AMENDED] . . . . . 1865
340:75-11-237. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-237. . . . . [AMENDED] . . . . . 1865
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340:75-11-239. . . . . [AMENDED] . . . . . 1865
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340:75-11-240. . . . . [AMENDED] . . . . . 1865
340:75-11-250. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-250. . . . . [AMENDED] . . . . . 1865
340:75-11-265. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-265. . . . . [AMENDED] . . . . . 1865
340:75-11-287. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-287. . . . . [AMENDED] . . . . . 1865
340:75-11-301. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-301. . . . . [AMENDED] . . . . . 1865
340:75-11-330. . . . . [AMENDED] (E) . . . . . 1092
340:75-11-330. . . . . [AMENDED] . . . . . 1865
340:75-13-65. . . . . [AMENDED] (E) . . . . . 1092
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340:75-15-6. . . . . [AMENDED] (E) . . . . . 1092
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340:75-15-8. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-41.1. . . . . [NEW] (E) . . . . . 1092
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340:75-15-43. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-59. . . . . [REVOKED] (E) . . . . . 1092
340:75-15-59. . . . . [REVOKED] . . . . . 1865
340:75-15-61. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-62. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-85. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-92. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-103. . . . . [AMENDED] (E) . . . . . 1092
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340:75-15-106. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-107. . . . . [REVOKED] (E) . . . . . 1092
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340:75-15-128.2. . . . . [AMENDED] . . . . . 1865
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340:75-16-29. . . . . [AMENDED] (E) . . . . . 1092
340:75-16-29. . . . . [AMENDED] . . . . . 1865

340:75-16-30. . . . . [AMENDED] (E) . . . . . 1092
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340:75-16-34. . . . . [REVOKED] (E) . . . . . 1092
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| Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See* Title 731) | 745 |
| Oklahoma **UNIFORM** Building Code Commission | 748 |
| Board of Trustees for the **UNIVERSITY** Center at Tulsa *(exempted 11-1-98)* | 750 |
| **UNIVERSITY** Hospitals Authority | 752 |
| **UNIVERSITY** Hospitals Trust | 753 |
| Board of Regents of the **UNIVERSITY** of Oklahoma *(exempted 11-1-98)* | 755 |
| Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma *(exempted 11-1-98)* | 760 |
| Oklahoma **USED** Motor Vehicle and Parts Commission | 765 |
| Oklahoma Department of **VETERANS** Affairs | 770 |
| Board of **VETERINARY** Medical Examiners | 775 |
| Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education) | 780 |
| Oklahoma **WATER** Resources Board | 785 |
| Board of Regents of **WESTERN** Oklahoma State College *(exempted 11-1-98)* | 790 |
| Oklahoma **WHEAT** Commission | 795 |
| Department of **WILDLIFE** Conservation | 800 |
| **WILL** Rogers and J.M. Davis Memorials Commission | 805 |

# 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 5. OKLAHOMA ABSTRACTORS BOARD
## CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT

*[OAR Docket #10-845]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Abstract Licenses, Certificates of Authority, and Permits
5:11-3-1 [AMENDED]
5:11-3-8 [AMENDED]
5:11-3-9 [AMENDED]
5:11-3-10 [NEW]
Subchapter 5. Regulation of Licensees, Certificate Holders and Permit Holders
5:11-5-3 [AMENDED]
Subchapter 7. Application for Permit to Develop Abstract Plant
5:11-7-2 through 5:11-7-4 [NEW]
Subchapter 13. Application for Abstractor License [NEW]
5:11-3-1 [NEW]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-845; filed 5-14-10]*

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

*[OAR Docket #10-842]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
75:15-1-1 [AMENDED]
75:15-1-1 [AMENDED]
75:15-1-2 [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault Programs
75:15-2-1 [AMENDED]
Subchapter 4. Batterers Intervention Programs [REVOKED]
75:15-4-1 [REVOKED]
75:15-4-2 [REVOKED]
75:15-4-3 [REVOKED]
75:15-4-4 [REVOKED]
75:15-4-5 [REVOKED]
75:15-4-7 [REVOKED]
75:15-4-8 [REVOKED]
75:15-4-10 [REVOKED]
75:15-4-11 [REVOKED]
75:15-4-12 [REVOKED]
75:15-4-13 [REVOKED]
75:15-4-14 [REVOKED]
75:15-4-15 [REVOKED]
75:15-4-16 [REVOKED]
75:15-4-17 [REVOKED]
75:15-4-18 [REVOKED]
75:15-4-19 [REVOKED]
75:15-4-20 [REVOKED]
75:15-4-21 [REVOKED]
Subchapter 5. Client Records and Confidentiality
75:15-5-3 [AMENDED]
75:15-5-3.1 [AMENDED]
Subchapter 7. Physical Environments
75:15-7-5 [AMENDED]
75:15-7-9 [AMENDED]
Subchapter 9. Program Management and Performance Improvement
75:15-9-8 [AMENDED]
Subchapter 13. Personnel and Volunteers
75:15-13-20.1 [AMENDED]
75:15-13-20.2 [AMENDED]
75:15-13-25 [AMENDED]
75:15-13-29 [AMENDED]
75:15-13-30 [REVOKED]
**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-842; filed 5-14-10]*

## TITLE 75. ATTORNEY GENERAL
## CHAPTER 25. BATTERERS INTERVENTION PROGRAMS

*[OAR Docket #10-843]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions [NEW]
75:25-1-1 [NEW]
75:25-1-1.1 [NEW]
75:25-1-2 [NEW]

75:25-1-3 [NEW]
75:25-1-4 [NEW]
Subchapter 2. Batterers Intervention [NEW]
75:25-2-1 [NEW]
75:25-2-2 [NEW]
75:25-2-3 [NEW]
75:25-2-4 [NEW]
75:25-2-5 [NEW]
75:25-2-6 [NEW]
75:25-2-7 [NEW]
75:25-2-8 [NEW]
75:25-2-9 [NEW]
75:25-2-10 [NEW]
75:25-2-11 [NEW]
75:25-2-12 [NEW]
75:25-2-13 [NEW]
75:25-2-14 [NEW]
75:25-2-15 [NEW]
75:25-2-16 [NEW]
75:25-2-17 [NEW]
75:25-2-18 [NEW]
Subchapter 3. Personnel and Volunteers [NEW]
75:25-3-1 [NEW]
75:25-3-2 [NEW]
75:25-3-3 [NEW]
75:25-3-4 [NEW]
75:25-3-5 [NEW]
75:25-3-6 [NEW]
75:25-3-7 [NEW]
75:25-3-8 [NEW]
75:25-3-9 [NEW]
75:25-3-10 [NEW]
75:25-3-11 [NEW]
75:25-3-11.1 [NEW]
75:25-3-11.2 [NEW]
75:25-3-12 [NEW]
Subchapter 4. Consultation [NEW]
75:25-4-1 [NEW]

**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-843; filed 5-14-10]*

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

*[OAR Docket #10-848]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 24. Health Savings Account [NEW]
87:10-24-1. Health Savings Account [NEW]
87:10-24-2. Definitions [NEW]
87:10-24-3. Requirements for eligibility [NEW]
87:10-24-4. Amount of benefits available [NEW]
87:10-24-5. Internal Revenue Code and regulations [NEW]
87:10-24-6. Mid-year changes of benefits [NEW]
87:10-24-7. Health Savings Account option [NEW]
87:10-24-8. Claims for reimbursement [NEW]
87:10-24-9. Forfeiture of unused benefits [NEW]
87:10-24-10. Other governing provisions [NEW]
87:10-24-11. Benefit changes [NEW]
87:10-24-12. Report to participants [NEW]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-848; filed 5-18-10]*

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

*[OAR Docket #10-849]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 28. Early Medical Alert Optional Benefit [NEW]
87:10-28-1. Early medical alert optional benefit [NEW]
87:10-28-2. Definitions [NEW]
87:10-28-3. Requirements for participation [NEW]
87:10-28-4. Internal Revenue Code and regulations [NEW]
87:10-28-5. Period of coverage - enrollment [NEW]
87:10-28-6. Enrollment [NEW]
87:10-28-7. Early medical alert account option [NEW]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-849; filed 5-18-10]*

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

*[OAR Docket #10-923]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Specific District Regulations
120:10-3-13. [AMENDED]
Subchapter 5. General District Provision and Additional Zoning Regulations

120:10-5-14. Mixed Use District-1, Health Center Commercial [AMENDED]
Subchapter 13. Administration
120:10-13-1 through 120:10-13-12.1 [REVOKED]
120:10-13-13 through 120:10-13-22 [NEW]

**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-923; filed 5-26-10]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

*[OAR Docket #10-902]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Chapter 5. Rules of Practice [AMENDED]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-902; filed 5-24-10]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL & GAS CONSERVATION

*[OAR Docket #10-901]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Chapter 10. Oil & Gas Conservation [AMENDED]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-901; filed 5-24-10]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

*[OAR Docket #10-903]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Chapter 35. Electric Utility Rules [AMENDED]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-903; filed 5-24-10]*

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

*[OAR Docket #10-803]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. Introduction
252:606-1-4. Date of federal regulations incorporated [AMENDED]

**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-803; filed 5-10-10]*

## TITLE 277. FORENSIC REVIEW BOARD CHAPTER 1. FORENSIC REVIEW BOARD

*[OAR Docket #10-878]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Chapter 1. Forensic Review Board [NEW]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-878; filed 5-19-10]*

## TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 20. PURCHASING POLICY

*[OAR Docket #10-905]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
300:20-1-1. [AMENDED]
300:20-1-2. [AMENDED]
300:20-1-3. [AMENDED]
300:20-1-4. [AMENDED]
300:20-1-5. [AMENDED]
300:20-1-6. [AMENDED]
300:20-1-7. [AMENDED]
300:20-1-8. [AMENDED]
300:20-1-9. [AMENDED]
300:20-1-10. [AMENDED]
300:20-1-11. [AMENDED]
300:20-1-12. [AMENDED]
300:20-1-13. [AMENDED]

300:20-1-14. [AMENDED]
300:20-1-16. [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-905; filed 5-24-10]*

## TITLE 300. GRAND RIVER DAM AUTHORITY
## CHAPTER 35. LAKE RULES

*[OAR Docket #10-906]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. Definitions, Purpose and Application
300:35-1-1. [AMENDED]
300:35-1-5. [AMENDED]
300:35-1-6. [AMENDED]
Subchapter 3. General Provisions
300:35-3-5. [AMENDED]
300:35-3-6. [REVOKED]
300:35-3-12. [AMENDED]
300:35-3-14. [NEW]
300:35-3-15. [NEW]
Subchapter 5. Boating Safety Rules
300:35-5-1. [AMENDED]
300:35-5-3. [AMENDED]
300:35-5-4. [AMENDED]
300:35-5-7. [AMENDED]
Subchapter 7. Vessels
300:35-7-1. [AMENDED]
300:35-7-2. [AMENDED]
300:35-7-4. [AMENDED]
300:35-7-5. [AMENDED]
300:35-7-8. [AMENDED]
300:35-7-12. [AMENDED]
Subchapter 9. Sanctioned Events
300:35-9-2. [AMENDED]
Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities
300:35-11-1. [AMENDED]
300:35-11-2. [AMENDED]
300:35-11-4. [AMENDED]
300:35-11-5. [AMENDED]
300:35-11-6. [AMENDED]
300:35-11-7. [AMENDED]
300:35-11-8. [AMENDED]
300:35-11-11. [AMENDED]
300:35-11-12. [AMENDED]
Subchapter 13. Permits for Dikes, Excavations, Dredgings, Erosion Control Devices, Retaining Walls, and Shoreline Stabilization
300:35-13-1. [AMENDED]
300:35-13-2. [AMENDED]
300:35-13-3. [AMENDED]
300:35-13-4. [AMENDED]
300:35-13-5. [REVOKED]
300:35-13-6. [AMENDED]
Subchapter 15. Commercial Use of the Lakes and Lands of GRDA
300:35-15-1. [AMENDED]
300:35-15-2. [AMENDED]
300:35-15-3. [REVOKED]
300:35-15-4. [AMENDED]
300:35-15-5. [REVOKED]
300:35-15-6. [AMENDED]
300:35-15-7. [REVOKED]
Subchapter 17. Raw Water Permits
300:35-17-1. [AMENDED]
300:35-17-2. [AMENDED]
Subchapter 21. Administration of Rules and Hearings
300:35-21-3. [AMENDED]
300:35-21-4. [AMENDED]
300:35-21-7. [AMENDED]
Subchapter 27. Vegetation Management Plan
300:35-27-3. [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-906; filed 5-24-10]*

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

*[OAR Docket #10-805]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 21. Rules of Procedure Governing Individual Proceedings [AMENDED]
Subchapter 23. Requests for Declaratory Relief and Rulemaking [NEW]
Subchapter 25. Discovery [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-805; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 9. HEALTH CARE INFORMATION

*[OAR Docket #10-827]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
310:9-1-3 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-827; filed 5-11-10]*

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 96. ADVANCE DIRECTIVE REGISTRY

*[OAR Docket #10-826]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Chapter 96. Advance Directive Registry [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-826; filed 5-11-10]*

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING AND TATTOOING

*[OAR Docket #10-806]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Body Piercing Artist and Tattoo Artist Requirements and Professional Standards
310:233-3-2 [AMENDED]
310:233-3-3 [AMENDED]
Subchapter 7. Requirements for Premises
310:233-7-2 [AMENDED]
Subchapter 9. License Requirements
310:233-9-1 [AMENDED]
310:233-9-2 [AMENDED]
310:233-9-4 [REVOKED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-806; filed 5-11-10]*

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 234. MEDICAL MICROPIGMENTATION

*[OAR Docket #10-825]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 9. Standards for Medical Micropigmentation
310:234-9-2 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-825; filed 5-11-10]*

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 281. DIAGNOSTIC X-RAY SYSTEMS

*[OAR Docket #10-807]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 11. Use of X-Rays in the Healing Arts and Veterinary Medicine
310:281-11-13 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-807; filed 5-11-10]*

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

*[OAR Docket #10-824]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 7. Application for Licensure
310:400-7-2 [AMENDED]
Subchapter 13. Fees
310:400-13-4 [AMENDED]

**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-824; filed 5-11-10]*

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

*[OAR Docket #10-808]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 5. Forms
310:403-5-2 [AMENDED]
Subchapter 17. Fees
310:403-17-2 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-808; filed 5-11-10]*

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

*[OAR Docket #10-823]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 7. Application procedures
310:405-7-2 [AMENDED]
Subchapter 13. Fees
310:405-13-4 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-823; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 406. LICENSED GENETIC COUNSELORS

*[OAR Docket #10-809]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 7. Application for Licensure
310:406-7-2 [AMENDED]
Subchapter 15. Fees
310:406-15-2 [AMENDED]
Subchapter 17. Continuing Education Requirements
310:406-17-3 [AMENDED]
310:406-17-4 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-809; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 512. CHILDHOOD LEAD POISONING PREVENTION RULES

*[OAR Docket #10-822]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Specimen
310:512-3-6 [NEW]
310:512-3-7 [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-822; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

*[OAR Docket #10-810]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. Disease and Injury Reporting Requirements
310:515-1-1.1 [AMENDED]
310:515-1-2 [AMENDED]
310:515-1-3 [AMENDED]
310:515-1-4 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-810; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 526. DENTAL SERVICES

*[OAR Docket #10-821]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
310:526-1-3. [AMENDED]
Subchapter 3. Oklahoma Dental Loan Repayment Program
310:526-3-2. [AMENDED]
310:526-3-3. [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-821; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 531. VISION SCREENING

*[OAR Docket #10-820]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provision
310:531-1-1 [AMEMDED]
310:531-1-3 [AMENDED]
Subchapter 5. Vision Screening Standards for Children
310:531-5-1 [AMENDED]
310:531-5-2 [AMENDED]
310:531-5-3 [AMENDED]
310:531-5-5 [NEW]
310:531-5-6 [NEW]
310:531-5-7 [NEW]
310:531-5-8 [NEW]
310:531-5-9 [New]
Subchapter 7. Registry Enforcement for Vision Screening Providers
310:531-7-1 [AMEMDED]
310:531-7-2 [AMENDED]
310:531-7-3 [AMENDED]
310:531-7-4 [AMENDED]
310:531-7-5 [AMENDED]
310:531-7-6 [AMENDED]
310:531-7-7 [NEW]
Subchapter 9. Sports Eye Safety Resource
310:531-9-1 [NEW]
310:531-9-2 [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-820; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATIONS

*[OAR Docket #10-811]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. Childhood Immunizations
310:535-1-2 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-811; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 551. ADVANCEMENT IN STEM CELL CURES AND THERAPIES ACT

*[OAR Docket #10-819]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Required Information for Reporting
310:551-3-2 [NEW]
310:551-3-3 [NEW]
Subchapter 5. Confidentiality of Information and Responsibilities of Information Providers [NEW]
310:551-5-1 [NEW]
310:551-5-2 [NEW]
310:551-5-3 [NEW]
310:551-5-4 [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-819; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 615. AMBULATORY SURGICAL ~~CENTER REGULATIONS~~CENTERS

*[OAR Docket #10-818]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions
310:615-1-2.2 [NEW]
310:615-1-3.1 [NEW]
310:615-1-3.2 [NEW]
Subchapter 3. Administration and Organization
310:615-3-8 [AMENDED]
Subchapter 5. Minimum Standards
310:615-5-1 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-818; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 642. OKLAHOMA EMERGENCY RESPONSE SYSTEMS STABILIZATION AND IMPROVEMENT REVOLVING FUND

*[OAR Docket #10-812]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions [NEW]
310:642-1-1 [NEW]
310:642-1-2 [NEW]
310:642-1-3 [NEW]
Subchapter 3. Applications [NEW]
310:642-3-1 [NEW]
310:642-3-2 [NEW]
Subchapter 5. Scoring [NEW]
310:642-5-1 [NEW]
Subchapter 7. Disbursement [NEW]
310:642-7-1 [NEW]
310:642-7-2 [NEW]
Subchapter 9. Evaluation [NEW]
310:642-9-1 [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-812; filed 5-11-10]*

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

*[OAR Docket #10-817]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 19. Administration, Records and Policies
310:663-19-4 [NEW]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-817; filed 5-11-10]*

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

*[OAR Docket #10-813]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 59. Classification of Hospital Emergency Services
310:667-59-20 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-813; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 669. TRAUMA CARE ASSISTANCE REVOLVING FUND

*[OAR Docket #10-816]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
310:669-1-3 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-816; filed 5-11-10]*

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

*[OAR Docket #10-814]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 9. Resident care services
310:675-9-5.1 [AMENDED]
Subchapter 13. Staff requirements
310:675-13-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-814; filed 5-11-10]*

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
## CHAPTER 680. RESIDENTIAL CARE HOMES

*[OAR Docket #10-815]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Licensure requirements
310:680-3-6 [AMENDED]
310:680-3-14 [NEW]
Subchapter 9. Dietary requirements
310:680-9-1 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-815; filed 5-11-10]*

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION
## CHAPTER 25. ENTRIES AND DECLARATIONS

*[OAR Docket #10-839]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rule
**RULE:**
325:25-1-30 [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-839; filed 5-13-10]*

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

*[OAR Docket #10-840]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rule
**RULE:**
325:75-1-12 [AMENDED]
325:75-1-12.1 [AMENDED]
325:75-1-13.1 [AMENDED]
325:75-1-16 [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 3, 2010

*[OAR Docket #10-840; filed 5-13-10]*

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

*[OAR Docket #10-880]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-9 [AMENDED]
340:75-1-12 [AMENDED]
340:75-1-12.2 [AMENDED]
340:75-1-12.6 [AMENDED]
340:75-1-14 [AMENDED]
340:75-1-16 through 340:75-1-18.1 [AMENDED]
340:75-1-18.2 [REVOKED]
340:75-1-18.3 through 340:75-1-18.4 [AMENDED]
340:75-1-20 through 340:75-1-21 [AMENDED]
340:75-1-23 [AMENDED]
340:75-1-23.1 [NEW]
340:75-1-29 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-44 through 340:75-1-46 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-151 through 340:75-1-152 [AMENDED]
340:75-1-152.3 through 340:75-1-152.8 [AMENDED]
340:75-1-154 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-1 through 340:75-3-2 [AMENDED]
340:75-3-4 through 340:75-3-7.1 [AMENDED]
340:75-3-7.2 [REVOKED]
340:75-3-7.3 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [NEW]
340:75-3-8 through 340:75-3-8.4 [AMENDED]
340:75-3.8.5 through 340:75-3-8.6 [REVOKED]
340:75-3-9.1 [AMENDED]
340:75-3-10.1 through 340:75-3-10.3 [AMENDED]
340:75-3-11 through 340:75-3-13 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-9 [AMENDED]
340:75-4-12.1 [AMENDED]
340:75-4-12.2 [REVOKED]
340:75-4-13 through 340:75-4-14 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-1 [AMENDED]

340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31.5 [AMENDED]
340:75-6-40 through 340:75-6-40.6 [AMENDED]
340:75-6-40.7 [REVOKED]
340:75-6-44 through 340:75-6-46 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48 through 340:75-6-48.3 [AMENDED]
340:75-6-49 through 340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 through 340:75-6-85.6 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
340:75-6-114 through 75-6-115.1 [REVOKED]
340:75-6-115.3 through 340:75-6-115.10 [REVOKED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-14 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-37.1 [AMENDED]
340:75-7-41 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-52 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-9 through 340:75-8-10 [AMENDED]
340:75-8-13 through 340:75-8-14 [AMENDED]
Part 3. DDSD Services for Children in Custody
340:75-8-40 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233 through 340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250 [AMENDED]
340:75-11-265 [AMENDED]
Part 23. Specialized Community Homes
340:75-11-287 [AMENDED]
Part 25. Non-funded and Funded Contracted Level B Placements
340:75-11-301 [AMENDED]
Part 29. Non-funded and Funded Level C Placements
340:75-11-330 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-6 [AMENDED]
340:75-15-8 [REVOKED]
Part 6. Adoption Process
340:75-15-41 [REVOKED]
340:75-15-41.1 [NEW]
340:75-15-43 [REVOKED]
Part 8. Adoptive Placement Process
340:75-15-59 [REVOKED]
340:75-15-61 through 340:75-15-62 [REVOKED]
Part 10. Integrated Family Assessment and Preparation Process
340:75-15-85 [REVOKED]
340:75-15-92 [REVOKED]
Part 12. Post Placement Services
340:75-15-103 [AMENDED]
340:75-15-106 through 340:75-15-108 [REVOKED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1 [AMENDED]
340:75-15-128.2 [AMENDED]
340:75-15-128.5 [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-28 through 340:75-16-30 [AMENDED]
340:75-16-34 [REVOKED]
340:75-16-37 through 340:75-16-38 [AMENDED]
**(Reference APA WF 09-06, 09-08, 09-10, 09-19)**

**GUBERNATORIAL APPROVAL:**
March 5, 2010

*[OAR Docket #10-880; filed 5-19-10]*

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

*[OAR Docket #10-882]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care
340:110-1-4.1 [AMENDED]
340:110-1-6 [AMENDED]
340:110-1-8 through 340:110-1-8.1 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-9 [AMENDED]
340:110-1-9.2 through 340:110-1-9.3 [AMENDED]
340:110-1-10 [AMENDED]
340:110-1-10.1 [NEW]
340:110-1-13 through 340:110-1-15 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-43.1 [AMENDED]
340:110-1-45 through 340:110-1-47.1 [AMENDED]
340:110-1-51 through 340:110-1-52 [AMENDED]
340:110-1-54 through 340:110-1-55 [AMENDED]
Subchapter 3. Licensing Standards for Childcare Facilities
Part 1. Requirements for Child Care Centers
340:110-3-2 through 340:110-3-3 [AMENDED]
340:110-3-5 through 340:110-3-6 [AMENDED]
340:110-3-7.1 [AMENDED]
Part 2. Requirement for Part-day Children's Programs
340:110-3-36 through 340:110-3-37 [AMENDED]
340:110-3-39 through 340:110-3-42 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-85 [AMENDED]
340:110-3-88 [AMENDED]
340:110-3-89.1 [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-146 through 340:110-3-147 [AMENDED]
340:110-3-153 [AMENDED]
340:110-3-153.1 [AMENDED]
340:110-3-168 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-221 through 340:110-3-226 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 1. Requirements for Child-Placing Agencies
340:110-5-3 through 340:110-5-4 [AMENDED]
340:110-5-6 through 340:110-5-8 [AMENDED]
340:110-5-12 [AMENDED]
**(Reference WF 09-14 and WF 10-02)**

**GUBERNATORIAL APPROVAL:**
April 28, 2010

*[OAR Docket #10-882; filed 5-19-10]*

## TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
## CHAPTER 30. OKLAHOMA STATE BUREAU OF INVESTIGATION LABORATORY

*[OAR Docket #10-804]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions
375:30-1-2 [AMENDED]
Subchapter 3. Collection and Submission of DNA Samples from the Oklahoma Department of Corrections
375:30-3-1 through 375:30-3-3 [AMENDED]
Subchapter 5. Collection and Submission of Forensic Evidence for DNA Profiling
375:30-5-2 through 375:30-5-4 [AMENDED]
Subchapter 7. Analysis of State DNA Offender Databank Samples
375:30-7-1 through 375:30-7-3 [AMENDED]
Subchapter 9. Removal of DNA Records from the State DNA Offender Database
375:30-9-2 [AMENDED]
Subchapter 11. General Rules for Submission of Evidence
375:30-11-1 through 375:30-11-5 [AMENDED]
375:30-11-7 [AMENDED]

**GUBERNATORIAL APPROVAL**
March 14, 2010

*[OAR Docket #10-804; filed 5-10-10]*

## TITLE 380. DEPARTMENT OF LABOR
## CHAPTER 30. PROTECTION OF LABOR

*[OAR Docket #10-912]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Wage Claim Procedures
380:30-3-4 [AMENDED]
380:30-3-8 [AMENDED]

**GUBERNATORIAL APPROVAL:**
May 5, 2010

*[OAR Docket #10-912; filed 5-26-10]*

## TITLE 380. DEPARTMENT OF LABOR CHAPTER 45. OKLAHOMA HAZARD COMMUNICATION STANDARD [REVOKED]

*[OAR Docket #10-914]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Chapter 45. Oklahoma Hazard Communication Standard [REVOKED]
**GUBERNATORIAL APPROVAL:**
May 5, 2010

*[OAR Docket #10-914; filed 5-26-10]*

## TITLE 380. DEPARTMENT OF LABOR CHAPTER 50. ABATEMENT OF FRIABLE ASBESTOS MATERIALS RULES

*[OAR Docket #10-916]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions [AMENDED]
Subchapter 4. Project Design Requirements [AMENDED]
Subchapter 5. Contractor, Supervisor, and Worker Licensing and Requirements [AMENDED]
Subchapter 6. Training Requirements [AMENDED]
Subchapter 9. Contractor Procedures [AMENDED]
Subchapter 11. Laboratory Requirements [AMENDED]
Subchapter 13. Glovebag Operations [AMENDED]
Subchapter 15. Worker and Work Area Protection [AMENDED]
Subchapter 17. Minimum Abatement Standards [AMENDED]
Subchapter 19. Variances [AMENDED]
Subchapter 21. Non-Friable Asbestos Containing Material Procedures [REVOKED]
Subchapter 23. Miscellaneous Friable Asbestos Material Abatement Procedures [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 5, 2010

*[OAR Docket #10-916; filed 5-26-10]*

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

*[OAR Docket #10-829]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
390:10-1-5 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-829; filed 5-11-10]*

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

*[OAR Docket #10-830]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. Basic Academy Programs
390:15-1-2 [AMENDED]
390:15-1-6 [AMENDED]
390:15-1-11 [REVOKED]
390:15-1-12 [REVOKED]
390:15-1-13 [AMENDED]
390:15-1-14 [REVOKED]
390:15-1-15 [REVOKED]
390:15-1-16 [REVOKED]
390:15-1-17 [REVOKED]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-830; filed 5-11-10]*

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

*[OAR Docket #10-831]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
390:20-1-3 [AMENDED]

390:20-1-4 [AMENDED]
390:20-1-8 [AMENDED]
390:20-1-11 [AMENDED]
390:20-1-12 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-831; filed 5-11-10]*

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

*[OAR Docket #10-832]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 5. License Requirements
390:35-5-13 [AMENDED]
Subchapter 9. Violations and Investigations
390:35-9-4 [AMENDED]
Subchapter 15. Training and Standards Requirements
Appendix A. Disqualifying Convictions [REVOKED]
Appendix A. Disqualifying Convictions [NEW]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-832; filed 5-11-10]*

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

*[OAR Docket #10-833]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
390:50-1-5 [AMENDED]
**GUBERNATORIAL APPROVAL:**
April 14, 2010

*[OAR Docket #10-833; filed 5-11-10]*

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
## CHAPTER 1. ADMINISTRATION

*[OAR Docket #10-874]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Chapter 1. Administration [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-874; filed 5-19-10]*

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
## CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

*[OAR Docket #10-875]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Chapter 17. Standards and Criteria for Community Mental Health Centers [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-875; filed 5-19-10]*

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
## CHAPTER 18. STANDARDS AND CRITERIA FOR ALCOHOL AND DRUG TREATMENT PROGRAMS

*[OAR Docket #10-876]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Chapter 18. Standards and Criteria for Alcohol and Drug Treatment Programs [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-876; filed 5-19-10]*

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
## CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS

*[OAR Docket #10-877]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
450:50-1-2. Definitions [AMENDED]
Subchapter 3. Behavioral Health Case Manager Certification Application
450:50-3-1. Qualifications for certification [AMENDED]
450:50-3-2. Applications for certification [AMENDED]
450:50-3-3. Duration of certification [AMENDED]
450:50-3-4. Fees [AMENDED]
450:50-3-5. Fitness of applicants [AMENDED]
450:50-3-7. Classifications of Certified Behavioral Health Case Managers [NEW]
Subchapter 5. Behavioral Health Case Manager Certification Training and Web-based Competency Exam
450:50-5-1. Case management certification training [AMENDED]
450:50-5-4. Continuing education requirements [AMENDED]
450:50-5-5. Web-based competency exam [NEW]
Subchapter 7. Rules of Professional Conduct
450:50-7-1. Responsibility and scope of practice [AMENDED]
450:50-7-2. Consumer welfare [AMENDED]
450:50-7-3. Reimbursement for services rendered [AMENDED]
450:50-7-4. Professional standards [AMENDED]
450:50-7-5. Failure to comply [AMENDED]
Subchapter 9. Enforcement
450:50-9-1. Enforcement [AMENDED]
Subchapter 11. Complaint Process and Investigation/resolution of Complaints [NEW]
450:50-11-1. Complaints of Professional Conduct [NEW]
450:50-11-2. Reviewing complaints [NEW]
450:50-11-3. Investigation [NEW]
450:50-11-4. Filing of an action [NEW]
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-877; filed 5-19-10]*

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## TITLE 460. DEPARTMENT OF MINES
## CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

*[OAR Docket #10-864]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Permanent Regulatory Program
460:20-3-5 [AMENDED]
Subchapter 15. Requirements for Permits and Permit Processing
460:20-15-2 [REVOKED]
460:20-15-6 [REVOKED]
460:20-15-6.1 through 460:20-15-16.10 [NEW]
460:20-15-9 [REVOKED]
460:20-15-9.1 through 460:20-15-9.2 [NEW]
460:20-15-10 [REVOKED]
460:20-15-10.1 through 460:20-15-10.2 [NEW]
460:20-15-13 [REVOKED]
460:20-15-13.1 [NEW]
460:20-15-14 [REVOKED]
460:20-15-14.1 through 460:20-15-14.2 [NEW]
Subchapter 17. Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights
460:20-17-1 [REVOKED]
460:20-17-1.1 [NEW]
460:20-17-2.1 through 460:20-17-2.2 [NEW]
460:20-17-5 [AMENDED]
Subchapter 23. Permit Applications: Minimum Requirements for Legal, Financial, Compliance, and Related Information
460:20-23-2 [REVOKED]
460:20-23-2.1 through 460:20-23-2.4 [NEW]
460:20-23-3 [REVOKED]
460:20-23-3.1 [NEW]
460:20-23-10 [NEW]
Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards
460:20-43-12 [AMENDED]
Subchapter 59. State Enforcement
460:20-59-2 and 460-59-3 [AMENDED]
Subchapter 63. Individual Civil Penalties
460:20-63-2 [REVOKED]
Subchapter 64. Alternative Enforcement [NEW]
460:20-64-1 through 460:20-64-5 [NEW]
**GUBERNATORIAL APPROVAL:**
April 16, 2010

*[OAR Docket #10-864; filed 5-18-10]*

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

*[OAR Docket #10-865]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 7. Individual Proceedings
535:1-7-3. Hearings [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
535:1-7-7. Final orders [AMENDED]
535:1-7-8. Appeal [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-3. Practical experience licenses and certificates [AMENDED]
535:1-11-4. Other fees ~~Public access, open records~~ [AMENDED]
535:1-11-5. Miscellaneous [AMENDED]
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-865; filed 5-19-10]*

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

*[OAR Docket #10-866]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-3. Intern requirements; licenses [AMENDED]
535:10-5-4. Intern practice requirements [AMENDED]
535:10-5-8. Preceptor requirements [AMENDED]
535:10-5-9. Training area requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]
535:10-7-10. Pharmacist reinstatement
**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-866; filed 5-19-10]*

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## TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
## CHAPTER 15. PHARMACIES

*[OAR Docket #10-867]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
**GUBERNATORAL APPROVAL:**
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*[OAR Docket #10-867; filed 5-19-10]*

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## TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
## CHAPTER 15. PHARMACIES

*[OAR Docket #10-868]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 1. General Provisions
535:15-1-1. Purpose [AMENDED]
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4. Physical requirements for pharmacies [AMENDED]
535:15-3-9. Non-resident pharmacies [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-3. Applicability [AMENDED]
535:15-5-4. Registration [AMENDED]
535:15-5-10. Director of pharmacy responsibilities [AMENDED]
Subchapter 6. Hospital Drug Rooms
535:15-6-1. Purpose [AMENDED]

535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
Subchapter 9. Parenteral Pharmacy Permits
535:15-9-6. Parenteral pharmacy physical requirements [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [AMENDED]
535:15-13-8. Technician annual permit requirement [AMENDED]

**GUBERNATORAL APPROVAL:**
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*[OAR Docket #10-868; filed 5-19-10]*

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

*[OAR Docket #10-869]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED]
Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-9.1. Prohibited conduct [AMENDED]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]

**GUBERNATORAL APPROVAL:**
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*[OAR Docket #10-869; filed 5-19-10]*

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

*[OAR Docket #10-870]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Applicants, Registrants and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-870; filed 5-19-10]*

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

*[OAR Docket #10-924]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
580:25-5-1. [AMENDED]

**GUBERNATORIAL APPROVAL:**
April 16, 2010

*[OAR Docket #10-924; filed 5-26-10]*

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

*[OAR Docket #10-925]*

**RULEMAKING ACTION:**
Gubernatorial approval of Permanent rules

**RULES:**
580:35-1-1. [AMENDED]
580:35-1-7. [AMENDED]
580:35-1-8. [AMENDED]
580:35-1-10. [AMENDED]

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*[OAR Docket #10-925; filed 5-26-10]*

## TITLE 580. DEPARTMENT OF CENTRAL SERVICES
## CHAPTER 55. COMMITTEE OF ALTERNATIVE FUELS TECHNICIAN EXAMINERS

*[OAR Docket #10-926]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
580:55-1-2 [AMENDED]
580:55-1-7 [AMENDED]

**GUBERMATORIAL APPROVAL:**
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*[OAR Docket #10-926; filed 5-26-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #10-853]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Public Policy
Part 3. Taxpayer Identification
710:1-3-6 [AMENDED]
**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-853; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 10. AD VALOREM

*[OAR Docket #10-854]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 7. Manufacturing Facilities
710:10-7-2.2. [AMENDED]
710:10-7-5. [AMENDED]
710:10-7-11. [AMENDED]
710:10-7-15. [AMENDED]
710:10-7-17. [AMENDED]
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*[OAR Docket #10-854; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 45. GROSS PRODUCTION

*[OAR Docket #10-855]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-21. [AMENDED]
710:45-9-24. [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-31. [AMENDED]
710:45-9-32.1. [AMENDED]
710:45-9-34. [AMENDED]
710:45-9-35. [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-40. [AMENDED]
710:45-9-41. [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-51. [AMENDED]
Part 13. Deep Wells
710:45-9-60. [AMENDED]
Part 15. New Discovery Wells
710:45-9-70. [AMENDED]
710:45-9-71. [AMENDED]
710:45-9-73. [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-90. [AMENDED]
710:45-9-92. [AMENDED]
710:45-9-93. [AMENDED]
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*[OAR Docket #10-855; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 50. INCOME

*[OAR Docket #10-856]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules
**RULES:**
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-45. [AMENDED]
710:50-3-46. [AMENDED]
Subchapter 9. Refunds
710:50-9-3. [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 3. Exemptions
710:50-15-35. [NEW]
Part 5. Other Adjustments to Income
710:50-15-47. [NEW]
710:50-15-50. [AMENDED]
710:50-15-53. [AMENDED]
710:50-15-68. [NEW]
Part 7. Credits Against Tax
710:50-15-74. [AMENDED]

710:50-15-81. [AMENDED]
710:50-15-83. [AMENDED]
710:50-15-86. [AMENDED]
710:50-15-87. [AMENDED]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51. [AMENDED]
Part 7. Apportionment and Allocation of Corporate Income and Expense
710:50-17-71. [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-856; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 60. MOTOR VEHICLES

*[OAR Docket #10-857]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-10. [AMENDED]
710:60-3-12. [AMENDED]
710:60-3-17. [AMENDED]
710:60-3-18. [AMENDED]
710:60-3-21. [AMENDED]
Part 3. Penalties
710:60-3-30. [AMENDED]
710:60-3-31. [AMENDED]
710:60-3-33. [AMENDED]
710:60-3-34. [AMENDED]
710:60-3-35. [AMENDED]
710:60-3-36. [AMENDED]
Part 9. Commercial Vehicles
710:60-3-91. [AMENDED]
Part 11. Other Vehicles
710:60-3-111. [AMENDED]
Part 13. Manufactured Homes
710:60-3-134. [AMENDED]
Part 14. All-Terrain Vehicles, Off-Road Motorcycles and Utility Vehicles
710:60-3-141. [AMENDED]
710:60-3-142. [AMENDED]
Part 15. Special License Plates
710:60-3-150. [AMENDED]
710:60-3-151. [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title [AMENDED]
710:60-5-55. [AMENDED]
710:60-5-62. [NEW]
Part 7. Transfer of Title
710:60-5-71. [AMENDED]
710:60-5-74. [AMENDED]
710:60-5-77. [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91. [AMENDED]
710:60-5-96. [AMENDED]
Part 11. Liens
710:60-5-116. [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
710:60-9-14. [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-94. [AMENDED]
710:60-9-97. [AMENDED]
Part 13. ~~Special~~ Provisions for Motor License Agent Application~~, Qualification,~~ and Appointment ~~and Agency Operation Applicable to Certain Motor License Agents and Agencies~~
710:60-9-130. [REVOKED]
710:60-9-130.1. [NEW]
710:60-9-131. [AMENDED]
710:60-9-133. [AMENDED]
710:60-9-134. [AMENDED]
710:60-9-135. [REVOKED]
710:60-9-137. [AMENDED]

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*[OAR Docket #10-857; filed 5-18-10]*

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

*[OAR Docket #10-858]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions
710:65-1-2. [AMENDED]
710:65-1-8. [AMENDED]
710:65-1-9. [AMENDED]
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-8. [AMENDED]
Part 3. Records and Recordkeeping
710:65-3-32. [AMENDED]
710:65-3-33. [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-13. [AMENDED]

710:65-7-16. [AMENDED]
710:65-7-21. [NEW]
710:65-7-22. [RESERVED]
710:65-7-23. [RESERVED]
710:65-7-24. [RESERVED]
710:65-7-25. [NEW]
Subchapter 9. Permits
710:65-9-8. [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 7. Churches
710:65-13-33. [AMENDED]
710:65-13-40. [AMENDED]
Part 10. Coal
710:65-13-55. [AMENDED]
Part 13. Contractors Refund; Change of Rates
710:65-13-70. [AMENDED]
Part 15. Hazardous Wastes
710:65-13-80. [AMENDED]
Part 23. Gas and Electricity
710:65-13-120. [AMENDED]
Part 25. Governmental Entities
710:65-13-130. [AMENDED]
710:65-13-133. [AMENDED]
Part 29. Manufacturing
710:65-13-150.1. [AMENDED]
710:65-13-157. [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169. [AMENDED]
710:65-13-172. [AMENDED]
710:65-13-173. [AMENDED]
710:65-13-174. [AMENDED]
710:65-13-175. [AMENDED]
710:65-13-177. [AMENDED]
Part 35. Newspapers; Periodicals; Programs; Media
710:65-13-194. [AMENDED]
Part 37. Sales for Resale
710:65-13-200. [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210. [AMENDED]
710:65-13-220. [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-334. [AMENDED]
710:65-13-335. [AMENDED]
710:65-13-336. [AMENDED]
710:65-13-337. [AMENDED]
710:65-13-338. [AMENDED]
710:65-13-339. [AMENDED]
710:65-13-340. [AMENDED]
710:65-13-341. [AMENDED]
710:65-13-342. [AMENDED]
710:65-13-343. [AMENDED]
710:65-13-344. [AMENDED]
710:65-13-345. [AMENDED]
710:65-13-346. [AMENDED]
710:65-13-348. [AMENDED]
710:65-13-350. [AMENDED]
710:65-13-351. [AMENDED]
710:65-13-352. [AMENDED]
710:65-13-353. [AMENDED]
710:65-13-354. [AMENDED]
710:65-13-355. [AMENDED]
710:65-13-357. [AMENDED]
710:65-13-359. [AMENDED]
710:65-13-360. [AMENDED]
710:65-13-361. [RESERVED]
710:65-13-362. [NEW]
Part 55. Trust Authorities
710:65-13-550. [AMENDED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-5. [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-52. [AMENDED]
Part 7. "D"
710:65-19-72. [AMENDED]
710:65-19-74. [AMENDED]
Part 11. "F"
710:65-19-114. [AMENDED]
Part 17. "I"
710:65-19-156. [AMENDED]
Part 31. "P"
710:65-19-259. [AMENDED]
Part 39. " T "
710:65-19-328. [AMENDED]
710:65-19-329. [AMENDED]
Part 41. "U"
710:65-19-341. [AMENDED]
Subchapter 21. Use Tax
710:65-21-2. [AMENDED]

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*[OAR Docket #10-858; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 70. TOBACCO, TOBACCO PRODUCTS AND CIGARETTES

*[OAR Docket #10-859]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-3. [AMENDED]
710:70-2-4. [AMENDED]

710:70-2-8. [AMENDED]
710:70-2-9. [AMENDED]
710:70-2-9.1. [AMENDED]
710:70-2-11. [AMENDED]
710:70-2-14. [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-2. [AMENDED]
710:70-5-3. [AMENDED]
710:70-5-4. [AMENDED]
710:70-5-6. [AMENDED]
710:70-5-8. [AMENDED]
710:70-5-9. [AMENDED]
710:70-5-10. [AMENDED]
710:70-5-13. [AMENDED]
710:70-5-14. [NEW]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-4. [AMENDED]
710:70-7-5. [AMENDED]
710:70-7-7. [REVOKED]
710:70-7-8. [AMENDED]
710:70-7-9. [AMENDED]
710:70-7-10. [NEW]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-859; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 85. VARIOUS TAX INCENTIVES

*[OAR Docket #10-860]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-8. [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-9. [AMENDED]
Subchapter 11. 21st Century Quality Jobs Program [NEW]
710:85-11-1. [NEW]
710:85-11-2. [NEW]
710:85-11-3. [NEW]
710:85-11-4. [NEW]
710:85-11-5. [NEW]
710:85-11-6. [NEW]
710:85-11-7. [NEW]
710:85-11-8. [NEW]
710:85-11-9. [NEW]
710:85-11-10. [NEW]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-860; filed 5-18-10]*

## TITLE 710. OKLAHOMA TAX COMMISSION
## CHAPTER 90. WITHHOLDING

*[OAR Docket #10-861]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Returns and Payments
710:90-3-4 [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-861; filed 5-18-10]*

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

*[OAR Docket #10-862]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 15. Wire Transmitter Fee [NEW]
710:95-15-1. [NEW]
710:95-15-2. [NEW]
710:95-15-3. [NEW]
710:95-15-4. [NEW]
710:95-15-5. [NEW]
710:95-15-6. [NEW]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-862; filed 5-18-10]*

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT
## CHAPTER 15. FISCAL, PERSONAL AND GENERAL OPERATIONS

*[OAR Docket #10-852]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 29. Oklahoma Today Magazine

Part 1. General Provisions
725:15-29-1 through 725:15-29-4 [REVOKED]
Part 3. Magazine Sales
725:15-29-10 [REVOKED]
725:15-29-11 [AMENDED]
Part 5. Resale Merchandise
725:15-29-20 through 725:15-29-21 [REVOKED]
Part 7. Credit
725:15-29-30 [AMENDED]
725:15-29-32 [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-852; filed 5-18-10]*

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 30. DIVISION OF STATE PARKS

*[OAR Docket #10-851]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 2. General Purpose
725:30-2-3. Penalties [AMENDED]
725:30-2-4. Definitions [AMENDED]
725:30-2-6. Closure and curfew[AMENDED]
725:30-2-7. Public notice[AMENDED]
725:30-2-8. Signs, signals and markings [AMENDED]
Subchapter 4. Public Use and Recreation
725:30-4-1. Preservation and protection of natural, cultural and archaeological resources [AMENDED]
725:30-4-4. Weapons [AMENDED]
725:30-4-6. Audio disturbances and quiet hours [AMENDED]
725:30-4-8. Sanitation [AMENDED]
725:30-4-10. Horses, llamas and pack animals [AMENDED]
725:30-4-12. Smoking [AMENDED]
725:30-4-13. Property [AMENDED]
725:30-4-18. Alcoholic beverages and controlled substances [AMENDED]
725:30-4-20. Soliciting [AMENDED]
725:30-4-25. Memorialization [AMENDED]
Subchapter 6. Fees, Discounts and Waivers
725:30-6-1. Fee authority, requirements, discounts and waivers [AMENDED]
Subchapter 8. Camping and Day Use
725:30-8-1. Definitions [AMENDED]
725:30-8-3. Fee collection, restrictions and exemptions [AMENDED]
725:30-8-4. Time limits and extensions[AMENDED]
Subchapter 12. Reservations and Use of Cabins, Group Camps, Shelters, Reserved/Assigned Camping Facilities, Amphitheaters, Community Buildings and Meeting Rooms
725:30-12-1. Definitions [AMENDED]
725:30-12-3. Group camps [AMENDED]
725:30-12-4. Shelters [AMENDED]
725:30-12-5. Reserved/assigned and group camping [AMENDED]
Subchapter 18. Special Use Areas
25:30-18-3. McGee Creek Natural Scenic Recreation Area-McGee Creek State Park [AMENDED]
Subchapter 20. Volunteers
725:30-20-2. Applications, qualification, selection and restrictions [AMENDED]
Subchapter 22. Concession Leases
725:30-22-2. Bidding process[AMENDED]
725:30-22-8. Grievance process [AMENDED]
Subchapter 26. Vehicles and Traffic Safety
725:30-26-14. Off-road vehicles [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-851; filed 5-18-10]*

## TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 35. THE OKLAHOMA FILM AND MUSIC OFFICE

*[OAR Docket #10-850]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. Oklahoma Film Enhancement Rebate Program
725:35-1-1 [AMENDED]
725:35-1-2 [AMENDED]
725:35-1-3 [AMENDED]
725:35-1-5 [AMENDED]

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*[OAR Docket #10-850; filed 5-18-10]*

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

*[OAR Docket #10-885]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 6. Definitions [NEW]

765:37-6-1 [NEW]
Subchapter 7. Installation Standards For Ground Sets
765:37-7-1 [AMENDED]
765:37-7-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-885; filed 5-20-10]*

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

*[OAR Docket #10-934]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions
780:10-1-1 [AMENDED]
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-1 [AMENDED]
780:10-3-2 [AMENDED]
780:10-3-3 [AMENDED]
780:10-3-8 [AMENDED]
Subchapter 5. Finance
780:10-5-4 [AMENDED]
Subchapter 7. Local Programs, Career Majors or Instructional Positions: Application; Student Accounting; Evaluation
780:10-7-1 [AMENDED]
780:10-7-3 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-934; filed 5-26-10]*

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

*[OAR Docket #10-935]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 3. Technology Centers Education
780:15-3-1. [AMENDED]
780:15-3-2. [AMENDED]
780:15-3-3. [AMENDED]
780:15-3-4. [AMENDED]
780:15-3-6. [AMENDED]
780:15-3-7. [AMENDED]
780:15-3-8. [AMENDED]

**GUBERNATORIAL APPROVAL:**
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*[OAR Docket #10-935; filed 5-26-10]*

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

*[OAR Docket #10-936]*

**RULEMAKING ACTION:**
Gubernatorial approval of permanent rules

**RULES:**
Subchapter 1. General Provisions
780:20-1-1.1. [AMENDED]
780:20-1-2. [AMENDED]
Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Progams
780:20-3-2. [AMENDED]
780:20-3-3. [AMENDED]
780:20-3-4. [AMENDED]
780:20-3-5. [AMENDED]

**GUBERNATORIAL APPROVAL:**
May 10, 2010

*[OAR Docket #10-936; filed 5-26-10]*

# Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

*For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.*

## TITLE 300. GRAND RIVER DAM AUTHORITY
## CHAPTER 35. LAKE RULES

*[OAR Docket #10-904]*

**RULEMAKING ACTION:**
Withdrawal of PERMANENT rulemaking
**WITHDRAWN RULES:**
Subchapter 5. Boating Safety Rules
300:35-5-2. [AMENDED]
**DATES:**
**Adoption:**
March 25, 2010
**Submitted to Governor:**
March 26, 2010
**Submitted to House:**
March 26, 2010
**Submitted to Senate:**
March 26, 2010
**Withdrawn:**
April 30, 2010

*[OAR Docket #10-904; filed 5-24-10]*

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

*[OAR Docket #10-893]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]
**AUTHORITY:**
Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and (2)
**DATES:**
**Adoption:**
January 27, 2010
**Approved by Governor:**
February 4, 2010
**Effective:**
Immediately upon Governor's approval
**Expiration:**
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature
**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATION BY REFERENCE:**
n/a
**FINDING OF EMERGENCY:**
The Administrator of Consumer Credit finds that there is a compelling public interest requiring emergency amendments to existing rules. The Federal Reserve Board published its annual adjustment of the dollar amount of fees that triggers additional disclosure requirements for home mortgage loans that bear rates or fees above a certain amount. The compelling public interest is maintaining Oklahoma's exemption from federal regulation.
**ANALYSIS:**
The amended rule incorporates the annual adjustment of the dollar amount of fees that triggers additional disclosure requirements for home mortgage loans that bear rates or fees above a certain amount.
**CONTACT PERSON:**
Roy John Martin, General Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-521-3653.

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

## SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

### 160:45-9-2. Requirements for certain closed-end home mortgages

(a) **Coverage.**

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 8 percent of the total loan amount **50**/, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is $412.
(ii) The dollar amount for 1997 is $424.
(iii) The dollar amount for 1998 is $435.
(iv) The dollar amount for 1999 is $441.
(v) The dollar amount for 2000 is $451.
(vi) The dollar amount for 2001 is $465.
(vii) The dollar amount for 2002 is $480.
(viii) The dollar amount for 2003 is $488.
(ix) The dollar amount for 2004 is $499.
(x) The dollar amount for 2005 is $510.
(xi) The dollar amount for 2006 is $528.
(xii) The dollar amount for 2007 is $547.
(xiii) The dollar amount for 2008 is $561.
(xiv) The dollar amount for 2009 is $583.
(xv) The dollar amount for 2010 is $579.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 USC 1615(d).

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;

(C) At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified in accordance with 160:45-9-4(a)(4)(B); and

(D) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

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

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

**50**/ Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to 160:45-5-2(2), and deducting any cost listed in 160:45-9-2(b)(1)(C) and 160:45-9-2(b)(1)(D) that is both included as points and fees under 160:45-9-2(b)(1) and financed by the creditor.

*[OAR Docket #10-893; filed 5-21-10]*

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## TITLE 210. STATE DEPARTMENT OF EDUCATION
## CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

*[OAR Docket #10-933]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 9. Lifelong Learning
210:10-9-6. General educational development (GED) testing program [AMENDED]
**AUTHORITY:**
70 O. S. § 3-104, State Board of Education
**DATES:**
**Adoption:**
March 25, 2010
**Effective:**
Immediately upon Governor's approval
**Approved by Governor:**
May 12, 2010
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature.
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**FINDING OF EMERGENCY:**
The proposed rule amendments are needed to prevent the GED fund from being further in the red and to recoup the costs of administering the GED program. The State Department of Education receives no federal or state funds to administer the GED Testing Program. The program is self-supported.
**ANALYSIS:**
The proposed rule amendments will increase user fees for GED testing and administrative services.
**CONTACT PERSON:**
Connie Holland, 405-521-3308

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

### SUBCHAPTER 9. LIFELONG LEARNING

**210:10-9-6. General educational development (GED) testing program**

(a) The Lifelong Learning Section of the State Department of Education has responsibility for directing the GED Testing Program in Oklahoma and for issuing high school diplomas to those who successfully complete the GED Tests.

(b) An applicant shall be 18 years of age or older, except beginning August 1, 1995, persons having attained the age of 16, but who are not yet 18, must be permitted to take the GED Tests provided the applicant meets the residency requirements and submits along with the application to take the GED Tests, a notarized joint written agreement between the school administrator of the school district in which the applicant resides, and the parent, guardian, or custodian, stating that it has been determined that such action is in the best interest of the child and community.

(c) An applicant shall be a resident of the State of Oklahoma.

(d) The GED Tests shall be administered by one of the many local GED Testing Centers in Oklahoma approved by the GED Testing Service, Washington, D.C.

(e) To become eligible to take the GED Tests, an application must be made to the Lifelong Learning Section of the State Department of Education online or through an approved local GED Testing Center. A fee will be charged by the local testing center at the time the tests are taken.

(f) The State Department of Education will contract with an independent scoring service approved by the GED Testing Service for the scoring of GED Tests. The local GED Testing Centers shall send the tests test answer sheets to the contracted scoring service for scoring. Lifelong Learning Section for scoring by the approved scoring service.

(g) An applicant shall make the minimum score required for passing the GED Tests, as established by the GED Testing Service.

(h) A high school diploma shall be awarded by the State Department of Education to those who make a passing score on the GED Tests. This credential certifies that the holder has shown evidence of general educational development equivalent to a high school education, as revealed by scores made on the GED Tests.

(i) The Lifelong Learning Section will collect a $19 fee from each local GED Testing Center for scoring the GED Tests, for processing the original GED Diploma and for the $6 first-time test taker fee required by the GED Testing Service. The Lifelong Learning Section will collect a $10 fee for processing the initial application for GED Testing and the original GED Diploma. This fee is in addition to the fees required by the GED Testing Service for first-time test takers and the scoring fee. Payment will be in the form of a school or institution check.

(j) A $10 fee will be required on a retest for scoring and processing by the Lifelong Learning Section. If the retest is for only the essay or objective tests, a $5 fee is required.The Lifelong Learning Section will collect a fee of $5 to score and process the writing test; a fee of $5 to score and process one or more of the science, social studies, reading, or math tests; and a fee of $10 to score and process a combination of the writing test plus one or more of the other four tests.

(k) The Lifelong Learning Section will require a ~~minimum~~ fee of ~~$5~~$20 for a duplicate GED ~~Diplomas and~~ Diploma with transcript and a fee of $10 for an official GED ~~tran-scripts~~transcript. ~~Payment will be made in the form of a certified check, money order, or cash.~~

(l) Only scores from the 2002 GED Tests will count toward earning a GED Diploma from January 1, 2002, forward.

(m) The Lifelong Learning Section will collect a $25 fee from the local GED Testing Center for processing a form repeat error. The local GED Testing Center may not collect this fee from the test-taker for whom the error occurred since this is an administrative error.

*[OAR Docket #10-933; filed 5-26-10]*

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## TITLE 210. STATE DEPARTMENT OF EDUCATION
## CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

*[OAR Docket #10-932]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 13. Student Assessment
210:10-13-21. Academic Assessment Monitoring Program (AAMP) [NEW]
**AUTHORITY:**
70 O. S. § 3-104, State Board of Education
**DATES:**
**Adoption:**
April 22, 2010
**Approved by Governor:**
May 10, 2010
**Effective:**
Immediately upon Governor's approval
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature.
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**FINDING OF EMERGENCY:**
Recently the State Department of Education was made aware of the requirement to increase the number of school sites monitored by the end of the 2009-2010 testing cycle. In order to fulfill the United States Department of Education requirements, it is imperative to implement the formal academic assessment monitoring program with the spring 2010 state testing window.
**ANALYSIS:**
The proposed rule establishes an Academic Assessment Monitoring Program (AAMP) for federal and state required academic assessments, to be in compliance with regulations as established by the United States Department of Education (USDE), Student Achievement and School Accountability Programs (SASA) for Formula Grant Programs, No Child Left Behind (NCLB) Act, Title I, §1001, Part A, Title III § 3102, and 70 O.S., § 1210.505 Student Assessment, Oklahoma School Testing Program (OSTP), and Oklahoma Administrative Code (OAC) 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20. The proposed rule provides a process for the Office of Accountability and Assessments to monitor academic assessment administration practices of all public elementary and secondary schools, local education agencies, and public charter schools, which are subject to the Oklahoma State Testing Program.
**CONTACT PERSON:**
Connie Holland, 405-521-3308

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

### SUBCHAPTER 13. STUDENT ASSESSMENT

**210:10-13-21. Academic Assessment Monitoring Program (AAMP)**

(a) **Purpose.** The Oklahoma State Department of Education (OSDE) shall establish and implement the Academic Assessment Monitoring Program (AAMP) to evaluate school district implementation and compliance with both Federal and State law and regulations related to academic assessments. The rules will bring the state into compliance with the following state and federal statutes and regulations:

(1) Student Achievement and School Accountability Programs (SASA) for Formula Grant Programs,

(2) Elementary Secondary Education Act (ESEA) Section 9304 (a) (1) requires that a State Education Agency (SEA) ensure that programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications,

(3) ESEA Section 9304 (a) (B) requires that an SEA adopt and use proper methods of administering each ESEA program, including the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation,

(4) Section 80.40 of the Education Department General Administrative Regulations (EDGAR) requires an SEA to monitor grant and sub-grant activities to ensure compliance with applicable Federal requirements, and Title 70 O.S. § 1210.505 Student Assessment, Oklahoma School Testing Program (OSTP), and Oklahoma Administrative Codes (OAC) 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20.

(5) This monitoring program is intended to:

(A) Ensure the testing of all eligible students, proper training of school district staff is conducted, test security is maintained, assessments are administered consistently and in a uniform manner as mandated in the Oklahoma Administrative Codes (OAC) 210:10-13-2, 4, 6, 7, 9, 10, and 11;

(B) Ensure that the OSDE receives from districts data of the highest quality, as mandated in the Oklahoma Administrative Code (OAC) 210:10-13-4, 18, and 20, and;

(C) Assist the staff of the OSDE to better advise and partner with districts regarding accountability and assessments.

(b) **Applicable entities.** These rules are applicable to all public schools, districts, and other educational entities within the state that participate in the OSTP.

(c) **Schedule of district monitoring.** All public school districts will be monitored at least once during the five (5) year cycle.

(1) School districts shall be scheduled for monitoring using a random selection process. Of the districts to be monitored within a particular year, five (5) percent will be randomly selected for site monitoring. The remaining ninety-five (95) percent will be monitored using a desk monitoring procedure.

(2) Additional school districts may receive a special desk or on-site monitoring and compliance review based on any of the following criteria:

(A) Observed statistical irregularities or discrepancies with student assessment data Oklahoma Administrative Code (OAC) 210:10-13-18, and 20 (e.g., statistical improbable growth in the percentage of student scoring proficient, questionable erasure analysis, and/or unusual change in student demographics);

(B) An established pattern of testing violations identified in the Oklahoma Administrative Code (OAC) at 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20 or irregularities as reported to the OSDE (e.g., vendor reports, invalidations, improper test administration, failure to attend or conduct yearly training);

(C) Documented concerns (e.g., parent and community, noncompliance issues from prior years, other technical assistance requests), and/or;

(D) Testing irregularities discovered through previous annual random monitoring.

(d) **Notification of monitoring schedule.** The monitoring schedule will be updated on an annual basis and posted to the OSDE Web site. Any new school site and/or district will be added to the cycle when the yearly update occurs. School sites and or districts that cease operation within the state shall be removed from the list. The Office of Accountability and Assessments will notify the superintendent of the school district in writing at least ten (10) working days prior to the opening of the testing window that the school district will be monitored during the upcoming testing window and will identify whether the monitoring will be on-site or desk monitoring. Additional schools monitored under (c) (2) of these rules, will be notified in writing at least twenty (20) working days before the opening of the testing window.

(e) **Monitoring procedures.**

(1) **On-site monitoring.**

(A) OSDE will send the district an On-site Monitoring Checklist ten (10) working days before the opening of a testing window to the District Superintendent and District Test Coordinator of the school district to be monitored.

(B) The superintendents of districts receiving an on-site monitoring notification letter will submit the district and site testing schedules to the OSDE, Office of Accountability and Assessments five (5) working days prior to the opening of the testing window. If a change in the testing schedule occurs by the district, prior to on-site monitoring, the district must notify the OSDE, Office of Accountability and Assessments immediately.

(C) The OSDE, Office of Accountability and Assessments notification letter of monitoring will indicate which site(s) within the district have been selected for monitoring.

(D) At a minimum, one elementary school, one middle school, and one high school site within the district will be monitored as applicable.

(E) If charter schools have been established within the school district, these sites may also be monitored.

(2) **Desk monitoring.**

(A) The staff of the Office of Accountability and Assessments will analyze across a 4 year period all pertinent testing and educational data for the school district being monitored (e.g., percent of students tested across cohort).

(B) The Desk Monitoring notification letter will indicate which site(s) within the district have been selected for monitoring.

(C) At a minimum, one elementary school, one middle school and one high school site within the same district will be monitored as applicable.

(D) If charter schools have been established within the school district, these sites may also be monitored.

(E) District Superintendents and District Test Coordinators of the school district to be monitored will receive a Desk Monitoring Checklist, ten (10) working days before the opening of a testing window. The section of the checklist titled, "District Provided Documentation" must be completed and documents returned to the Office of Accountability and Assessments of the Oklahoma State Department of Education within twenty (20) working days from the last testing day of the End-of-Instruction (EOI) online assessment window.

(f) **Failure to comply with state and federal regulations related to Academic Assessment.**

(1) The Office of Accountability and Assessments will provide monitoring results to the district superintendent forty-five (45) working days from the end of the 20 day submission date of the On-Site or Desk Monitoring documents from the school district being monitored. The monitoring results will inform a district that they have met or not met requirements of Subsection (a) of these rules related to student academic testing. Districts will be designated as in compliance if all requirements have been met, or if any monitored area is found deficient then the district and the school will be designated as noncompliant. If a district is designated as noncompliant, the Office of Accountability and Assessment staff will annually conduct monitoring activities until the district is in compliant status.

(2) Districts that remain in noncompliance for two consecutive years will receive a deficiency on their accreditation report.

*[OAR Docket #10-932; filed 5-26-10]*

## TITLE 210. STATE DEPARTMENT OF EDUCATION
## CHAPTER 20. STAFF

*[OAR Docket #10-931]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-103. Career development plan to teach early childhood - infants, toddlers, and three-year-olds [NEW]
**AUTHORITY:**
70 O. S. § 3-104, State Board of Education
**DATES:**
**Adoption:**
April 22, 2010
**Approved by Governor:**
May 10, 2010
**Effective:**
Immediately upon Governor's approval
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature.
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**FINDING OF EMERGENCY:**
The proposed rule is considered to be an emergency so the career development program may be implemented in time for the 2010-2011 school year.
**ANALYSIS:**
The proposed rule is to adopt a career development program for individuals with a bachelor's degree in family relations/child development or a related major/degree from an accredited higher education institution recognized by the Oklahoma State Board of Education to be eligible to teach infants, toddlers, and three-year-olds, not including pre-kindergarten age four.
**CONTACT PERSON:**
Connie Holland, 405-521-3308

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

### SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

### PART 9. TEACHER CERTIFICATION

**210:20-9-103. Career development plan to teach early childhood - infants, toddlers, and three-year-olds**

(a) The Oklahoma State Department of Education (OSDE) shall issue a credential to teach infants, toddlers, and three-year-olds, when the following requirements are met:

(1) Bachelor's degree in the area of child development or family relations with an emphasis in the development of infants and toddlers through age three (3) from a regionally accredited higher education institution recognized by the Oklahoma State Board of Education,

(2) Pass the Oklahoma General Education Test, and

(3) Pass the Federal Bureau of Investigation (FBI) criminal history check.

(b) The Oklahoma State Department of Education shall issue a standard teaching certificate when the following requirements are met:

(1) Complete three (3) semester hours in reading instruction from a regionally accredited higher education institution recognized by the Oklahoma State Board of Education.

(2) Documentation of successful completion of 180 days of employment by the program/site director.

*[OAR Docket #10-931; filed 5-26-10]*

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## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
## CHAPTER 10. PURCHASING

*[OAR Docket #10-898]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
317:10-1-1. [AMENDED]
317:10-1-2. [AMENDED]
317:10-1-3. [AMENDED]
317:10-1-4. [AMENDED]
317:10-1-5. [REVOKED]
317:10-1-6. [REVOKED]
317:10-1-7. [REVOKED]
317:10-1-8. [REVOKED]
317:10-1-9. [REVOKED]
317:10-1-10. [REVOKED]
317:10-1-11. [REVOKED]
317:10-1-12. [AMENDED]
317:10-1-15. [REVOKED]
317:10-1-16. [AMENDED]
317:10-1-17. [REVOKED]
317:10-1-18. [REVOKED]
317:10-1-18.1. [REVOKED]
317:10-1-18.2. [REVOKED]
317:10-1-19. [REVOKED]
317:10-1-20. [REVOKED]
**(Reference APA WF # 10-09)**
**AUTHORITY:**
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Oklahoma Central Purchasing Act, and 74 Okla. Stat. §§ 85.1 et seq.
**DATES:**
**Adoption:**
April 08, 2010
**Approved by Governor:**
May 14, 2010
**Effective:**
Immediately upon Governor's approval
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's contract and purchasing guidelines. These emergency rule revisions will ensure rules are consistent and in compliance with current Oklahoma law. They will also clarify OHCA's ability to handle contracts and purchases internally, thereby allowing OHCA to make purchases necessary to agency operations without unnecessary delay.

**ANALYSIS:**

OHCA contract and purchasing rules are revised to better coordinate and comply with new purchasing rules and regulations from the Oklahoma Department Central Services (DCS). Proposed revisions will: (1) incorporate updated procedures corresponding to higher purchasing thresholds; (2) allow OHCA subject matter experts to make purchases in house without DCS approval, pursuant to 74 O.S., §85.5 (T); (3) provide for the appeals process on these purchases to be handled by OHCA; (4) remove unnecessary language; and (5) update policy to reflect changes in the internal purchasing manual. These revisions are needed to provide immediate consistency and clarity within agency rules

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

**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):**

**317:10-1-1. Purpose**

(a) The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA). The Contracts and Purchasing Divisions are internal divisions of the OHCA. These divisions provide the mechanism for the acquisition of goods, equipment, non-professional and professional services for the operation of the OHCA. These rules are superseded by the Oklahoma Department of Central Services (DCS) Purchasing rules (OAC 580:15) whenever DCS has final authority on an acquisition.

(b) Different rules apply depending on which of the above three entities is making the acquisition and whether the purchase is for professional services or non-professional services and products. When an acquisition is made by DCS, the DCS Purchasing rules at OAC 580:15 apply. When an acquisition is made by OHCA, these rules must be read in conjunction with the DCS rules.

**317:10-1-2. Definitions**

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

~~**"Acquisition"** means all types of purchases and rentals necessary to perform the duties assigned to the OHCA, whether bought or leased by contract or otherwise, and includes every means by which the OHCA obtains any materials, supplies, service or equipment.~~

~~**"Associate director(s)"** means the most senior agency administrative personnel directly below the Chief Executive Officer in the agency line of authority.~~

~~**"Authority"** means the Oklahoma Health Care Authority.~~

**"Authority Board"** means the board designated by the Oklahoma Legislature to establish policies and adopt and promulgate rules for the OHCA.

~~**"Award"** means when the Chief Executive Officer or designee and Certified Procurement Officer agree on a suitable vendor for a competitive solicitation and the Chief Executive Officer, Certified Procurement Officer or designee notifies the successful vendor.~~

~~**"Best Value"** means a method for bid award that uses criteria established by the Oklahoma Central Purchasing Act and outlined under 74 O.S., 1998, Section 85.2(2).~~

~~**"Bid"** is an offer a vendor submits in response to a solicitation.~~

~~**"Certified Procurement Officer"** or **"CPO"** means a state agency official authorized by the Director of the Central Purchasing Division, Oklahoma Department of Central Services to make acquisitions for a state agency.~~

**"Chief Executive Officer"** or **"CEO"** means the highest ranking administrator at the OHCA.

~~**"Commodity code"** means a group of like products or services.~~

~~**"Contracts"** means the Contracts Division of the OHCA.~~

~~**"Division"** means a division within the OHCA.~~

~~**"EEOC"** means Equal Employment Opportunity Commission.~~

~~**"Equipment"** means all personal property acquired for use by the OHCA which is in the nature of a tool, device, or machine and shall be deemed to include all personal property used or consumed by the OHCA which is not included within the category of materials and supplies.~~

~~**"Goods"** means products, material, supplies and includes all property except real property acquired by the OHCA.~~

~~**"Invitation" to Bid"** or **"ITB"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.~~

~~**"Non-Professional"** means services which are predominately physical or manual in character and may involve the supplying of products.~~

~~**"Professional services"** means services which are predominantly advisory or intellectual in character, or involve support rather than supplying equipment, supplies or other merchandise. Professional services include services to support or improve agency policy development, decision making, management, administration, or the operation of management systems.~~

~~**"Public agency"** means~~

~~(A) any political subdivision of the state;~~

~~(B) any agency of the state government or of the United States;~~

~~(C) each and every public trust of this state, whether such trust is a municipality, a county, or the State of Oklahoma except the Oklahoma Ordinance Works Authority;~~

~~(D) any corporation organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act, Section 1001 et seq. Of Title 18 of the Oklahoma Statutes; and~~

~~(E) any political subdivision of another state.~~

~~**"Purchasing"** means the Purchasing Division of the OHCA.~~

~~**"Request for Proposal"** or **"RFP"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.~~

~~**"Request for Quotation"** or **"RFQ"** means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.~~

~~**"Services"** means labor rendered by a person to another as distinguished from providing tangible goods. It shall include any type of personal or professional service, employment or undertaking except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and is regularly used.~~

~~**"Solicitation"** is a request from a state agency or the State Purchasing Director for a proposal and/or pricing for an acquisition. Solicitation shall be by invitation to bid, request for proposal or request for quotation.~~

~~**"State Agency or agency"** means any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only municipalities, counties, and other governmental subdivisions of the state.~~

~~**"Supplier"** or **"Vendor"** means an individual or business entity that sells or desires to sell acquisitions to state agencies.~~

**317:10-1-3. General contracting and purchasing provisions**

~~(a) The Authority has the statutory authority to directly purchase or acquire goods, services or equipment in compliance with the provisions of the Oklahoma Central Purchasing Act, the State Use Committee, other statutory provisions and rules of the Central Purchasing Division, Oklahoma Department of Central Services, for state agency acquisitions.~~

~~(b) Goods, services and equipment for the Oklahoma Health Care Authority shall be acquired by one of the following methods and in accordance with the statutes of the State of Oklahoma:~~

~~(1) Acquisition of products and/or services through mandatory statewide contracts, State Use Committee procurement schedule, scheduled acquisition or non encumbered contracts.~~

~~(2) Purchases from other governmental agencies.~~

~~(3) Acquisition of products and/or services through non mandatory statewide contracts if the price does not exceed the purchase price the agency could pay in an open market acquisition.~~

~~(4) Direct order for products and/or services by purchase order or purchase card to the vendor within the authorized dollar amounts and other limitations contained in this Chapter.~~

~~(5) Competitive solicitation of products and services by the Authority.~~

~~(6) Competitive solicitation of products or services by the Oklahoma Department of Central Services, Central Purchasing Division.~~

~~(7) Sole source acquisitions according to the procedure in OAC 317:10-1-15.~~

~~(8) Donations to the Authority.~~

~~(c) The goods, services and equipment shall meet the specifications required, be acquired in compliance with the Central Purchasing Act and be cost effective.~~

~~(d) Except for acquisitions requiring the approval of the Authority Board, the CEO or a designated associate director, a CPO, in consultation with the requesting division, shall evaluate bids based upon criteria outlined in the solicitation, and shall document that evaluation.~~

~~(e) All amendments to any acquisition shall be initiated by the requesting division, but must be approved by the CEO, a designated associate director or a CPO.~~

(a) All acquisitions made by the Oklahoma Health Care Authority shall be in accordance with the Oklahoma Central Purchasing Act, 74 Okla. Stat. §§ 85.1 et seq., other applicable statutory provisions, Oklahoma Department of Central Services Central Purchasing Rules and the Authority's approved internal purchasing procedures.

(b) When these rules are silent on a relevant issue related to an acquisition made by the Authority, the appropriate DCS rule applies, except that where "State Purchasing Director" is specified, this means "the Authority CPO making the acquisition and/or the CEO". Where "Purchasing Division" is specified, this means "the Authority".

**317:10-1-4. Vendor registration**

Any vendor wishing to do business with the Authority should ~~be~~ register on the vendor bidder list maintained by the Central Purchasing Division of the Oklahoma Department of Central Services. ~~Any vendor who wants to be on the bidder list must register with the Central Purchasing Division at the Oklahoma Department of Central Services to receive copies of solicitations for the commodities or services which the vendor wishes to sell. All vendors are eligible for consideration.~~ The Authority may also send solicitations by request to vendors that are not on the vendor bidder list.

**317:10-1-5. Reports of vendor non-compliance to the Central Purchasing Division, Oklahoma Department of Central Services [REVOKED]**

~~(a) To ensure that vendors will perform in the best interest of the Authority, it is necessary to address problems in a swift and equitable manner for all concerned. In addition, varying degrees of vendor misconduct can cause irreparable harm to the Authority and its divisions. It is therefore recognized that penalties for poor vendor performance and/or violation of state statutes must be addressed. Reports of vendor non-compliance may be reported by the Authority to the Central Purchasing Division, Oklahoma Department of Central Services.~~

~~(b) Reports of vendor non-compliance may be considered, but is not limited to, the following infractions:~~

~~(1) Failure to perform pursuant to specifications on a solicitation.~~

~~(2) Failure on the part of the vendor to meet promised and/or required delivery dates and prices.~~

~~(3) Delivery by the vendor of substitutes in lieu of the items(s) specified on the approved bid and/or purchase order.~~

~~(4) Failure on the part of the vendor to meet EEOC and other requirements mandated by public legislation or the Authority Board.~~

~~(5) Problems created by the vendor regarding incorrect or inappropriate billing adjustment for goods and/or services furnished.~~

~~(6) Failure to support purchased products by not supplying necessary information, required maintenance and/or parts.~~

**317:10-1-6. Vendor samples [REVOKED]**

~~(a) Samples provided by vendors for evaluation will be accepted if they meet the following conditions:~~

~~(1) The product is one which is of a type presently in use or is of potential use to the Authority. Samples of goods or equipment not likely to be purchased will not be accepted.~~

~~(2) The quantity or size of the sample is relatively small and of low value. The object of a sample is the examination of its fitness for agency use.~~

~~(3) If a vendor sample is an item of equipment, the item must be inspected and approved by the CEO, associate director or designee for the area in which the equipment is to be sampled prior to the delivery to the division requesting the sample.~~

~~(4) Any manufacturer warranty and liability will be in effect for any product samples being evaluated by the agency.~~

~~(b) If vendor supplied samples are accepted, they shall be promptly conveyed to the requesting division for evaluation.~~

~~(c) The vendor may follow up with the appropriate CPO on any sample left for evaluation.~~

~~(d) Samples not destroyed by examination and testing or retained for comparison will be returned at cost to the vendor upon written request.~~

**317:10-1-7. Submission of bids [REVOKED]**

~~(a) If a vendor wishes to bid on the item(s) listed in a solicitation, the vendor shall complete the bid via the instructions provided with the solicitation. It is the vendor's responsibility to read and understand the instructions and terms and conditions provided with the solicitation. Failure to comply with the instructions and terms and conditions in the solicitation may disqualify the bid as per OAC 317:10-1-11. Any questions should be directed to the Authority's appropriate CPO.~~

~~(b) If the vendor does not wish to bid on the items, the vendor should fill in the vendor name, address, and write "No Bid" in the unit price column and return the solicitation to Contracts or Purchasing, whichever is appropriate.~~

~~(c) It is the responsibility of the vendor to ensure delivery of a bid to the Authority at or prior to the designated time on the solicitation. The agency will not be responsible for late bids.~~

**317:10-1-8. Bid openings [REVOKED]**

~~(a) All sealed bids will be stamped with the date and time upon receipt in the Contracts or Purchasing Division. The bids will be placed in a secured bid file until time for the scheduled bid opening. Access to the file is limited to the CPO or designee until the bid opening.~~

~~(b) Bids will be opened at the designated date and time of closing by the appropriate CPO. A bid opening record will be completed and maintained in the bid file.~~

~~(c) Award recommendations are made in writing upon conclusion of the bid evaluation.~~

~~(d) All bids and bid records are open to the public during normal working hours, after the bid opening, and in accordance with 51 O.S. 1991, Sections 24A.1 et seq., as amended. Copies may be requested in writing from the CPO.~~

**317:10-1-9. Bid evaluations [REVOKED]**

~~(a) After the bid opening, the appropriate Certified Procurement Officer will utilize a spread sheet referred to as the "bid evaluation sheet". A bid evaluation sheet will be completed for each solicitation. The vendor's bid will be reviewed for compliance with the instructions, compliance with the terms and conditions, and for compliance with the bid as per OAC 317:10-1-10 and 317:10-1-11.~~

~~(b) The bid evaluation sheet will be provided to the agency's division requesting the solicitation for their evaluation.~~

**317:10-1-10. Award of bid [REVOKED]**

~~(a) The solicitation, the bid evaluation sheet, and the literature and/or samples provided by the vendor will be forwarded to the requisitioning division. The division will review the information to determine compliance with the solicitation specifications. The division will make a recommendation of award based on the information provided. The recommendation will be reviewed by Contracts or Purchasing to ensure compliance with all Authority rules, policies and procedures.~~

~~(b) Contracts or Purchasing has the right to waive minor deficiencies or informalities in a bid provided that, in the CPO's judgment, the best interest of the state would be served without prejudice to the rights of the other bidder(s).~~

~~(c) Tie bids may develop between bidders. If these bidders are equal in price and all specifications, the award will be determined by a coin toss or by a series of coin tosses.~~

~~(d) If the solicitation specifies that the bid evaluation criteria is lowest and best, the bid will be evaluated by applying the following criteria:~~

~~(1) Lowest total purchase price. The bid price shall be a firm fixed price for each acquisition the solicitation specifies for the duration of the contract period.~~

~~(2) Quality and reliability of the acquisition. Additional factors regarding the responsiveness of the bid and the responsibility of the bidder shall be considered.~~

~~(3) Consistency of the proposed solution with state agency objectives. The Authority shall determine if the bid meets the specifications of the solicitation and determine the consistency with state agency planning documents and announced strategic direction.~~

~~(e) The Authority reserves the right to implement criteria of "Best Value" in the bid award process as outlined in 74 O.S., 1998, Section 85.7, and pursuant to the provisions of the Oklahoma Department of Central Services, Rules of the Central Purchasing Division, OAC 580:15-4-11(h).~~

~~(f) The Authority reserves the right to accept by item, group of items, or by the total bid, as specified in the solicitation.~~

~~(g) The Authority reserves the right to reject in part or whole any bid.~~

~~(h) No award will be made if the Authority determines the lowest bid totals more than the money available for purchase or if the lowest bid exceeds the reasonable market price.~~

~~(i) The Authority will send a purchase order or a notice of award as acceptable notification of a valid and binding contract with a vendor.~~

~~(j) All awards will be made under the terms and conditions as outlined in OAC 317:10-1-11 and any additional terms and conditions as described in the solicitation.~~

~~(k) The solicitation together with the successful vendor's responsive bid shall constitute a binding contract and will be interpreted under Oklahoma Law.~~

~~(l) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any acquisition by the Authority.~~

**317:10-1-11. Terms and conditions for acceptable bids [REVOKED]**

~~(a) All bids submitted are subject to the Authority's policies and procedures and/or any special conditions and specifications listed in this Subchapter, and made part of the solicitation.~~

~~(b) Sealed bids will be opened by the appropriate Certified Procurement Officer at the time and date shown on the solicitation.~~

~~(c) Bids received after the closing time will not be considered. Envelopes must contain only one bid, be sealed and the name and address of the bidder inserted in the upper left hand corner. The requisition number and closing date must appear on the face of the envelope.~~

~~(d) The bid shall be in strict conformity with the instructions to the bidder and shall be submitted on the approved form. The bid must be signed by an authorized representative of the bidder. The bids must be typewritten or written in ink, and corrections must be initialed by a representative of the vendor prior to the submission of the bid. Corrections made by correction fluid or by correctable typewriter ribbons will not be accepted unless initialed. Penciled bids will not be accepted.~~

~~(e) The non collusion affidavit form must be completed and returned.~~

~~(f) The bid may be awarded on an all or none basis, by item or groups of items, as specified in the solicitation.~~

~~(g) All bidders must guarantee that the quoted unit price in a bid is correct.~~

~~(h) Acquisitions by the Authority are not subject to any sales tax or federal excise tax.~~

~~(i) Prices shall be bid F.O.B. and include packaging, handling, shipping, and delivery charges prepaid by the bidder, unless otherwise specified in the solicitation.~~

~~(j) The bidder shall deliver the merchandise or services as bid. Any deviation must be approved in writing with the Authority CEO, designated associate director or the appropriate CPO.~~

~~(k) Any questions pertaining to the clarification of the solicitation shall be directed to the appropriate CPO.~~

~~(l) Any manufacturer, trade names, brand names, information and/or catalog numbers listed in the specification are for information and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item(s). If the bid is based on equivalent products, the bidder shall indicate on the bid form the manufacturer's name and number. The alternate bid shall be accompanied with sketches, descriptive literature, and/or completed specifications. Samples of the alternate item(s) may be required in the solicitation. Reference to literature submitted with a previous bid will not satisfy this provision. If necessary, the bidder shall also explain in detail the reason(s) why the proposed requirements may be satisfied with a substitute product. Bids lacking any written indication of intent to quote an alternate brand will be received and considered in complete compliance with the specifications as listed on the solicitation.~~

~~(m) A bid constitutes a legal offer which becomes a contract upon acceptance by the Authority pursuant to OAC 317:10-1-10(k).~~

~~(n) The bid must be made out in the name of the bidder and must be fully and properly executed by an authorized person and signed in ink with full knowledge and acceptance of all its provisions.~~

~~(o) In accepting a contract with the Authority, the bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the bidder relevant to the contract are subject to examination by the Authority, and the State Auditor and Inspector.~~

~~(p) Failure to comply with the terms and conditions will subject the bid to disqualification.~~

**317:10-1-12. Protest of award**

~~(a) Any bidder may protest the award of a bid. A protest may be based, but is not limited to, the following:~~

~~(1) Error in the calculation of price;~~

~~(2) The bid of the successful vendor did not meet the solicitation specifications;~~

~~(3) The solicitation procedure was done in violation of the Authority's rules; or~~

~~(4) Authority personnel handling the solicitation procedure acted in a willful or capricious manner.~~

~~(b) After the award is made, the protesting bidder shall submit written notice to the State Purchasing Director, Oklahoma Department of Central Services within ten (10) days of reasonable notice of contract award. The protest notice shall state supplier facts and reasons for protest.~~

~~(c) The State Purchasing Director shall review the protest and contract award documentation, responding to the protesting bidder as outlined in the Oklahoma Department of Central Services, Rules of the Central Purchasing Division, OAC 580:15-4-13.~~

(a) Protests of awards made by the Authority under 74 Okla. Stat. § 85.5T are addressed at OAC 317:2-1-1 et seq.

(b) Bidders who wish to protest any other award shall follow the process outlined in the Oklahoma Department of Central Services rules at OAC 580:15-4-13.

**317:10-1-15. Sole source or sole brand acquisitions [REVOKED]**

~~(a) The Authority need not seek competitive solicitations for goods or services, if the person with authority to make the acquisition affirms that:~~

~~(1) The goods, equipment or services may only be obtained from a single or sole source; must be a sole brand; or,~~

~~(2) A public exigency or emergency exists in which the urgency for the requirement will not permit a delay incident to competitive solicitation; or,~~

~~(3) After solicitation of a number of sources, competition is deemed inadequate.~~

~~(b) The person wishing to make an acquisition through a sole source shall forward an affidavit to Contracts or Purchasing which gives all the reasons why the specifications to fill the need restricts the item or service to one person or business, or brand. The appropriate CPO shall confirm the information on the affidavit by consulting with the Central Purchasing Division, Office of State Finance, contacts in the business community, Internet searches and any other resources identified.~~

~~(1) If the total acquisition price exceeds $2,500 but does not exceed $25,000:~~

~~(A) If the CPO determines the acquisition is a sole source or sole brand, the affidavit shall be submitted to the CEO for signature of approval. In the prolonged absence of the CEO, the designee of the CEO may approve a sole source acquisition.~~

~~(B) Upon approval by the CEO or in the CEO's absence, the designee, the CPO completes the acquisition pursuant to the provisions of the Oklahoma Central Purchasing Act.~~

~~(C) The affidavit shall be maintained in a file within the Authority.~~

~~(2) If the total acquisition price exceeds $25,000:~~

~~(A) The appropriate CPO shall submit the affidavit to the CEO or in the CEO's absence, to the designee for approval/signature.~~

~~(B) The affidavit and acquisition information shall be submitted to the State Purchasing Director, Oklahoma Department of Central Services for completion of the acquisition.~~

~~(C) Copies of the affidavit are maintained in a file within the Authority.~~

~~(c) Criteria which may be sufficient to justify a sole source or sole brand contract include, but are not limited to:~~

~~(1) Replacement or repair parts require the same brand.~~

~~(2) Compatibility of equipment or the continuity of services rendered from the same vendor is an essential factor for effective utilization of the product or service.~~

~~(3) The goods, service or equipment is the only one of its kind that will fulfill the need of the agency.~~

~~(4) The product or service furnished by the vendor is very specialized or the vendor providing the service possesses great acquired expertise, and the vendor is the only one singularly and peculiarly qualified to provide such product or service.~~

**317:10-1-16. Delegation of authority**

The authority to procure needed products and services for the Authority has been delegated to the Authority from the Oklahoma Department of Central Services, Central Purchasing Division. The Authority Board delegates ~~procurement~~ authority for expenditure of funds to the CEO and other Authority officers and personnel according to the dollar limits and types of products stated in (1), (2) and (3) of this Section. Within this authority, the CEO may delegate in writing to other specific individuals the responsibility for the performance of the procurement duties.

(1) **Supply and non-professional services acquisitions.** Each division director or supervisor may initiate any supply or non-professional services acquisition which is within his or her authorized division budget and approved by the CEO, associate director or designee. Any single acquisition of this kind over $5,000 up to $500,000 must be approved by the CEO or a designated associate director. Any single acquisition of this kind over $500,000 must be approved by the Authority Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds $500,000 for a supply or non-professional services contract must be prior approved by the OHCA Board. Any amendment to a contract that would result in a 10 percent or greater increase in the total acquisition cost originally approved by the OHCA Board must be submitted to the OHCA Board for prior approval.

(2) **Professional service contracts.** Acquisitions of professional services must be approved by the CEO or designee. All professional service contracts over $125,000 must be approved by the Authority Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds $125,000 for a professional service contract must be prior approved by the OHCA Board. Any amendment to a contract that would result in a 25 percent or greater increase or a $250,000 or greater increase in the total acquisition cost originally approved by the OHCA Board must be submitted to the OHCA Board for prior approval. Board approval is not required if the increase in total contract acquisition cost results from the exercise of a price increase methodology, option for additional work, or option to renew that was contained in the previously approved contract.

(3) **Interagency/intergovernmental agreements.** All agreements with another state agency or public agency

must be approved by the CEO or designee, but are exempt from the Authority Board approval.

**317:10-1-17. Acquisitions of $2,500 or less [REVOKED]**

~~(a) Any acquisition for an amount of $2,500 or less shall be exempt from the competitive solicitation procedures. The items may be acquired by a purchase order or purchase card order issued directly to the vendor and pursuant to the provisions of the Oklahoma Department of Central Services, Rules of the Central Purchasing Division, OAC 580:15-6-6.~~

~~(b) Contracts or Purchasing will monitor these orders to see if the combined usage from the various divisions for the same items exceeds the $2,500 amount allowed. Should this occur, the division will be notified that competitive solicitation specifications must be prepared and that the acquisition will be processed in accordance with agency policy based upon the overall dollar amount of the acquisition.~~

~~(c) The Authority may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.~~

**317:10-1-18. Acquisitions in excess of $2,500 and not exceeding $10,000 [REVOKED]**

~~(a) If the acquisition is for an amount exceeding $2,500, but is not more than $10,000, the appropriate CPO shall determine if the goods or services are available from a mandatory statewide contract, State Use Committee procurement schedule, scheduled acquisition, non-encumbered contract, another governmental agency or from non-mandatory statewide contracts. If the goods or services are available through one of these methods, the agency will acquire the goods or services in this manner.~~

~~(b) If the acquisition is not available utilizing one of the methods stated in (a) of this Section, the agency shall acquire the goods or services by an open market acquisition.~~

~~(1) The CPO may select suppliers from the registered supplier list maintained by the Central Purchasing Division, Oklahoma Department of Central Services, suppliers that can meet the agency's delivery date or suppliers in the vicinity. Suppliers will not be chosen that have been suspended or debarred from the registered supplier list.~~

~~(2) The CPO shall secure price quotations and delivery dates from suppliers. Price quotations may be in writing or documented by the CPO.~~

~~(3) If the Authority and the supplier execute a contract for the acquisition, the supplier shall submit a notarized, sworn statement of non collusion pursuant to 74 O.S., Section 85.23.~~

~~(4) The Authority shall pay the supplier following receipt, inspection and acceptance of the acquisition.~~

~~(5) The Authority shall retain documents and records of each acquisition for three years following acquisition date.~~

~~(6) All records and documentation shall be made available to the State Auditor and Inspector or the State Purchasing Director, Oklahoma Department of Central Services, upon request. Further, all contracting and purchasing records required to be open under the Open Records Act shall be available.~~

~~(c) The Authority may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.~~

~~(d) The Authority may issue change orders to increase a purchase order for an acquisition not to exceed ten percent of the original purchase order total price.~~

**317:10-1-18.1. Acquisitions in excess of $10,000 and not exceeding $25,000 [REVOKED]**

~~(a) The CPO shall determine if the acquisition is available from a mandatory statewide contract, State Use Committee procurement schedule, scheduled acquisition, non-encumbered contract, another governmental agency or from a non-mandatory statewide contract. If the acquisition is available through one of these methods, the agency will acquire the goods or services in this manner.~~

~~(b) If the acquisition is not available utilizing one of the above methods, the agency shall acquire the goods or services by an open market acquisition.~~

~~(1) The CPO shall select a minimum of three suppliers for solicitation. The CPO may select suppliers from the registered supplier list maintained by the Central Purchasing Division, Oklahoma Department of Central Services, suppliers that can meet the agency's delivery date or suppliers in the vicinity. Suppliers will not be chosen that have been suspended or debarred from the registered supplier list.~~

~~(2) The CPO shall secure price quotations and delivery dates from suppliers. Price quotations may be in writing or documented by the Certified Procurement Officer.~~

~~(3) If a vendor submits a bid, the vendor shall submit an original notarized non collusion affidavit pursuant to 74 O.S., Section 85.22.~~

~~(4) If the Authority and the supplier execute a contract for the acquisition, the supplier shall submit a notarized, sworn statement of non collusion pursuant to 74 O.S., Section 85.23.~~

~~(5) The Authority shall pay the supplier following receipt, inspection and acceptance of the acquisition.~~

~~(6) The Authority shall retain documents and records of each acquisition for three years following acquisition date.~~

~~(7) All records and documentation shall be made available to the State Auditor and Inspector or the State Purchasing Director, Oklahoma Department of Central Services, upon request. Further, all purchasing records required to be open under the Open Records Act shall be available.~~

~~(c) The Authority may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.~~

~~(d) The Authority may issue change orders to increase a purchase order for an acquisition not to exceed ten percent of the original purchase order total price. The Authority shall notify the Department of Central Services, State Purchasing Director, if a change order increases an acquisition purchase price above $25,000.~~

**317:10-1-18.2. Acquisitions in excess of $25,000 [REVOKED]**

~~(a) The CPO shall determine if the acquisition is available from a mandatory statewide contract, State Use Committee procurement schedule, scheduled acquisition, non-encumbered contract, another governmental agency or from a non-mandatory statewide contract. If the acquisition is available through one of these methods, the agency will acquire the goods or services in this manner subject to the provisions of OAC 317:10-1-16.~~

~~(b) If the acquisition is not available utilizing one of the above methods, the agency shall submit a request for the acquisition to the State Purchasing Director, Oklahoma State Department of Central Services.~~

**317:10-1-19. Professional service contracts [REVOKED]**

~~(a) The Contracts Unit (Contracts) is the official repository for all original professional service agreements/contracts except as otherwise authorized by the CEO. Divisions must forward to Contracts all original agreements/contracts in their files. A standard format for all agreements will be on file and any changes will be coordinated with Contracts. Any correspondence affecting the contract must also be forwarded to Contracts. Contracts staff will assist agency personnel in obtaining copies of documents requested from the files. Contracts' central file will contain:~~

~~(1) Official copy of the agreement/contract,~~
~~(2) Amendments,~~
~~(3) Compliance audits or reviews,~~
~~(4) Historical vendor performance,~~
~~(5) The requisition, and~~
~~(6) Other related documents including purchase orders.~~

~~(b) The Authority may not enter into a professional service contract with any person who has been employed by the Authority within one year after the termination date of the individual's employment, unless specifically permitted by statute. This shall not apply to contracts with qualified interpreters for the deaf.~~

~~(c) All professional services contracts shall contain an audit clause which provides that books, records, documents, accounting procedures, practices and any other item of the services provider relevant to the contract are subject to examination by OHCA or the State Auditor and Inspector.~~

~~(d) The Authority shall monitor and review compliance all professional services contracts periodically, but not less than twice during the contract period.~~

~~(e) A performance evaluation is required of the service provided under a professional service contract. Such evaluations shall assess the performance of the vendor during the contractual period. Evaluations shall be completed by the division responsible for initiating the contract no less than 90 days after the end of the contract. A copy of each evaluation is forwarded to Contracts for filing in the contract file.~~

~~(f) If the final product of a contract is a report, written proposal or study, the vendor shall comply with the following:~~

~~(1) the vendor shall provide a sworn statement certifying that said vendor has not previously entered into a contract with the Authority or any other state agency which would result in a substantial duplication of the previous end report. A sworn statement shall not be required of a vendor who is renewing a contract; and~~

~~(2) the vendor must deliver two copies of the report to Contracts. Contracts will file one copy with the State Librarian and Archivist.~~

~~(g) Contract terms and price must be definite and fixed. Contracts for professional services shall provide for payments to vendors at a uniform rate for the duration of the contract if the services being provided are similar and consistent. If the professional services are not similar and consistent for the duration of the contract, the Authority shall comply with the provisions of 74 O.S., 1998, Section 85.41(G).~~

~~(h) The following professional services are exempt from competitive bidding pursuant to 74 O.S., Section 85.7(2), and 18 O.S., Section 803:~~

~~(1) Physician, Surgeon or doctor of medicine;~~
~~(2) Osteopathic Physician or Surgeon;~~
~~(3) Chiropractor;~~
~~(4) Chiropodist podiatrist;~~
~~(5) Optometrist;~~
~~(6) Veterinarian;~~
~~(7) Architect;~~
~~(8) Attorney;~~
~~(9) Dentist;~~
~~(10) Public Accountant;~~
~~(11) Psychologist;~~
~~(12) Physical Therapist;~~
~~(13) Registered Nurse;~~
~~(14) Professional Engineer;~~
~~(15) Land Surveyor;~~
~~(16) Pharmacist;~~
~~(17) Occupational Therapist;~~
~~(18) Speech Pathologist;~~
~~(19) Audiologist; and~~
~~(20) Licensed Perfusionist.~~

~~(i) The Authority shall require proof of professional certification or license of all vendors providing professional services described in (h) of this Section.~~

~~(j) All professional service contracts other than those specified in (h) of this Section must be competitively bid pursuant to this Chapter unless criteria exist sufficient to justify a sole source contract, or unless the contract does not exceed the $25,000 threshold required for competitive bidding, or as otherwise provided by state law.~~

~~(k) The requirement for competitive bidding may not be avoided by entering into a contract with an individual licensed in one of the professional categories identified in (h) of this~~

~~Section, to perform non-germane services. For example, a lawyer may not be given a contract to serve as an investment counselor without competitive bidding.~~

~~(l) Bids for professional services contracts shall be evaluated by the appropriate division and/or evaluation team, and reviewed by the Contracts Administrator or designee prior to submittal to the State Purchasing Director. Both cost and technical expertise shall be considered in determining the lowest and best or best value bid.~~

~~(m) The travel expenses to be incurred by the vendor pursuant to the contract for services shall be included in the total amount of the contract award, unless the Authority decides to reimburse the vendor under state statues for such expenses, and informs vendors of such reimbursement in the ITB or request for proposal. The vendor shall be responsible for all travel arrangements and provide supporting documentation when submitting claims for reimbursement.~~

### 317:10-1-20. Interagency/Intergovernmental agreements [REVOKED]

~~(a) OHCA may contract with another state agency pursuant to 74 O.S., Section 581.~~

~~(b) OHCA may contract with a political subdivision or agency of the United States pursuant to 74 O.S., Sections 1001 through 1008.~~

~~(c) OHCA shall not attempt to make or make an acquisition through another state agency or public agency for the purpose of evading competitive solicitation provisions of the Oklahoma Central Purchasing Act or rules of the Central Purchasing Division.~~

*[OAR Docket #10-898; filed 5-24-10]*

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## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
## CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

*[OAR Docket #10-899]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 5. Individual Providers and Specialties
Part 25. Psychologists
317:30-5-275. [AMENDED]
317:30-5-276. [AMENDED]
317:30-5-278. [AMENDED]
Part 26. Licensed Behavioral Health Providers [NEW]
317:30-5-280. [NEW]
317:30-5-281. [NEW]
317:30-5-282. [NEW]
317:30-5-283. [NEW]
**(Reference APA WF #10-15)**
**AUTHORITY:**
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
**DATES:**
**Adoption:**
April 8, 2010
**Approved by Governor:**
May 14, 2010
**Effective:**
July 1, 2010
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**FINDING OF EMERGENCY:**
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to amend policy to allow for direct contracting by licensed master's level Licensed Behavioral Health Professionals (LBHP). By allowing direct contracting with these providers it will increase specialist access, increase access to care in rural communities, decrease use of emergency room, and increase crisis intervention. This rule revision will also divert psychiatric residential treatment center (RTC) usage due to LBHPs being more accessible throughout the state. The RTC diversion will decrease costs and allow members to be seen in their own communities.
**ANALYSIS:**
Rules are revised to allow direct reimbursement to licensed masters level behavioral health professionals who, under current rules, are only allowed to provide services in agency settings. Additionally, psychologist rules are revised to update provider requirements, terminology and to require prior authorization of services for all services provided except the initial assessment, health and behavior codes and/or crisis intervention. Revisions require LBHPs and Psychologist to complete a customer data core (CDC) assessment sheet to receive reimbursement for services. The CDC data enables OHCA to review quality of service.
**CONTACT PERSON:**
Tywanda Cox at (405)522-7153

**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 JULY 1, 2010:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

## PART 25. PSYCHOLOGISTS

### 317:30-5-275. Eligible providers

(a) Licensed Psychologist must be licensed to practice in the state in which services are provided. Payment is made for compensable services to psychologists licensed in the state in which face to face services are delivered. ~~Payment is also made to practitioners who have completed education requirements to begin an internship or a post-doctoral fellowship in an accredited clinical psychology academic training program and are under current board approved supervision toward licensure. Each psychologist must have a current contract with the Oklahoma Health Care Authority (OHCA). Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider.~~

(b) ~~In order for services provided by clinical psychology interns completing required internships and post-doctoral fellows completing required supervision for licensure to be reimbursed, the following conditions must be met:~~

~~(1) The practitioner billing SoonerCare must have a letter on file covering the dates of services of the internship or post-doctoral fellowship;~~

~~(2) The psychology intern or post-doctoral fellow must be under the direct supervision of the licensed psychologist responsible for the member's care;~~

~~(3) The licensed psychologist responsible for the member's care must:~~

~~(A) staff the member's case with the intern or fellow,~~

~~(B) actively direct the services,~~

~~(C) be available to the intern or fellow for in-person consultation while they are providing services,~~

~~(D) agree with the current plan for the member, and~~

~~(E) confirm that the service provided by the intern or fellow was appropriate; and~~

~~(4) The member's medical record must show that the requirements for reimbursement were met and the licensed psychologist responsible for the member's care has reviewed, countersigned, and dated the notes in the medical record at least every week so that it is documented that the licensed psychologist is responsible for the member's care.~~ Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider.

(c) Services provided by practitioners who have completed education requirements to begin an internship or a post-doctoral fellowship in an accredited clinical psychology academic training program and are under current board approved supervision toward licensure are eligible for reimbursement. Each supervising psychologist must have a current contract with the Oklahoma Health Care Authority (OHCA).

(d) For those licensure candidates who are actively and regularly receiving board approved supervision, or extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, each supervising psychologist must have a current contract with the Oklahoma Health Care Authority (OHCA).

(e) In order for services provided by clinical psychology interns completing required internships, post-doctoral fellows completing required supervision for licensure to be reimbursed, the following conditions must be met:

(1) The licensed practitioner billing SoonerCare must have a letter on file covering the dates of services of the internship or post doctoral fellowship;

(2) The psychology intern or post-doctoral fellow must be under the direct supervision of the licensed psychologist responsible for the member's care;

(3) The licensed psychologist responsible for the member's care must:

(A) staff the member's case with the intern or fellow,

(B) actively direct the services,

(C) be available to the intern or fellow for in-person consultation while they are providing services,

(D) agree with the current plan for the member, and

(E) confirm that the service provided by the intern or fellow was appropriate; and

(4) The member's medical record must show that the requirements for reimbursement were met and the licensed psychologist responsible for the member's care has reviewed, countersigned, and dated the notes in the medical record at least every week so that it is documented that the licensed psychologist is responsible for the member's care.

**317:30-5-276. Coverage by category**

(a) **Adults.** There is no coverage for adults for services by a psychologist.

(b) **Children.** Coverage for children includes the following services (all services, except Initial or Level of Care Assessment, health and behavior codes and/or Crisis Intervention services, require authorization by OHCA, or its designated agent):

(1) ~~Psychiatric Diagnostic Interview Examination (PDIE). The interview and assessment is defined as a face-to-face interaction with the member. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider. If there has been a break in service over a six month period, then an additional unit can be prior authorized by OHCA, or their designated agent.~~ Bio-Psycho-Social Assessments. Psychiatric Diagnostic Interview Examination (PDIE) initial assessment or Level of Care Assessment. The interview and assessment is defined as a face-to-face interaction with the member. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider per member. If there has been a break in service over a six month period, then an additional unit of PDIE can be prior authorized by OHCA, or their designated agent.

(2) Individual and/or Interactive psychotherapy in an outpatient setting including an office, ~~or~~ clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or ~~member's residence~~ other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a SoonerCare

eligible child as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is ~~eight~~ six patients for children four years of age up to the age of 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of a SoonerCare eligible child four years of age or older as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Psychological, Developmental, Neuropsychological, Neurobehavioral Testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Four hours/units of testing per patient (over the age of two), per provider is allowed without prior authorization every 12 months. In circumstances where it is determined that further testing is medically necessary, additional hours/units may be prior authorized by the OHCA or designated agent based upon medical necessity and consultation review. In circumstances where there is a clinical need for specialty testing, then more hours/units of testing can be authorized. Any testing performed for a child under three must be prior authorized. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) ~~Payment for therapy services provided by a psychologist to any one member is limited to five sessions/units per month without prior authorization. In circumstances where it is determined that further sessions/units are medically necessary, then more sessions/units can be prior authorized by the Oklahoma Health Care Authority or their designated agent. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed.~~ Health and Behavior codes - behavioral health services are available only to chronically and severely medically ill children.

(7) ~~A child who is being treated in an acute inpatient setting can receive separate Psychological services as the inpatient per diem is for "non physician" services only.~~ Crisis intervention services for the purpose of stabilization and hospital diversion as clinically appropriate.

(8) ~~A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing without prior authorization by the OHCA or its designated agent.~~ Payment for therapy services provided by a psychologist to any one member is limited to eight sessions/units per month. All units/sessions, except the Initial or Level of Care Assessments or Crisis Intervention must be authorized by the OHCA or its designated agent. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(9) A child who is being treated in an acute psychiatric inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only.

(10) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing without prior authorization by the OHCA or its designated agent.

(c) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the mentally retarded program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

(d) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

**317:30-5-278. Non-covered procedures**

The following procedures by psychologists are not covered:

(1) sensitivity training
(2) encounter
(3) workshops
(4) sexual competency training
(5) marathons or retreats for mental disorders
(6) strictly education training
(7) psychotherapy to persons under three years of age unless specifically approved by OHCA, or its designated agent.

## PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

**317:30-5-280. Eligible Providers**

(a) Licensed Behavioral Health Professionals (LBHP) are defined as follows:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided.

(A) Psychologist,
(B) Social Worker (clinical specialty only),

(C) Professional Counselor,
(D) Marriage and Family Therapist,
(E) Behavioral Practitioner, or
(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(b) Practitioners who have completed education requirements to begin an internship or a post-doctoral fellowship in an accredited clinical academic training program and are under current board approved supervision toward licensure. Each supervising LBHP must have a current contract with the Oklahoma Health Care Authority (OHCA).

(c) For those LBHP candidates who are actively and regularly receiving a LBHP board approved supervision, or extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in 2 (A) through (F) above.

(d) In order for services provided by clinical academic interns completing required internships and LBHP candidates completing required supervision for licensure to be reimbursed, the following conditions must be met:

(1) The licensed LBHP practitioner billing SoonerCare must have a letter on file covering the dates of services of the internship or LBHP board approved supervision;

(2) The academic intern or LBHP candidate must be under the direct supervision of the licensed professional responsible for the member's care;

(3) The supervising licensed professional responsible for the member's care must:

(A) staff the member's case with the academic intern or LBHP candidate,
(B) actively direct the services,
(C) be available to the intern or LBHP candidate for in-person consultation while they are providing services,
(D) agree with the current plan for the member, and
(E) confirm that the service provided by the intern or LBHP candidate was appropriate; and

(4) The member's medical record must show that the requirements for reimbursement were met and the licensed professional responsible for the member's care has reviewed, countersigned, and dated the notes in the medical record at least every week so that it is documented that the licensed professional is responsible for the member's care.

**317:30-5-281. Coverage by Category**

(a) **Adults.** There is no coverage for adults for services by a LBHP.

(b) **Children.** Coverage for children includes the following services (all services, except for the Initial or Level of Care Assessments or Crisis Intervention, require authorization by OHCA or its designated agent, providers listed in 317:30-5-280(a)(1),(a)(3)and (a)(4) are exempt from authorization):

(1) Bio-Psycho-Social and Level of Care Assessments.

(A) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary.

(B) Assessments for Children's Level of Care determination of medical necessity must follow a specified assessment process through OHCA or their designated agent. Only one assessment is allowable per provider per member. If there has been a break in service over a six month period, or the assessment is conducted for the purpose of determining a child's need for inpatient psychiatric admission, then an additional unit can be authorized by OHCA, or their designated agent.

(2) Individual and/or Interactive psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in an office, clinic, or other confidential setting. Group therapy is a face-to- face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six for ages four up to 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Evaluation and Testing is clinically appropriate and allowable when an accurate diagnosis and determination

of treatment needs is needed. Eight hours/units of testing per patient (over the age of two), per provider is allowed every 12 months. In circumstances where it is determined that further testing is medically necessary, additional hours/units may be prior authorized by the OHCA or designated agent based upon medical necessity and consultation review. In circumstances where there is clinical need for specialty testing, then more hours/units of testing can be authorized. Testing units must be billed on the date the testing interpretation, scoring, and/or reporting was performed and supported by documentation. (6) Crisis intervention services for the purpose of stabilization and hospitalization diversion as clinically appropriate.

(7) Payment for therapy services provided by a LBHP to any one member is limited to eight sessions/units per month. All units/sessions, except Assessment and Crisis Intervention must be authorized by the OHCA or their designated agent. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(8) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or testing without authorization by the OHCA or their designated agent.

(c) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the mentally retarded program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

(d) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

**317:30-5-282. Non-covered procedures**

The following procedures by LBHPs are not covered:

(1) sensitivity training
(2) encounter
(3) workshops
(4) sexual competency training
(5) marathons or retreats for mental disorders
(6) strictly education training
(7) psychotherapy to persons under three years of age unless specifically approved by OHCA, or its designated agent.

**317:30-5-283. Documentation of records**

All behavioral health services will be reflected by documentation in the patient records.

(1) All assessment, testing, and treatment services/units billed must include the following:

(A) date;
(B) start and stop time for each session/unit billed;
(C) signature of the provider;
(D) credentials of provider;
(E) specific problem(s), goals, and/or objectives addressed;
(F) methods used to address problem(s), goals and objectives;
(G) progress made toward goals and objectives;
(H) patient response to the session or intervention; and
(I) any new problem(s), goals and/or objectives identified during the session.

(2) For each Group psychotherapy session, a separate list of participants must be maintained.

(3) Testing will be documented for each date of service performed which should include at a minimum, the objectives for testing, the test administered, the results/conclusions and interpretation of the tests, and recommendations for treatment and/or care based on testing and analysis.

*[OAR Docket #10-899; filed 5-24-10]*

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
## CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

*[OAR Docket #10-900]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 2. Medicaid Recovery Program
317:35-9-15. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-4. [AMENDED]
**(Reference APA WF # 10-16)**
**AUTHORITY:**
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
**DATES:**
**Adoption:**
April 8, 2010
**Approved by Governor:**
May 14, 2010
**Effective:**
Immediately upon Governor's approval
**Expiration:**
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**FINDING OF EMERGENCY:**
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to remove policy allowing the Oklahoma Department of Human Services (OKDHS) to conduct hearings in the Medicaid estate recovery process for individuals in nursing facilities, ICF/MR's or other medical institutions. Current policy conflicts with State Statue providing that the Oklahoma Health Care Authority (OHCA) shall conduct the hearings.

**ANALYSIS:**

Rules are revised to remove policy allowing OKDHS to conduct fair hearings in the estate recovery process for individuals in nursing facilities, ICF/MR's or other medical institutions, having a lien placed on their property. Current policy conflicts with State Statue at O.S. Title 63, Section 5051.3(B)(3) providing that the OHCA shall conduct the hearings. Elimination of the OKDHS hearing will prevent potential confusion in the estate recovery process as the State Medicaid Agency, the Oklahoma Health Care Authority will be conducting the hearings for its Medicaid members.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

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

## SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

## PART 2. MEDICAID RECOVERY PROGRAM

**317:35-9-15. Medicaid recovery**

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the State to seek recovery against the estate of certain Title XIX members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority (OHCA) on behalf of a member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the OHCA subject to recovery by legal action either in the form of a lien filed against the real property of the member and/or a claim made against the estate of the member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this Part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. [See OAC 317:35-5-41.8(a)(3)(H) for consideration of home property as a countable resource.] State Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services;
(2) home and community based services;
(3) related hospital services;
(4) prescription drug services;
(5) physician services; and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing ~~(OKDHS will conduct hearings)~~, against the real property of a member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.**

(A) A lien may not be filed on the home property if the member's family includes:

(i) a surviving spouse residing in the home;

(ii) a child or children age 20 or less lawfully residing in the home ;

(iii) a disabled child or children of any age lawfully residing in the home; or

(iv) a brother or sister of the member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(B) If an individual covered under an Oklahoma Long-term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual for the amount of assets or resources disregarded.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return to the home. To return home means the member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, OKDHS provides written notice to the member that a one-year period of inpatient care constitutes a determination by the OKDHS that there is no reasonable expectation that the member will be discharged and return home for a period of at least 90 days. The member or the member's representative is asked to declare intent to return home by signing the OKDHS Form 08MA024E, Acknowledgment of Intent to Return Home/Medicaid Recovery Program. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the member cannot reasonably be expected to be discharged and return home. When this determination has been made, the member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against the member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate [see (c) of this Section] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, when the individual or his/her family is merely inconvenienced or when their lifestyle is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the member cannot reasonably be expected to be discharged from the nursing facility and return home and the member has been given notice of an intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the member or his/her representative. The lien must contain the following information:

(A) the name and mailing address of the member, spouse, legal guardian, authorized representative, or individual acting on behalf of the member;

(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for Title XIX on the member's behalf;

(C) the date the member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution;

(D) the legal description of the real property against which the lien will be recorded; and

(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by OHCA for Title XIX correctly received may be enforced before or after the death of the member. But it may be enforced only:

(A) after the death of the surviving spouse of the member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the member, natural or adopted, who is blind or disabled, as defined in OAC 317:35-1-2, residing in the home;

(D) when no brother or sister of the member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the member is lawfully residing in the home who has resided there for at least two years immediately before the date of the member's admission to the nursing facility, and establishes to the satisfaction of the OKDHS that he or she provided care to the member which permitted the member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The member or member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be released within 50 days. After that time, the member or the member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (See OAC 317:35-5-41 through 317:35-5-41.7) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery from estates.**

(1) If the member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living

in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating member's death, a computer generated report is sent to OHCA/Third Party Liability (TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

(5) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual's estate for the amount of assets or resources disregarded.

## SUBCHAPTER 19. NURSING FACILITY SERVICES

### 317:35-19-4. Medicaid recovery

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the state to seek recovery against the estate of certain Title XIX members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority (OHCA) on behalf of a member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the OHCA subject to recovery by legal action either in the form of a lien filed against the real property of the member and/or a claim made against the estate of the member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. [See OAC 317:35-5-41.8(a)(3)(H) for consideration of home property as a countable resource.] State Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services,
(2) home and community based services,
(3) related hospital services,
(4) prescription drug services,
(5) physician services, and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing, ~~(OKDHS will conduct hearings)~~ against the real property of a member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.**

(A) A lien may not be filed on the home property if the member's family includes:

(i) a surviving spouse residing in the home;

(ii) a child or children age 20 or less lawfully residing in the home;

(iii) a disabled child or children of any age lawfully residing in the home; or

(iv) a brother or sister of the member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(B) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual for the amount of assets or resources disregarded.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return to the home. To return home means the member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, OKDHS provides written notice to the member that a one-year period of inpatient care constitutes a determination by the OKDHS that there is no reasonable expectation that the member will be discharged and return home for a period of at least three months. The member or the member's representative is asked to declare intent to return home by signing the OKDHS Form 08MA024E, Acknowledgment of Intent to Return Home/Medicaid Recovery Program. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the member cannot reasonably be expected to be discharged and return home. When this determination has been made, the member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against

the member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate [see (C) of this Section] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, where the individual or his/her family is merely inconvenienced or where their lifestyle is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the member cannot reasonably be expected to be discharged from the nursing facility and return home and the member has been given notice of the intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the member or his/her representative. The lien must contain the following information:

(A) the name and mailing address of the member, member's spouse, legal guardian, authorized representative, or individual acting on behalf of the member,

(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for XIX on the member's behalf,

(C) the date the member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution,

(D) the legal description of the real property against which the lien will be recorded, and

(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by the OHCA for Title XIX correctly received may be enforced before or after the death of the member. But it may be enforced only:

(A) after the death of the surviving spouse of the member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the member, natural or adopted, who is blind or disabled as defined in, OAC 317:35-1-2 residing in the home;

(D) when no brother or sister of the member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the member is lawfully residing in the home who has resided there for at least two years immediately before the date of the member's admission to the nursing facility, and establishes to the satisfaction of the OKDHS that he or she provided care to the member which permitted the member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The member or member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be released within 50 days. After that time, the member or the member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (See OAC 317:35-5-41 through 317:35-5-41.7) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery from estates.**

(1) If the member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating member's death, a computer generated report is sent to OHCA/Third Party Liability (TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

(5) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual's estate for the amount of assets or resources disregarded.

*[OAR Docket #10-900; filed 5-24-10]*

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

*[OAR Docket #10-881]*

**RULEMAKING ACTION:**
EMERGENCY adoption
**RULES:**
Subchapter 5. Operational Policies
Part 37. Recovery
340:25-5-312 [AMENDED]
**(Reference APA WF10-05)**
**AUTHORITY:**
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 654 of Title 42 of the United States Code; Section 302.33 of Title 45 Code of Federal Regulations; Sections 171, 185, 237A through 237.2, 237.7, 238, and 238.1 of Title 56 of the Oklahoma Statutes; Section 724.1 of Title 3A of the Oklahoma Statutes; and Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes; and Oklahoma Administrative Code 340:25-5-305.
**DATES:**
**Adoption:**
March 23, 2010
**Approved by Governor:**
April 28, 2010
**Effective:**
Upon Governor's approval
**Expiration:**
Effective through July 14, 2011, 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 to reduce the fiscal impact on families who have a child support overpayment with OKDHS.
**ANALYSIS:**
The proposed revisions continue strengthening families and improving services to families during these difficult economic times.
**CONTACT PERSON:**
Dena Thayer at (405)521-4326
**SUMMARY:**
The proposed revisions to Subchapter 5 of Chapter 25 amend the rules to reduce the fiscal impact on families when Oklahoma Child Support Services (OCSS) is recovering an overpayment from current child support collections.

**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 37. RECOVERY

**340:25-5-312. Overpayment rules and procedures**

(a) **Overpayment recipient.** A custodial person, noncustodial parent, or other entity to whom ~~the~~ Oklahoma Child Support ~~Enforcement Division~~ Services (~~CSED~~ OCSS) has made an overpayment is an overpayment recipient and owes the amount of the overpayment to ~~CSED~~ OCSS, acting on behalf of the State of Oklahoma.

(b) **Fraud.** If an overpayment may have resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or if fraud is otherwise suspected, ~~CSED~~ OCSS reports the information to the Oklahoma Department of Human Services ~~(OKDHS)~~ Office of Inspector General ~~(OIG)~~ for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(c) **Recovery amount.** ~~CSED~~ OCSS retains ~~50~~ 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time, in order to recover any type of overpayment until the overpayment is recovered in full. ~~CSED~~ OCSS does not reduce the recovery amount at the recipient's request.

(d) **Notice.** ~~CSED~~ OCSS sends a notice of overpayment and recovery to the recipient of the overpayment. The notice includes:

(1) a statement that the recipient received money to which the recipient was not entitled and owes money to ~~CSED~~ OCSS;

(2) the amount of the overpayment;

(3) the method of withholding from monthly payments until the overpayment is recovered in full;

(4) a statement that ~~CSED~~ OCSS may collect the overpayment through any means permitted by law; and

(5) instructions for requesting in writing an administrative review under OAC 340:25-5-200.1 within 30 days after the date on the notice of overpayment and recovery letter, if the recipient disagrees with the amount of the overpayment.

(e) **Other overpayment recovery methods.** ~~CSED~~ OCSS also recovers overpayments, including, but not limited to:

(1) voluntary payments;

(2) state income tax refund intercepts under Section 205.2 of Title 68 of the Oklahoma Statutes; and

(3) lottery prize claims under Section 724.1 of Title 3A of the Oklahoma Statutes.

(f) **TANF customers.** In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, ~~CSED~~ OCSS may make a noncooperation referral to the TANF social services specialist. ~~CSED~~ OCSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(g) **Administrative review.** If an administrative review is requested under OAC 340:25-5-200.1, the purpose of the review is to provide the recipient an opportunity to offer new or additional information regarding the amount of the overpayment. Upon timely receipt of a written request for an administrative review, the ~~CSED~~ OCSS office conducts the review within 30 days.

*[OAR Docket #10-881; filed 5-19-10]*

# Permanent Final Adoptions

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

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

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

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

## TITLE 5. OKLAHOMA ABSTRACTORS BOARD
## CHAPTER 11. ADMINISTRATIVE OPERATIONS

*[OAR Docket #10-847]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Abstract Licenses, Certificates of Authority, and Permits
5:11-3-1 [AMENDED]
5:11-3-8 [AMENDED]
5:11-3-9 [AMENDED]
5:11-3-10 [NEW]
Subchapter 5. Regulation of Licensees, Certificate Holders and Permit Holders
5:11-5-3 [AMENDED]
Subchapter 7. Application for Permit to Develop Abstract Plant
5:11-7-2 through 5:11-7-4 [NEW]
Subchapter 13. Application for Abstractor License [NEW]
5:11-3-1 [NEW]
**AUTHORITY:**
Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"
**DATES:**
**Comment Period:**
January 15, 2010 through February 16, 2010
**Public Hearing:**
February 16, 2010
**Adoption:**
March 11, 2010
**Submitted to Governor:**
March 16, 2010
**Submitted to House:**
March 16, 2010
**Submitted to Senate:**
March 16, 2010
**Gubernatorial approval:**
April 14, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2010
**Final Adoption:**
May 12, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCYACTIONS:**
Not applicable
**INCORPORATIONS BY REFERENCE:**
None.
**ANALYSIS:**
The proposed rules provide help to better define who must hold an abstractor's license, employment status to allow inactive status for a year, including active duty military, require permit applicants to provide lists of 3rd party providers, renewal of a permit to include actively pursuing the building of the plants, forms, and guidance for permit applications.
**CONTACT PERSON:**
Glynda Reppond, Executive Director (405) 522-5019

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS

**5:11-3-1. Who must hold abstract license**

(a) Any person in the employ of a holder of a certificate of authority or permit, or ~~A~~a holder of a certificate of authority ~~or permit~~ who is an individual actively engaged in the process of preparing abstracts, or the holder of a permit who is an individual actively engaged in the construction of an abstract plant, shall be required to have an individual abstract license.

(b) ~~The holder of a certificate of authority or permit shall provide the Board with a list of the names of licensed and unlicensed employees in such form as directed by the Board.~~ Any person who is employed by a holder of a permit or certificate of authority whose sole function is limited to reviewing documents to determine the type of instrument, date, parties, recording information and legal description, and entering such information into a manual or computer indexing system shall not be required to hold an abstract license. Such activity shall be conducted under the supervision of a licensed abstractor. Prior to the final entry of such documents to the abstract plant, a licensed abstractor must review, verify and accept such entries as final on behalf of the holder of the permit or certificate of authority. Any matter entered into the indexing system by an unlicensed person without proper licensed supervision may be deemed a violation of this Act.

(c) The holder of a certificate of authority or permit shall provide the Board with a list of the names of licensed and unlicensed employees in such form as directed by the Board.

**5:11-3-8. Change of employment status**

(a) Upon change of employment, regardless of reason or place of relocation, a licensee shall report such change to the Board within ten (10) days of the effective date of the change.

(b) Upon written request by the licensee more than 30 days prior to the expiration of a licensee's license, the Board may place a licensee on inactive status. Such status may be requested for one additional renewal period upon request and

payment of the required renewal fees. The request for inactive status shall be in writing, on a form furnished by the Board.

(c) During active military service, any licensee shall not be required to pay the fees but shall request the inactive status prior to each term for which the license is to be issued.

(d) At any time the licensee complies with all requirements of the Oklahoma Abstractors Act, an inactive licensee may request active status, which request shall be in writing, on forms furnished by the Board.

**5:11-3-9. Forms**

The forms prescribed by the Board shall include but not be limited for the following:

(1) **Certificate of authority.** The Board shall establish separate forms for the initial application for a certificate of authority, a temporary certificate of authority, annual renewal of a certificate of authority, and transfer of ownership of certificate of authority.

(2) **Permit.**

(A) The Board shall establish separate forms for the initial application for a permit and for the annual renewal of a permit.

(B) The form shall include an affidavit prepared by the appropriate District Court Clerk and County Clerk certifying the status and availability of the county records.

(C) Each form regarding an initial application for a permit shall include a general statement of the law and instructions directing how the forms should be completed.

(D) The applicant for a permit shall provide the Board a list of all employees~~.~~ and third party providers involved in the construction of the abstract plant.

(3) **License.** The Board shall establish separate forms for the initial application for an abstract license and for the annual renewal of a license.

(4) **Uniform Abstract Certificate.** The Board shall establish a form which will provide to the consumer information including but not limited to:

(A) the authority for providing an abstract of title;

(B) the items being certified;

(C) beginning page and ending page;

(D) if the abstract certification excepts oil, gas, and other minerals, in which case substantial compliance with the following language shall be used: Except instruments of any kind and character relating to all oil, gas, and other minerals, including but not limited to deeds, grants, leases, assignments and releases thereof, all of which instruments are omitted and excepted entirely from this abstract.

(E) the period covered; and

(F) the signature and license number of the abstractor.

(G) certificate of authority number; and

(H) date of issuance.

(5) **Abstract Rates filing.** The Board shall establish a form to be used to file annually the statutorily mandated list of abstracting fees.

(6) **Public Complaint.** The Board shall create a sample form for use by an individual filing a written complaint with the Board. Substantial compliance with the requirements set out in the form shall be sufficient for the Board to accept the complaint. The information required shall include but not be limited to:

(A) the name, address, and phone number of the individual filing the complaint;

(B) the name, address, and phone number of the person against whom the complaint is being filed;

(C) the date of the preparation of the complaint; and

(D) an outline of the complaint.

(7) **Effective date of changes.** Any change in a form shall become effective thirty (30) days after adoption by the Board. If the change is declared an emergency, the Board shall specify the shorter effective date.

**5:11-3-10. Report of change of controlling interest**

(a) The holder of a certificate of authority or a permit shall report a change of controlling interest to the Board within 60 days after the change of control becomes effective, unless such time period is extended upon request to the Board. Such report shall include:

(1) the number of shares or percentage interest sold and by whom and

(2) the number of shares or percentage interest purchased and by whom.

(b) As used in this section, the term "controlling interest" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the holder of a certificate of authority or permit as represented by an ownership interest. A change in ownership of 40% or more of the voting stock, entity interest, or individual interest of a holder of a certificate of authority or permit shall be reported as a change of controlling interest to the Board.

## SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS

**5:11-5-3. Preparation of abstracts**

(a) **Type of abstract.** A certificate of authority holder shall cause the preparation of an abstract of title on real property which shall cover:

(1) a fee simple estate, less and except oil, gas and other mineral interests; or

(2) upon the request of a customer, a fee simple estate including oil, gas, and other mineral interests; or

(3) oil, gas and other mineral interests.

(b) **Abstract certificate.** The abstract certificate and caption sheet shall reflect an appropriate disclaimer regarding that which is excluded.

(c) **Contents of abstract.** For the time period covered by the certification, an abstract of title shall include but not be limited to the following:

(1) all instruments that have been filed for record and have been recorded in the office of the county clerk for the county in which the property is located which:

(A) legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;

(B) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said real estate; and

(C) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(2) the records of the court clerk for the county in which the subject property is located which:

(A) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said subject property; and

(B) judgments or transcripts of judgments against any of the parties appearing within the chain of title.

(3) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the office of the county treasurer for the county in which the subject property is located due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon, and unpaid personal property taxes which are a lien on said real estate.

(d) **Federal court certificate.** Upon request of a consumer, a holder of a certificate of authority in Muskogee, Okmulgee, Oklahoma, and Tulsa counties shall certify to the records of the Clerk of the United States District Court and the Clerk of the United States Bankruptcy Court for such federal judicial districts located in such counties for the time period covered by the certification, that disclose:

(1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property; and

(2) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(e) **Final certification for title insurance.** For purposes of a title insurance policy, ~~an abstractor~~ a certificate of authority holder in the county where the insured property is located shall prepare either of the following:

(1) an extension of the abstract or supplemental abstract; or

(2) a final title report after a final title search has been conducted. The final title report shall include all information required for an abstract of title pursuant to the Act and these rules, and shall be certified up to and including the effective date of the title insurance policy.

(f) **Other services.** Any service performed or product produced by the holder of a certificate of authority that does not qualify as an abstract of title shall not be designated as an abstract of title and shall not include an abstract certificate.

(g) Statement of abstracting charges. All charges for abstracts, abstract extensions, supplemental abstracts, or final title reports shall be separately stated and shall not be combined with title insurance, closing fees, or examination charges on invoices, statements, settlement statements, and consumer estimates.

## SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP ABSTRACT PLANT

**5:11-7-2. Renewal of permit to develop abstract plant**

A permit holder must actively pursue construction of the abstract plant. Failure to do so may result in revocation of permit or non-renewal by the board.

**5:11-7-3. Business activities of a permit holder**

During the period of development of the abstract plant by a holder of a permit, until a certificate of authority is issued to such permit holder, the business activities of a permit holder and licensees under its supervision are limited to the construction of the abstract plant and activities directly related thereto. A permit holder shall not sell or provide products or services to the public or for its own benefit from its plant under development and may not charge or collect fees for such products or services.

**5:11-7-4. Permit not transferrable**

A permit is not transferrable. An individual, association, partnership, corporation, or other entity desiring to purchase the assets of a permit holder shall be required to file a new application for a permit to develop abstract plant pursuant to section 34 of the Act and Subchapter 7 of these rules.

## SUBCHAPTER 13. APPLICATION FOR ABSTRACTOR LICENSE

**5:11-13-1. Application for abstractor license**

(a ) **Form.** The application shall be on a form prescribed by the Board.

(b) **Qualified application.**

(1) Approved application. If the Board shall be of the opinion that an applicant for license is qualified, the application shall be approved.

(2) Incomplete application. An applicant submitting either an incomplete application or an application requiring further information and/or investigation, shall either:

(A) Sign a form acknowledging that the application has not received final approval; however, the applicant requests permission to sit for the examination. If thereafter the application is not approved, the examination grade will be voided and fee will not be refunded or

(B) Wait for final approval of the application by the Board.

(c) **Denial of application.** After consideration and action by the Board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant.

*[OAR Docket #10-847; filed 5-17-10]*

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

*[OAR Docket #10-828]*

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PERMANENT final adoption
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Subchapter 1. General Provisions
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Subchapter 3. Requirements to Practice Public Accountancy
10:15-3-2. [AMENDED]
10:15-3-3. [AMENDED]
10:15-3-4. [AMENDED]
Subchapter 18. Computer-Based Examination
10:15-18-1. [AMENDED]
10:15-18-4. [AMENDED]
10:15-18-7. [AMENDED]
10:15-18-10. [AMENDED]
10:15-18-11. [AMENDED]
10:15-18-12. [AMENDED]
10:15-18-14. [AMENDED]
10:15-18-15. [NEW]
10:15-18-16. [NEW]
Subchapter 21. Reciprocity
10:15-21-1. [AMENDED]
10:15-21-3. [AMENDED]
10:15-21-5. [AMENDED]
Subchapter 22. Substantial Equivalency
10:15-22-1. [REVOKED]
Subchapter 23. Registration
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10:15-23-2. [AMENDED]
10:15-23-3. [NEW]
Subchapter 25. Permits
10:15-25-1. [AMENDED]
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10:15-25-3. [AMENDED]
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Subchapter 27. Fees
10:15-27-7.1. [REVOKED]
10:15-27-8. [AMENDED]
10:15-27-9. [AMENDED]
10:15-27-9.1. [NEW]
Subchapter 30. Continuing Professional Education
10:15-30-1. [AMENDED]
10:15-30-5. [AMENDED]
10:15-30-6. [AMENDED]
10:15-30-8. [AMENDED]
10:15-30-9. [AMENDED]
Subchapter 32. Standards for Continuing Professional Education (CPE) Programs
10:15-32-1. [AMENDED]
10:15-32-2. [AMENDED]
10:15-32-5. [AMENDED]
10:15-32-6. [AMENDED]
Subchapter 33. Peer Review
10:15-33-6. [AMENDED]
Subchapter 35. Reinstatement
10:15-35-1. [AMENDED]
10:15-35-2. [AMENDED]
Subchapter 37. Enforcement Procedures
10:15-37-9. [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1. [AMENDED]
10:15-39-8. [REVOKED]
10:15-39-8.1. [NEW]
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Subchapter 21. Reciprocity
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Subchapter 22. Substantial Equivalency
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Subchapter 25. Permits
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10:15-25-4 [AMENDED]
Subchapter 27. Fees
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10:15-27-8 [AMENDED]
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Subchapter 30. Continuing Professional Education
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n/a

**ANALYSIS:**

HB 1779, effective April 14, 2009, amended the Act significantly. Emergency rules were adopted effective August 6, 2009, which now must be made permanent. HB 1779 amended the substantial equivalency provisions of the Act so that Oklahoma is now a full mobility state, in accordance with the AICPA's Uniform Accountancy Act. Unless an individual or firm is performing audits or reviews, practicing accounting across state lines on the basis of licensure by another jurisdiction will be much like driving across state lines with a driver's license issued by another state in that no fee is required and no notification must be given to the State of Oklahoma. As in the case with the driver crossing state lines, the individual or firm entering the state is subject to Oklahoma statutes. In addition, the Sections 15.14 and 15.14A Act were amended so that registration and permit renewals will be due annually on the last day of each registrant's birth month rather than on July 31. CPE reporting, which is done in conjunction with registration and permit renewals, is amended to coincide with the filing deadlines for those renewals. This will spread out the work load and make better use of the OAB's staffing resources. In addition, Sections 15.8 and 15.9 of the Act were amended to provide for national criminal history background checks for individuals who apply to sit for the CPA/PA examination or apply for certification or licensure in Oklahoma. Additional amendments to the general provisions clarify existing definitions or delete definitions of terms either not used anywhere in the Oklahoma Accountancy Act (Act) or the Oklahoma Administrative Code (Code) or that are already defined in the Act, remove obsolete language, correct a reference due to an amendment to the Act, and correct sentence structure errors. An additional amendment to the standards for computer based exams removes the provision that a qualification applicant can have graduated from a two-year college or university. Additional substantive amendments to the reciprocity rules correct a codification error and clarify that an application for a reciprocal certificate or license will not be considered until all of the requirements have been provided to the Oklahoma Accountancy Board. Additional substantive amendments to the registration rules allow for postmarks for carriers other than the USPS, change the firm registration filing deadline from May 31 to June 30 in accordance with an amendment to Section 15.15 of the Act, and provide for amendments to a registrant's revoked status if the registrant was revoked for failure to register and the OAB later learns the registrant was deceased or incapacitated at the time of the administrative revocation. The firm permit renewal dates of issuance and expiration are amended in accordance with amendments to Section 15.15 of the Act effective April 14, 2009. Other amendments to the permit rules remove language that has become obsolete because of changes to Section 15.12A of the Act, provide that sole proprietors will be issued a firm permit bearing the same date of issuance and expiration as the sole proprietor's individual permit, base the date of issuance and expiration of individual permits timely renewed on each registrant's birth month, clarify that a firm serving Oklahoma clients from outside this state is required to hold a valid permit only if the firm is providing services under the provision of Section 15.12A.A.5 of the Act, and provide that the Executive Director's designee may approve requests for a transition period to complete CPE required for the permit to practice. Fees associated with substantial equivalence are revoked since individuals entering the state under the substantial equivalency provision are no longer required to make application or pay a fee under Section 15.12A of the Act. Registration and permit fees are amended to provide for annual registration and permit renewals with staggered due dates based on each individual's birth month nd for the proration of fees for purposes of transitioning to birth month renewals. An additional amendment to the continuing professional education rules provides examples of the types of descriptive materials that should be retained to substantiate CPE courses. A new provision requires that individuals actively involved in the supervision or review of compilation engagements for third party reliance complete at least 4 credits of CPE in the subject area of compilations each calendar year. This requirement would be waived if the registrant works for a public accounting firm currently enrolled in a peer review program with an approved sponsoring organization or if the registrant is a sole proprietor currently enrolled in a peer review program with an approved sponsoring organization. Additional substantive amendments make it clear the Board may verify in the CPE Audit that individuals claiming an exemption to the CPE requirement are entitled to do so, clarify that registrants must request an exemption each year and that the Board may deny exemption requests any time it is determined an individual is not eligible for the exemption, and provide that the Executive Director or his/her designee may grant extensions for good cause on a case by case basis. Standards for Continuing Professional Education (CPE) Programs, substantive amendments correct a reference and make permanent the provisions currently in effect under the emergency rule promulgation effective August 6, 2009, that allow registrants to take self-study CPE courses from sponsors registered with any NASBA registry, not just with NASBA's National Registry of CPE Sponsors as provided in the last permanent rule promulgation. The provision allows for Quality Assurance Services (QAS) registered sponsors. Peer review amendments require the submission of documents required by the Board under this subsection to be sent by electronic means by secure website unless the sponsoring organization does not have access to the website. Substantive amendments to the reinstatement rules provide for a national criminal history record check in accordance with an amendment to Section 15.9 of the Act effective April 14, 2009, and that evaluation and approval of applications for reinstatement shall be performed by the Executive Director or his or her designee. Amendments to the enforcement procedures create a specific rule violation for failure to cooperate with an investigation conducted by the Board. Amendments to the rules of professional conduct separate the subsections under "Other responsibilities and practices" into two separate sections. The firm name section provides further protection of the public by clarifying what constitutes a misleading firm name. This section regarding firm names does not affect firms licensed by the Board prior to the effective date of this section but does apply to any change in legal organization or name that occurs after the effective date of this section. The written communications section provides that a certificate or license holder, firm, candidate, or applicant must provide copies of any requested documents and shall substantively respond in writing to any communications from the Board requesting a response within thirty (30) days of the mailing of such request or communication by registered or certified mail, to the last address of the registrant known to the Board. Amendments to audits performed in accordance with government auditing standards are not substantive and are consistent with other non-substantive changes made throughout the rules regarding changing the term "on a form" to "in a format," which applies to both paper forms and electronic filings.

**CONTACT PERSON:**

S. Nicole Prieto Johns (405) 521-2397

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10:15-1-2. Definitions

In addition to the terms defined in the Oklahoma Accountancy Act, the following words or terms shall be applied when implementing that Act and, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

**"Accounting information system (AIS)"** means a subsystem of the management information system within an organization. The accounting information system collects and records financial and related information used to support management decision making and to meet both internal and external financial reporting requirements. An AIS system includes, but is not limited to, the accounting for transactions cycles such as revenues and receivables, purchases and payables, payroll, inventory, cash receipts and cash disbursements, and related data based systems.

**"Act"** means the Oklahoma Accountancy Act, Oklahoma Statutes, Title 59, §§ 15.1 through 15.38, dealing with the practice of public accountancy in Oklahoma.

**"Active"** when used to refer to the status of a registrant, describes an individual who possesses a certificate or license

and who has not otherwise been granted "retired" or "inactive" status.

**"Advanced"** means the learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

**"Basic"** means the learning activity level most beneficial to registrants new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

~~**"Close relative"** means a non-dependent child, stepchild, brother, sister, grandparent, parent, parent-in-law, and their respective spouses of a registrant. Close relatives of the registrant do not include the brothers and sisters of the spouse of the registrant.~~

**"Code"** means Title 10 of the Oklahoma Administrative Code.

**"Compensation"** means the receipt of any remuneration of any kind for public accounting services, including but not limited to salary, wages, bonuses or receipt of any tangible or intangible thing of value.

**"Continuing Professional Education"** means the set of activities that enables registrants to maintain and improve their professional competence. It is an integral part of the lifelong learning required to provide competent service. ~~to the public. The set of activities that enables registrants to maintain and improve their professional competence.~~

**"CPE"** means continuing professional education.

**"CPE credit"** means fifty minutes of participation in a group, independent study or self-study program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

**"CPE program sponsor"** means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term CPE program sponsor may include associations of CPAs or PAs, whether formal or informal, as well as employers who offer in-house programs.

~~**"Domicile"** means an individual's place of residence.~~

~~**"Engagement team"** means auditors who are required to exercise significant judgment in the audit process and would include positions where the auditor was the person in charge of the fieldwork up through partner on the engagement.~~

**"Evaluative feedback"** means specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

**"Examining Authority"** means the agency, board or other entity, of the District of Columbia, or any state or territory of the United States, entrusted with the responsibility for the governance, discipline, registration, examination and award of certificates, licenses or conditional credits for certified public accountants or public accountants and the practice of public accountancy in said jurisdictions.

**"Generally accepted accounting principles"** means the same as ~~"Statement on Auditing Standards No. 69, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Independent Auditor's Report" adopted in 1992, and issued by the American Institute of Certified Public Accountants and subsequent amendments.~~ Financial Accounting Standards Board (FASB) Accounting Standards Codification Section 105, "Generally Accepted Accounting Principles."

**"Generally accepted auditing standards"** means those standards which are used to measure the quality of the performance of auditing procedures and the objectives to be obtained by their use. Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States, Standards of the Public Company Accounting Oversight Board (PCAOB) and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

**"Group program"** means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

**"Immediate family members"** means the registrant's, or his/her spouse's, lineal and collateral heirs.

**"Inactive"** used to refer to the status of a registrant who is exempt from complying with the CPE requirements as provided in Subchapter 10:15-30-8(1)(B),(C),(D), and (E). However, inactive status does not preclude volunteer services for which the inactive registrant receives no direct or indirect compensation so long as the inactive registrant does not sign any documents related to such services as a CPA or PA.

**"Independent study"** means an educational process designed to permit a participant to learn a given subject under a learning contract with a CPE program sponsor.

**"Instructional methods"** means delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

**"Intermediate"** means learning activity level that builds on a basic program, most appropriate for registrants with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

**"Internet-based programs"** means a learning activity, through a group program or a self-study program, that is designed to permit a participant to learn the given subject matter via the Internet. To qualify as either a group or self-study program, the Internet learning activity must meet the respective standards.

**"Learning activity"** means an educational endeavor that maintains or improves professional competence.

**"Learning contract"** means a written contract signed by an independent study participant and a qualified CPE program sponsor prior to the commencement of the independent study that:

(A) Specifies the nature of the independent study program and the time frame over which it is to be completed, not to exceed 15 weeks.

(B) Specifies that the output must be in the form of a written report that will be reviewed by the CPE program sponsor or a qualified person selected by the CPE program sponsor.

(C) Outlines the maximum CPE credit that will be awarded for the independent study program, but limits credit to actual time spent.

**"Learning objectives"** means specifications on what participants should accomplish in a learning activity. Learning objectives are useful to program developers in deciding appropriate instructional methods and allocating time to various subjects.

**"Learning plans"** means structured processes that help registrants guide their professional development. They are dynamic instruments used to evaluate and document learning and professional competence development. This may be reviewed regularly and modified, as registrants' professional competence needs change. Plans include:

(A) A self-assessment of the gap between current and needed knowledge, skills, and abilities;

(B) A set of learning objectives arising from this assessment; and

(C) Learning activities to be undertaken to fulfill the learning plan.

**"Licensee"** means an individual designated as a CPA, PA, or equivalent designation in another state.

**"Management information system (MIS)"** means a computer or manual system, or a group of systems, within an organization that is responsible for collecting and processing data to ensure that all levels of management have the information needed to plan, organize, and control the operations of the organization and to meet both internal and external reporting requirements.

~~**"NASBA"** means National Association of State Boards of Accountancy.~~

~~**"New CPAs and PAs"** refers to individuals who are initially certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction.~~

**"Office"** means a building, room, or series of rooms which are owned, leased, or rented by an individual or firm for the purpose of holding out or carrying out the practice of public accounting.

**"Organization"** includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, sole proprietorship, an association, two or more persons having a joint or common interest, an employer of CPAs or PAs, or any other legal or commercial entity.

~~**"Other compensation"** means compensation, including remuneration based on a percentage of the amounts involved received by a registrant who is engaged in the practice of public accounting for other than the performance of professional services or for the sale or referral of products or services of third parties.~~

**"Other professional standards"** means those standards as defined by Statements on Management Advisory Services, Statements on Responsibilities in Tax Practice, Statements on Standards for Accounting and Review Services and Statements of Quality Control Standards, where applicable, issued by the American Institute of Certified Public Accountants.

**"Overview"** means learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

~~**"Period of professional engagement"** means the period during which professional services are provided, with such period starting when the registrant begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the registrant or by the client.~~

**"Personal development"** means a field of study that covers such skills as communications, managing the group process, dealing effectively with others, interviewing, counseling, and career planning.

**"Pilot test"** means sampling of at least three independent individuals representative of the intended participants to measure the average completion time to determine the recommended CPE credit for self-study programs.

**"Professional competence"** means having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession. The expertise needed to undertake professional responsibilities and to serve the public interest.

~~**"Program of learning"** means a collection of learning activities that are designed and intended as continuing education and that comply with these standards.~~

**"Reinforcement feedback"** means specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

~~**"Related individual"** includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit sensitive, even though not a position, of significant influence, the registrant should not participate in the engagement.~~

**"Renewal permit"** refers to a permit applied for prior to the expiration of the current permit.

**"Retired"** means a registrant who holds a certificate or license and verifies to the Board that the registrant is no longer practicing public accounting or employed. However, retired

status does not preclude volunteer services for which the retired registrant receives no direct or indirect compensation so long as the retired registrant does not sign any documents related to such services as a CPA or PA.

**"Rolling ~~three-year~~ three (3) calendar year period"** means that ~~the registrant is required to have completed~~ active status registrants are required to complete 120 hours of CPE in any three-calendar-year period ~~beginning January 1, 2006 and going forward~~.

**"Self-study program"** means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs use a pilot test to measure the average completion time from which the recommended CPE credit is determined.

**"Sole Proprietorship"** means an unincorporated business enterprise which is owned entirely by one (1) certificate or license holder.

**"State"** means the District of Columbia, any state, or territory of the United States.

**"Update"** means learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

## SUBCHAPTER 3. REQUIREMENTS TO PRACTICE PUBLIC ACCOUNTANCY

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

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

(1) The examination has been satisfactorily completed;

(2) Evidence, by means established in ~~10:15-37-11(e)~~ Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;

(3) ~~Effective with all initial examination candidates for the November 2003 examination, documentation~~ Documentation ~~must be~~ has been provided that the certification applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as ~~defined~~ described in Title 59, Section ~~15.9.D.~~ 15.9.E of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided ~~on a form~~ in a format prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

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

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

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

(1) The examination has been satisfactorily completed;

(2) Evidence, by means established in ~~10:15-37-11(e)~~ Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;

(3) ~~Effective with all initial examination candidates for the November 2003 examination, documentation~~ Documentation ~~must be~~ has been provided that the licensure applicant has a total of Eighteen hundred (1,800) hours of part time or full time work experience in accounting as ~~defined~~ described in Title 59, Section ~~15.9.D.~~ 15.9.E of the Act. Work experience must have been obtained within the four (4) years immediately prior to filing the application for certification. This requirement may be satisfied through work experience in government, industry, academia, or public practice. Acceptable work experience includes accounting, attest, tax, and related services. Approved documentation of experience must be provided ~~on a form~~ in a format prescribed by the Board. If the work experience is denied, the applicant may file a written request with the Board for a review of the denial. The applicant shall have the burden of demonstrating to the Board that the requirements under this section have been met. Any evidence submitted by the applicant shall be in documentary form, and

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

### 10:15-3-4. Permits to practice

In addition to a license or certificate, any registrant practicing public accounting or providing expert witness testimony in any Oklahoma or Federal Court located in Oklahoma shall be required to have a valid permit with exceptions as allowed in 10:15-3-5.

## SUBCHAPTER 18. COMPUTER-BASED EXAMINATION

### 10:15-18-1. Applications for examination

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

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

(~~b~~c) A candidate's application for examination will not be considered filed until the ~~form~~ application in a format prescribed by the Board and the application fee as provided ~~by §15.10A of the Act,~~ in Subchapter 27 are received by the Board.

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

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

**10:15-18-4. Educational requirements**

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

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

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

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

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

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

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

(d) ~~On and after July 1, 2003, one~~ One hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.C. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in ~~Code~~ 10:15-1-2, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.C.

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

**10:15-18-7. Board review of denied applications**

(a) The Board shall consider all requests for review of denied applications.

(b) The issues considered for review shall include, but not be limited to, the statutory eligibility requirements and rules upon which the denial of the application was based.

(c) The qualification applicant or candidate who has requested the review shall be notified in writing of the Board's decision. If the denial is sustained by the Board, the written notice shall include the reason(s) for sustaining the denial.

(d) If the denial of the application is sustained, and the qualification applicant or candidate is not satisfied with the decision of the Board, the qualification applicant or candidate may request in writing a public hearing before the Board. Such request shall be granted only if the qualification applicant or candidate can provide additional information to the Board which was not previously available to the Board at the time of the initial evaluation, ~~or~~ review, or denial. Any additional evidence shall be in documentary form. If any additional evidence is to be presented by oral testimony, a written synopsis of that oral evidence shall accompany the request for a public hearing.

(e) If the Board grants a public hearing to the qualification applicant or candidate, the hearing may be held in conjunction with the next regular meeting of the Board or at a special meeting of the Board.

**10:15-18-10. Procedures to request review of the grading process**

(a) A candidate may request a review or appeal of ~~his or her nonpassing~~ non-passing examination scores with the appropriate review or appeal organization.

(b) The cost of the review or appeal shall be paid by the candidate.

**10:15-18-11. Requests for extension of time**

(a) A candidate may apply for an extension of the time limits set by this Subchapter if the candidate is called to active military service or becomes incapacitated as a result of illness or injury.

(b) The candidate shall file a written request with the Board for an extension after receiving the call to active military service and shall furnish a copy of the orders to active military service or furnish written evidence of incapacitation or injury.

(c) Within sixty (60) calendar days after the candidate is discharged from active military service, the candidate shall furnish the Board with copies of the discharge orders. The candidate shall then be required to take one (1) test section for which the candidate is eligible within the next six (6) months following the candidate's discharge from military service or rehabilitation from ~~illness~~ incapacitation or injury.

(d) The candidate shall file a written request with the Board for an extension should serious illness or injury incapacitate

the candidate to the extent that the illness or injury prevents the candidate from examination testing. The candidate shall furnish a copy of an original and signed diagnosis directly related to the injury or illness from a licensed, qualified physician. The professional must provide a precise statement setting forth the determination that the illness or injury precludes the candidate from testing and the time period involved. The Board will follow federal Health Insurance Portability and Accountability Act (HIPAA) guidelines.

**10:15-18-12. Application for transfer of credits**

(a) An individual who has taken the AICPA Uniform Certified Public Accountant Examination in any jurisdiction may apply to the Board for the transfer of credits granted.

(b) The application shall be in such ~~form~~ format as the Board prescribes.

(c) The applicant shall submit written verification of the valid credits from the examining authority responsible for administering the examination at which such credits were earned.

(d) The applicant shall meet all other eligibility requirements established to take the examination in Oklahoma at the time of filing the application.

**10:15-18-14. Failure to apply to take succeeding examinations**

If a candidate fails to sit for a test section for eighteen (18) months after approval, or fails to sit for one (1) test section for an eighteen (18) month period, that individual shall no longer be considered a candidate and must reapply as ~~an~~ a qualification applicant~~. The individual shall~~ and meet the ~~current~~ qualification requirements in effect ~~to reapply~~ at the time of making application.

**10:15-18-15. Cheating**

(a) Cheating by a candidate in applying for, taking or subsequent to the examination will invalidate any score earned by the candidate on any or all test sections of the examination and may warrant summary expulsion from the test site and disqualification from taking the examination for a specified period of time or indefinitely.

(b) For purposes of this subsection, the following actions or attempted activities, among others, may be considered cheating:

(1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) Communication between candidates inside or outside the test site or copying another candidate's answers while the examination is in progress;

(3) Communication with others inside or outside the test site while the examination is in progress;

(4) Substitution of another person to sit in the test site in the stead of a candidate;

(5) Reference to crib sheets, textbooks or other material or electronic media (other than that provided to the candidate as part of the examination) inside or outside the test site while the examination is in progress;

(6) Violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so, or otherwise participating in the collection of test items for use, redistribution or sale;

(7) Retaking or attempting to retake a test section by an individual holding a valid certificate or by a candidate who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to Board order or unless the individual has been expressly authorized by the Board to participate in a "secret shopper" program.

(c) In any case where it appears that cheating has occurred or is occurring, the Board or its representatives may either summarily expel the candidate involved from the examination or move the candidate to a position in the test center away from other examinees where the candidate can be watched more closely.

(d) In any case where the Board believes that it has evidence that a candidate has cheated on the examination, including those cases where the candidate has been expelled from the examination, the Board shall conduct an investigation and may conduct a hearing consistent with the requirements of the Administrative Procedures Act following the examination session for the purpose of determining whether or not there was cheating and, if so, what remedy should be applied. In such proceedings, the Board's decision shall include, but not be limited to:

(1) Whether the candidate shall be given credit for any portion of the examination completed in that session; and

(2) Whether the candidate shall be barred from taking the examination and, if so, for what period of time.

(e) If the candidate is allowed to continue taking the examination, the Board may:

(1) Admonish the candidate;

(2) Require the candidate be seated in a segregated location for the rest of the examination;

(3) Keep a record of the candidate's seat location and identifying information, and the names and identifying information of the candidates in close proximity of the candidate; and

(4) Notify NASBA, the AICPA and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.

(f) In any case in which a candidate is refused credit granted for any test section of an examination taken, disqualified from taking any test section, or barred from taking the examination in the future, the Board may provide the findings and actions taken to any other jurisdiction to which the candidate may apply for the examination.

**10:15-18-16. Security and irregularities**

Notwithstanding any other provisions under these rules, the Board may postpone scheduled examinations, the release of scores, or the issuance of certificates due to:

(1) A breach of examination security;

(2) Unauthorized acquisition or disclosure of the contents of an examination;

(3) Suspected or actual negligence, errors, omissions, or irregularities in conducting an examination; or

(4) For any other reasonable cause or unforeseen circumstance.

## SUBCHAPTER 21. RECIPROCITY

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

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

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

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

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

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

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

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

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

(b) The application for a reciprocal certificate or license shall be filed within one hundred twenty (120) days of employment with a public accounting firm located in this state or engaging in the practice of public accounting in Oklahoma.

(c) An application for a reciprocal certificate or license, in a format prescribed by the Board, will not be considered filed until the application, all required documents as proof that the applicant has satisfied the eligibility requirements, and fees are received by the Board.

**10:15-21-3. Evaluation of qualifications**

Evaluation and approval or denial of the application for a reciprocal certificate or license shall be performed by the Executive Director or his or her designee.

**10:15-21-5. Review of applications by Board**

(a) The Board shall consider all requests for review of denied applications for reciprocity.

(b) The issues considered for review shall include but not be limited to, the statutory eligibility requirements and rules upon which the denial of the application was based.

(c) The applicant who has requested the review shall be notified in writing of the decision by the Board. If the denial is sustained by the Board, the written notice shall include the reason(s) for sustaining the denial.

(d) If the denial of an application is sustained, and the applicant is not satisfied with the decision of the Board, an applicant may request, in writing, a public hearing before the Board. Such request shall be granted only if the applicant can provide additional information to the Board which was not previously available to either the Executive Director, his or her designee, or the Board at the time of the initial evaluation or review. Any additional evidence shall be in documentary form. If any additional evidence is to be presented by oral testimony, a written synopsis of that oral evidence shall accompany the request for a public hearing.

(e) If the Board grants a public hearing to the applicant, the hearing may be held in conjunction with the next regular meeting of the Board or at a special meeting of the Board.

## SUBCHAPTER 22. SUBSTANTIAL EQUIVALENCY

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

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

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

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

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

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

~~(3) In lieu of the procedure set out in paragraph (a)(2), at anytime prior to entering this State, an individual, directly or through the individual's firm, may be included in a master notice to all participating substantially equivalent jurisdictions including the Board by giving notice to the NASBA National Qualification Appraisal Service or other comparable service designated by the Board; and, provided the firm accepts responsibility for each individual's compliance with the accountancy laws and rules of this State for as long as the individual is included in the firm's master notice, keeps the master notice reasonably current and renews the notice annually. In any event, the individual seeking practice privileges is responsible for complying with the requirement that the notification required under this Section has been made.~~

~~(4) Staff will inform the individual if he/she must withdraw based on findings. Withdrawal must be immediate. Individuals may appeal, and practice in this State may continue during the appeal process.~~

~~(b) Notice shall be renewed annually on the anniversary date of the original notice for so long as the individual intends to use Substantial Equivalency privileges in this State.~~

~~(c) Notice shall be amended within thirty (30) days after the individual changes his/her principal place of business or within 30 days after the certificate or license has been denied, revoked, or suspended in any jurisdiction.~~

~~(d) A non-resident individual shall not be deemed to have entered this State for purposes of the Section and notice is not required under this Section if the individual's contact with this State is limited to any of the following activities:~~

~~(1) teaching either a college or continuing professional education course,~~

~~(2) delivering a lecture,~~

~~(3) moderating a panel discussion,~~

~~(4) rendering professional services to the individual's employer or to persons employed by the individual's employer, including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients.~~

~~(e) No notice shall be required for a certificate or license holder of a jurisdiction that does not require notice by an Oklahoma certificate or license holder entering that jurisdiction to practice public accounting.~~

## SUBCHAPTER 23. REGISTRATION

### 10:15-23-1. Registration of individuals

~~(a) On or before July 31, all individuals shall register biennially as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board on a form prescribed by the Board.~~

~~(b) All registration statements shall be accompanied by a registration fee.~~

~~(1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.~~

~~(2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.~~

~~(3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.~~

~~(4) The Board shall use its discretion in determining the conditions required for retirement or disability.~~

~~(c) In addition to the regular registration fee paid by an individual, there shall be a fee for registering after July 31 but within twelve (12) months after the lapse date of the certificate or license.~~

~~(d) In addition to the regular registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.~~

(a) Beginning in 2010, the Board will begin the implementation of an annual registration process based on each registrant's birth month. All individuals shall register annually on staggered dates of the last day of the individuals' birth months as provided in Section 15.14 of the Oklahoma Accountancy Act and shall file a registration statement with the Board in a format prescribed by the Board. The certificate or license shall be considered lapsed after the last day of the birth month.

(b) All registration statements shall be accompanied by a registration fee.

(1) In the case of a registrant who has reached the age of sixty-five (65), the registration fee shall be reduced, as provided in Subchapter 27.

(2) In the case of a registrant who is disabled beyond gainful employment, as provided in Section 15.14 of the Oklahoma Accountancy Act, the registration fee may be waived for the period of disability.

(3) All requests for a reduction or waiver of the registration fee shall be addressed to the Board, in writing.

(4) The Board shall use its discretion in determining the conditions required for disability.

(c) In addition to the registration fee paid by an individual, there shall be a fee for registering after the last day of the renewal month but within twelve (12) months after the lapse date of the certificate or license.

(d) In addition to the registration fee paid by an individual, there shall be a fee for registering later than twelve (12) months following the lapse date of the certificate or license.

(e) Evaluation of qualifications and approval of registrations filed by individuals shall be performed by the Executive Director or his/her designee, subject to the review and supervision of the Board.

(f) Denial of individual registrations shall be by the Board.

(g) During the period when a certificate or license is suspended by the Board, the suspended registrant shall be required to file annually with the Board an informational report ~~on a form~~ in a format prescribed by the Board. No fee shall be required with such filing.

~~(h) Biennial filings mailed to the Board office by United States postal service with a postmark on or before July 31 shall be deemed timely filed.~~

(h) Renewal forms delivered to the Board office via carrier service with a postmark or ship date on or before the set expiration date as provided in this subsection shall be deemed timely filed.

### 10:15-23-2. Registration of firms

(a) On or before ~~May 31~~ June 30 of each year all firms of certified public accountants and all firms of public accountants qualified to register shall file a registration statement with the Board ~~on a form~~ in a format prescribed by the Board.

(b) The registration statement filed on behalf of a firm of certified public accountants shall be made by a partner or shareholder.

(c) The statement filed on behalf of a firm of public accountants shall be made by a partner or shareholder.

(d) Evaluation of qualifications and approval of registrations filed by firms shall be performed by the Executive Director or his/her designee, subject to the review and supervision of the Board.

(e) Denial of firm registrations shall be by the Board.

(f) Except for sole proprietorships, all registration statements filed on behalf of a firm shall be accompanied by an

annual registration fee and the applicable permit fee for the firm, as provided in Subchapter 27.

~~(g) Firm filings mailed to the Board office by United States postal service with a postmark on or before May 31 shall be deemed timely filed.~~

(g) Firm filings delivered to the Board office via carrier service with a postmark or ship date on or before June 30 shall be deemed timely filed.

**10:15-23-3. Amendments to registrant status**

(a) Should a registrant's CPA certificate or PA license be revoked for failure to register under the provisions of Section 15.14.F.2 of the Act and the Board later learns the registrant was deceased prior to the administrative revocation, the registrant's status will be changed from revoked to deceased provided documentation stating the registrant is deceased is received by the Board.

(b) Should a disabled registrant's CPA certificate or PA license be revoked for failure to register under the provisions of Section 15.14.F.2 of the Act and the Board later learns the registrant was incapacitated at the time of the administrative revocation, the registrant's status may be changed from revoked to disabled provided documentation is received by the Board verifying the registrant was incapacitated and unable to file the appropriate registration form prior to the revocation.

## SUBCHAPTER 25. PERMITS

**10:15-25-1. Term of permit**

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

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

(a) Permits renewed on a timely basis shall bear a date of issue of July 1 for individuals and June 1 for firms except sole proprietorships. All other permits, except for ~~b~~ (d) and ~~c~~ (e) below, shall bear a date of issue based on the date the acceptable application for a permit is received in the Board office.

(b) Except for sole proprietorships, firm permits renewed on a timely basis shall bear a date of issuance of July 1 and shall expire on the following June 30.

(c) Sole proprietorship firm permits shall bear the same date of issuance and expiration as the sole proprietor's individual permit.

(~~b~~d) When the Board has granted an extension ~~in accordance with 10:15-30-8(3)~~, the date of issuance will be determined on a case by case basis.

(~~c~~e) If an application for a permit which has been returned to the holder for correction or completion of information is returned to the Board in an acceptable ~~form~~ format within thirty (30) calendar days of the first denial, the permit shall bear the date on which the permit application was first received in the office of the Board. Failure to resubmit an acceptable application within the thirty-day period shall cause the permit to be dated with the date the acceptable application is received in the Board office.

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

**10:15-25-3. Individual permit**

~~(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.~~

(~~b~~a) Any registrant engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit, except for a licensed attorney providing tax services who does not display the certificate or license and does not have any reference thereto on professional stationery, business cards, or printed or electronic format. However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. An individual who meets the definition of retired or inactive status as defined in the Code or the Act is not considered to be in the practice of public accounting. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements.

~~(c) Each partner, shareholder, owner, member and certified or licensed employee of a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.~~

(~~d~~b) The application for renewal of a permit shall be filed with the Board ~~on a form~~ in a format prescribed by the Board prior to the expiration of the permit. ~~currently held and no later than June 30.~~

(~~e~~c) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(~~f~~d) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

(~~g~~e) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.

(f) Effective January 1, 2010, the issue dates and expiration dates for individual permits to practice public accounting, as provided in this subchapter, shall be adjusted according to the schedule provided for in 10:15-25-3(g) below.

(g) The Board shall provide a schedule of expiration dates and prorated fees for purposes of transitioning into the new staggered annual renewal dates.

**10:15-25-4. Firm permits**

(a) Each firm permit shall have a maximum term of one (1) year unless extended by the Board and shall expire on ~~May 31~~ June 30 following the date of issuance.

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

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

(d) A firm is required to hold a valid permit if that firm is serving Oklahoma clients–from outside this state ~~unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.~~ only if such firm is providing services under the provision of Section 15.12A.A.5 of the Act.

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

**10:15-25-5. Transitional period for individuals entering and re-entering public practice**

(a) A registrant who immediately gives written notice to the Board upon changing to public accounting status from nonpublic status may be granted a period of sixty (60) days from the date the registrant begins the practice of public accounting in which to complete the continuing education credit required for issuance of the permit. Such courses shall comply with the criteria set forth in Subchapter 30. The procedure for administering the code is as follows:

(1) The registrant shall furnish a letter if self employed or from the employer, if employed, attesting to the beginning date of the registrant's self employment or employment, and shall furnish a list of courses in which the registrant has enrolled during the 60-day period. The list should include course title, name of sponsor, CPE credits to be awarded, and approximate date course is to be completed.

(2) Upon receipt of the written notification, the Executive Director or his/her designee shall review the request for sufficiency of information and shall ascertain whether the registrant is to be granted the transitional CPE compliance period.

(3) The registrant shall be notified by letter within five (5) working days whether the transitional period has been granted. Such letter shall grant permission for the registrant to practice public accounting, without penalty, for the sixty (60) day transitional period or shall state the specific reason why the transitional period was not granted. A copy of the letter notifying the registrant that the transitional period was not granted will also be mailed to the registrant's employer, if employed.

(b) If a registrant is unable to qualify for the permit within the sixty (60) days provided for herein, the registrant may apply in writing one time to the Board for an additional thirty (30) day period in which to qualify for the permit. The procedure for doing so is as follows:

(1) The written petition shall set forth the reason(s) for the registrant's inability to satisfy the CPE requirement within the sixty (60) days previously granted. The petition shall set forth the precise manner in which the registrant will satisfy the requirement for the issuance of a permit if the additional thirty (30) days is granted.

(2) Upon receipt of the petition from the self employed registrant or the employer, the Executive Director or his/her designee shall decide whether the registrant is to be granted the additional thirty (30) days in which to comply.

(3) If granted, the thirty (30) day period shall commence following the last day of the sixty (60) day period. The registrant and the employer, if applicable, shall be notified by the Board within five (5) working days following the Board's receipt of the employer's petition.

(4) If the additional thirty (30) day period is denied, the registrant and the employer, if applicable, will be informed in writing of the specific reason(s) for the denial within five (5) working days following receipt of the petition.

(5) Upon denial of the additional thirty (30) day period, the registrant and the employer, if applicable, will be notified in writing that the registrant must cease practicing public accounting until such time as the registrant has been issued the permit.

(c) Approval by the Board of such request(s) shall authorize the registrant to practice public accounting during the time period(s) referred to in this Subchapter.

## SUBCHAPTER 27. FEES

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

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

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

**10:15-27-8. Registration**

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

~~(1) In addition to the regular registration fee there shall be a fee for registering after July 31, but within twelve (12) months after the lapse date of the certificate or license, of One Hundred Dollars ($100.00).~~

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

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

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

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

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

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

**10:15-27-9. Permit**

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

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

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

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

**10:15-27-9.1. Proration of fees for transition to birth month renewals**

The Board shall provide a schedule of prorated fees for purposes of transitioning into the new staggered annual renewal dates.

## SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

**10:15-30-1. Burden of proof**

The burden of proof rests solely upon certificate and license holders to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, their CPE exempt status or that all continuing education courses reported meet all the requirements as to content and subject matter related to the profession as provided in subchapter 32 of this Code.

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

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

(b) Each certificate or license holder shall annually report CPE for the preceding calendar year or claim an exemption to the CPE requirement for the preceding calendar year. This reporting shall take place in conjunction with the filing of the certificate or license holder's annual registration renewal based on the certificate or license holder's birth month. The Board shall provide a schedule for purposes of transitioning to the new staggered annual birth month renewal/reporting dates.

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

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

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

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

(1) Date the in-attendance course was completed;

(2) Date a self-study course was completed and evidenced by the date of certified mailing or date of facsimile transmission to the program sponsor;

(3) Date an internet self-study course is transmitted to the program sponsor.

(f) At the time of completing each course, or within sixty (60) days thereafter, the certificate or license holder shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the ~~compliance period~~ calendar year in which the program is completed and shall include the specific information set forth in the Board's CPE Standards in 10:15-32-6(a).

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

(1) course descriptions;

(2) course outlines; and

(3) course objectives.

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

(i) Effective January 1, 2011, if a certificate or license holder is actively involved in the supervision or review of compilation engagements for third party reliance, the certificate or license holder must complete a minimum of four (4) credits of CPE in the subject area of compilation engagements in each calendar year. This requirement shall be waived if:

(1) the certificate or license holder works for a public accounting firm currently enrolled in a peer review program with an approved sponsoring organization; or

(2) the certificate or license holder is a sole proprietorship currently enrolled in a peer review program with an approved sponsoring organization.

**10:15-30-6. Verification of CPE credit or exemption**

(a) The Board may periodically conduct verification of certificate and license holders' compliance with CPE requirements or their eligibility to claim an exemption to the CPE requirements. ~~the CPE credit reported by certificate and license holders.~~

(b) Such verification shall be conducted by requesting the certificate or license holder to submit to the Board the documentation and evidence required to be retained by the certificate or license holder.

(c) If a CPE course is not accepted for credit, the certificate or license holder will be notified and the Board may grant a period of time for the certificate or license holder to correct the deficiency.

(d) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.

(e) Certificate and license holders shall automatically be included in the subsequent verification of CPE in any of the following instances:

(1) If the certificate or license holder failed to satisfactorily comply with CPE requirements as determined by the Board;

(2) if a certificate or license holder has been the subject of an enforcement action by the Board during the preceding credit verification.

(f) Registrants are required to substantiate credit reported to the Board, regardless of whether the registrant continues to be required to hold a permit.

(g) Current valid credit may be substituted for disallowed credit if offered to the Board by the registrant within sixty (60) days, or a number of days as determined by the Board, following notification of a credit deficiency.

(h) Before enforcement action is taken as the result of a CPE audit deficiency, the Board will issue a second request for documents and allow sixty (60) days, or a number of days as determined by the Board, for compliance with the request.

**10:15-30-8. Exceptions to CPE reporting requirements**

All certificate and license holders must comply with CPE reporting requirements unless exempted below.

(1) The Board exempts from the requirements of CPE the following classifications:

(A) Retired certificate or license holders who are no longer employed or practicing public accounting;

(B) Certificate or license holders who are on active military service;

(C) Disabled certificate or license holders who are no longer employed or practicing public accounting due to medical circumstances;

(D) Certificate or license holders who are (A) not employed due to circumstances other than retirement, military service or disability or (B) certificate or license holders employed but not performing any services associated with accounting work. For purposes of this section, the term "associated with accounting work" shall include but is not limited to the following:

(i) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance or audit or preparing personal financial statements or investment plans; or

(ii) representing to the public, including an employer, that the registrant is a CPA or PA in connection with the performance or sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, office, website or any electronic media.

(E) Other good cause as determined by the Board on an individual basis.

(2) In order to be granted an exemption based on 10:15-30-8(1) above, certificate and license holders must request an exemption each year in a format prescribed by the Board as required in 10:15-30-5(b). An exemption may be denied at any time if it is determined that the certificate or license holder was not eligible for the exemption claimed.

(~~2~~3) ~~The Board will consider granting an exemption from the CPE requirement on a case by case basis if:~~ In order for an exemption to be granted under 10:15-30-8(1) above, the Board may require the following affidavits:

(A) ~~a~~ The registrant completes and forwards to the Board a sworn affidavit indicating that the registrant will not be associated with accounting work during the period for which the exemption is requested. A registrant who has been granted this exemption and who re-enters the work force shall be required to comply with 10:15-30-9; and

(B) ~~a~~ The registrant forwards to the Board a sworn affidavit from the employer or organization indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the registrant's immediate supervisor that there is no reliance on the registrant's expertise as a CPA or PA.

(~~3~~4) ~~Unless otherwise exempted for good cause on a case by case basis.~~ The Executive Director or his/her designee may grant extensions or exemptions for good cause on a case by case basis, and a report of such actions shall be provided to the Board.

(~~4~~5) A certificate or license holder exempt from the requirement of CPE by reason of retirement or inactive status must indicate "retired" or "inactive" if they use their "CPA" or "PA" designation in any manner.

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

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

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

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

(B) within one year of the date the registrant returns to active status.

(2) For each calendar year in which the registrant claimed an exemption or failed to report CPE pursuant to the CPE requirement, the registrant must complete forty (40) hours of CPE.

(3) The maximum number of CPE hours required to return to active status shall be one hundred twenty (120) hours, including at least four (4) hours of professional ethics.

(4) If the number of CPE hours required to return to active status is fewer than one hundred twenty (120), two (2) hours of professional ethics must be included.

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

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

(A) Sixty (60) days from the date of the return to active status for registrants needing forty (40) or fewer hours of CPE; and

(B) One year from the date of the return to active status for any additional CPE above the (40) hours described in (A) above.

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

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

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

**10:15-32-1. Standards for certificate and license holders**

(a) All certificate and license holders should participate in learning activities that maintain and/or improve their professional competence.

(1) Selection of learning activities should be a thoughtful, reflective process addressing the individual registrant's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(2) Registrants' fields of employment do not limit the need for CPE. Those performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(3) Acceptable subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the registrant's professional competence.

(4) To help guide their professional development, registrants may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development. It should be reviewed

periodically and modified as professional competence needs change.

(b) Certificate and license holders should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation and Standards for CPE Program Reporting.

(1) Certificate and license holders are responsible for compliance with all applicable CPE requirements, rules, and regulations of state licensing bodies, other governmental entities, membership associations, and other professional organizations or bodies. They should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(2) Periodically, registrants participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If registrants propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to state licensing bodies and/or all other professional organizations or bodies that the learning activity is equivalent to one which meets all these Standards.

(c) Registrants are responsible for accurate reporting of the appropriate number of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including:

(1) name and contact information of CPE program sponsor;

(2) title and description of content;

(3) date(s) of program; and

(4) number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(d) To protect the public interest, regulators require CPAs and PAs to document maintenance and enhancement of professional competence through periodic reporting of CPE. For convenience, measurement is expressed in CPE credits. However, the objective of CPE must always be maintenance/enhancement of professional competence, not attainment of credits. Compliance with regulatory and other requirements mandates that registrants keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements, a reasonable policy is to retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(e) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(1) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;

(2) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;

(3) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;

(4) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;

(5) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and

(6) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer ~~on a form~~ in a format prescribed by the Board supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(f) Individuals who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(g) Registrants may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(h) Registrants may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(1) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(2) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(A) All the requirements of the independent study as outlined in the learning contract are met;

(B) The CPE program sponsor reviews and signs the participant's report;

(C) The CPE program sponsor reports to the participant the actual credits earned; and

(D) The CPE program sponsor provides the participant with contact information.

(3) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(4) Complete the program of independent study in 15 weeks or less.

(j) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

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

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

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

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

(1) offered by sponsors registered with NASBA ~~NASBA's National Registry of CPE Sponsors~~; or

(2) courses offered by the AICPA or other such organizations as determined by the Board.

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

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

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

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

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

(A) Semester System 15 credits; and

(B) Quarter System 10 credits;

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

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

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

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

(1) offered by sponsors registered with NASBA ~~NASBA's National Registry of CPE Sponsors~~; or

(2) courses offered by the AICPA or other such organizations as determined by the Board.

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

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

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

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

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

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

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

**10:15-32-6. Standards for CPE Program Reporting**

(a) CPE program sponsors must provide program participants with documentation of their participation, which includes the following:

(1) CPE program sponsor name and contact information;
(2) Participant's name;
(3) Course title;
(4) Course field of study;
(5) Date offered or completed;
(6) Type of instructional/delivery method used;
(7) Amount of CPE credit recommended; and
(8) Verification by CPE program sponsor representative.

(b) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(1) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor;
(2) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination;
(3) For instruction credit, a certificate or other verification supplied by the CPE program sponsor;
(4) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received;
(5) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college; and
(6) For published articles, books, or CPE programs,
(A) A copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor; and
(B) A statement from the writer ~~on a form~~ in a format prescribed by the Board supporting the number of CPE hours claimed.

(c) CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(1) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to:
(A) Records of participation;
(B) Dates and locations;
(C) Instructor names and credentials;
(D) Number of CPE credits earned by participants; and
(E) Results of program evaluations.
(2) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.
(3) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:
(A) When the pilot test was conducted;
(B) The intended participant population;
(C) How the sample was determined;
(D) Names and profiles of sample participants; and
(E) A summary of participants' actual completion time.

## SUBCHAPTER 33. PEER REVIEW

**10:15-33-6. Reporting to the board**

(a) ~~Through December 31, 2008, any~~ Any report or document required to be submitted under this subsection shall be filed with the Board~~, including by electronic means,~~ within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:

(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or
(2) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and
(3) A copy of the Public Company Accounting Oversight Board (PCAOB) report, if applicable.

(b) Any report or document required to be submitted under this subsection shall be made available to the Board by a secure website or other secure means unless the sponsoring organization does not have access to a secure website or other secure means. In such case the report may be directly submitted by the firm.

(~~b~~c) ~~Effective January 1, 2009, any~~ Any report or document required to be submitted under this subsection shall be filed with the Board~~, including by electronic means,~~ within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:

(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is pass; or
(2) A copy of the report, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is pass with deficiencies or fail.

(~~c~~d) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

## SUBCHAPTER 35. REINSTATEMENT

**10:15-35-1. Application for reinstatement**

(a) Upon application ~~on a form~~ in a format prescribed by the Board an individual may request reinstatement of a canceled, suspended, or revoked certificate or license.

(b) ~~The applicant shall be of good moral character.~~ Evidence, by means established in Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;
(c) In addition to the application fee the applicant shall pay the required registration fees and permit fee, if applicable, as well as all costs and fines assessed by the Board which remain unpaid at the date the application is filed.
(d) Individuals applying for the reinstatement of a certificate or license must meet the requirements to return to active status in 10:15-30-9 if they will be providing any services associated with accounting work.
(e) Individuals applying for the reinstatement of a certificate or license must show evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

**10:15-35-2. Evaluation of applications for reinstatement**

(a) Evaluation and approval of applications for reinstatement shall be performed by the Executive Director or his or her designee.
(b) Denial of applications failing to meet all applicable requirements for reinstatement shall be by the Board.

## SUBCHAPTER 37. ENFORCEMENT PROCEDURES

**10:15-37-9. Violations by certificate or license holders and candidates**

(a) Certificate or license holders, firms, and candidates must cooperate with any investigation conducted by the Board. Failure to cooperate with such an investigation may result in disciplinary action by the Board.
(~~a~~b) In the event the investigation of an allegation against a certificate or license holder or a candidate concludes that the accused is in violation of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board, the Board shall take any action authorized by law, or these rules, to protect the public from the unauthorized or illegal action of the certificate or license holder.
(~~b~~c) All proceedings and related procedures shall be conducted in accordance with the provisions of the Oklahoma Administrative Procedures Act.

## SUBCHAPTER 39. RULES OF PROFESSIONAL ~~CONFLICT~~ CONDUCT

**10:15-39-1. Application**

(a) To the extent not contradicted by rule herein, a registrant shall conform in fact and in appearance to the AICPA Code of Professional Conduct.
(b) To protect the public interest, the Rules of Professional Conduct are based on the premise that the public and the business community rely on sound financial reporting and on professional competence. This premise is inherent in the authorized use of the titles certified public accountant and public accountant, which imposes on persons registered with the Board certain obligations to the public and to others. These obligations which the Rules of Professional Conduct are intended to enforce, include: the obligation to maintain independence and objectivity of thought and action, to strive continuously to improve professional skills, to observe, where applicable, ~~generally accepted accounting principles~~ accounting principles generally accepted in the United States of America, International Financial Reporting Standards (IFRS), governmental auditing standards, standards as set by the Public Company Accounting Oversight Board, and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients or employers in confidence, to uphold the standards of the public accounting profession, and to maintain high standards of personal conduct in all matters affecting fitness to practice public accounting.
(c) Acceptance by a registrant of a certificate or license involves a duty to abide by the Rules of Professional Conduct.
(d) The Rules of Professional Conduct are intended to have application to all kinds of professional services performed in the practice of accounting, including, but not limited to, assurance, attest, auditing, accounting, review and compilation services, tax services, management advisory services and personal financial and investment planning, and intended to apply as well to all certificate and license holders, whether or not engaged in the practice of public accounting, except where the wording of one of the Rules of Professional Conduct clearly indicates that the applicability is more limited.
(e) A registrant who is engaged in the practice of public accounting outside the United States is not subject to discipline by the Board for departing, with respect to such foreign practice, from any of the Rules of Professional Conduct, so long as the conduct is in accordance with the Rules of Professional Conduct applicable to the practice of public accounting in the country in which the registrant is practicing. If the name of a registrant is associated with financial statements in such manner as to imply that the registrant is acting as an independent CPA or PA under circumstances which would entitle the reader to assume that United States practices are followed, the registrant will be expected to comply with auditing standards and accounting principles generally accepted in the United States of America, and other professional standards applicable to the services provided.
(f) In interpreting and enforcing these rules, the Board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions, appropriately authorized ethics committees of professional organizations and other federal and state agencies.

**10:15-39-8. Other responsibilities and practices [REVOKED]**

~~(a) **Firm names.**~~

~~(1) No registrant shall engage in the practice of public accounting using a professional or firm name or designation that is misleading about the legal form of the firm, or about the individuals who are partners, officers, shareholders, or members of the firm, or about any other matter, provided, however, that names of one (1) or more former owners may be included in the name of a firm or its successor.~~

~~(2) A registrant who is a sole proprietor, and not incorporated, who is engaged in the practice of public accounting, shall be allowed to use and employ the designation "d/b/a" with a business name provided the sole proprietor's name is included in the name of the business. No registrant shall use a misleading business name.~~

~~(b) A registrant shall respond in writing to any communications from the Board requesting a response, within thirty (30) days of the mailing of such communication by registered or certified mail, to the last address of the registrant known to the Board.~~

**10:15-39-8.1. Firm names**

(a) A firm name may not contain words, abbreviations or other language that is misleading to the public or that may cause confusion to the public as to the legal form or ownership of the firm.

(b) A firm licensed by the Board may not conduct business, perform or offer to perform services for or provide products to a client under a name other than the name in which the firm is licensed.

(c) A word, abbreviation or other language is presumed to be misleading if it:

(1) is a trade name or assumed name that does not comply with paragraph (d)(1) or (2) of this subsection;

(2) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;

(3) includes the name of a non-owner of the firm;

(4) includes the name of a non-CPA;

(5) states or implies educational or professional attainment not supported in fact;

(6) states or implies licensing recognition for the firm or any of its owners not supported in fact; or

(7) includes a designation such as "and company," "company," "associates," "and associates," "group," or abbreviations thereof or similar designations implying that the firm has more than one employed registrant unless there are at least two employed registrants involved in the practice. Independent contractors are not considered employees under this subsection.

(d) A word, abbreviation or other language is presumed not misleading if it:

(1) is the name, surname, or initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;

(2) is the name, surname, or initials of one or more current or former international practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state;

(3) indicates the legal organization of the firm; or

(4) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.

(e) A registrant who is a sole proprietor, and not incorporated, who is engaged in the practice of public accounting must comply with 1 and 2 of this subsection:

(1) The registrant shall be allowed to use and employ the designation "d/b/a" with a business name provided the sole proprietor's name is included in the name of the business. No registrant shall use a misleading business name; and

(2) A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor.

(f) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof.

(g) This section regarding firm names does not affect firms licensed by the Board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section.

(h) A firm licensed by the Board after the effective date of this section, whose name includes a designation implying that the firm has more than one employed registrant, as provided in Subsection (c)(7) above, may continue to practice under that name for up to two years from the date the firm no longer has more than one employed registrant.

**10:15-39-8.2. Written communications**

A certificate or license holder, firm, candidate, or applicant shall provide copies of any requested documents and shall substantively respond in writing to any communications from the Board requesting a response within thirty (30) days of the mailing of such request or communication by registered or certified mail, to the last address of the registrant known to the Board.

## SUBCHAPTER 43. AUDITS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

**10:15-43-1. Registration**

Pursuant to Title 74 Oklahoma Statutes Section 212A(B), all registrants, prior to entering into contracts to perform an audit of a governmental entity, must register, ~~on a form~~ in a format prescribed by the Board which attests to the registrant's compliance with Government Auditing Standards.

**10:15-43-6. Renewal requirements**

All registrants who have registered under the provisions of this subchapter shall renew their registration, ~~on a form~~ in a format prescribed by the Board, on or before December 31 of each year.

**10:15-43-8. Reinstatement**

After disqualification, reinstatement shall only be granted upon the filing of the ~~form~~ application in a format prescribed by the Board and proof of the firm's qualification.

*[OAR Docket #10-828; filed 5-11-10]*

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

*[OAR Docket #10-919]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Chapter 15. Standards and Criteria for Domestic Violence~~,~~and Sexual Assault ~~and Batterers Intervention~~ Programs [AMENDED]
**AUTHORITY:**
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
**DATES:**
**Comment Period:**
February 23, 2010 through March 24, 2010
**Public Hearing:**
March 24, 2010
**Adoption:**
March 24, 2010
**Submitted to Governor:**
March 29, 2010
**Submitted to House:**
March 29, 2010
**Submitted to Senate:**
March 29, 2010
**Gubernatorial Approval:**
May 3, 2010
**Legislative Approval:**
Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2010
**Final Adoption:**
May 22, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
Pursuant to Title 74 O.S. § 18-p1 et seq. the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence and sexual assault programs and for private facilities and organizations which offer domestic violence and sexual assault services in this state. These rules set forth the requirements which are required to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement and auditing of domestic violence and sexual assault services in this state.
**CONTACT PERSON:**
Susan Damron Krug (405) 522-0042

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**75:15-1-1. Purpose**

This chapter sets forth the rules, including standards and criteria, used in certifying all domestic violence~~, batterers intervention~~ and sexual assault programs and shelters (74 O.S. § 18p-6). The rules regarding factors relating to the certification processes including, but not necessarily limited to, applications, fees, requirements for and administrative sanctions, are found in OAC Title 75, Chapter 1.

**75:15-1-1.1. Mission and underlying philosophy**

(a) The mission of the standards and criteria for domestic violence, sexual assault and batterers intervention programs is to eliminate domestic violence, sexual assault and stalking in the State of Oklahoma.

(b) The philosophy underlying the standards and criteria for domestic violence~~,~~ and sexual assault ~~and batterers intervention~~ programs is that:

(1) All persons have the right to live without fear, abuse, oppression and violence;

(2) There should be equality in relationships and survivors of domestic violence, sexual assault and stalking should be helped to assume power over their own lives;

(3) No one deserves to be victimized by assaultive or abusive behavior;

(4) Survivors should be treated with dignity and respect;

(5) All people involved in violent crimes are affected-victims, children, families, partners, friends, the community, and perpetrators;

(6) Offending is a choice, and perpetrators of domestic violence, sexual assault and stalking are solely responsible for their behavior;

(7) These perpetrators must be held accountable for their behavior~~, and~~

(8) A coordinated community response is the best approach to eliminating domestic violence, sexual assault and stalking in Oklahoma~~.~~, and

(9) Safety for the victims/survivors and their dependants is the primary focus of intervention and services.

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

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

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

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

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

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

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

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

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

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

**"Case management"** means the process of supporting and helping victims/survivors and their dependents as they cope with and overcome the effects of domestic violence, sexual assault and stalking. Actions may include activities such as 1)developing, reviewing, and updating the service plan that is designed to solve specific problems in the current life situation; 2) supporting adult/child survivor's skills in making their desired life changes through activities such as introducing new skills, modifying previous ways of coping with their situation and linking to resources to address immediate needs and secondary issues, and/or 3) exit planning as part of the individual supportive services. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

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

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

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

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

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

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

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

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

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

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

**"Counseling"** means a method of using various commonly acceptable treatment approaches provided face-to-face by a behavioral health professional either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, psycho-educational interventions or another widely accepted theoretical framework for treatment.

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

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

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

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

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

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

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

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

**"Education"** means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

**"Emergency services"** or **"crisis services"** means a twenty-four (24) hour capability for danger assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Primary Victim"** means a client who has experienced domestic violence, sexual assault, stalking or the consequences of these crimes first hand.

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

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

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

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

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

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

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

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

**"Safety Planning"** means the process of working with the adult/child victim/survivor to develop tools in advance of potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents.

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

**"Secondary Victim"** means a person with a relationship with the primary victim.

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

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

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

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

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

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

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

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

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

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

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

**"Volunteer"** means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

**75:15-1-3. Meaning of verbs in rules**

The attention of the facility is drawn to the distinction between the use of the words "shall," "should," and "may" in this chapter:

(1) **"Shall"** is the term used to indicate a mandatory statement, the only acceptable method under the present standards.

(2) **"Should"** is the term used to reflect the most preferable procedure, yet allowing for the use of effective alternatives.

(3) **"May"** is the term used to reflect an acceptable method that is recognized but not necessarily preferred.

## SUBCHAPTER 2. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

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

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

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

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

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

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

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

(4) Needed clothing for the sexual assault victim.

(5) Follow-up contact that does not compromise privacy and safety needs of the victim shall be offered to all sexual assault clients seen in the medical setting. If written permission is granted by the client for follow-up contact, it shall be done no later than fourteen (14) business days after face-to-face crisis intervention. Follow-up will offer the client agency services or other available resources needed by the client.

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

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

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

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

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

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

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

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

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

(1) A facility with offices, individual and group counseling space to provide services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to provide access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(6) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.

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

(g) Within five (5) business days of entry into shelter or transitional living or prior to providing children's services (excluding advocacy ~~or~~, children's activities or crisis intervention), all certified programs shall assess the risk and needs of the children accompanying ~~primary~~ victims and provide children's services to address the impact of violence and trauma in their lives and to facilitate healing. A risk and needs screening and assessment on each child shall minimally include information on his or her:

(1) Safety, including but not limited to:
(A) History of child abuse or neglect;
(B) Exposure or witnessing violence;
(C) Child's response to witnessing violence;
(D) History of involvement in the child welfare system; including the presence of current child welfare involvement;
(E) Visitation with the perpetrator;
(2) Brief trauma screening to assess the impact of trauma;
(3) Developmental history to include speech and language, hearing and visual;
(4) Medical or physical health history;
(5) Social history to include interactions with peers;
(6) History of use of tobacco, alcohol or other drugs;
(7) Parent/guardian custodial status;
(8) Community referral needs.

(h) Services provided to each child shall be culturally sensitive while addressing the identified risk and needs and shall minimally include:
(1) safety planning that is appropriate with respect to the child or adolescent's age, development, and education;
(2) a specific safe, protected play area for children;
(3) advocacy with community systems;
(4) referral to community resources for needed services;
(5) linkage and advocacy with the local school system to provide for ongoing educational needs;
(6) parenting support for clients, if applicable; and
(7) Children's groups using age appropriate topics and based on established best practices.

(i) Pursuant to ~~Title 10 O.S. § 7103~~ Title 10A O.S. § 1-2-101, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.

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

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

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

## SUBCHAPTER 4. BATTERERS INTERVENTION PROGRAMS [REVOKED]

### 75:15-4-1. Purpose [REVOKED]

~~The purpose of this subchapter is to set forth the standards and criteria governing services provided by Certified batterers intervention programs. Certified batterers intervention programs must also comply with Subchapters 1, 13, and 15.~~

### 75:15-4-2. Batterers intervention program [REVOKED]

~~(a) Each certified batterer intervention program shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:~~
~~(1) Services shall be provided in a facility with offices available for private individual and group sessions.~~
~~(2) Services shall be provided to self or court referred batterers. Group services shall be the primary modality. Referral to domestic violence services is provided for the batterer's partner or victim, when possible.~~
~~(3) The focus shall be on victim safety and the elimination of violence within the home and assist the batterer in developing personal responsibility and accountability for his or her behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.~~
~~(4) Anger control or management, and/or substance abuse treatment and/or mental health treatment alone shall not constitute batterers intervention; neither may these interventions be utilized as the primary means of facilitating the required changes in behavior and attitudes. However, these secondary interventions may be used to supplement the batterers intervention curriculum outlined in 75:15-4-2.~~
~~(5) Services shall include client assessments as described in 75:15-4-5.~~

~~(b) Education shall be provided to the batterer utilizing written curriculum specifically developed for batterers intervention that comprehensively addresses, at a minimum:~~
~~(1) the dynamics of domestic violence and power and control issues;~~
~~(2) the sociocultural basis for violence, including domestic violence;~~
~~(3) issues of sexism and gender role stereotyping;~~
~~(4) non-abusive communication techniques;~~
~~(5) effective coping strategies;~~
~~(6) parenting;~~
~~(7) effects of domestic violence on children;~~
~~(8) developing healthy relationships;~~
~~(9) safety planning for the prevention of violence;~~
~~(10) effects of domestic violence on victims from a victim perspective;~~
~~(11) the potential consequences of domestic violence, and~~
~~(12) establish personal goals and objectives to eliminate violent, controlling and abusive behavior.~~

~~(c) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 5:00 P.M. Monday through Friday.~~

~~(d) The program shall maintain admission criteria for batterer intervention services.~~

~~(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.~~

~~(f) Service policy shall not permit the substitution of individual counseling appointments for group participation except in a situation where only one batterer of a gender has been court ordered to the program.~~

~~(g) Group sizes shall be limited to not less than two (2) and not more than twelve (12) sixteen (16)clients.~~

~~(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.~~

~~(i) Joint participation shall not be allowed of the victim as part of batterers intervention.~~

~~(j) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.~~

~~(k) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:~~

~~(1) substance abuse; and~~

~~(2) mental health services.~~

~~(l) In the case of court referred clients, the program shall develop a written process for coordinating with and reporting to the court, judge, probation officer, and/or district attorney, that shall include a current description of the program and the requirements for participation and successful completion of the program.~~

~~(m) Referral for services. If other services for the batterer are necessary, appropriate referrals shall be made for such issues, including but not limited to, mental health or substance abuse issues.~~

~~(n) Compliance with 75:15-4-2 shall be determined by a review of program policy and procedures; client records; service referral agreements, and other program documentation. Compliance may also include client interviews and/or observation of direct client services.~~

**75:15-4-3. Victim safety and confidentiality [REVOKED]**

~~(a) Victim safety.~~

~~(1) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.~~

~~(2) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs serving batterers and the staff of programs providing victims' services.~~

~~(3) There shall be a written, cooperative, accountable working relationship between the batterers intervention program, and the DV/SA providers that serve victims so potential victims and others are warned of imminent danger.~~

~~(4) Initial victim or partner contact shall be attempted when the batterer has been accepted or denied admission to the program. The victim or partner shall be provided with general information including:~~

~~(A) A brief description of the program, including program expectations, program content and philosophy;~~

~~(B) The limitations of the program including a statement that the batterer's participation does not ensure the participant will stop any or all battering behaviors nor guarantee victim or partner safety;~~

~~(C) Information related to victim services.~~

~~(5) The batterers intervention program shall maintain contact with the victim or partner at the victim's discretion. If the victim or partner elects not to receive information, the program is still required to notify the individual in the case of imminent threat or danger to the victim's safety.~~

~~(6) If the victim or partner elects to receive information after initial contact by the program, at a minimum, partner or victim notification is required when:~~

~~(A) The batterer begins attending the intervention program;~~

~~(B) The batterer terminates the intervention program for noncompliance;~~

~~(C) There is an imminent threat or danger to the victim's safety.~~

~~(7) The efforts to find and notify the batterer's partner or victim shall be documented.~~

~~(8) Collaboration shall be established with other domestic violence/sexual assault programs certified by the Attorney General.~~

~~(b) Certified batterer intervention programs shall not be less than 52 weeks in duration. The 52 weekly group sessions shall be no less than ninety (90) minutes in length. Completion of a batterers intervention program requires at a minimum 52 weekly attended sessions as well as a favorable evaluation from the program.~~

~~(c) Compliance with 75:15-4-3 shall be determined by a review of program policy and procedures; client records; service referral and cooperative agreements, and/or other program documentation.~~

**75:15-4-4. Client records [REVOKED]**

~~(a) A certified batterers intervention program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier.~~

~~(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white out" or any action which obliterates the error.~~

~~(c) Compliance with 75:15-4-4 shall be determined by on-site observation, client records, policy and procedures and any other supporting program documentation.~~

**75:15-4-5. Record content [REVOKED]**

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

~~(1) Intake and screening information:~~

~~(A) Client's name;~~

~~(B) Date of initial contact/intake;~~

~~(C) Pertinent medical information, including substance abuse;~~

~~(D) Emergency contact information;~~

~~(E) History/nature of abuse, and~~

~~(F) Court Order if applicable.~~

~~(2) Service notes, which shall minimally include:~~

~~(A) The time, date, location and description of services provided;~~

~~(B) The signature of staff providing the services; and~~

~~(C) A service note for each contact for services that shall include:~~

~~(i) personal responsibility and accountability;~~

~~(ii) level of participation in services;~~

~~(iii) change(s) in family, social, personal, legal or work environment(s);~~

~~(iv) inference of use or increased use of drugs/alcohol;~~

~~(v) whether or not facilitator observed sufficient indications of risk requiring notification of victim or others, and~~

~~(vi) referrals for supplemental services.~~

~~(3) Exit information, which shall minimally include:~~

~~(A) Documentation that the client participated in planning for his or her exit from the program;~~

~~(B) The reasons for the client's exit or departure; and~~

~~(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.~~

~~(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.~~

~~(c) Client records for batterers intervention services shall conform to the following:~~

~~(1) An assessment of the client shall be made prior to acceptance into the program. The assessment shall at a minimum include:~~

~~(A) current and past history of violence;~~

~~(B) lethality risk indicators;~~

~~(C) drug and alcohol use/abuse history and screening;~~

~~(D) mental health history and screening;~~

~~(E) criminal history and a report of the incident that generated the referral, and~~

~~(F) current or past history with child protective or adult protective services.~~

~~(2) An individualized written client contract shall be completed by the third (3rd) session; signed by the batterer; and shall include, but not be limited to:~~

~~(A) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.~~

~~(B) The criteria for suspension and termination.~~

~~(C) The program's rules.~~

~~(D) A written notice in bold type which specifies **"Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."**~~

~~(E) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.~~

~~(F) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and nonviolence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.~~

~~(G) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.~~

~~(3) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.~~

~~(4) Service termination reports shall be completed for all types of conditions under which services are ended and shall include, at a minimum, the reason for termination, summary of lethality risk indicators, and any concerns for the safety of victims, children, and/or others. Types and reasons for terminating services include:~~

~~(A) **Rejection.** Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;~~

~~(B) **Involuntary termination.** Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client contract; and~~

~~(C) **Completion.** Upon completion of the program, an exit interview and service termination report shall be completed and documented in the client record. The service termination report shall include a disclosure stating that completion of batterers intervention does not indicate that the client~~

~~will not re-offend; it is a report that the person has satisfactorily completed the necessary requirements of the certified program without any other known or reported re-offending during the time of enrollment in the program.~~

~~(5) In the case of court ordered or otherwise referred batterers, without jeopardizing the safety of the victim, a written report to the court or referring agent, shall be submitted within seven (7) business days of the following events:~~

~~(A) Acceptance into or rejection from the program including but not limited to a summary of the results of the initial assessment or the reason for rejection;~~

~~(B) Reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim or to third persons, and;~~

~~(C) Exit from the program including but not limited to the service termination report. All reports shall include any perceived areas of concern which may include, but are not limited to, substance abuse or mental health issues that the court may want to seriously consider.~~

~~(D) The batterers intervention program shall report any client absence of three (3)unexcused, consecutive sessions or seven (7) unexcused absences in a period of fifty-two (52)weeks to the court.~~

~~(6) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record without including any confidential victim identification information; and~~

~~(7) Copies of all service documentation including assessments, exit interviews and reports shall be kept in the batterer's file.~~

~~(d) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.~~

~~(e) Compliance with this 75:15-4-5 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation.~~

**75:15-4-7. Physical safety and integrity of client records [REVOKED]**

~~(a) Client records shall be maintained in a locked and secure manner. The program shall have written policies and procedures to safeguard the record and information contained in the record against loss, theft, defacement, tampering, or unauthorized access or use.~~

~~(b) Compliance with 75:15-4-7 shall be determined by a review of the program policy and procedures; on-site review of locking mechanisms and procedures to assure security; and on-site observation of the handling of client records.~~

**75:15-4-8. Client record, handling, retention, and disposal [REVOKED]**

~~(a) A program shall have written policy and procedures addressing the storage, retention period, and method of disposal of client records. This policy and procedures shall be compatible with protecting clients' rights against unauthorized confidential information disclosures.~~

~~(b) Client records shall be easily retrieved by staff as needed for providing and documenting services.~~

~~(c) Compliance with 75:15-4-8 shall be determined by a review of the program's policy and procedures, and a review of office and files.~~

**75:15-4-10. Fire and safety codes and inspections [REVOKED]**

~~(a) The physical environments of all office space shall meet safety, zoning, and building code regulations required by local, state, and federal authorities; and shall obtain and maintain an annual fire and safety inspection from local or state authorities.~~

~~(b) Compliance with 75:15-4-10 shall be determined by a review of the annual fire and safety inspection report.~~

**75:15-4-11. Fire fighting and first aid equipment [REVOKED]**

~~(a) All facilities shall have a first aid supply kit and annually maintained fire extinguishers.~~

~~(b) Compliance with 75:15-4-11 shall be determined by on-site observation and by interviewing staff.~~

**75:15-4-12. Disaster procedures [REVOKED]**

~~(a) There shall be written procedures describing the emergency plans in case of a disaster, whether internal or external, or in case of threat to the safety of any client or staff person. Evacuation routes, inside sheltering sites, and fire extinguisher locations shall be posted.~~

~~(b) Fire, tornado, bomb threat and intruder drills shall be conducted annually. The date, time, and type of the drill shall be documented.~~

~~(c) Compliance with 75:15-4-12 shall be determined by on-site observation, a review of written procedures, staff interviews, and documentation of drills.~~

**75:15-4-13. Persons with special needs [REVOKED]**

~~(a) The program building shall allow access for all clients and staff. Referrals must be provided when necessary, and the program shall have written procedures referrals for disabled persons who can not be served on-site. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.~~

~~(b) Compliance with 75:15-4-13 shall be determined by a review of program policy and procedures.~~

**75:15-4-14. Program environment [REVOKED]**

~~(a) The certified program environment shall meet the following conditions:~~

~~(1) The facility shall be accessible by an all weather road.~~

~~(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.~~

~~(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by clients at between 65oF and 85oF.~~

~~(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the clients.~~

~~(5) The facility shall have water from an approved tested potable source.~~

~~(6) The facility shall have, at minimum, a commode and, lavatory facility. The privacy of individuals shall be assured while using these facilities.~~

~~(7) Smoking shall not be allowed in any indoor portion of any program.~~

~~(8) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.~~

~~(9) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.~~

~~(10) All facilities shall have emergency back up lighting.~~

~~(b) Compliance with 75:15-4-14 shall be determined by a review of program policy and procedures; staff interviews, and on-site observation.~~

**75:15-4-15. Admission criteria [REVOKED]**

~~(a) The agency shall have specific written criteria identifying persons for whom the services are intended, and persons who are excluded from receiving services.~~

~~(b) The program shall have a written policy requiring referral of any individual who does not meet services criteria.~~

~~(c) Compliance with 75:15-4-15 shall be determined by a review of written program policy and procedures.~~

**75:15-4-16. Program management, policy and procedures [REVOKED]**

~~(a) The agency shall maintain written policy and procedures which describe the rules clients are expected to follow.~~

~~(b) Clients shall be given a copy of program rules and the provision of such shall be documented in the client record.~~

~~(c) The program shall have a written policy of the intent to comply with the Americans with Disabilities Act of 1990.~~

~~(d) Compliance with 75:15-4-16 shall be determined by a review of the program's written policy and procedures and a review of client records.~~

**75:15-4-17. Program mission and goals [REVOKED]**

~~(a) The agency or program shall have a written mission statement, and annually state in writing the program's goals.~~

~~(b) The annual program goals shall be approved by the agency's governing body each year, and shall be disseminated to personnel and volunteers.~~

~~(c) Compliance with 75:15-4-17 shall be determined by a review of the mission statement, program's annual goals, governing body minutes, staff meeting minutes, or any other relevant documentation provided by the program.~~

**75:15-4-18. Annual program evaluation [REVOKED]**

~~(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan established in policy and procedures to include the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., governing body members, staff, or other persons.~~

~~(b) Upon completion, this evaluation shall be submitted and reviewed by the governing body, and made available to the OAG, personnel and volunteers.~~

~~(c) Compliance with 75:15-4-18 shall be determined by a review of the program evaluation, policy and procedures, staff meeting minutes, and/or any other supporting documentation provided by the program.~~

**75:15-4-19. Critical incidents [REVOKED]**

~~(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.~~

~~(b) Each critical incident shall be recorded and monitored as follows:~~

~~(1) agency name and name and signature of the person(s) reporting the critical incident;~~

~~(2) Client ID(s) staff member(s), and/or property, involved in the critical incident;~~

~~(3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;~~

~~(4) a description of the incident;~~

~~(5) severity of each injury, if applicable. Severity shall be indicated as follows:~~

~~(A) no off site medical care required or first aid care administered on site;~~

~~(B) medical care by a physician or nurse or follow up attention required; or~~

~~(C) hospitalization or immediate off site medical attention was required;~~

~~(6) resolution or action taken, date action taken and signature of the agency director or authorized designee;~~

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

~~(1) Critical incidents requiring medical care by a physician or nurse or follow up attention and incidents requiring hospitalization or immediate off site medical attention shall be delivered via fax or mail to the Office of the Attorney General Victims Services Unit within forty eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.~~

~~(2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.~~

~~(d) Compliance with 75:15-4-19 shall be determined by a review of policy and procedures, critical incident reports at the~~

~~program and those submitted to the Office of the Attorney General Victims Services Unit.~~

**75:15-4-20. Client rights [REVOKED]**

~~(a) Each client shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:~~

~~(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.~~

~~(2) Each client has the right to receive services without regard to his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, or legal status.~~

~~(3) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.~~

~~(4) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.~~

~~(5) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.~~

~~(6) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply.~~

~~(7) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.~~

~~(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.~~

~~(c) Programs shall have written policy and procedures to ensure each client enjoys, and has explained to him or her, these rights; and these rights are visibly posted in client areas of the facility.~~

~~(d) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.~~

**75:15-4-21. Client grievance policy and procedures [REVOKED]**

~~(a) Each program shall have a written client grievance policy providing for, but not limited to, the following:~~

~~(1) Written notice of the grievance and appeal procedure provided to the client;~~

~~(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;~~

~~(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;~~

~~(4) Provide for notice to the client that he or she has a right to make a complaint to the OAG Victims Services Unit.~~

~~(5) Clients shall be given a copy of the grievance policy including the right to make a complaint to the OAG and the provision of such shall be documented in the client record;~~

~~(6) Mechanism to monitor the grievance process and improve performance based on outcomes; and~~

~~(7) Annual review of the grievance policy and procedures,~~

~~with revisions as needed.~~

## SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

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

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

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse including dangerousness assessment <u>including a description of the event that precipitated the request for services</u>; and

(F) Perpetrator information if known.

(2) Service notes, which shall minimally include:

(A) The date, location, start time, duration and description of services provided delineated by time spent and service code;

(B) The signature of staff providing the services; and

(3) Service plan focusing on victim safety and, well-being which shall minimally include:

(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and

(B) Service plans and their updates shall be signed and dated by the client and staff.

(4) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.
(c) Compliance with 75:15-5-3 shall be determined by a review of program policy and procedures; review of the client records for content; and/or other supporting program documentation.

**75:15-5-3.1. Record content - service specific**
(a) Client records for specific services shall conform to the following:
(1) Shelter Services:
(A) On a client's entry to the shelter, staff shall record the client's name, emergency contact person(s) and any referral for medical or emergency services. This information may be a part of the full intake interview if the full intake is done on entering the shelter.
(B) Shelter clients shall have the full intake interview and screening completed within ~~twenty-four (24)~~ forty-eight (48) hours of entry into the shelter.
(C) Service plans shall be completed within five (5) business days of the shelter client's entry to the shelter.
(D) The service plan shall be reviewed and updated at least every two (2) weeks.
(E) The client's service plan shall include components which address the needs of each child accompanying the client.
(F) The service plan shall include safety issues for client and children.
(G) A daily note for clients and their children.
(2) Crisis Intervention Services:
(A) All face-to-face contacts with active clients are documented and contacts with persons not receiving additional services shall be documented. Documentation shall minimally include the following:
(i) Staff/Volunteer Name and signature;
(ii) Date, time, length, and location of intervention;
(iii) Client's name, age, race, county of residence, and contact number
(iv) Protective order information if applicable;
(v) Personnel involved such as police, hospital, etc.;
(vi) Summary of contact including visible injuries, medical treatment and services requested;
(vii) Outcome;
(B) All telephone contacts shall be documented. Documentation shall minimally include the following:
(i) Staff/Volunteer name;
(ii) Date, time and length of call;
(iii) Caller's name and contact number, if given. However, no caller shall be required to give a name, phone number or any other identifying information as a condition to receive information or domestic violence, sexual assault or stalking services;
(iv) Summary of the call including services needed;
(v) Outcome; and
(vi) Follow-up services offered if victim safety is not compromised.
(C) Contact information is kept by the crisis intervention program.
(D) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.
(3) Counseling, Support and Advocacy Services:
(A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.
(B) A service plan shall be completed by the fifth (5th) advocacy or counseling session.
(C) A service plan review and update shall be completed at least every six (6) months.
(4) Sexual Assault Services:
(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.
(B) Service plans shall be reviewed and updated at least every ninety (90) days.
(5) Transitional Living Services:
(A) A service plan shall be developed within five (5) business days of the client moving in.
(B) The service plan shall be reviewed and updated at least every ninety (90) days.
(6) Safe home Services
(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the safe home, the safe home provider shall record the client's name, emergency contact information, and pertinent medical information.
(B) Safe Home clients shall receive a full intake interview and screening by program staff within twenty-four (24) hours of admission or by the first business day following admission.
(C) A service plan shall be developed within five (5) business days of the client's entry to the safe home.
(D) All records regarding the client shall be retained in the client's record at the sponsoring program.
(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.
(c) Compliance with this 75:15-5-3.1 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

## SUBCHAPTER 7. PHYSICAL ENVIRONMENTS

**75:15-7-5. Persons with special needs**

(a) Pursuant to the Americans with Disabilities Act of 1990, ~~The~~ the program ~~building shall allow access for all clients and staff~~ shall ensure that persons with disabilities are not excluded from services. Programs are required to integrate a person with a disability into agency services, unless providing separate services is the only way to provide equal opportunities for services. Referrals must be provided when necessary, and the program shall have written procedures for referrals of disabled persons who can not be served on-site. Service and companion animals should be allowed in facilities unless the animal poses a direct threat to the health/safety of others. Auxiliary aids/services should be provided as necessary to ensure effective communication unless doing so would cause an undue burden (i.e., significant difficulty or expense) or fundamental alteration in services. Alterations to existing buildings must be accessible to the maximum extent feasible. All newly constructed facilities must be accessible to persons with disabilities unless it is structurally impractical. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.

(b) Compliance with 75:15-7-5 shall be determined by a review of program policy and procedures.

**75:15-7-9. Program environment, transitional living services program**

(a) All transitional living services programs shall comply with section 75:15-7-6 (a)(1)-(10) and the following:

(1) operable smoke detectors;

(2) 24-hour access to a telephone for emergencies;

(3) secured by double locks or locking devices such as chains, bolts, etc. which meets state and local fire code inspection; and

(4) outdoor openings such as windows shall be covered for privacy.

(b) Compliance with 75:15-7-9 shall be determined by a review of program policy and procedures, provider and client interviews where appropriate, and on-site observation.

## SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT

**75:15-9-8. Annual program evaluation**

(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan established in policy and procedures to include the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., governing body members, staff, or other persons. The evaluation shall include an assessment to identify special populations of victims of sexual assault, domestic violence and stalking who are underserved or who have special needs.

(b) Upon completion, this evaluation shall be submitted and reviewed by the governing body, and made available to personnel and volunteers.

(c) Compliance with 75:15-9-8 shall be determined by a review of the program evaluation, policy and procedures, staff meeting minutes and/or any other supporting documentation.

## SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

## PART 3. TRAINING

**75:15-13-20.1. Orientation - general, personnel and volunteers**

(a) A certified program shall provide a minimum of ~~10~~ 16 hours orientation training that incorporates the use of adult learning techniques (i.e., scenarios, role playing) to familiarize new personnel and volunteers providing direct services with the program which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) Stalking;

(14) Victim advocacy;

(15) Parenting and disciplinary techniques;

(16) Active and empathetic listening techniques including hotline skills;

(17) Accessing resources needed by victims and their families including how to ensure services and access resources for persons with disabilities;

(18) Safety planning for adults and age appropriate safety planning for children;

(19) Basic child development;

(20) Legal and ethical issues;

(21) Cultural Sensitivity, and

(22) Effects of trauma including post traumatic stress disorder.

(b) Volunteers providing indirect services and children's activities are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.

(c) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client

contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.

(d) Compliance with 75:15-13-20.1 shall be determined by a review of the written policies and procedures, and personnel and volunteer training manuals and records.

**75:15-13-20.2. Inservice and ongoing training for personnel and volunteers**

(a) A certified program shall have policy and procedures mandating, at the minimum, sixteen (16) hours of annual training of all staff which shall include:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;

(3) First aid kits and fire extinguishers, their location, contents and use;

(4) Universal precautions~~, and~~

(5) Client rights, and~~.~~

(6) Legal and ethical issues.

(7) The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking, batterers intervention and administration as prescribed and approved by the Executive Director.

(b) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director.

(c) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC 75:15-1-2 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.

(d) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(e) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements upon completion of required annual training set forth in subsection (a) above. A copy of the current certification card issued by the OCADVSA shall be evidence of good standing.

(f) Compliance with 75:15-13-20.2 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

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

(a) Prior to providing any direct services or CLEET training, all sexual assault services staff shall receive a minimum of ~~eight (8)~~ six (6)hours classroom training in addition to basic orientation which shall include but not be limited to ~~information regarding sexual assault and rape, date rape, spousal rape, incest, stalking and sexual harassment, as well as training in safety planning and local procedures for providing sexual assault services for victims of rape~~:

(1) Sexual abuse within the family (i.e., incest, sibling abuse, marital and domestic relationship rapes).

(2) Sexual assault outside the family (i.e., stranger, non-stranger, abuse by professionals, sexual harassment and bullying)

(3) Sexual assault within institutions (i.e., nursing homes, residential facilities, prisons, military)

(4) Commercial sexual exploitation (i.e., prostitution, trafficking, pornography, escort services)

(5) Non-traditional client populations (i.e., males, victims of same sex, bisexual or transgender, non-English speaking, undocumented immigrants, victims with cognitive disabilities or who are deaf or hard of hearing.

(6) Other topics to increase skills such as post-traumatic stress syndrome as it relates to rape trauma, rape trauma syndrome, self-injury and alcohol and drug use.

(b) Compliance with 75:15-13-25 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel or volunteer records.

**75:15-13-29. Personnel training, Court Advocates**

(a) Prior to providing services, Court Advocates shall receive the prescribed orientation training, and training in the following:

(1) protective orders (i.e., the requirements for obtaining an ex parte emergency protective order and permanent protective order and an understanding of what happens after a protective order is issued);

(2) full faith and credit;

(3) the court process including safety planning during this time; and,

(4) at least three (3) hours of accompanied court time with a trained court advocate that includes observation of an ex parte emergency protective order hearing and a final protective order hearing.

(b) Compliance with 75:15-13-29 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

**75:15-13-30. Personnel training, batterers intervention services [REVOKED]**

~~(a) Personnel facilitating batterers intervention groups shall minimally have a graduate degree in a behavioral health or criminal justice related field and one year related work experience, have a Bachelors degree in a behavioral health or criminal justice related field and two years related work experience, or have been employed as a facilitator in a certified batterers intervention program prior to July 1, 2008.~~

~~(b) A certified batterers intervention program shall contract with or employ a qualified licensed professional as defined in 75:15-1-2 under "Counseling" for purposes of providing case and programmatic consultation to personnel facilitating batterers intervention groups and for conducting individual client evaluations before and after attendance of the program.~~

~~(c) Prior to providing any direct services, personnel facilitating batterers intervention services shall observe a minimum of 12 batterers intervention sessions, receive the prescribed orientation and at least sixteen (16) hours training in all of the curriculum topics listed in 75:15-4-2(b). Additionally, the Executive Director shall certify the proficiency of any personnel facilitating batterers intervention in each of the curriculum topics and in group facilitation.~~

~~(d) Personnel who provide batterers intervention service may not provide services for the victim that may result in a conflict of interest.~~

~~(e) Compliance with 75:15-13-30 shall be determined by:~~

~~(1) Review of program's policy and procedures.~~

~~(2) Review of program's training records and other provided documentation of staff training.~~

~~(3) Review of personnel records.~~

*[OAR Docket #10-919; filed 5-26-10]*

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## TITLE 75. ATTORNEY GENERAL
## CHAPTER 25. BATTERERS INTERVENTION PROGRAMS

*[OAR Docket #10-918]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Chapter 25. Batterers Intervention Programs [NEW]
**AUTHORITY:**
Office of Attorney General, 74 O.S. § 18p-6
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n/a

**ANALYSIS:**
Pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of batterers intervention programs and for private facilities and organizations which offer batterers intervention services in this state. These rules set forth the requirements which are required to provide services pursuant to 74 O.S. § 18p-6 and to meet the responsibilities related to oversight, management, evaluation, performance improvement and auditing of batterer intervention services in this state.
**CONTACT PERSON:**
Susan Damron Krug (405) 522-0042

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**75:25-1-1. Purpose**

The purpose of this chapter is to set forth the standards and criteria governing services provided by Certified batterers intervention programs. The rules regarding factors relating to the certification processes including, but not necessarily limited to, applications, fees, requirements for and administrative sanctions, are found in OAC Title 75, Chapter 1.

**75:25-1-2. Mission and underlying philosophy**

(a) The mission of the standards and criteria for batterers intervention programs is to eliminate domestic violence, sexual assault and stalking in the State of Oklahoma.

(b) The philosophy underlying the standards and criteria for domestic violence, sexual assault and batterers intervention programs is that:

(1) All persons have the right to live without fear, abuse, oppression and violence;

(2) There should be equality in relationships and survivors of domestic violence, sexual assault and stalking should be helped to assume power over their own lives;

(3) No one deserves to be victimized by assaultive or abusive behavior;

(4) Survivors should be treated with dignity and respect;

(5) All people involved in violent crimes are affected-victims, children, families, partners, friends, the community, and perpetrators;

(6) Offending is a choice, and perpetrators of domestic violence, sexual assault and stalking are solely responsible for their behavior;

(7) These perpetrators must be held accountable for their behavior;

(8) A coordinated community response is the best approach to eliminating domestic violence, sexual assault and stalking in Oklahoma, and

(9) Safety for the victims/survivors and their dependants is the primary focus of intervention and services.

**75:25-1-3. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Coordinated Community Response Team"** means a multi-disciplinary group of individuals from agencies and programs in the community whose purpose is to keep victims safe and hold batterers accountable.

**"Counseling"** means a method of using various commonly acceptable treatment approaches provided face-to-face by a behavioral health professional either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, psycho-educational interventions or another widely accepted theoretical framework for treatment.

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

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

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

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

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

**"Education"** means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Safety Planning"** means the process of working with the adult/child victim/survivor to develop tools in advance of potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents.

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

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

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

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

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

**"Volunteer"** means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

**75:25-1-4. Meaning of verbs in rules**

The attention of the facility is drawn to the distinction between the use of the words "shall," "should," and "may" in this chapter:

(1) **"Shall"** is the term used to indicate a mandatory statement, the only acceptable method under the present standards.

(2) **"Should"** is the term used to reflect the most preferable procedure, yet allowing for the use of effective alternatives.

(3) **"May"** is the term used to reflect an acceptable method that is recognized but not necessarily preferred.

**75:25-1-5. Annual review of standards and criteria**

This chapter shall be reviewed annually by the Office of the Attorney General.

## SUBCHAPTER 3. BATTERERS INTERVENTION

**75:25-3-1. Batterers intervention program**

(a) Each certified batterer intervention program shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:

(1) Services shall be provided in a facility with offices available for private individual and group sessions.

(2) Services shall be provided to self or court-referred batterers. Group services shall be the primary modality. Referral to domestic violence services is provided for the batterer's partner or victim, when possible.

(3) The focus shall be on victim safety and the elimination of violence within the home and assist the batterer in developing personal responsibility and accountability for his or her behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.

(4) Anger control or management, and/or substance abuse treatment and/or mental health treatment alone shall not constitute batterers intervention; neither may these interventions be utilized as the primary means of facilitating the required changes in behavior and attitudes. However, these secondary interventions may be used to supplement the batterers intervention curriculum.

(5) Services shall include client assessments as described herein.

(b) Education shall be provided to the batterer utilizing written curriculum specifically developed for batterers intervention that comprehensively addresses, at a minimum:

(1) the dynamics of domestic violence and power and control issues;

(2) the sociocultural basis for violence, including domestic violence;

(3) issues of sexism and gender role stereotyping;

(4) non-abusive communication techniques;

(5) effective coping strategies;

(6) parenting;

(7) effects of domestic violence on children;

(8) developing healthy relationships;

(9) safety planning for the prevention of violence;

(10) effects of domestic violence on victims from a victim perspective;

(11) the potential consequences of domestic violence, and

(12) establish personal goals and objectives to eliminate violent, controlling and abusive behavior.

(c) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 5:00 P.M. Monday through Friday.

(d) The program shall maintain admission criteria for batterer intervention services.

(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.

(f) Service policy shall not permit the substitution of individual counseling appointments for group participation except in a situation where only one batterer of a gender has been court-ordered to the program.

(g) Group sizes shall be limited to not less than two (2) and not more than sixteen (16)clients.

(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.

(i) Joint participation shall not be allowed of the victim as part of batterers intervention.

(j) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.

(k) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:

(1) substance abuse; and

(2) mental health services.

(l) In the case of court referred clients, the program shall develop a written process for coordinating with and reporting to the court, judge, probation officer, and/or district attorney, that shall include a current description of the program and the requirements for participation and successful completion of the program.

(m) If other services for the batterer are necessary, appropriate referrals shall be made for such issues, including but not limited to mental health and/or substance abuse issues.

(n) Compliance with 75:25-3-1 shall be determined by a review of program policy and procedures; client records; service referral agreements, and other program documentation. Compliance may also include client interviews and/or observation of direct client services.

**75:25-3-2. Victim safety and confidentiality**

(a) **Victim safety.**

(1) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.

(2) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs serving batterers and the staff of programs providing victims' services.

(3) There shall be a written, cooperative, accountable working relationship between the batterers intervention program, and the DV/SA providers that serve victims so potential victims and others are warned of imminent danger.

(4) Initial victim or partner contact shall be attempted when the batterer has been accepted or denied admission to the program. The victim or partner shall be provided with general information including:

(A) A brief description of the program, including program expectations, program content and philosophy;

(B) The limitations of the program including a statement that the batterer's participation does not ensure the participant will stop any or all battering behaviors nor guarantee victim or partner safety;

(C) Information related to victim services.

(5) The batterers intervention program shall maintain contact with the victim or partner at the victim's discretion. If the victim or partner elects not to receive information, the program is still required to notify the individual in the case of imminent threat or danger to the victim's safety.

(6) If the victim or partner elects to receive information after initial contact by the program, at a minimum, partner or victim notification is required when:

(A) The batterer begins attending the intervention program;

(B) The batterer terminates the intervention program for noncompliance;

(C) There is an imminent threat or danger to the victim's safety.

(7) The efforts to find and notify the batterer's partner or victim shall be documented.

(8) Collaboration shall be established with other domestic violence/sexual assault programs certified by the Attorney General.

(b) Certified batterer intervention programs shall not be less than 52 weeks in duration. The 52 weekly group sessions shall be no less than ninety (90) minutes in length. Completion of a batterers intervention program requires at a minimum 52 weekly attended sessions as well as a favorable evaluation from the program.

(c) Compliance with 75:25-3-2 shall be determined by a review of program policy and procedures; client records; service referral and cooperative agreements, and/or other program documentation.

**75:25-3-3. Client records**

(a) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(b) Compliance with 75:25-3-3 shall be determined by on-site observation, client records, policy and procedures and any other supporting program documentation.

**75:25-3-4. Record content**

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

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information, and

(E) Court Order if applicable.

(2) Service notes, which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A service note for each contact for services that shall include:

(i) personal responsibility and accountability;

(ii) level of participation in services;

(iii) change(s) in family, social, personal, legal or work environment(s);

(iv) inference of use or increased use of drugs/alcohol;

(v) whether or not facilitator observed sufficient indications of risk requiring notification of victim or others, and

(vi) referrals for supplemental services.

(3) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Client records for batterers intervention services shall conform to the following:

(1) An assessment of the client shall be made prior to acceptance into the program. The assessment shall at a minimum include:

(A) current and past history of violence;

(B) lethality risk indicators;

(C) drug and alcohol use/abuse history and screening;

(D) mental health history and screening;

(E) criminal history and a report of the incident that generated the referral; and

(F) current or past history with child protective or adult protective services.

(2) An individualized written client-contract shall be completed by the third (3rd) session; signed by the batterer; and shall include, but not be limited to:

(A) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.

(B) The criteria for suspension and termination.

(C) The program's rules.

(D) A written notice in bold type which specifies "Please be advised any reasonable knowledge **or** suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."

(E) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.

(F) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of

abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and nonviolence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.

(G) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.

(3) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.

(4) Service termination reports shall be completed for all types of conditions under which services are ended and shall include, at a minimum, the reason for termination, summary of lethality risk indicators, and any concerns for the safety of victims, children, and/or others. Types and reasons for terminating services include:

(A) **Rejection.** Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(B) **Involuntary termination.** Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client-contract; and

(C) **Completion.** Upon completion of the program, an exit interview and service termination report shall be completed and documented in the client record. The service termination report shall include a disclosure stating that completion of batterers intervention does not indicate that the client will not re-offend; it is a report that the person has satisfactorily completed the necessary requirements of the certified program without any other known or reported re-offending during the time of enrollment in the program.

(5) In the case of court-ordered or otherwise referred batterers, without jeopardizing the safety of the victim, a written report to the court or referring agent, shall be submitted within seven (7) business days of the following events:

(A) Acceptance into or rejection from the program including but not limited to a summary of the results of the initial assessment or the reason for rejection;

(B) Reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim or to third persons, and;

(C) Exit from the program including but not limited to the service termination report.

(6) All reports shall include any perceived areas of concern which may include, but are not limited to, substance abuse or mental health issues that the court may want to seriously consider.

(7) The batterers intervention program shall report any client absence of three (3)unexcused, consecutive sessions or seven (7) unexcused absences in a period of fifty-two (52)weeks to the court.

(8) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record without including any confidential victim identification information.

(9) Copies of all service documentation including assessments, exit interviews and reports shall be kept in the batterer's file.

(d) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(e) Compliance with this 75:25-3-4 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation.

**75:25-3-5. Physical safety and integrity of client records**

(a) Client records shall be maintained in a secure manner. The program shall have written policies and procedures to safeguard the record and information contained in the record against loss, theft, defacement, tampering, or unauthorized access or use.

(b) Compliance with 75:25-3-5 shall be determined by a review of the program policy and procedures; on-site review of locking mechanisms and procedures to assure security; and on-site observation of the handling of client records.

**75:25-3-6. Client record, handling, retention, and disposal**

(a) A program shall have written policy and procedures addressing the storage, retention period, and method of disposal of client records. This policy and procedures shall be compatible with protecting clients' rights against unauthorized confidential information disclosures where applicable.

(b) Client records shall be easily retrieved by staff as needed for providing and documenting services.

(c) Compliance with 75:25-3-6 shall be determined by a review of the program's policy and procedures, and a review of office and files.

**75:25-3-7. Fire and safety codes and inspections**

(a) The physical environments of all office space shall meet safety, zoning, and building code regulations required by local, state, and federal authorities; and shall obtain and maintain an annual fire and safety inspection from local or state authorities.

(b) Compliance with 75:25-3-7 shall be determined by a review of the annual fire and safety inspection report.

**75:25-3-8. Fire fighting and first aid equipment**

(a) All facilities shall have a first aid supply kit and annually maintained fire extinguishers.

(b) Compliance with 75:25-3-8 shall be determined by on-site observation and by interviewing staff.

**75:25-3-9. Disaster procedures**

(a) There shall be written procedures describing the emergency plans in case of a disaster, whether internal or external, or in case of threat to the safety of any client or staff person. Evacuation routes, inside sheltering sites, and fire extinguisher locations shall be posted.

(b) Fire, tornado, bomb threat and intruder drills shall be conducted annually. The date, time, and type of the drill shall be documented.

(c) Compliance with 75:25-3-9 shall be determined by on-site observation, a review of written procedures, staff interviews, and documentation of drills.

**75:25-3-10. Persons with special needs**

(a) The program shall ensure that persons with disabilities are not excluded from services. Referrals must be provided when necessary, and the program shall have written procedures referrals for disabled persons who can not be served on-site. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.

(b) Compliance with 75:25-3-10 shall be determined by a review of program policy and procedures.

**75:25-3-11. Program environment**

(a) The certified program environment shall meet the following conditions:

(1) The facility shall be accessible by an all-weather road.

(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.

(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by clients at between 65°F and 85°F.

(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the clients.

(5) The facility shall have water from an approved tested potable source.

(6) The facility shall have, at minimum, a commode and, lavatory facility. The privacy of individuals shall be assured while using these facilities.

(7) Smoking shall not be allowed in any indoor portion of any program.

(8) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.

(9) All facilities shall have emergency back up lighting.

(b) Compliance with 75:25-3-11 shall be determined by a review of program policy and procedures; staff interviews, and on-site observation.

**75:25-3-12. Program management, policy and procedures**

(a) The agency shall maintain written policy and procedures which describe the rules clients are expected to follow.

(b) Clients shall be given a copy of program rules and the provision of such shall be documented in the client record.

(c) The program shall have a written policy of the intent to comply with the Americans with Disabilities Act of 1990.

(d) Compliance with 75:25-3-12 shall be determined by a review of the program's written policy and procedures and a review of client records.

**75:25-3-13. Annual program evaluation**

(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan established in policy and procedures to include the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., Certified Domestic Violence and Sexual Assault Program, staff, or other persons.

(b) Upon completion, this evaluation shall be made available to the OAG, local district attorney, court, personnel and volunteers.

(c) Compliance with 75:25-3-13 shall be determined by a review of the program evaluation, policy and procedures, staff meeting minutes, and/or any other supporting documentation provided by the program.

**75:25-3-14. Critical incidents**

(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.

(b) Each critical incident shall be recorded and monitored as follows:

(1) agency name and name and signature of the person(s) reporting the critical incident;

(2) Client name, staff member(s), and/or property, involved in the critical incident;

(3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;

(4) a description of the incident;

(5) severity of each injury, if applicable. Severity shall be indicated as follows:

(A) no off-site medical care required or first aid care administered on-site;

(B) medical care by a physician or nurse or follow-up attention required; or

(C) hospitalization or immediate off-site medical attention was required;

(6) resolution or action taken, date action taken and signature of the agency director or authorized designee.

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

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to the Office of the Attorney General Victims Services Unit within forty-eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.

(2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.

(d) Compliance with 75:25-3-14 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

**75:25-3-15. Client rights**

(a) Each client shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:

(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each client has the right to receive services without regard to his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, or legal status.

(3) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(4) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(5) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(6) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply.

(7) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.

(c) Programs shall have written policy and procedures to ensure each client enjoys, and has explained to him or her, these rights; and these rights are visibly posted in client areas of the facility.

(d) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.

**75:15-3-16. Client grievance policy and procedures**

(a) Each program shall have a written client grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he or she has a right to make a complaint to the OAG Victims Services Unit;

(5) Clients shall be given a copy of the grievance policy including the right to make a complaint to the OAG and the provision of such shall be documented in the client record;

(6) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(7) Annual review of the grievance policy and procedures, with revisions as needed.

## SUBCHAPTER 5. PERSONNEL AND VOLUNTEERS

### PART 1. PERSONNEL

**75:25-5-1. Personnel policies and procedures**

(a) The program shall have written policies and procedures governing the conditions of agency employment to include appropriate screening and background inquiries to ensure client safety and confidentiality.

(b) The agency's policy and procedures shall be accessible to all personnel and each shall be informed of personnel policies and procedures, and any other materials regulating or governing the conditions of their employment.

(c) Written policies and procedures shall ensure personnel are informed of any changes to these a fore stated materials.

(d) Compliance with 75:25-5-1 shall be determined by a review of the program's personnel policies and procedures, interviews with staff, review of staff meeting minutes and/or other supporting documentation.

**75:25-5-2. Non-discrimination**

(a) The agency's policies and procedures shall include provisions for non-discrimination with regard to the agency's relationship with personnel in accordance with applicable state and federal laws.

(b) Compliance with 75:25-5-2 shall be determined by a review of the program's written policy and procedure, and staff interviews.

**75:25-5-3. Selection of personnel**

(a) The methods for selecting personnel shall be described in policy and procedures and shall include, but not be limited to:

(1) The processes for recruitment, selection and appointment; and

(2) Written criteria demonstrably related to the position being filled.

(b) Compliance with 75:25-5-3 shall be determined by:

(1) A review of the policies and procedures.

(2) A review of job descriptions for personnel.

(3) A review of any other supporting documentation.

**75:25-5-4. Job descriptions, personnel**

(a) The agency shall have written job descriptions for personnel defining the duties of, and minimum qualifications for, each position.

(b) Compliance with 75:25-5-4 shall be determined by:

(1) a review of the program's policies and procedures, and

(2) a review of the program's job descriptions.

**75:25-5-5. Personnel records**

(a) The agency shall maintain record(s) for each staff member selected and utilized; documentation shall minimally include:

(1) job description;

(2) employment application or resume;

(3) documentation of current qualifications and training as required and defined in the job description;

(4) duty or work assignment;

(5) record of hours worked or hours of service performed;

(6) record of participation in training;

(7) staff performance evaluation(s); and

(8) emergency notification information.

(b) Compliance with 75:25-5-5 shall be determined by a review of personnel records.

**75:25-5-6. Supervision of personnel**

(a) A certified program shall establish in writing lines of supervision for all personnel.

(b) Compliance with 75:25-5-6 shall be determined through a review of the program's policy and procedures, or any other supporting documentation provided, including but not limited to, personnel manuals, organizational charts, job descriptions, and personnel files.

**75:25-5-7. Performance evaluation of personnel**

(a) The agency shall have policies and procedures mandating the evaluation of personnel employment and service performance. These policies and procedures shall minimally include:

(1) performance evaluations shall be completed at least annually, to include an evaluation of the executive director;

(2) define the reason(s) for any evaluation other than annual;

(3) performance evaluations shall be in writing and based on the staff's job description;

(4) each evaluation shall be individually discussed with the staff;

(5) personnel shall have a documented opportunity to respond, in writing, to each of their individual performance evaluations;

(6) both staff and supervisor shall sign and date the performance evaluation. However, the evaluation document shall state the staff's signature does not necessarily constitute agreement with the evaluation content.

(b) Compliance with 75:25-5-7 shall be determined by a review of:

(1) program policies and procedures, governing authority meeting minutes where applicable, and

(2) review of personnel files.

## PART 3. VOLUNTEERS

**75:25-5-12. Volunteer policies and procedures**

(a) The program shall have written policies and procedures governing volunteer utilization to include appropriate screening and background inquiries to ensure client safety and confidentiality.

(b) The agency's policies and procedures shall include provisions for non-discrimination with regard to the agency's relationship with volunteers in accordance with applicable state and federal laws.

(c) Compliance with 75:25-5-12 shall be determined by a review of the program's written policy and procedure, and volunteer interviews.

**75:25-5-13. Supervision of volunteers**

(a) A certified program shall establish in writing lines of supervision for all volunteers.

(b) A certified program shall ensure each volunteer has the knowledge appropriate to his or her job duties and are supervised by personnel.

(c) Compliance with 75:25-5-13 shall be determined through a review of the program's policy and procedures, and any other supporting documentation provided, including but not limited to, volunteer manuals, and organizational charts.

**75:25-5-14. Volunteer records**

(a) The agency shall maintain record(s) for each volunteer selected and utilized; documentation shall minimally include:

(1) duty or work assignment;

(2) record of hours worked or hours of service performed;
(3) record of participation in training; and
(4) emergency notification information.
(b) Compliance with 75:25-5-14 shall be determined by a review of personnel records.

## PART 5. TRAINING

### 75:25-5-19. Orientation - general, personnel and volunteers

(a) A certified program shall provide a minimum of 16 hours orientation training to familiarize new personnel and volunteers providing direct services with the program which includes, but is not limited to:
(1) Program goals and services of each service component;
(2) Program policy and procedures;
(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;
(4) Facility safety and disaster plans;
(5) First aid kits and fire extinguishers, their location, contents and use;
(6) Universal precautions;
(7) Client rights;
(8) Domestic violence and its effects on victims and children;
(9) The cycle of domestic violence;
(10) Power and control tactics of abuse;
(11) Crisis intervention techniques;
(12) Sexual assault;
(13) Stalking;
(14) Victim advocacy;
(15) Parenting and disciplinary techniques;
(16) Active listening techniques;
(17) Accessing resources needed by victims and their families including how to ensure services and access resources for persons with disabilities;
(18) Safety planning for adults and age appropriate safety planning for children;
(19) Basic child development;
(20) Legal and ethical issues;
(21) Cultural Sensitivity, and
(22) Effects of trauma including post traumatic stress disorder.
(b) Volunteers providing indirect services are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.
(c) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.
(d) Compliance with 75:25-5-19 shall be determined by a review of the written policies and procedures, and personnel and
volunteer training manuals and records.

### 75:25-5-20. Inservice and ongoing training for personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, sixteen (16) hours of annual training of all staff which shall include:
(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;
(2) Facility safety and disaster plans;
(3) First aid kits and fire extinguishers, their location, contents and use;
(4) Universal precautions, and
(5) Client rights, and
(6) Legal and ethical issues.
(b) The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking, batterers intervention and administration as prescribed and approved by the Executive Director.
(c) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director.
(d) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC 75:25-1-3 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.
(e) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.
(f) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements upon completion of required annual training set forth in subsection (a) above. A copy of the current certification card issued by the OCADVSA shall be evidence of good standing.
(g) Compliance with 75:25-5-20 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

### 75:25-5-21. Personnel training, batterers intervention services

(a) Personnel facilitating batterers intervention groups shall minimally have a graduate degree in a behavioral health or criminal justice related field and one-year related work experience, have a Bachelors degree in a behavioral health or criminal justice related field and two years related work experience,

or have been employed as a facilitator in a certified batterers intervention program prior to July 1, 2008.

(b) A certified batterers intervention program shall contract with or employ a qualified licensed professional as defined in 75:25-1-3 under "Counseling" for purposes of providing case and programmatic consultation to personnel facilitating batterers intervention groups and for conducting individual client evaluations before and after attendance of the program.

(c) Prior to providing any direct services, personnel facilitating batterers intervention services shall observe a minimum of 12 batterers intervention sessions from an OAG certified program in addition to training requirements. Additionally, the Executive Director shall certify the proficiency of any personnel facilitating batterers intervention in each of the curriculum topics and in group facilitation.

(d) Personnel who provide batterers intervention service may not provide services for the victim that may result in a conflict of interest.

(e) Compliance with 75:25-5-21 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

## SUBCHAPTER 7. CONSULTATION

### 75:25-7-1. Consultation and Coordination

(a) Batterers Intervention Programs that are not operated by a Certified Domestic Violence and Sexual Assault Program shall demonstrate monthly consultation with a domestic violence advocate(s) from the Certified Domestic Violence and Sexual Assault Program that provides services in the geographic area(s) served or the local Coordinated Community Response Team.

(b) Compliance with 75:25-7-1 shall be determined by documentation of meeting notes or minutes that shall include, but are not limited to, recording of:

(1) the date, time and place of the meeting;

(2) names of those attending, and

(3) topics and issues discussed and decisions reached.

*[OAR Docket #10-918; filed 5-26-10]*

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

*[OAR Docket #10-927]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Specific District Regulations
120:10-3-13. [AMENDED]
Subchapter 5. General District Provision and Additional Zoning Regulations
120:10-5-14. [AMENDED]
Subchapter 13. Administration
120:10-13-1.1. through 120:10-13-12.1. [REVOKED]
120:10-13-13. through 120:10-13-22. [NEW]
**AUTHORITY:**
Capitol-Medical Center Improvement and Zoning Commission, 73 O.S., Section 83.4
**DATES:**
**Comment Period:**
February 16, 2010 through March 26, 2010
**Public Hearing:**
March 26, 2010
**Adoption:**
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**Submitted to Governor:**
March 29, 2010
**Submitted to House:**
March 29, 2010
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March 29, 2010
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May 3, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2010
**Final adoption:**
May 22, 2010
**Effective:**
June 25, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
Rules in 120:10-13 were included in the Commission rules affected by the Oklahoma Supreme Court mandate in *Musgrove Mill, LLC, v. Capitol-Medical Center Improvement and Zoning Commission, et al*., Docket No. 104,374 and the District Court Judgment issued in *Musgrove Mill, LLC, v. Capitol-Medical Center Improvement and Zoning Commission, et al*., Case CJ2006-5558. The Commission promulgated emergency rules to ensure it would be able to continue to perform its statutory functions, which the Governor approved on June 22, 2009. The Commission adopted permanent rules to supersede the emergency rules on December 18, 2009.

These proposed rules contain revisions, corrections and clarification to Subchapter 13 that had not been identified prior to the December 18th Commission meeting. In order to comply with administrative rules on rulemaking (OAC 655:10) and avoid any confusion caused by amendments to duplicate sections, these proposed rules revoke the December 18th proposed permanent rule sections. Rule sections in Subchapter 13 have been renumbered and revisions to the sections are included in the newly numbered sections.

Rules in Subchapter 13 are provide information and procedures used by the Commission to review plans and issue building permits; amend its administrative rules or the master land use plan; process to file appeals with the Commission; granting of conditional use permits; and, other general administrative provisions related to the Commission. Revisions to Subchapters 3 and 5 were made to correct an incorrect cross-reference.
**CONTACT PERSON:**
Gerry Smedley, Administrative Rules Liaison, (405) 522-8519, Department of Central Services, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105; or, Denise Martin, Administrative Officer, Capitol-Medical Center Improvement and Zoning Commission, (405) 521-3678, 2401 N. Lincoln Blvd., Suite 112, Oklahoma City, OK 73105.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

## SUBCHAPTER 3. SPECIFIC DISTRICT REGULATIONS

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

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

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

(1) Clinic, dental, medical, mental health;
(2) Extended Care Facilities;
(3) Health Center Residential;
(4) Heliport;
(5) Hospital;
(6) Hotel/Motel;
(7) Research Laboratory;
(8) Public Health Facilities; and,
(9) Rehabilitation Center.

(c) **Conditional uses permitted.**

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

(A) Bank or Credit Union
(B) Barber Shop or Salon
(C) Child Care Facilities
(D) Conference Centers
(E) Copy Centers

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

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

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

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

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

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

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

(j) **Signage.** All premises identification and directional signage shall be designed and constructed in compliance with Subchapter ~~13~~ 15 of this Chapter.

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

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

## SUBCHAPTER 5. GENERAL DISTRICT PROVISION AND ADDITIONAL ZONING REGULATIONS

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

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

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

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

(1) Any of the following uses:

(A) Conference Center;

(B) Copy Center;

(C) Electronics Equipment Sales or Services;

(D) Financial Institutions;

(E) Health or Fitness Club;

(F) Medical or Dental Associations;

(G) Mixed Use Building;

(H) Office or Professional Services;

(I) Therapy or Rehabilitation Centers;

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

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

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

(A) Coffee shop Professional Services;

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

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

(D) Florist Shop;

(E) Gift or Card shop;

(F) Health Food Store;

(G) Medical retail display area or showroom;

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

(I) Tag Agent; and,

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

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

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

(1) health care professionals;

(2) counseling services;

(3) architects;

(4) engineers;

(5) planners;

(6) attorneys; and,

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

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

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

(h) **Minimum site size.** The minimum site size for new development for a single use structure is .5 acres. The minimum site size for a mixed use building is 1.5 acres. No building shall exceed the 0.60 Floor Area Ratio established by the Capitol-Medical Center Improvement and Zoning District Master Plan as amended.

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

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

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

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

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

(k) **Signage.** All identification, premises, and directional signage shall be in compliance with the criteria established in Subchapter ~~13~~ 15. Signage Regulations.

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

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

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

## SUBCHAPTER 13. ADMINISTRATION

### 120:10-13-1.1. Building permit or certificate of occupancy required [REVOKED]

~~It shall be a violation of this Chapter for any person to change the use of or permit the change of use of any land or structure until a building permit or certificate of occupancy~~

~~shall have been issued by the Director of the Capitol Medical Center Improvement and Zoning Commission.~~

**120:10-13-2.1. Building permit and plan and review procedures [REVOKED]**

~~Whenever any structure or building is to be erected or structurally altered, or extended, a building permit shall be obtained in accordance with the following procedures:~~

~~(1) Applicant shall submit to the Director of the Commission the following plans:~~

~~(A) Two copies of architectural, structural, or mechanical drawings and specifications of all buildings and structures, drawn accurately to scale, showing complete design and use of materials in plan, section and elevation.~~

~~(B) Two copies of site plans drawn accurately to scale showing, among other things, the exact size and location of all main and accessory buildings and structures, the type and location of all landscaping, the amount and location of off street parking areas including all driveways and other structures used for ingress and egress, the location of all public easements adjacent to or passing through said site, and all drainage structures and channels.~~

~~(2) The Director shall review all building and site plans to determine their compliance with this Chapter. If the permit application is for an alteration as defined in 120:10-1-3, and which conforms to the regulation's requirements, then the Director may issue an authorized building permit and report that fact and circumstances to the Zoning Commission at its next meeting. If the permit application is for new construction, the Director shall report his findings in determining compliance with this Chapter to the Commission. Thereupon, the Commission shall review the building plans and site plans including the landscaping, orientation and design of the proposed building and use, and the texture of materials to determine whether the character of the improvement is in harmony with and would not detract from the character of area in which said improvement is proposed to be located. If the Commission recommends changes in building or site plans, said changes and the reason for them shall be submitted in writing to the applicant. If site and building plans have been prepared by and certified by an architect licensed to practice in the State of Oklahoma, and said architect and applicant decide to accept the recommendation of the Commission regarding changes, then there shall be a period of review not to exceed six (6) months from the date on which the Commission recommended said change(s). At the end of the period of review, said building plans and site plans shall be considered approved, whether the recommendations of the Commission have been complied with or not; provided the landscape plan meets all the requirements and recommended changes of the Commission. In all other cases, no building permit shall be issued until said plans have received the approval of the Commission.~~

~~(3) Building permits shall be limited to a period of ninety (90) days, and if construction has not been started within ninety (90) days, such permit shall be void and of no force and effect.~~

**120:10-13-3.1. Certificate of occupancy [REVOKED]**

~~No change shall be made in the use of land, building or structure existing at the time of the passage of this Chapter or thereafter until a certificate of occupancy is obtained from the Director of the Commission. No certificate of occupancy shall be issued until it is determined that all the provisions of this Chapter are complied with.~~

**120:10-13-4.1. Oklahoma City building permit required [REVOKED]**

~~Because the Zoning District area is a part of the Oklahoma City metropolitan area and it is desirable that, insofar as possible, the improvements made within the Capitol area shall comply with Oklahoma City ordinances and all the rules, regulations and ordinances pertaining thereto, except where they are in conflict with the Master Plan of the Capitol Medical Center Improvement and Zoning District, a building permit shall be obtained from the City of Oklahoma City as a condition of issuing a permit under this Chapter; provided however, that the Capitol Medical Center Improvement and Zoning Commission may waive this requirement if the sole condition for not receiving a permit from the City of Oklahoma City is due to conflict between the Master Plan of the Capitol Medical Center Improvement and Zoning District and that of the City of Oklahoma City.~~

**120:10-13-5.1. Amendments [REVOKED]**

~~In accordance with 73 O.S., Sections 83.4 and 83.7, as amended, the Capitol Medical Center Improvement and Zoning Commission shall permit amendments and shall prescribe the rules and regulations concerning procedure for the conduct of zoning public hearings.~~

~~(1) **Zoning text and Master Land Use Plan amendment.** Prior to the adoption of any zoning regulations, or master land use plan, or amendment thereto, the Commission shall hold a public hearing on the same after first having given notice by publication of time and place of said hearing, by publication for not less than ten (10) days prior said hearing in a legal publication published in Oklahoma County.~~

~~(2) **Zoning map amendment.**~~

~~(A) **Public hearing required.** The Commission may from time to time on its own motion or petition from a property owner amend the official zoning map; provided, however, that no amendment shall be made until a public hearing thereon has been held.~~

~~(B) **Intent.** Amendments to the zoning map shall be considered to recognize changes in the Master Land Use Plan, to correct error, or to recognize changed or changing conditions in a particular area on in the jurisdictional area generally.~~

~~(C) **Conformity with Master Plan.** Amendments to the zoning map which are proposed and which are not in conformity with the Master Land Use Plan shall not be approved until the conflicts with the Master Land Use Plan have been eliminated through a change in the proposal or through official changes in the Master Land Use Plan.~~

~~(D) **Notice.** The Commission shall give ten (10) days notice of a public hearing on a proposed map amended by publication in a legal newspaper published in Oklahoma County. In addition, notice to all property owners within a three hundred (300) foot radius of the exterior boundary of the subject property, exclusive of streets and alleys not in access of three hundred (300) feet in width. The notice shall contain:~~

~~(i) Date, time and place of public hearing.~~

~~(ii) Legal description of the property and the street address or approximate location of the Capitol Medical Center Improvement and Zoning District.~~

~~(iii) Present zoning classification of the property and the proposed zoning classification.~~

**120:10-13-6.1. Appeals to the Commission [REVOKED]**

~~(a) Appeals to the Commission may be taken by any person aggrieved or by an officer, department, board, or agency of the State of Oklahoma affected by any decision of the Zoning Administration. Such appeal shall be taken with thirty (30) days from the date of the decision by filing with the Chairman of the Commission a notice of appeal specifying the grounds thereof. The Director forthwith transmits to the Commission Chairman all the papers constituting the record upon which the action appeal from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Director certifies to the Commission, after the notice of appeal shall have been filed his opinion, cause imminent peril to life and or property. In such cases, proceedings shall not be stayed otherwise than by restraining order which shall be granted by the Commission or by a court of record on application and notice to the office from whom the appeal is taken and on the cause shown.~~

~~(b) The Commission shall fix a reasonable time for a hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any part may appear in person or by agent or by attorney. The Commission shall keep minutes of its appeal proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall be a public record. The concurring vote of five (5) members of the Commission shall be necessary to reverse any order, requirement, decision or determination of the Director to decide in favor of the applicant on any manner which is before the Commission.~~

**120:10-13-7.1. Appeals to District Court [REVOKED]**

~~Appeals may be filed in accordance with 73 O.S. Section 83.9 as follows: "*Any person aggrieved by a rule, regulation, decision, or order of the Capitol Medical Center Improvement and Zoning Commission, or the Director thereof, may appeal to the district court of Oklahoma County by filing a petition in said Court and serving a copy thereof on the Director of the Commission. No bond shall be required for such appeal but costs may be required in the district court as in other cases. Filing of such appeal shall in no respect suspend the operation of any such rule, regulation, decision or order; nor shall the district court order any such suspension until full hearing. The district court may require the certification to it, by the Commission, of all papers, records, and documents constituting the record of the Commission in respect of such matters. No rule, regulation, decision or order of the Commission, or of the Director thereof, shall be suspended or set aside by the court unless the same, after hearing, shall be determined to be without authority of law. An appeal to the Supreme Court from the decision of the district court shall be allowed in other cases.*"~~

**120:10-13-8.1. Powers of the Commission relative to variation [REVOKED]**

~~The Commission shall have the following powers to grant variances:~~

~~(1) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of this Chapter, or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or conditions of a specific piece of property, which condition is not generally prevalent in the area, the strict application of the requirements of this Chapter would result in peculiar and exceptional undue hardship upon the owner of such property, the Commission is hereby empowered to authorize, upon an appeal relating to such property, a variation from such strict application so as to relieve such difficulties or hardship, but may establish such requirements relative to such property as would carry out the purpose and intent of this Chapter. The Commission shall not permit by variance a principal use not otherwise permitted in the applicable district, it being the expressed spirit and intent of this Chapter that a change of the permitted principal use shall be made by amendment of the regulations or the zoning map.~~

~~(2) A variance from the terms of this Chapter shall be granted by the Commission under the following provisions:~~

~~(A) The granting the variances requested will not confer on the applicant any special privilege that is denied by this Section too the lands, structures, or buildings in the same district.~~

~~(B) No non-conforming use of the neighborhood lands, structures, or building in the same zone and no permitted use of land, structures, or building in other districts shall be considered grounds for issuance of a variance.~~

**120:10-13-9.1. Powers relative to conditional uses permissible on review [REVOKED]**

~~The Commission shall have the following powers to grant conditional uses:~~

~~(1) Upon appeal, the Commission shall review the uses listed in Subchapter 3 of the Specific District Regulations of this Chapter as "Uses Permitted on Review". These are so classified because they more intensely dominate the area in which they are located than do other uses permitted in the district; however, the nature of such uses may make it desirable that they be permitted to locate therein. The following procedure is established to integrate properly the uses permitted on review with the other land uses located in the district. These uses shall be reviewed and authorized or rejected under the following procedure:~~

~~(A) An application shall be filed with the Commission for review. Said application shall show the location and intended use of the site, the names of all property owners, and existing land uses within two hundred (200) feet, and any other material pertinent to the request which the Commission may require.~~

~~(B) The Commission shall hold one or more public hearings thereon.~~

~~(C) The Commission, within forty-five (45) days of the date of application, shall study the effects of such proposed building or use upon the character of the neighborhood, traffic conditions, public utilities, and other matters pertaining to the general welfare, and authorize or deny the issuance of a permit for the use of land or buildings requested.~~

~~(D) If a protest against such conditional permit be presented, duly signed and acknowledged by the owners of twenty percent (20%) or more of the area of the lots immediately abutting either side of the territory included for such permit, or separated therefrom only by an alley or street, such permit shall not be approved except by the favorable votes of six (6) members of the Commission.~~

~~(2) In considering all appeals from rulings made under 120:10-13-8.1 of this Section, the Commission shall in making its findings on any specific case, determine the effect of the proposed change upon the supply of light and air to adjacent property, upon the congestion in the public street, upon the public safety from fire and other hazards, upon established property values within the surrounding area, and upon other factors relating to the public health, safety, comfort, morals and general welfare of the State and the people of the Capitol Medical Center Improvement and Zoning District. Every ruling made upon any appeal to the Commission shall be accompanied by a written finding of fact based upon the testimony received at the hearing afforded by the Commission, and shall specify the reason for granting or denying the appeal.~~

**120:10-13-10.1. Enforcement [REVOKED]**

~~In accordance with 73 O.S. Section 83.11, the Capitol Medical Center Improvement and Zoning Commission shall constitute a body corporate for purposes of instituting and defending litigation to enforce its rules, regulations, decisions, and orders; and it may, in its name, institute or defend actions by and on its own behalf, or in behalf of the owner or owners of any property within said District, to enjoin any breach or violation thereof. No bond shall be required of the Commission in any such action for the issuance of any temporary or permanent order, or an appeal.~~

**120:10-13-11.1. Invalidity of a part [REVOKED]**

~~In any case where a portion of this Chapter shall be held invalid or unconstitutional, the remainder of the regulations shall not thereby be invalid, but shall remain in full force and effect.~~

**120:10-13-12.1. Conflicting municipal provisions [REVOKED]**

~~This Chapter shall not be construed as repealing or reducing the effect of any of the ordinances of the City of Oklahoma City, Oklahoma governing and regulating any type of construction work within the District, or any other municipal ordinances in effect within the District, including the ordinance regulating the extraction of oil and gas within the District; provided, however, that whenever a conflict exists between the provisions of this Chapter and the ordinances and regulations of the city of Oklahoma City, Oklahoma, the provision of these Regulation shall govern.~~

**120:10-13-13. Commission authority**

No improvement, alteration, or change in land use shall occur within the boundaries of the zoning district as defined in 73 O.S., Section 83 unless authorized by the Commission in compliance with the procedures established in this Subchapter.

**120:10-13-14. Building permit and plan review procedure**

Whenever any permanent or temporary structure, or building is constructed, altered or expanded, a building permit shall be obtained in accordance with the following procedure:

(1) Applicant shall submit to the Director of the Commission the following:

(A) Three sets of architectural, structural, mechanical, and landscape plans identifying all buildings and structures drawn to scale with sufficient clarity to indicate the location, nature and extent of the work proposed and showing in detail that they conform to the requirements of this subsection.

(B) Three sets of site plans drawn to scale with sufficient clarity showing the location of lot lines, property lines, dimensions of the building site, and the width of all public or private streets adjacent to the building site; existing or proposed streets or alleys; the size and location of all main and accessory buildings, structures, and signage; the amount and location of all off-street parking facilities and loading areas, including driveways and handicapped parking and accessibility; public easements adjacent to or passing

through the site, and significant drainage features. Plans may be submitted on sheets a minimum size of 11" x 17", a maximum size of 30" x 42", electronically, or on a compact disc.

(2) The Director shall review all building and site plans to determine their compliance with this Chapter. If the building permit is for an alteration as defined in 120:10-1-3 and is in conformance with the regulation requirement, the Director is authorized to issue the permit. If the building permit is for new construction, the Director shall prepare a staff report determining compliance with this Chapter. The Commission shall review all plans submitted including orientation and design of the proposed building and its use, and texture and type materials to determine whether the character of the improvement is in harmony with and would not detract from the character of the area in which the improvement is proposed to be located. If the Commission recommends changes in building or site plans, the changes and the reason for them will be submitted in writing to the applicant. No building permit shall be issued until the plans have been approved by the Commission.

(3) Building permits will expire 90 days after the approval date, if construction has not commenced within 90 days, the permit shall be void and of no force and effect.

**120:10-13-15. Oklahoma City permits required**

Unless exempted by law, as a condition of this Chapter a building permit, certificate of occupancy and any other permits required for compliance with the International Building Code must be obtained from the City of Oklahoma City. The Commission may waive this requirement if the sole condition for not receiving a permit from the City of Oklahoma City is due to conflict between the Master Plan of the Capitol-Medical Center Improvement and Zoning District and that of the City of Oklahoma City.

**120:10-13-16. Amendments**

In accordance with 73 O.S. Sections 83.4 and 83.7, as amended, the Capitol-Medical Center Improvement and Zoning Commission shall allow for amendments and formulate rules and procedures to conduct public hearings regarding changes to the zoning map.

(1) **Zoning text and Master Land Use Plan amendments.** Prior to the adoption or amendment of any zoning regulation or master land use plan the Commission shall hold a public hearing in accordance with the procedure established in 120:10-13-5(D) of this Subchapter.

(2) **Zoning map amendment.**

(A) **Public hearing required.** The Commission may review a request from a property owner of record to amend the official zoning map; however, no map amendment shall be made until a public hearing has been held.

(B) **Intent.** Amendments to the zoning map shall be considered to recognize changes in the Master Land Use Plan, to correct error, or to recognize changed or changing conditions in a particular area on or in the jurisdictional area generally.

(C) **Conformity with Master Plan.** Amendments to the zoning map which are proposed and which are not in conformance with the Master Land Use Plan shall not be approved until the conflicts with the Master Land Use Plan have been eliminated through a change in the proposal or through official changes in the Master Land Use Plan.

(D) **Notice.** The Commission shall give 10 days notice of a public hearing on a proposed map amendment by publication in a legal newspaper published in Oklahoma County. In addition, notice to all property owners within a 300 foot radius of the exterior boundary of the subject property, exclusive of streets and alleys not in excess of 300 feet in width. The notice shall contain:

(i) Date, time and place of public hearing.

(ii) Legal description of the property and the street address or approximate location in the Capitol-Medical Center Improvement and Zoning District.

(iii) Present zoning classification of the property and location of proposed rezoning.

**120:10-13-17. Appeal to the Commission**

(a) Appeals to the Commission may be taken by any person or entity aggrieved by an officer, department, board or agency of the State of Oklahoma, who is affected by any decision of the Commission's Administration. Appeals shall be filed within 30 days from the date of the decision. A notice of appeal specifying the ground shall be filed with the Chairman of the Commission. The Director shall transmit to the Chairman all documents constituting the record of the decision being appealed. An appeal stays all proceedings in the action being appealed, unless the Director certifies to the Commission that in his or her opinion a stay will cause imminent peril to life and or property. In such cases, proceedings shall not be stayed other than by an injunction granted by a court of record on application and notice to the appealing party.

(b) The Commission shall fix a reasonable time for a hearing of the appeal and within 10 days give public notice and notice by mail or personal service to affected parties. At the hearing, any party may appear in person or by agent or by attorney. The Commission shall keep minutes of its appeal proceeding showing the vote of each member on each question. The concurring vote of 6 members of the Commission will be necessary to reverse any order, requirement, decision or determination of the Director in favor of the applicant on any matter before the Commission.

**120:10-13-18. Powers of the Commission relative to variation**

(a) The Commission is empowered to authorize, as requested a variation from the strict application of this Chapter

to relieve difficulties or hardship, but may establish requirements relative to the property to achieve the purpose and intent of this Chapter.

The Commission shall have the power to grant variances in the following instances:

(1) Exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of this Chapter.

(2) Exceptional topographical conditions or other extraordinary or exceptional situations or conditions of a specific piece of property, which is a condition generally not prevalent in the area.

(3) When the strict application of the requirements of this Chapter would result in peculiar and exceptional undue hardship on the property owner.

(b) The Commission shall not grant a variance for a principal use that is not permitted in the applicable district. It is the expressed spirit and intent of this Chapter that a change of the permitted principal use shall be made by amendment of the regulations or the zoning map.

(c) A variance from the requirements of this Chapter shall be granted by the Commission under the following provisions:

(1) The granting of the variance will not confer on the applicant any special privilege that is denied by this Section to the lands, structures, or building in the same district.

(2) No nonconforming use of the neighborhood lands, structures, or buildings in the same zone and no permitted use of land, structures, or building in other district shall be considered grounds for issuance of a variance.

**120:10-13-19. Powers relative to conditional uses permissible on review**

The Commission shall have the following powers to grant conditional uses:

(1) Upon receipt of a request the Commission shall review the uses listed in Subchapter 3 of the Specific District Regulations of this Chapter as "Uses Permitted on Review". These are so classified because they more intensely dominate the area in which they are located than do other uses permitted in the district; however, the nature of the uses may make it desirable that they be permitted to locate within the district. The following procedure is established to integrate properly the uses permitted on review with the other land uses located in the district. The requested use shall be reviewed and authorized or rejected under the following procedure:

(A) An application shall be filed with the Commission for review. The application shall show the location and intended use of the site, the names of all property owners, and existing land uses within 200 feet (the notice area), and any other material pertinent to the request the Commission may require.

(B) The Commission shall hold 1 or more public hearings.

(C) The Commission, within 45 days of the date of application, shall study the effect of the proposed building or use upon the character of the neighborhood, traffic conditions, public utilities, and other matters pertaining to the use and area, and grant or deny the issuance of a permit for the requested use of land or buildings.

(D) If a protest against a conditional permit is presented, duly signed and acknowledged by the owners of 20% or more of the notice area of the permit, the permit shall not be approved except by the favorable votes of 6 members of the Commission.

(2) In considering all requests and rulings made under 120:10-13-8 and 120:10-13-9 of this Subchapter, the Commission in making its findings on any specific case shall determine the following:

(A) The effect of the proposed use on the supply of light and air to adjacent property;

(B) The congestion of public streets;

(C) The health and safety of the public from fire and other hazards;

(D) Impact on established property values in the surrounding area; and

(E) Other factors the Commission determines to be relative to the comfort, morals and general welfare of the State and the people of the Capitol-Medical Center Improvement and Zoning District.

(3) Every ruling made on any request to the Commission shall be accompanied by a written finding-of-fact based on the testimony received at the hearing held by the Commission, and shall specify the reason for granting or denying the permit.

(4) Conditional use permits are non-transferable and are approved for use by the applicant only. Any change in ownership or tenancy will be subject to review for compliance with the procedures established in this subchapter and the applicable zoning district.

(5) If at any time the terms and conditions of the original permit as approved by the Commission are not met it is considered a violation and the Commission may, after hearing, revoke the permit and require the use to cease.

**120:10-13-20. Enforcement**

In accordance with 73 O.S. 1971, Paragraph 83.11, the Capitol-Medical Center Improvement and Zoning Commission shall constitute a body corporate for purposes of instituting and defending litigation to enforce its rules, regulations, decisions, and orders. The Commission may, in its name, institute or defend actions by and on its own behalf, or in behalf of the owner or owners of any property within the District, to enjoin any breach or violation. No bond shall be required of the Commission in any action for the issuance of any temporary or permanent order, or an appeal.

**120:10-13-21. Invalidity of a part**

In any case where a portion of this Chapter shall be held invalid or unconstitutional, the remainder of the regulations shall not be invalid, but shall remain in full force and effect.

**120:10-13-22. Conflicting municipal provisions**

This Chapter shall not be interpreted as repealing or reducing the effect of any of the ordinances of the City of Oklahoma City, Oklahoma governing and regulating any type of construction work within the District, or any other municipal ordinance regulating the extraction of oil and gas within the District; provided, however, that whenever a conflict exists between the provisions of this Chapter and the ordinances and regulations of the City of Oklahoma City, Oklahoma, the provisions of this Chapter shall govern.

*[OAR Docket #10-927; filed 5-26-10]*

## TITLE 160. DEPARTMENT OF CONSUMER CREDIT
## CHAPTER 5. FEES

*[OAR Docket #10-894]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
160:5-1-2 [AMENDED]
**AUTHORITY:**
Administrator of Consumer Credit; 14A O.S., §6-104(e), 59 O.S. § 1512(A) and 59 O.S. § 2095.1
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Failure of the Legislature to disapprove the rule resulted in approval on May 12, 2010
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**SUPERSEDED EMERGENCY ACTIONS:**
n/a
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n/a
**ANALYSIS:**
The rule indicates the correct license fees for supervised lenders, pawnshops, precious metal and gem dealers, precious metal and gem dealer employees, mortgage brokers and mortgage loan originators. The license fees are set forth in the Uniform Consumer Credit Code, the Oklahoma Pawnshop Act, the Precious Metal and Gem Dealer Licensure Act and the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act. The license fees were adjusted by the Oklahoma Legislature, effective July 1, 2009. The amendment updates the rule to reflect the correct statutory license fees.
**CONTACT PERSON:**
Roy John Martin, General Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-522-4665.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

**160:5-1-2. Fees**

Fees charged by the Department are as follows:

(1) Supervised Lenders

(A) ~~$150.00 application fee~~ $190.00 annual fee for license, except that for any license granted after June 30, the fee shall be $75.00 [14A:3-503(1)]

(B) $225.00 investigation fee for license [14A:3-503(1)]

(C) ~~$150.00 annual renewal fee [14A:3-504(5)] and a~~ $50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8)hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for eachpartial hour for each full hour, over eight (8) hours. A $50.00 late fee shall be imposedwhen the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars ($650.00) foreach licensed office in any calendar year. [14A:3-506(1)]

(E) $25.00 fee for a duplicate or amended license [14A:3-504(5)]

(F) $25.00 fee for a returned check [14A:3-506(10)]

(G) $25.00 late fee for any annual report received after May 1 [14A:3-506(5)]

(H) All fees are non-refundable unless the Code or these rules require otherwise.

(2) Notifications

(A) $20.00 annual filing fee [14A:6-203(1)]

(B) sellers, lessors, lenders and assignees shall pay the $20.00 annual filing fee plus $10.00 per $100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]

(C) All fees are non-refundable unless the Code or these rules require otherwise.

(3) Pawnbrokers

(A) ~~$100.00~~ $140.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1505(A)]

(B) $125.00 investigation fee for license [59:1505(A)]

(C) ~~$100.00~~ $140.00 annual renewal fee [59:1506(C)]

(D) $200.00 annual examination fee [59:1508(A)]

(E) All fees are non-refundable unless the Act or these rules require otherwise.

(4) Rent-to-Own Businesses

(A) $100.00 application fee for license, except that for any application filed after June 30, the fee shall be $50.00 [59:1953]

(B) $100.00 annual renewal fee [59:1953]

(C) $200.00 annual examination fee [59:1955(B)]

(D) All fees are non-refundable unless the Act or these rules require otherwise.

(5) Health Spas

(A) $200.00 initial registration fee [59:2002(A)(4)]; this fee shall be applied without regard to the date of the filing.

(B) $200.00 annual renewal fee [59:2002(A)(4)]

(C) All fees are non-refundable unless the Act or these rules require otherwise.

(6) Credit Services Organizations

(A) $100.00 application fee for license [24:143(A)]; this fee shall be applied without regard to the date of filing.

(B) $100.00 investigation fee for license [24:143(A)]

(C) $100.00 annual renewal fee [24:143(A)]

(D) $200.00 annual examination fee [24:146(A)]

(E) All fees are non-refundable unless the Act or these rules require otherwise.

(7) Precious Metals and Gem Dealers

(A) ~~$50.00 application fee for license for dealers, $25.00 application fee for license for each employee [59:1525(A) and (B); these fees shall be applied without regard to the date of filing.~~ $200.00 annual license fee for dealers, $100.00 annual license fee for each employee [59:1525(A) and (B)]; these fees shall be applied without regard to the date of filing.

(B) ~~$50.00~~ $225.00 investigation fee for license [59:1525(A)]

(C) ~~$50.00~~ $200.00 annual renewal fee for dealers, ~~$25.00~~ $100.00 annual renewal fee for each employee [59:1526(A) and (B)]

(D) All fees are non-refundable unless the Act or these rules require otherwise.

(8) Mortgage Brokers and Mortgage Loan Originators

(A) $750.00 application fee for a mortgage broker license; this fee shall be applied without regard to the date of filing ~~[59:2085(A)(2)]~~

(B) $100.00 initial license fee for a mortgage broker license ~~[59:2085(I)(1)];~~ 59:2095.7(M)(1)]; this fee shall be applied without regard to the date of filing.

(C) $100.00 annual renewal fee for a mortgage broker license ~~[59:2085(I)(1)]~~ [59:2095.7(M)(1)

(D) ~~$25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]~~ $200.00 late renewal fee [59:2095.7(M)(2)]

(E) $50.00 annual license fee for a branch office license ~~[59:2085(I)(2)];~~ 59:2095.7(M)(3)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.

(F) $50.00 inactive status fee for a mortgage broker license ~~[59:2085(I)(3)];~~ 59:2095.7(M)(4)]; ~~this fee shall be paid for each year of inactive status [59:2085(E)]~~

(G) ~~Reactivation fees for a mortgage broker license [59:2085(F)]~~

~~(i) If a mortgage broker license has been inactive for a licensing year, then the reactivation fee is $100.00.~~

~~(ii) If a mortgage broker license reactivation fee is filed on or before June 30 of an inactive license year, then the reactivation fee is $100.00.~~

~~(iii) If a mortgage broker license reactivation fee is filed after June 30 of an inactive license year, then the reactivation fee is $50.00.~~ $25.00 fee for each mortgage broker license change, duplicate license or returned check [59:2095.7(M)(5)]

(H) ~~$10.00 change of address fee [59:2085(H) and (I)(4)]~~ Each mortgage broker shall pay a $50.00 fee paid into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund [59:2095.7(M)(6)]

(I) ~~$50.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.~~ $300.00 examination fee unless an additional fee is required in accordance with 59:2095.23 [59:2095.7(M)(7)]

(J) ~~$50.00 annual renewal fee for a mortgage loan originator license [59:2085(I)(5)]~~ $100.00 initial license fee for a mortgage loan originator license. [59:2095.7(M)(1)]

(K) ~~$10.00 change of sponsor fee [59:2085(I)(6)]~~ $100.00 annual renewal fee for a mortgage loan originator license.

(L) ~~$150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]~~ $50.00 inactive status fee for a mortgage loan originator license.[59:2095.7(M)(4)]

(M) ~~Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]~~ $25.00 fee for each mortgage loan originator license change, duplicate license or returned check. [59:2095.7(M)(5)]

(N) ~~All fees are non-refundable unless the Act or these rules require otherwise.~~ Each mortgage loan originator shall pay $50.00 to the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund. [59:2095.7(M)(6)]

(O) All fees are non-refundable unless the Act or these rules require otherwise.

(9) Deferred Deposit Lenders

(A) $250.00 application fee for license; this fee is required for each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(B) $500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]

(C) $250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]

(D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, $300.00. For any examination in excess of eight (8) hours, $300.00 plus $50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A $50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]

(E) $25.00 late fee for any annual report received after May 1 [59:3114(F)]

(F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]

(10) Other

(A) $0.25 fee per page for copies [51:24A.5(3)]

(B) $1.00 fee per copied page for a certified copy [51:24A.5(3)]

(C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)].

*[OAR Docket #10-894; filed 5-21-10]*

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

*[OAR Docket #10-895]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]
Appendix H. Closed-end Model Forms and Clauses [REVOKED]
Appendix H. Closed-end Model Forms and Clauses [NEW]
**AUTHORITY:**
Administrator of Consumer Credit; 14A O.S. § 6-104(1)(e) and (2)
**DATES:**
**Comment period:**
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Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2010
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May 12, 2010
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July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Appendix H. Closed-end Model Forms and Clauses [REVOKED]
Appendix H. Closed-end Model Forms and Clauses [NEW]
**Gubernatorial approval:**
December 18, 2009
**Register publication:**
27 OK Reg 492
**Docket number:**
10-34
**Superseded rules:**
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]
**Gubernatorial approval:**
February 4, 2010
**Register publication:**
In this issue
**Docket number:**
10-893
**INCORPORATION BY REFERENCE:**
n/a
**ANALYSIS:**
The amendment to 160:45-9-2 incorporates an annual adjustment of the dollar amount of fees that triggers additional disclosure requirements for certain home mortgage transactions. The model forms in Appendix H include new model forms for creditors to use in consumer credit transactions in the State of Oklahoma. The model forms facilitate compliance with disclosure requirements in the Uniform Consumer Credit Code and Truth in Lending rules. The model forms aid consumers by simplifying the technical nature of consumer credit disclosure statements.
**CONTACT PERSON:**
Roy John Martin, General Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-522-4665.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 9. SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

**160:45-9-2. Requirements for certain closed-end home mortgages**

(a) **Coverage.**

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(A) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B) The total points and fees payable by the consumer at or before loan closing will exceed the greater

of 8 percent of the total loan amount **50**/, or $400; the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

(i) The dollar amount for 1996 is $412.
(ii) The dollar amount for 1997 is $424.
(iii) The dollar amount for 1998 is $435.
(iv) The dollar amount for 1999 is $441.
(v) The dollar amount for 2000 is $451.
(vi) The dollar amount for 2001 is $465.
(vii) The dollar amount for 2002 is $480.
(viii) The dollar amount for 2003 is $488.
(ix) The dollar amount for 2004 is $499.
(x) The dollar amount for 2005 is $510.
(xi) The dollar amount for 2006 is $528.
(xii) The dollar amount for 2007 is $547.
(xiii) The dollar amount for 2008 is $561.
(xiv) The dollar amount for 2009 is $583.
(xv) The dollar amount for 2010 is $579.

(2) This section does not apply to the following:

(A) A residential mortgage transaction.

(B) A reverse-mortgage transaction subject to 160:45-9-3.

(C) An open-end credit plan subject to subchapter 3 of this chapter.

(b) **Definitions.** For purposes of this subchapter, the following definitions apply:

(1) For purposes of paragraph (a)(1)(B) of this section, **points and fees** means:

(A) All items required to be disclosed under 160:45-1-4(a) and (b), except interest or the time-price differential;

(B) All compensation paid to mortgage brokers;

(C) All items listed in 160:45-1-4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

(2) **Affiliate** means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(c) **Disclosures.** In addition to other disclosures required by this chapter, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) **Notices.** The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) **Annual percentage rate.** The annual percentage rate.

(3) **Regular payment; balloon payment.** The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(4) **Variable-rate.** For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be disclosed under 160:45-7-4.

(5) **Amount borrowed.** For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) **Limitations.** A mortgage transaction subject to this section shall not include the following terms:

(1) **Balloon payment.**

(A) For a loan with a term of less than five years, a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.

(B) **Exception.** The limitations in paragraph (d)(1)(A) of this section do not apply to loans with maturities of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(2) **Negative amortization.** A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) **Advance payments.** A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) **Increased interest rate.** An increase in the interest rate after default.

(5) **Rebates.** A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) **Prepayment penalties.** Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by

section 933(d) of the Housing and Community Development Act of 1992, 15 USC 1615(d).

(7) **Prepayment-penalty exception.** A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;

(C) At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer's monthly gross income, as verified in accordance with 160:45-9-4(a)(4)(B); and

(D) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(8) **Due-on-demand clause.** A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(A) There is fraud or material misrepresentation by the consumer in connection with the loan;

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

(C) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

**50**/ Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to 160:45-5-2(2), and deducting any cost listed in 160:45-9-2(b)(1)(C) and 160:45-9-2(b)(1)(D) that is both included as points and fees under 160:45-9-2(b)(1) and financed by the creditor.

## APPENDIX H. CLOSED-END MODEL FORMS AND CLAUSES [REVOKED]

## APPENDIX H. CLOSED-END MODEL FORMS AND CLAUSES [NEW]

| | |
|---|---|
| H-1 | Credit Sale Model Form (160:45-5-2) |
| H-2 | Loan Model Form (160:45-5-2) |
| H-3 | Amount Financed Itemization Model Form (160:45-5-2(3)) |
| H-4(A) | Variable-Rate Model Clauses (160:45-5-2(6)(A)) |
| H-4(B) | Variable-Rate Model Clauses (160:45-5-2(6)(B)) |
| H-4(C) | Variable-Rate Model Clauses (160:45-5-3(b)) |
| H-4(D) | Variable-Rate Model Clauses (160:45-5-4(c)) |
| H-5 | Demand Feature Model Clauses (160:45-5-2(9)) |
| H-6 | Assumption Policy Model Clause (160:45-5-2(17)) |
| H-7 | Required Deposit Model Clause (160:45-5-2(18)) |
| H-8 | Rescission Model Form (General) (160:45-5-7) |
| H-9 | Rescission Model Form (Refinancing with Original Creditor) (160:45-5-7) |
| H-10 | Credit Sale Sample |
| H-11 | Installment Loan Sample |
| H-12 | Refinancing Sample |
| H-13 | Mortgage with Demand Feature Sample |
| H-14 | Variable-Rate Mortgage Sample (160:45-5-3(b)) |
| H-15 | Graduated-Payment Mortgage Sample |
| H-16 | Mortgage Sample (160;45-9-2) |

H-1—Credit Sale Model Form

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. | Total Sale Price<br>The total cost of your purchase on credit, including your downpayment of<br>$ _____ |
|---|---|---|---|---|
| % | $ | $ | $ | $ |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| | | |
| | | |

Insurance
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. _____ Signature |
| Credit Disability | | I want credit disability insurance. _____ Signature |
| Credit Life and Disability | | I want credit life and disability insurance. _____ Signature |

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $_____.

Security: You are giving a security interest in:
☐ the goods or property being purchased.
☐ (brief description of other property).

Filing fees $ _____ Non-filing insurance $ _____

Late Charge: If a payment is late, you will be charged $ _____/_____% of the payment.

Prepayment: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

_____
e means an estimate

H-2—Loan Model Form

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. |
|---|---|---|---|
| % | $ | $ | $ |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| | | |
| | | |

**Insurance**
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. _____ Signature |
| Credit Disability | | I want credit disability insurance. _____ Signature |
| Credit Life and Disability | | I want credit life and disability insurance. _____ Signature |

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $_____.

**Security:** You are giving a security interest in:
☐ the goods or property being purchased.
☐ (brief description of other property).

**Filing fees $** _____ **Non-filing insurance $** _____

**Late Charge:** If a payment is late, you will be charged $_____/_____% of the payment.

**Prepayment:** If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

_____
e means an estimate

## H-3—Amount Financed Itemization Model Form

Itemization of the Amount Financed of $_____

$_____ Amount given to you directly

$_____ Amount paid on your account

Amount paid to others on your behalf

$_____ to [public officials] [credit bureau] [appraiser] [insurance company]

$_____ to (name of another creditor)

$_____ to (other)

$_____ Prepaid finance charge

## H-4(A)—Variable-Rate Model Clauses

The annual percentage rate may increase during the term of this transaction if:
[the prime interest rate of (creditor) increases.]
[the balance in your deposit account falls below $_____.]
[you terminate your employment with (employer).]

[The interest rate will not increase above _____%.]
[The maximum interest rate increase at one time will be _____%.]
[The rate will not increase more than once every (time period).]

Any increase will take the form of:
[higher payment amounts.]
[more payments of the same amount.]
[a larger amount due at maturity.]

*Example based on the specific transaction*
[If the interest rate increases by _____% in (time period),
[your regular payments will increase to $_____.]
[you will have to make _____ additional payments.]
[your final payment will increase to $_____.]]

*Example based on a typical transaction*
[If your loan were for $_____ at _____% for (term) and the rate increased to _____% in (time period),
[your regular payments would increase by $_____.]
[you would have to make _____ additional payments.]
[your final payment would increase by $_____.]]

## H-4(B)—Variable-Rate Model Clauses

Your loan contains a variable-rate feature. Disclosures about the variable-rate feature have been provided to you earlier.

**H-4(C) Variable-Rate Model Clauses**

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

**How Your Interest Rate and Payment Are Determined**

- Your interest rate will be based on [an index plus a margin] [a formula].
- Your payment will be based on the interest rate, loan balance, and loan term.
  - [The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]
  - [The interest rate will be based on (identification of formula). Ask us for our current interest rate.
  - Information about the index [formula for rate adjustments] is published [can be found] _____.
  - [The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest-rate discounts.]

**How Your Interest Rate Can Change**

- Your interest rate can change (frequency).
- [Your interest rate cannot increase or decrease more than _____ percentage points at each adjustment.]
- Your interest rate cannot increase [or decrease] more than _____ percentage points over the term of the loan.

**How Your Payment Can Change**

- Your payment can change (frequency) based on changes in the interest rate.
- [Your payment cannot increase more than (amount or percentage) at each adjustment.]
- You will be notified in writing _____ days before the due date of a payment at a new level. This notice will contain information about your interest rates, payment amount, and loan balance.
- [You will be notified once each year during which interest-rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your interest rates, payment amount, and loan balance.]
- For example, on a $10,000 [term] loan with an initial interest rate of _____ [(the rate shown in the interest-rate column below for the year 19_____)] [in effect (month) (year)], the maximum amount that the interest rate can rise under this program is _____ percentage points, to _____ %, and the monthly payment can rise from a first-year payment of $_____ to a maximum of $_____ in the _____ year. To see what your payments would be, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 x _____ = $_____ per month.)]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

| | | | |
|---|---|---|---|
| Amount | $10,000 | Caps | _____ [periodic interest-rate cap] |
| Term | _____ | | _____ lifetime interest-rate cap |
| Change date | _____ | | _____ [payment cap] |
| Payment adjustment | (frequency) | [Interest-rate carryover] | |
| Interest adjustment | (frequency) | [Negative amortization] | |
| [Margin]* | _____ | [Interest-rate discount]** | |
| | | Index | (identification of index or formula) |

| Year | Index (%) | Margin (percentage points) | Interest Rate (%) | Monthly Payment ($) | Remaining Balance ($) |
|---|---|---|---|---|---|
| 1982 | | | | | |
| 1983 | | | | | |
| 1984 | | | | | |
| 1985 | | | | | |
| 1986 | | | | | |
| 1987 | | | | | |
| 1988 | | | | | |
| 1989 | | | | | |
| 1990 | | | | | |
| 1991 | | | | | |
| 1992 | | | | | |
| 1993 | | | | | |
| 1994 | | | | | |
| 1995 | | | | | |
| 1996 | | | | | |

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1992 would be: $60,000 ÷ $10,000 = 6; 6 x _____ = $ _____ per month.)

*This is a margin we have used recently, your margin may be different.

**This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

## H-4(D)—Variable-Rate Model Clauses

Your new interest rate will be _____%, which is based on an index value of _____%.
Your previous interest rate was _____%, which was based on an index value of _____%.
[The new interest rate does not reflect a change of _____ percentage point in the index value which was not added because of _____.]
[The new payment will be $_____.]
[Your new loan balance is $_____.]
[Your (new) (existing) payment will not be sufficient to cover the interest due and the difference will be added to the loan amount. The payment amount needed to pay your loan in full by the end of the term at the new interest rate is $_____.]
[The following interest rate adjustments have been implemented this year without changing your payment: _____.
These interest rates were based on the following index values: _____.]

## H-5—Demand Feature Model Clauses

This obligation [is payable on demand.]
[has a demand feature.]
[All disclosures are based on an assumed maturity of one year.]

## H-6—Assumption Policy Model Clause

Assumption: Someone buying your house [may, subject to conditions, be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

## H-7—Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

## H-8—Rescission Model Form (General)

NOTICE OF RIGHT TO CANCEL

**Your Right to Cancel**

You are entering into a transaction that will result in a [mortgage/lien/ security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is

_____; or

(2) the date you received your Truth in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

**How to Cancel**

If you decide to cancel this transaction, you may do so by notifying us in writing, at

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date) (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

_____ _____

Consumer's Signature Date

**H-9 Rescission Model Form (Refinancing with Original Creditor)**

NOTICE OF RIGHT TO CANCEL

**Your Right to Cancel**

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law and the law of this state to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of this new transaction, which is _____; or
(2) the date you received your new Truth in Lending disclosures; or
(3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect the amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below. If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

**How to Cancel**

If you decide to cancel this new transaction, you may do so by notifying us in writing, at
(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of
(date)
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

_____ _____

Consumer's Signature Date

H-10—Credit Sale Sample

**Big Wheel Auto**

Alice Green

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. | Total Sale Price<br>The total cost of your purchase on credit, including your downpayment of $ 1500 — |
|---|---|---|---|---|
| 14.84 % | $ 1496.80 | $ 6107.50 | $ 7604.30 | $ 9129.30 |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 36 | $211.23 | Monthly beginning 6-1-81 |
| | | |

**Insurance**

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

| Type | Premium | Signature | |
|---|---|---|---|
| Credit Life | $120 — | I want credit life insurance. | Alice Green<br>Signature |
| Credit Disability | | I want credit disability insurance. | Signature |
| Credit Life and Disability | | I want credit life and disability insurance. | Signature |

**Security:** You are giving a security interest in:
☒ the goods being purchased.
☐ _____.

**Filing fees** $ 12.50 **Non-filing insurance** $ _____

**Late Charge:** If a payment is late, you will be charged $10.

**Prepayment:** If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I have received a copy of this statement.

Alice Green — Signature
5-1-81 — Date

s means an estimate

H-11—Installment Loan Sample

Friendly Bank & Trust Co.
700 East Street
Little Creek, USA

Lisa Stone
22-4859-22
300 Maple Avenue
Little Creek, USA

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled |
|---|---|---|---|
| 12 % | $ 675.31 | $ 5000- | $ 5675.31 |

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 1 | $262.03 e | 6/1/81 |
| 23 | $235.36 | Monthly beginning 7/1/81 |

**Late Charge:** If a payment is late, you will be charged $5 or 10% of the payment, whichever is less.

**Prepayment:** If you pay off early, you ☒ may ☐ will not have to pay a penalty.

**Required Deposit:** The annual percentage rate does not take into account your required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

e means an estimate

H-12—Refinancing Sample

**Everyone's Credit Union** Date: April 1, 1981

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled |
|---|---|---|---|
| 15 % | $1285.06 | $5177.73 | $6462.79 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 35 | $179.53 | Monthly starting 5-1-81 |
| 1 | $179.24 | 4-1-84 |

**Insurance**

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost

| Type | Premium | Signature |
|---|---|---|
| Credit Life | | I want credit life insurance. Signature |
| Credit Disability | $177.73 | I want credit disability insurance Signature Joseph Day |

**Security:** You are giving a security interest in: ☐ the goods or property being purchased. ☒ your automobile.

**Late Charge:** If a payment is late, you will be charged 20% of the interest due with a minimum charge of $.05.

**Prepayment:** If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

Itemization of the Amount Financed of $ 5177.73

$ 1000- Amount given to you directly
$ 3000- Amount paid on your account

Amount paid to others on your behalf
$ _____ to public officials
$ 500- to Coop Credit Union
$ 500- to Acme Finance Co.
$ 177.73 to Pan-Galactic Ins. Co.
$ _____ for credit report

$ _____ Prepaid finance charge

H-13—Mortgage with Demand Feature Sample

**Mortgage Savings and Loan Assoc.**
Date: April 15, 1981

Glenn Jones
700 Oak Drive
Little Creek, USA

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate | FINANCE CHARGE<br>The dollar amount the credit will cost you | Amount Financed<br>The amount of credit provided to you or on your behalf | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled |
|---|---|---|---|
| 14.85 % | $156,551.54 | $44,605.66 | $201,157.20 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 360 | $558.77 | Monthly beginning 6/1/81 |

This obligation has a demand feature.

You may obtain property insurance from anyone you want that is acceptable to Mortgage Savings and Loan Assoc.. If you get the insurance from Mortgage Savings and Loan Assoc. you will pay $ 150 - /year

**Security:** You are giving a security interest in:
☒ the goods or property being purchased.
☐ _____.

**Late Charge:** If a payment is late, you will be charged $ N/A 5 % of the payment.

**Prepayment:** If you pay off early, you may have to pay a penalty.

**Assumption:** Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

_____
e means an estimate

**H-14 Variable-Rate Mortgage Sample**

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

**How Your Interest Rate and Payment Are Determined**

- Your interest rate will be based on an index rate plus a margin.
- Your payment will be based on the interest rate, loan balance, and loan term.
  - The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.
  - Information about the index rate is published weekly in the Wall Street Journal.
- Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

**How Your Interest Rate Can Change**

- Your interest rate can change yearly.
- Your interest rate cannot increase or decrease more than 2 percentage points per year.
- Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

**How Your Monthly Payment Can Change**

- Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.
- [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be $60,000 ÷ $10,000 = 6; 6 x 106.03 = $636.18 per month.)
- You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount, and loan balance.]

**[Example**

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions.

| | | | |
|---|---|---|---|
| Amount | $10,000 | Caps | 2 percentage points annual interest rate |
| Term | 30 years | | 5 percentage points lifetime interest rate |
| Payment adjustment | 1 year | Index | Weekly average yield on U.S. |
| Interest adjustment | 1 year | | Treasury securities adjusted to a constant |
| Margin | 3 percentage points | | maturity of one year |

| Year | Interest | Monthly | Remaining |
|---|---|---|---|

| (as of the 1st week ending in July) | Index (%) | Margin (percentage points) | Rate (%) | Payment ($) | Balance ($) |
|---|---|---|---|---|---|
| 1982 | 14.41 | 3 | 17.41 | 145.90 | 9,989.37 |
| 1983 | 9.78 | 3 | 15.41** | 129.81 | 9,969.66 |
| 1984 | 12.17 | 3 | 15.17 | 127.91 | 9,945.51 |
| 1985 | 7.66 | 3 | 13.17** | 112.43 | 9,903.70 |
| 1986 | 6.36 | 3 | 12.41*** | 106.73 | 9,848.94 |
| 1987 | 6.71 | 3 | 12.41*** | 106.73 | 9,786.98 |
| 1988 | 7.52 | 3 | 12.41*** | 106.73 | 9,716.88 |
| 1989 | 7.97 | 3 | 12.41*** | 106.73 | 9,637.56 |
| 1990 | 8.06 | 3 | 12.41*** | 106.73 | 9,547.83 |
| 1991 | 6.40 | 3 | 12.41*** | 106.73 | 9,446.29 |
| 1992 | 3.96 | 3 | 12.41*** | 106.73 | 9,331.56 |
| 1993 | 3.42 | 3 | 12.41*** | 106.73 | 9,201.61 |
| 1994 | 5.47 | 3 | 12.41*** | 106.73 | 9,054.72 |
| 1995 | 5.53 | 3 | 12.41*** | 106.73 | 8,888.52 |
| 1996 | 5.82 | 3 | 12.41*** | 106.73 | 8,700.37 |

*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2 percentage point annual interest-rate cap.
***This interest rate reflects a 5 percentage point annual interest-rate cap.

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000 ÷ $10,000 = 6; 6 x $106.73 = $640.38.)

- You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount, and loan balance.]

H-15—Graduated Payment Mortgage Sample

**Convenient Savings and Loan** Account number: 4862-88

Michael Jones
500 Walnut Court, Little Creek USA

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you | Amount Financed<br>The amount of credit provided to you or on your behalf | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled |
|---|---|---|---|
| 15.37 % | $177,970.44 | $43,777 | $221,548.44 |

Your payment schedule will be

| Number of Payments | Amount of Payments | When Payments Are Due | |
|---|---|---|---|
| 12 | $446.62 | monthly beginning | 6/1/81 |
| 12 | $479.67 | " " | 6/1/82 |
| 12 | $515.11 | " " | 6/1/83 |
| 12 | $553.13 | " " | 6/1/84 |
| 12 | $593.91 | " " | 6/1/85 |
| 300 | varying from $637.68 to $627.37 | " " | 6/1/86 |

**Security:** You are giving a security interest in the property being purchased.

**Late Charge:** If a payment is late, you will be charged 5% of the payment.

**Prepayment:** If you pay off early, you
☒ may ☐ will not have to pay a penalty
☒ may ☐ will not be entitled to a refund of part of the finance charge.

**Assumption:** Someone buying your home cannot assume the remainder of the mortgage on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

H-16—Mortgage Sample

**You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.**

**If you obtain this loan, the lender will have a mortgage on your home.**

**YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.**

You are borrowing $_____ (optional credit insurance is ☐ is not ☐ included in this amount).

The annual percentage rate on your loan will be: _____%.

Your regular _[frequency]_ payment will be: $_____.
[At the end of your loan, you will still owe us: $_[balloon amount]_.]

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $_____.]

*[OAR Docket #10-895; filed 5-21-10]*

## TITLE 160. DEPARTMENT OF CONSUMER CREDIT
## CHAPTER 55. MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS

*[OAR Docket #10-896]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions
160:55-1-2 [AMENDED]
Subchapter 3. Licensing
160:55-3-1.1. [AMENDED]
160:55-3-1.2 [REVOKED]
160:55-3-1.3 [REVOKED]
160:55-3-1.4 [REVOKED]
160:55-3-3 [REVOKED]
160:55-3-3.1 [AMENDED]
160:55-3-4 [AMENDED]
160:55-3-8 [AMENDED]
160:55-3-9 [REVOKED]
160:55-3-9.1 [AMENDED]
160:55-3-10.1 [REVOKED]
160:55-3-12 [NEW]
160:55-3-13 [NEW]
Subchapter 5. Advisory Committee [REVOKED]
160:55-5-1 [REVOKED]
160:55-5-2 [REVOKED]
160:55-5-3 [REVOKED]
Subchapter 7. Records
160:55-7-1 [AMENDED]
Subchapter 9. Enforcement
160:55-9-10 [AMENDED]
**AUTHORITY:**
Administrator of Consumer Credit; 59 O.S. §§ 2095.1(2), 2095.13 and 2095.14
**DATES:**
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March 3, 2010
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March 16, 2010
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March 16, 2010
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April 14, 2010
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May 12, 2010
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**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 1. General Provisions
160:55-1-2 [AMENDED]
Subchapter 3. Licensing
160:55-3-1.1. [AMENDED]
160:55-3-1.2 [REVOKED]
160:55-3-1.3 [REVOKED]
160:55-3-1.4 [REVOKED]
160:55-3-3 [REVOKED]
160:55-3-4 [AMENDED]
160:55-3-8 [AMENDED]
160:55-3-9 [REVOKED]
160:55-3-9.1 [AMENDED]
160:55-3-10.1 [REVOKED]
160:55-3-12 [NEW]
160:55-3-13 [NEW]
Subchapter 5. Advisory Committee [REVOKED]
160:55-5-1 [REVOKED]
160:55-5-2 [REVOKED]
160:55-5-3 [REVOKED]
Subchapter 7. Records
160:55-7-1 [AMENDED]
**Gubernatorial approval:**
June 22, 2009
**Register publication:**
26 OK Reg 2947
**Docket number:**
09-1200
**INCORPORATION BY REFERENCE:**
n/a
**ANALYSIS:**
The rules implement the licensing requirements of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The SAFE Act was effective July 1, 2009 and its passage by the Oklahoma Legislature was mandated by Congress for compliance with the federal SAFE Act. The rules include procedures for obtaining licenses, required information for license applications, procedures for denying licenses, procedures for license changes, standards for determining financial responsibility, a process for challenging information entered into the Nationwide Mortgage Licensing System and Registry and record keeping requirements. The rules also revoke existing rules that conflict with the requirements of the SAFE Act and amend rules that include incorrect statutory citations.
**CONTACT PERSON:**
Roy John Martin, General Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-522-4665.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

**160:55-1-2. Definitions**

Except as otherwise specifically defined in this section, the definitions set forth in the SAFE Act are incorporated herein and made a part hereof. The following words or terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

~~**"Act"** means the Oklahoma Mortgage Broker Licensure Act beginning at §2081 of Title 59 of the Oklahoma Statutes.~~

**"APA"** means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

**"Applicant"** means an entity or individual that has submitted an initial or renewal application for licensure as a mortgage broker or mortgage loan originator.

~~**"Committee"** means the Mortgage Broker Advisory Committee.~~

**"Days"** mean calendar days. In computing any period of time for communications between a person and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the licensed location, the Department or the office of the court clerk is closed.

**"Department"** means the Oklahoma State Department of Consumer Credit.

**"Deputy Administrator"** means the Deputy Administrator of the Department.

**"License"** means the instrument issued pursuant to the SAFE Act and these rules that is the sole authorization for an entity or individual to engage in mortgage business in the State of Oklahoma.

**"Mortgage business"** means the ~~trade that involves the making, negotiating or offering to make or negotiate any loan secured by a mortgage, deed of trust or any lien interest on residential real estate created with the consent of the owner of the real estate~~ business of taking residential mortgage loan applications or offering, negotiating or modifying the terms of residential mortgage loans in the State of Oklahoma.

**"NMLS&R"** means the Nationwide Mortgage Licensing System and Registry.

**"RESPA"** means the Real Estate Settlement Procedures Act of 1974 beginning at §2601 of Title 12 of the United States Code.

**"SAFE Act"** means the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act beginning at §2095 of Title 59 of the Oklahoma Statutes.

## SUBCHAPTER 3. LICENSING

**160:55-3-1.1. ~~Licensure forms~~ Licensing requirements**

~~(a) **License application.**~~

~~(1) The license application shall be completed by the person seeking a mortgage broker license or a mortgage loan originator license and shall include all fees, forms and exhibits requested.~~

~~(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been~~

~~submitted and the applicant has passed a license test, if required. [59:2085(A)(1)(c), (A)(9) and (L)(4), and 2092(B)]~~

~~(3) The Administrator shall grant or deny a license application within thirty (30) days from inal application unless the period is extended by written agreement between the applicant and the Administrator. [59:2085(C)]~~

~~(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial. If any applicant pays for a license test, but does not take the license test, the license test fee shall be returned to the applicant. If an applicant for a mortgage broker license fails to comply with the application process, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.~~

~~(b) **License test.** The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage broker licenses, unless waived by the Administrator. [59:2085(A)(1)(c) and (A)(9), and 2092(A) and (B)] The examination approved by the Administrator that is required to be taken and passed by applicants for mortgage loan originator licenses that do not have the required experience, unless waived by the Administrator. [59:2085(A)(9) and (L)(4), and 2092(A) and (B)]~~

~~(c) **Licenses.** No license is transferable or assignable. [59:2085(A)(7)] Expired licenses shall not be renewed; however, a new license may be issued if the applicant satisfies all of the licensing requirements of an initial license. [59:2085(D)]~~

~~(1) **Mortgage broker license.** The license, executed under the hand of the Administrator and delivered, is evidence of a person's authority to engage in the mortgage business within Oklahoma. The license shall be prominently displayed in an area of the principal place of business that is used or visited by a majority of the borrowers [59:2085(G)].~~

~~(2) **Mortgage loan originator license.** The license, executed under the hand of the Administrator and delivered, is evidence of an individual's authority to make, negotiate or offer to make or negotiate a mortgage loan for or on behalf of a mortgage broker.~~

~~(3) **Branch office license.** The license, executed under the hand of the Administrator and delivered, is evidence of a location in addition to the principal place of business noted on the mortgage broker license where mortgage business may be transacted. Any branch office license shall be prominently displayed in an area of the branch office that is used or visited by a majority of the borrowers [59:2085(H)].~~

~~(d) **Renewal application.**~~

~~(1) The license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December each year, unless the person holds a three year license for which the renewal application with all fees shall be submitted and postmarked on or before the first day of December of the final year of validity. As a courtesy, the Department may send a notice of renewal to each person, but the failure to do so shall not relieve any person of the duty to renew timely or impair the authority of the Administrator against any person.~~

~~(2) If the license is not renewed by December 15, a delinquency notice shall be sent to the person. If the license is not renewed by December 31, the license shall be suspended. A suspended license may be renewed with a completed license renewal application submitted with all fees and postmarked on or before January 31. If the license is not renewed by January 31, the license shall expire. [59:2085(D)]~~

~~(e) **Inactive and reactivation applications.** In lieu of renewal, a mortgage broker may place its license on inactive status for the following license year by completing an inactive application and submitting the application with its license and fee postmarked on or before the first day of December. [59:2085(E)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the renewal requirements.~~

~~(1) At the end of the first inactive license year, the mortgage broker shall complete an inactive application or a reactivation application and submit it with the proper fee postmarked on or before the first day of December. [59:2085(E) and (F)] If a mortgage broker applies for inactive status when the license is not eligible for inactive status, the Administrator shall notify the mortgage broker that the license is subject to the reactivation requirements.~~

~~(2) If the mortgage broker license is on inactive status for two (2) consecutive years, then at the end of the second inactive license year, the mortgage broker shall complete a reactivation application and submit it with the fee postmarked on or before the first day of December. [59:2085(E) and (F)]~~

~~(3) If a mortgage broker license is not inactivated or reactivated by December 31, then the license shall expire. [59:2085(E)]~~

~~(4) During an inactive license year, the mortgage broker license may be reactivated for the remainder of the year by completing a reactivation application and submitting the application with the fee. [59:2085(F)]~~

(a) **Mortgage loan originator license.** The requirements for obtaining a mortgage loan originator license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department's website shall include a link to the NMLS&R website.

(2) **Pre-licensing education.** Twenty (20) hours of pre-licensing education are required. Pre-licensing education courses and providers are reviewed and approved by NMLS&R. Information regarding pre-licensing education, including, but not limited to, approved courses, providers and scheduling is available from NMLS&R.

(3) **Testing.** An applicant is required to pass a test. The test consists of two (2) parts, a national part and an Oklahoma part. A score of seventy-five percent (75%) correct answers to questions is required on both parts

to pass the test. The testing providers are selected by NMLS&R. The test is developed by testing providers selected by NMLS&R. Information regarding the test is provided by NMLS&R, including but not limited to, approved testing providers, testing locations, study materials and test scheduling.

(4) **Background checks.** Applicants are required to pass a background check. The background check consists of the following:

(A) **Fingerprints.** An applicant is required to submit fingerprints to NMLS&R. Information regarding fingerprints is indicated on the NMLS&R website.

(B) **Applicants with felony convictions or pleas.** Applicants with felony convictions or applicants that have pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the applicant was convicted or in which the applicant pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United States of America.

(C) **Credit reports.** An applicant is required to submit personal information to NMLS&R for the purpose of obtaining credit reports. The purpose of the credit reports is to determine the financial responsibility of an applicant.

(5) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator.

(6) **Fees.** Payment of all required license fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(7) **Results.** Test score results, verification of completion of pre-licensing education and background check information are submitted to the Administrator by NMLS&R. The Administrator reviews the information to determine if an applicant qualifies for licensure.

(b) **Mortgage broker license.** The requirements for obtaining a mortgage broker license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department website shall include a link to the NMLS&R website.

(2) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator.

(3) **Designation of mortgage loan originator.** An applicant shall designate a licensed mortgage loan originator to oversee the operations of the applicant. An individual shall not serve as the designated mortgage loan originator for more than one (1) mortgage broker.

(4) **Officers, owners, directors and partners.** The application shall list each officer, owner, director or partner of the applicant. An officer, owner, director or partner of the applicant shall not act as a mortgage loan originator as defined by the SAFE Act unless each officer, owner, director or partner is licensed as a mortgage loan originator. Each officer, owner, director or partner of the applicant is required to pass a background check. The applicant shall submit the following information for each officer, owner, director or partner to NMLS&R:

(A) **Fingerprints.** Information regarding fingerprints is indicated on the NMLS&R website.

(B) **Felony convictions or pleas.** Any officer, owner, director or partner of a mortgage broker applicant with a felony conviction or that has pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the officer, owner, director or partner was convicted or in which the officer, owner, director or partner pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United States of America.

(C) **Credit reports.** Each officer, owner, director or partner of a mortgage broker applicant is required to submit personal information to NMLS&R for purposes of obtaining credit reports for each officer, owner, director or partner of a mortgage broker applicant. The purpose of the credit reports is to determine the financial responsibility of each officer, owner, director or partner of a mortgage broker applicant.

(D) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator.

(c) **Mortgage broker branch office license.** An applicant maintaining more than one location for the transaction of mortgage business shall obtain a branch office license for each location. The NMLS&R website provides information for obtaining branch office licenses.

(1) **Fees.** Payment of all required license fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(2) **Designated loan originator.** Each mortgage broker branch office shall designate a licensed mortgage loan originator to oversee the operations of the mortgage broker branch office. An individual shall not serve as the

designated mortgage loan originator for more than one (1) branch office.

(3) **Results.** The results of any information required for the application process are submitted to the Administrator by NMLS&R. The Administrator reviews the information to determine if an applicant qualifies for licensure.

**160:55-3-1.2. Experience or educational requirement [REVOKED]**

~~(a) **Mortgage Broker.** To apply for a mortgage broker license, an applicant shall provide satisfactory evidence of the required experience or certificates of completion for twenty (20) hours of education courses approved by the National Association of Mortgage Brokers taken within the required time period. [59:2085(A)(1)(a) and (b)]~~

~~(b) **Mortgage Loan Originator.** To apply for a mortgage loan originator license, an applicant shall provide certificates of completion for sixteen (16) hours of education courses approved by the National Association of Mortgage Brokers taken within the required time period and may provide satisfactory evidence of the required experience [59:2085(L)(4) and (5)].~~

~~(c) Satisfactory evidence for experience includes, but is not limited to, W-2 forms and 1099 forms.~~

~~(d) For purposes of this section, "applicant" means an individual; an owner of a sole proprietorship; the stockholders or three largest stockholders and the officers, directors and trustees of a corporation; the partners, principals, officers and directors of a partnership or limited liability company.~~

**160:55-3-1.3. Active management requirement [REVOKED]**

~~An individual is in active management of the activities of a licensed person when the individual supervises the mortgage business operations on a full-time basis.~~

**160:55-3-1.4. Continuing education [REVOKED]**

~~(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education, and to set forth the requirements for approval by the Administrator of a proposed continuing education course.~~

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

~~(1) **"Certificate of completion"** means a form acceptable to the Administrator and completed by the provider that signifies satisfactory completion of the approved course and reflects hours earned.~~

~~(2) **"Education verification form"** means a form acceptable to the Administrator and completed by the mortgage broker or mortgage loan originator that states under oath to compliance with the continuing education requirements.~~

~~(3) **"Provider"** means the Commission; a technology center school; a college or university; a private school; the Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers or any affiliate thereof; the Oklahoma Bar Association, American Bar Association or any affiliate thereof; or an education provider that provides approved continuing education courses. [59:2093(B)]~~

~~(c) **Continuing education requirements.**~~

~~(1) **Hours.**~~

~~(A) All mortgage brokers and mortgage loan originators shall complete sixteen (16) hours of continuing education before license renewal or reactivation. [59:2093(A)] Courses taken in excess of the required hours shall not carry forward.~~

~~(B) A minimum of seven (7) of the sixteen (16) credit hours shall consist of:~~

~~(i) one (1) credit hour covering the Real Estate Settlement Procedures Act;~~

~~(ii) one (1) credit hour covering the Truth In Lending Act;~~

~~(iii) one (1) credit hour covering federal laws related to fair lending - the Equal Credit Opportunity Act, the Fair Housing Act and the Home Mortgage Disclosure Act; and~~

~~(iv) four (4) credit hours covering ethics. [59:2093(A)]~~

~~(2) **Credit for instructors.** An instructor who is a mortgage broker or a mortgage loan originator shall receive the same continuing education credit for presenting approved course materials as a mortgage broker or mortgage loan originator who attends an approved classroom instructional session.~~

~~(3) **Certificates of completion required for license renewal or reactivation.** Each mortgage broker and mortgage loan originator shall attach an education verification form and certificates of completion for the required number of hours to the renewal or reactivation application. [59:2093(A)]~~

~~(4) **Repeating courses.** A mortgage broker or mortgage loan originator may repeat a course before renewal, if the maximum hours designated for the course were not attained in the first attempt. By repeating the course, the mortgage broker or mortgage loan originator may not earn more than the maximum hours designated for the course. A mortgage broker or mortgage loan originator may repeat a course after two (2) license renewal dates have elapsed and receive the maximum hours designated for the course.~~

~~(5) **Exceptions.** The requirements for continuing education in this section shall not apply to:~~

~~(A) a mortgage broker whose license is on inactive status; or,~~

~~(B) a non-resident mortgage broker or mortgage loan originator who is licensed in a state having continuing education requirements and the mortgage broker or mortgage loan originator meets all the requirements of that state. The non-resident mortgage broker or mortgage loan originator shall be responsible for providing satisfactory proof of compliance with the other state's requirements. [59:2093(E)]~~

~~(6) **Extensions.** For good cause shown, the Administrator may grant an extension of time during which the continuing education requirements may be completed.~~

~~The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding renewal. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the mortgage broker or mortgage loan originator and shall include details and any documentation to support the request. Each request must be received by the Administrator no less than thirty (30) days before renewal.~~

~~(d) **Approval of continuing education courses.**~~

~~(1) **Information required.** Each provider shall apply for approval of each course. All providers, including publicly funded educational institutions, shall provide:~~

~~(A) Name and address of the provider.~~

~~(B) Contact person and his or her address and telephone number(s).~~

~~(C) The location of the course, unless it is an individual study or correspondence course.~~

~~(D) Documentation that each course is approved by the National Association of Mortgage Brokers and the number of hours approved for each course. Courses must consist of a minimum of one (1) hour.~~

~~(E) Subject outlines which list the summarized subjects covered in each course and a copy of any course materials.~~

~~(F) The names of instructors.~~

~~(2) **Application deadline for course approval.** At least thirty (30) days prior to the course date, the provider shall apply to the Administrator for course approval. The Administrator shall grant or deny approval in writing based upon information submitted regarding each course. The Administrator will assign the number of hours awarded for an approved course. Each course approval shall be valid for a period of twelve (12) months. Course materials must be resubmitted at the time of expiration.~~

~~(3) **Withheld or withdrawn approval.** The Administrator may withhold or withdraw approval for any course for non-compliance with any provision of this section. This withdrawal will not affect any hours attained under the course previous to the withdrawal.~~

~~(4) **List of approved courses.** A list of approved courses shall be available from the Administrator. [59:2093(C)]~~

~~(5) **Certificate of Completion.** At the completion of each course, the provider shall provide each mortgage broker or mortgage loan originator with a "Certificate of Completion" form.~~

~~(6) **List of mortgage brokers and mortgage loan originators completing course to Administrator.** At the completion of each course, the provider shall provide the Administrator a list of all mortgage brokers and mortgage loan originators who completed the course. This list shall reflect the name and license number of each mortgage broker and mortgage loan originator.~~

~~(7) **Course records.** Providers shall maintain course records for at least seven (7) years.~~

**160:55-3-3. Investigations for licensure [REVOKED]**

~~A thorough investigation shall be conducted of each applicant for a mortgage broker license, and applicants shall provide such additional information as may be requested from the applicant for that purpose. In addition, the Administrator may consult outside sources, including law enforcement agencies, and may require the applicant's consent to release such other relevant information as the Administrator may deem necessary to determine the moral character, experience, background, honesty, truthfulness, integrity and competency of the applicant, any responsible individual designated by the applicant and any officer, director, shareholder or other interested party of the applicant [59:2085(A)(1) and (2)]. It shall be within the discretion of the Administrator to determine the fitness of an applicant, provided that such discretion is not arbitrary or capricious and is, or will be, applied uniformly to all similarly situated applicants.~~

**160:55-3-3.1. License Denials**

~~(a) **Denial notice.** The Administrator shall notify the applicant of the denial of a license application in writing stating the reasons for the denial. The notice shall be sent by certified mail with return receipt requested or be delivered in person. If an applicant for a mortgage broker license is denied a license, the initial license fee shall be returned to the applicant, but the Administrator shall retain the application fee.~~

~~(b) **Hearing request.** The applicant may make a written request for a hearing on the application within thirty (30) days of receipt of the denial notice.~~

~~(c) **Hearing notice.**~~

~~(1) If the applicant makes a timely request for a hearing, a hearing shall be held within sixty (60) days of receipt of the request. However, the applicant shall be given twenty (20) days notice of the hearing in writing.~~

~~(2) The notice shall:~~

~~(A) state the time, place and nature of the hearing;~~

~~(B) state the legal authority and jurisdiction for the hearing;~~

~~(C) refer to the statutory sections and rules involved; and~~

~~(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].~~

~~(d) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].~~

~~(e) **Order.**~~

~~(1) The Administrator shall issue an order granting or denying the license application within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the applicant and the Administrator.~~

~~(2) The order shall:~~

~~(A) be in writing;~~

~~(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;~~

~~(C) state conclusions of law; and~~

~~(D) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].~~

(a) **Background and purpose.** The SAFE Act authorizes the Administrator of Consumer Credit to deny a mortgage broker or mortgage loan originator license or decline to renew a mortgage broker or mortgage loan originator license, after notice and hearing pursuant to Article II of the APA, for failing to meet the requirements of the SAFE Act or for withholding information in an application for a license or renewal of a license. [59:2095.17]. The purpose of this rule is to provide procedures for processing and denying applications for mortgage broker or mortgage loan originator licenses if an applicant fails to meet the requirements of the SAFE Act or withholds information in an application for a license or renewal of a license.

(b) **Notification procedures.**

(1) **General notification requirements.** The Department shall notify an applicant if the applicant fails to meet the requirements of the SAFE Act or if the applicant has withheld information regarding an application. The notification shall indicate the requirements of the SAFE Act the applicant has failed to meet or indicate the information that has been withheld from the application. The notification may be sent via certified mail, return receipt requested, courier service, electronic mail, facsimile or regular United States Mail. The applicant shall have thirty (30) days from the date notification is sent to respond to the notification.

(A) **Applicants failing to meet the requirements of the SAFE Act.** If an applicant has failed to meet the requirements of the SAFE Act for licensure, the applicant may withdraw an application by notification in writing to the Department within thirty(30) days from the date notification is sent from the Department. The applicant may request a refund of the license fee, which shall be refundable to the licensee upon request. If the applicant fails to request a withdrawal of the application within the required period of time, a Notice of Hearing shall be filed in accordance with Article II of the APA for denial of the license. License fees shall not be refundable if an application is denied after notice and hearing in accordance with Article II of the APA.

(B) **Applicants that have withheld information.** Applicants that have withheld information regarding an application shall have thirty (30) days from the date notification is sent from the Department to provide the withheld information. A Notice of Hearing shall be filed in accordance with Article II of the APA for denial of the license if an applicant fails to provide withheld information within the required period of time. License fees shall not be refundable if an application is denied after notice and hearing in accordance with Article II of the APA.

(c) **License fee.** For purposes of this section, license fee shall mean the initial and renewal license fee and shall not include an application fee or the fee paid into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund.

**160:55-3-4. Licensure periods**

Any license issued during a year shall run only to December 31 of that year~~, except three-year licenses shall run to December 31 of the third calendar year~~.

**160:55-3-8. ~~Change of control~~ Mortgage broker license changes**

~~(a) At least thirty (30) days before any proposed change of control of any licensed mortgage broker, the mortgage broker shall notify the Administrator of the intent to change control, and the acquiring person shall apply for a mortgage broker license and branch office licenses, if any The Administrator shall notify the mortgage broker and the acquiring person when the acquiring person's mortgage broker license application has been granted. After the mortgage broker surrenders its mortgage broker license and branch office licenses, if any, and transfers controlling interest, a mortgage broker license and branch office licenses, if any, shall be issued to the acquiring person. [59:2085(A)(7)]~~

~~(b) If the change of control results in the closing of any locations, then the mortgage broker shall post an announcement on the front door listing the name, business telephone number and mailing and business addresses of the acquiring person. The announcement shall be posted before controlling interest is transferred and shall remain posted until the existing location closes. The mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement.~~

~~(c) For purposes of this section, "change of control" means a change of an individual owner, or a change of more than twenty percent (20%) in the power to vote outstanding shares of a licensed corporation, partnership, association or trust. [59:2085(A)(7)]~~

(a) **Notification.** At least thirty (30) days before any proposed change in ownership or any change in the officers, owners, directors, partners or the designated mortgage loan originator of a mortgage broker, the mortgage broker shall notify the Administrator of the proposed change by regular United States mail, electronic mail, facsimile or courier service. The mortgage broker shall also contact the Administrator for instructions regarding the completion of necessary documentation to process the proposed change.

(b) **Required documentation and information.**

(1) **Change in ownership, officers, directors or partners.** A mortgage broker with a proposed change of ownership or a proposed change of any officers, directors or partners shall submit the following information for each new proposed owner, officer, director or partner:

(A) Fingerprints.

(B) Personal information for obtaining credit reports.

(C) Any proposed officer, owner, director or partner that has a felony conviction or has pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime

is classified as a felony is determined by the law of the domestic, military or foreign court in which the officer, owner, director or partner was convicted or in which the officer, owner, director or partner pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United State of America.

(D) Any additional documentation required by the Administrator.

(2) **Change of designated mortgage loan originator.** A mortgage broker with a proposed change for the designated mortgage loan originator shall submit to NMLS&R the name and license number or unique identifier issued by NMLS&R for the proposed, designated mortgage loan originator.

(c) **Proposed change involving fifty percent (50%) or more new owners, officers, directors or partners.** A mortgage broker with a fifty percent (50%) or more proposed change in ownership, officers, directors or partners shall submit a new license application in accordance with the SAFE Act and rules promulgated by the Administrator.

**160:55-3-9. Ownership of more than one location [REVOKED]**

~~(a) Any location, in addition to the principal place of business noted on the mortgage broker license, where the mortgage broker will transact mortgage business shall be licensed as a branch office [59:2085(H)].~~

~~(b) For purposes of this section, "locations where mortgage business will be transacted" shall include any location at which:~~

~~(1) a mortgage loan application is provided, taken or completed in person, or~~

~~(2) making, negotiating or offering to make or negotiate a mortgage loan occurs.~~

~~(c) For purposes of this section, the term "locations where mortgage business will be transacted" shall not include either:~~

~~(1) administrative offices at which only bookkeeping, billing or accounting duties are performed for separate mortgage business locations, or~~

~~(2) offices at which only independent contractors or their employees, or both, are located.~~

**160:55-3-9.1. ~~Moving or closing a location~~ Address changes and closing requirements**

~~(a) At least thirty (30) days before the address of the principal place of business or a branch office is changed, the mortgage broker shall notify the~~ Administrator ~~in writing~~. ~~The mortgage broker shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. In the change notice, the mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license, that needs need to be amended along with a change of address fee. [59:2085(H)]~~

~~(b) At least thirty (30) days before a location is to be closed, the mortgage broker shall notify the Administrator in writing. The mortgage broker shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the mortgage broker shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.~~

(a) At least thirty (30) days before the address of the principal place of business or the address of a branch office is changed, the mortgage broker shall notify the Administrator through NMLS&R. The mortgage broker shall return the license to the Administrator along with an appropriate fee for an amended license.

(b) At least thirty (30) days before a location is to be closed, the mortgage broker shall notify the Administrator through NMLS&R. The mortgage broker shall return the license to the Administrator.

(c) A mortgage loan originator shall notify the Administrator through NMLS&R of any address change at least thirty (30) days prior to the change of their address of record. The mortgage loan originator shall return the license to the Administrator along with the appropriate fee for an amended license.

**160:55-3-10.1. Loss or change of licensed mortgage broker sponsor [REVOKED]**

~~(a) When a mortgage broker cancels the sponsorship of a mortgage loan originator, the mortgage broker shall submit the mortgage loan originator's license to the Department within three (3) business days.~~

~~(b) The Department shall return the license to the mortgage loan originator with the name of the new sponsoring mortgage broker after all requested forms, exhibits, information and fee have been submitted.~~

~~(c) The Department's holding of the mortgage loan originator license does not change the licensure period.~~

~~(d) The person remains subject to all licensing and renewal requirements for the mortgage loan originator license whether the person or the Department holds the license.~~

**160:55-3-12. Standards for determining financial responsibility**

(a) **Purpose.** Mortgage loan originator applicants and the owners, officers, directors and partners of mortgage broker applicants must demonstrate financial responsibility pursuant to the SAFE Act and this rule. The SAFE Act authorizes the Administrator to deny license applications if an applicant for a mortgage loan originator license or if any owner, officer, director or partner of a mortgage broker applicant has not demonstrated financial responsibility. The SAFE Act provides general guidelines for determining a failure to demonstrate financial responsibility, such as outstanding judgments, foreclosures, tax liens and a pattern of seriously delinquent

accounts. The purpose of this rule is to establish specific criteria for determining when an applicant for a mortgage loan originator license or when any owners, officers, directors or partners of a mortgage broker applicant have failed to demonstrate financial responsibility pursuant to the SAFE Act and this rule.

(b) **Standards demonstrating financial responsibility pursuant to the SAFE Act and this rule.**

(1) **Threshold combined credit score.** A threshold credit score shall be set by the Administrator. The credit score of an applicant shall be the combined, average credit score of the applicant from the three (3) major credit reporting bureaus. The Administrator shall publish the threshold credit score on the Department website. The Administrator may adjust the threshold credit score as necessary. Any adjustments to the threshold credit score shall be published on the Department website.

(2) **Mortgage loan originators.** If an applicant's credit score equals or exceeds the threshold credit score, the applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of an applicant is less than the threshold credit score, the Administrator shall review the credit reports of the applicant for any current outstanding judgments (excluding judgments solely as a result of medical expenses) current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years to determine if the applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

(3) **Mortgage brokers.** If the credit score of all of the owners, officers, directors or partners of the applicant equals or exceeds the threshold credit score, the applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of any of the owners, officers, directors or partners of the applicant is less than the threshold credit score, the Administrator shall review the credit reports of the owners, officers, directors or partners of the applicant with a credit score that is less than the threshold credit score for any current outstanding judgments, excluding judgments solely as a result of medical expenses, current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years of such owner, officer, director or partner to determine if the applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

**160:55-3-13. Challenging information entered into NMLS&R**

(a) **Purpose.** This rule establishes a process for mortgage brokers and mortgage loan originators to challenge information entered into NMLS&R by the Administrator. A process for challenging information entered into NMLS&R is required by the SAFE Act.

(b) Process. A mortgage broker or mortgage loan originator shall comply with the following procedures to challenge information entered into NMLS&R by the Administrator:

(1) A mortgage broker or mortgage loan originator shall submit written notification to the Administrator indicating the mortgage broker or mortgage loan originator is challenging information entered into NMLS&R by the Administrator concerning the mortgage broker or mortgage loan originator.

(2) The written notification may be submitted by electronic mail, facsimile, United States Mail or courier service. The Administrator may require a different method of notification if the method of notification utilized by a mortgage broker or mortgage loan originator is illegible or is unable to be viewed by the Administrator. The Administrator may notify a mortgage broker or mortgage loan originator that a different method of notification must be utilized via electronic mail, facsimile, United States Mail or courier service.

(3) Written notification shall indicate the information being challenged.

(4) Written notification shall include documentation substantiating the challenge.

(5) Written notification shall include the unique identifier of the mortgage broker or mortgage loan originator.

(c) **Decision of Administrator.**

(1) The Administrator shall notify the mortgage broker or mortgage loan originator of the decision concerning the challenge.

(2) The decision of the Administrator shall be in writing and shall state the action taken by the Administrator in response to the challenge of the mortgage broker or mortgage loan originator.

(3) The decision of the Administrator may be submitted to the mortgage broker or mortgage loan originator by certified United States Mail, return receipt requested, electronic mail, facsimile, courier service or regular United States mail.

(d) **Hearing.**

(1) Within thirty (30) days after notification of the decision is sent, the mortgage broker or mortgage loan originator may request a hearing concerning an adverse decision of the Administrator regarding the challenge of the mortgage broker or mortgage loan originator.

(2) A mortgage broker or mortgage loan originator shall request a hearing in writing via electronic mail, facsimile, United States mail or courier service. The request shall be directed to the Administrator.

(3) A hearing shall be conducted in accordance with Article II of the APA and the SAFE Act.

(4) The Administrator shall issue a final order concerning the challenge as required by the APA.

## SUBCHAPTER 5. ADVISORY COMMITTEE [REVOKED]

**160:55-5-1. Purpose [REVOKED]**

~~The rules in this subchapter provide regulations relating to the proper and efficient functioning of the Mortgage Broker Advisory Committee.~~

**160:55-5-2. Responsibilities [REVOKED]**

~~(a) The Committee shall monitor the mortgage business in Oklahoma and shall recommend such policies or policy changes to the Commission deemed appropriate regarding the following subjects:~~

~~(1) the soundness and vitality of the industry;~~

~~(2) abuses or improper conduct in the industry;~~

~~(3) the sufficient availability of consumer credit to the people of Oklahoma for mortgage loans; and~~

~~(4) a proper balance of interests between consumers and mortgage brokers and mortgage loan originators [59:2090(A)].~~

~~(b) The Commission may assign to the Committee such topics for advice and recommendation regarding the mortgage business as the Commission may deem necessary from time to time, and shall set deadlines for the Committee to report back to the Commission with reports on its progress and advice [59:2090(A)].~~

~~(c) A recommendation under subsection (a) of this section or a report under subsection (b) of this section from the Committee shall be in writing and shall be placed on the next regular meeting agenda of the Commission.~~

~~(d) The Committee shall prepare licensing test forms for the Administrator's approval and the passing standard for the tests. It shall be within the discretion of the Administrator to approve the licensing test forms, provided that such approval shall not be unreasonably withheld when the content of the test forms covers the statutory topics. [59:2092(A)]~~

~~(e) The Administrator may also consult with, and seek the advice of, the Committee as the need may arise.~~

**160:55-5-3. Meetings [REVOKED]**

~~(a) The meetings of the Committee shall be regularly held on the second Tuesday of January, April, July and October of each year. In the event of lack of quorum, the Chairman shall reschedule the meeting for another date convenient for all members of the Committee before the end of the second month after the scheduled meeting, so that the Committee shall meet its statutory requirement that meetings be held at least quarterly. The Committee shall also meet at other times deemed necessary at the call of the Chairman or by request of a majority of members of the Committee. The meetings are open to the public. [59:2090(C)]~~

~~(b) The Administrator or the Deputy Administrator shall routinely attend meetings of the Committee, and shall provide such records, as may be requested, to the Committee for the performance of its duties.~~

## SUBCHAPTER 7. RECORDS

**160:55-7-1. Records and changes**

(a) **Records.** Each licensee's records shall be maintained in compliance with the SAFE Act and these rules.

(1) **Transaction journal.** As part of the books and records related to their mortgage business, each licensee shall maintain a transaction journal that discloses the consumer's full name, date of loan, loan account number, name of lender and address of lender.

(2) **Retention.** Mortgage brokers and mortgage loan originators shall preserve and make available such books and records related to their mortgage business for four (4) years from the date of the initial transaction between the person and each borrower, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. Trust account records shall be preserved and made available for at least three (3) years after the date of final entries therein ~~[59:2087(D)]~~. ~~Employee background investigation records shall be preserved and made available for at least two (2) years after employment is terminated [59:2085(A)(6)(b)].~~ The records shall be maintained for such time periods whether the person is currently licensed or previously licensed.

(3) **Location.** ~~Upon licensing, mortgage brokers and mortgage loan originators shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location.~~ Records shall be maintained at a designated location or maintained in an electronic format. Licensees shall designate in writing to the Administrator whether records are maintained at a physical location or maintained in an electronic format. The Administrator may require a mortgage broker to submit records via electronic mail or certified mail, return receipt requested, to the Administrator for purposes of reviewing a complaint or for conducting an examination.

(b) **Changes.** Each person shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted ~~to the Department~~ through NMLS&R within thirty (30) days of such change or addition unless the SAFE Act or these rules require otherwise.

## SUBCHAPTER 9. ENFORCEMENT

**160:55-9-10. ~~Oklahoma Mortgage Brokers Recovery Fund~~ Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund**

(a) **Purpose.** This section establishes a procedure required by 59 O.S. § ~~2091(A)(2)~~ 2095.20 for expending monies from the ~~Oklahoma Mortgage Brokers Recovery Fund~~ Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund ("Fund") in connection with reimbursements of approved claims.

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

(1) **"Claimant"** means a person who has been adjudged by a court of competent jurisdiction to have suffered monetary damages as specified by 59 O.S. § ~~2091(B)(1)~~ 2095.20(B)(1) and who has filed a claim for reimbursement from the Fund.

(2) **"Court of competent jurisdiction"** means a court having power and authority to hear and decide a civil action filed by a claimant.

(3) **"Final judgment"** means a written final determination by a court of competent jurisdiction of the rights of the claimant and the judgment debtor arising from a transaction or series of transactions as described by 59 O.S. §~~2091(B)(1).~~ 2095.20(B)(1). A final judgment under this section shall not include a default or a judgment by default unless the time to file a motion or petition to set aside, correct, open, modify or vacate the default or judgment by default has run and no proceedings to set aside, correct, open, modify or vacate the default or judgment by default have commenced.

(4) **"Judgment debtor"** means a person obligated through a final judgment to pay monetary damages to a claimant.

(c) **Required documentation.** To apply for reimbursement from the Fund, a claimant shall file a written claim to the Administrator. The claim shall include the following documentation:

(1) A certified copy of the affidavit or petition filed in a court of competent jurisdiction;

(2) Certified copies of the final judgment and any orders issued by a court of competent jurisdiction;

(3) Evidence that the final judgment has been enforced as provided by statute for enforcement of judgments in civil actions and the amount realized was insufficient to satisfy the final judgment; and

(4) Evidence that any compensation recovered by the claimant from the judgment debtor, or from any other source for monetary loss arising out of the transaction or series of transactions has been applied to the final judgment awarded by a court of competent jurisdiction.

(d) **Commission review.** The Administrator is authorized to determine the sufficiency of the claim and submitted documentation. After the Administrator receives the required documentation indicated in paragraph (c) of this section, he or she shall make a recommendation to the Commission concerning approval or denial of the claim. The Commission may take one of the following actions:

(1) Approve or deny the claim based on the Administrator's recommendation;

(2) Approve or deny the claim independent of the Administrator's recommendation; or

(3) Request additional information and or documentation it deems necessary to render a decision in accordance with the requirements of 59 O.S. § 2091 and Oklahoma law.

(e) **Notification.** The Administrator shall submit written notification to the claimant of the Commission's decision regarding the claim.

(f) **Expenditures.**

(1) If the Commission approves a claim, expenditures from the Fund shall be made by the Administrator in accordance with 59 O.S. § ~~2091~~ 2095.20 and Oklahoma law.

(2) If at any time monies in the Fund are insufficient to satisfy existing obligations and encumbrances on the Fund or an approved claim, or portion(s) thereof, the Administrator may satisfy such unpaid claims or portion(s) thereof as soon as a sufficient amount of money has been deposited in the Fund. When there is more than one outstanding approved claim, the Commission may determine the order of payment.

(g) **Restrictions.** A claimant shall not be qualified to file a claim for reimbursement from the Fund if:

(1) The claimant is the spouse of the judgment debtor or a personal representative of such spouse;

(2) The claimant is a licensee that acted in their own behalf in the transaction or series of transactions that are the subject of the claim;

(3) The claimant has previously been reimbursed the maximum amount allowed from the Fund involving the same transaction or series of transactions.

*[OAR Docket #10-896; filed 5-21-10]*

## TITLE 165. CORPORATION COMMISSION
## CHAPTER 30. MOTOR CARRIERS

*[OAR Docket #10-863]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
Subchapter 1. General Provisions
165:30-1-1. Purpose [AMENDED]
165:30-1-2. Definitions [AMENDED]
Subchapter 3. Intrastate Motor Carriers
Part 1. Applying For A License
165:30-3-1. Obtaining a license [AMENDED]
165:30-3-3. License and certificate renewals [AMENDED]
Part 3. License Requirements
165:30-3-11. Insurance [AMENDED]
Part 5. Conducting Operations
165:30-3-32. Shipping documentation [AMENDED]
165:30-3-34. Minimum standards [AMENDED]
Part 9. Violations
165:30-3-71. Loading capacity - Safety compliance [AMENDED]
Subchapter 7. Procedural Rules
165:30-7-2. Notice [REVOKED]
165:30-7-5. Forms [AMENDED]
165:30-7-8. Review of Applicants for safety fitness [AMENDED]
165:30-7-11. USDOT number [AMENDED]
Subchapter 10. Interstate Motor Carriers
Part 1. Compliance
165:30-10-9. Minimum standards [NEW]
Part 3. Conducting Operations
165:30-10-13. Shipping documentation [AMENDED]
Subchapter 13. Intrastate Household Goods Certificates ~~or Permits~~
Part 1. ~~Applying For~~Obtaining Authority
165:30-13-2. Obtaining a household goods certificate ~~or permit~~ [AMENDED]

165:30-13-3. Temporary authority [REVOKED]
165:30-13-4. Reissuance of certificate [NEW]
Part 3. Household Goods Certificate ~~Or Permit~~ Requirements
165:30-13-11. Insurance [AMENDED]
165:30-13-12. Identification device [AMENDED]
165:30-13-13. Annual report [REVOKED]
165:30-13-14. COD shipments [REVOKED]
165:30-13-15. Markings [AMENDED]
165:30-13-16. Current address requirement [AMENDED]
165:30-13-17. Adoption of interstate tariff - filing of affidavit [REVOKED]
Part 5. Conducting Operations
165:30-13-20. Estimates [NEW]
165:30-13-22. Consumer protection information [NEW]
165:30-13-24. Valuation and liability [NEW]
165:30-13-26. Bill of Lading [NEW]
165:30-13-27. Blank or incomplete documents [NEW]
165:30-13-28. Additional services [NEW]
165:30-13-31. Compliance with laws and regulations [AMENDED]
165:30-13-32. Shipping documentation [REVOKED]
165:30-13-33. Records [AMENDED]
165:30-13-34. Minimum standards [AMENDED]
165:30-13-35. Credit [REVOKED]
165:30-13-36. Loss, damage and concealed claims [AMENDED]
165:30-13-37. Leasing of equipment [AMENDED]
Part 7. Name Changes ~~And Transfer~~
165:30-13-51. ~~Mergers and name~~Name changes [AMENDED]
165:30-13-52. Transfer of certificate or permit [REVOKED]
165:30-13-53. Transfer upon death of holder of certificate or permit [REVOKED]
Part 9. Violations
165:30-13-71. Loading capacity-Safety compliance [AMENDED]
165:30-13-72. Leasing of authority [AMENDED]
165:30-13-73. Advertising [AMENDED]
165:30-13-74. Contempt complaint [AMENDED]
Part 11. Suspension Or Cancellation Of Authority
165:30-13-91. Voluntary suspension or discontinuance of service [REVOKED]
165:30-13-92. Involuntary suspension or revocation of a household goods certificate ~~or permit~~ [AMENDED]
165:30-13-93. Reinstatement of certificate ~~or permit~~ [AMENDED]
165:30-13-94. Violations [AMENDED]
Subchapter 15. Intrastate Private Carriers
Part 5. Conducting Operations
165:30-15-14. ~~Legal possession of cargo~~Shipping documentation [AMENDED]
Subchapter 19. Registration Pursuant To The International Registration Plan
165:30-19-19. Trip permits and hunters permits [AMENDED]
Subchapter 25. Harvest Permits [NEW]
165:30-25-1. Harvest permits [NEW]

**AUTHORITY:**
Oklahoma Constitution, Article IX, §18
47 O.S. §§ 161.A et. seq., 230.32, 230.34a, 1124.2

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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2010.
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None
**INCORPORATIONS BY REFERENCE:**
None
**ANALYSIS:**
The adopted rules were promulgated to conform with recent statutory amendments which established the Household Goods Act of 2009 and to add provisions for motor carriers to obtain harvest permits and unladen, or hunter's permits.
**CONTACT PERSON:**
Kathy Nelson, 522-1638

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:30-1-1. Purpose

The public policy of this State, as declared by the Legislature, requires that motor carriers and private carriers, except as provided in this Chapter, should be regulated by the Oklahoma Corporation Commission, hereinafter referred to as the Commission, to protect the public interest, the environment and the highways of the state of Oklahoma and ensure compliance with applicable safety rules and regulations. The public policy of this State, as further declared by the Legislature, requires that ~~the charges and services of~~ motor carriers of household goods~~, as defined in this Subchapter, should~~ be regulated by the Commission in such manner as to establish standards for public safety, fair competitive practices, adequate and dependable service and protection of shippers from deceptive or unfair practices. The rules in this Chapter are intended to implement that public policy and to carry out the Commission's statutory duty of regulation in the public interest. In case of doubt as to the meaning of any language of the rules in this Chapter, that construction should be adopted which is consistent with the Constitution and Statutes of Oklahoma. ~~All prior rules and regulations governing motor carriers pertaining to acts and services of motor carriers are hereby superseded and revoked.~~

### 165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq. and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

**"110% rule"** means the household goods carrier must deliver the shipper's goods once the shipper pays 110% of the estimated or agreed upon charges.

**"Alliance"** means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state,

local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

**"Accessorial services"** means services provided by an intrastate motor carrier of household goods at the request of a shipper that may be in addition to the actual transportation of the household goods. Examples of accessorial services are packing, unpacking, appliance servicing, loading/unloading of large items (such as a piano), climbing/descending stairs, demurrage, etc.

**"Authority"** means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations or fuel permits.

**"Base state"** means the state selected by a motor carrier according to the procedures established by a uniform program.

**"Binding estimate"** means a written agreement made in advance between the intrastate household goods carrier and the shipper which guarantees the total cost of the transportation of the household goods based upon the quantities and services shown on the estimate.

**"CFR"** means the Code of Federal Regulations.

~~**"COD"** means collect on delivery.~~

**"Consignee"** means the person or place shown on the shipping documentation as the location to which a carrier is directed to deliver a shipment.

**"Consignor"** means the person who offers goods for shipment.

**"Commission"** means the Oklahoma Corporation Commission.

**"Corporate family"** means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest.

**"Environmental restoration"** means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

**"Exceeding authority"** means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

**"FMCSA"** means the Federal Motor Carrier Safety Administration.

**"For-hire motor carrier"** means a person operating upon any public highway engaged in the transportation of property or passengers for compensation or consideration or for commercial purposes.

**"Gross Combination Weight Rating" (GCWR)** means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

**"Gross Vehicle Weight" (GVW)** means the registered weight of the vehicle or any lawful registered combination weight (Gross Combination Weight or GCW).

**"Gross Vehicle Weight Rating" (GVWR)** means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

**"Harvest permit"** means a document issued by the Commission to a motor carrier engaging in the commercial transportation of farm products in a raw state. A harvest permit encompasses vehicle registration, fuel permit and intrastate operating authority requirements of the State of Oklahoma.

**"Hazardous waste"** means any material that is subject to the "Hazardous Waste Manifest Requirements" of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

**"Hazardous waste permit"** means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

**"HMTUSA"** means the Hazardous Materials Transportation Uniform Safety Act of 1990.

**"Household goods"** means the used personal effects and property of a dwelling.

**"Hunter's permit or Unladen permit"** means a permit that provides temporary registration to an apportionable vehicle at the unladen (empty) weight of the vehicle. It is commonly used by a vehicle lessor to move a vehicle, without any load, to another jurisdiction so the lessor can establish a new contractual relationship with a different motor carrier.

~~**"ICC"** means the Interstate Commerce Commission or its successor agency.~~

**"Identification device"** means an annual, fee-paid, non-transferable device issued by the Commission to be carried in each and every vehicle.

**"Intercorporate hauling"** means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

**"Interstate"** means a shipment having an origin or destination into, out of or through two or more states.

**"Intrastate"** means a shipment having an origin and destination wholly within one state.

**"IRP"** means the International Registration Plan as administered by the Commission or other states.

**"Letter of filing"** means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

**"Motor carrier"** means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

~~**"Motor carrier of household goods"** means a person holding a valid certificate or permit requiring public convenience and necessity transporting for hire used personal effects and property of a dwelling.~~

**"NAIC"** means the National Association of Insurance Commissions.

**"Non-binding estimate"** means the estimated total cost to transport household goods intrastate based upon the weight of the shipment, volume of the shipment, amount of time to perform the movement and/or any accessorial services requested.

**"Participating state"** means a state electing to participate in a uniform program by entering into a base state agreement.

**"PIN"** means personal identification number.

**"Principal place of business"** means a single location that serves as the motor carrier's ~~or private carrier's~~ headquarters and where it maintains or can make available its operational records.

**"Private motor carrier"** means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

**"Process agent"** means a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker, or freight forwarder.

~~**"Public convenience and necessity"** means a determination of fact arrived at by the Commission in its expertise and discretion based upon evidentiary proceedings. It denotes a need for transportation service which may be less than absolute, but more than simple convenience or desire of shippers or consignees of freight. It presupposes a present or definite future requirement not already adequately met or will be met. The Commission's determination of fact is whether a proposed transportation service will serve a useful public purpose, responsive to a public demand or need, and whether this purpose can and will be served by the proposed service without unnecessarily endangering or impairing the operations of existing services contrary to the public interest as it applies to motor carriers of household goods.~~

**"Registration"** means the identification of hazardous waste transporters through a national base state system.

**"Reciprocal state"** means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

**"Shipper"** means a person authorized to tender a shipment to a carrier and may include, but is not limited to, a consignor, consignee or beneficial owner of the shipment.

**"Trip permit"** means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

**"Truck yard pit"** means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

**"Uniform application"** means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

**"Uniform program"** means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal with one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

**"Unprocessed agricultural commodities"** means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling, spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

**"USDOT"** means the United States Department of Transportation.

## SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

## PART 1. APPLYING FOR A LICENSE

### 165:30-3-1. Obtaining a license

(a) No intrastate motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers or property for hire without first obtaining from the Commission a license as provided in this Section. A license issued under this Subchapter shall not include transportation as a motor carrier of household goods. Motor carriers of household goods must comply with Subchapter 13 of this Chapter.

(1) An applicant for a license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Chapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Chapter shall be met within thirty (30) days from date of receipt of a motor carrier license application by the Commission. Failure to comply will result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for intrastate operations shall be issued until after the applicant has provided a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Chapter and all applicable state statutes; and has purchased an appropriate number of identification devices.

(6) The notarized application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business or a terminal in Oklahoma).

(E) Declaration of its USDOT number.~~, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months~~. Motor carriers without a USDOT number must ~~attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission~~ obtain a USDOT number from FMCSA or the Commission prior to a license being issued.

(F) Declaration of its USDOT safety rating and safety compliance.

(~~F~~G) Declaration of ~~A~~ size and weight ~~summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.~~ compliance.

(~~G~~H) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(~~H~~I) A description of all terminal and dock facilities.

(~~I~~J) ~~A declaration~~ Declaration ~~that~~ the applicant is in full compliance with all other state laws, rules and regulations.

(~~J~~K) Any other information the Commission deems pertinent.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers.

(8) A motor carrier desiring to modify its license operations shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (5) and (6)(D) - ~~(H)~~(I) of this subsection.

(9) A copy of the current license under which a motor carrier operates shall be carried at all times in each power unit by the motor carrier.

(b) A motor carrier engaged in intercorporate hauling shall be subject to this Subchapter.

(c) Motor carrier operations, other than motor carriers of passengers, are exempt from this Subchapter when:

(1) Conducted strictly within a municipality, or

(2) Conducted by a federal, state or local government.

(d) Motor carriers of passengers shall be exempt from this Subchapter when:

(1) Operating a taxicab, as defined by 47 O.S. § 1-174, wholly within a municipality, provided the operator of the taxicab is licensed by the municipality in which business is conducted;

(2) Operating a bus, as defined by 47 O.S. § 1-105, not between two or more cities or towns, provided the operator of the bus is licensed by a municipality in which business is conducted.

(e) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all other requirements for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license to the Director of the Transportation Division. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(f) The Commission may grant or deny the motor carrier license application or may impose conditions, stipulations and limitations on the license. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within 30 days of receipt of a complete application.

(g) No intrastate motor carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) All proceedings subsequent to the application, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

**165:30-3-3. License and certificate renewals**

(a) Any motor carrier desiring to continue intrastate motor carrier operations as granted in its license or certificate, shall,

prior to the date of license or certificate expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed, attested to and notarized as follows:

(1) Application of sole proprietorship must be signed by owner.

(2) Application of partnership must be signed by one of the partners.

(3) Application of corporation must be signed by an officer.

(b) All intrastate motor carrier licenses and certificates issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year, but may be renewed for up to three years. Carriers renewing licenses or certificates for more than one year must maintain all requirements of that license or certificate ~~as prescribed in Part 3 of this Subchapter~~ in order for the license or certificate to be valid.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) A renewal application may be set for hearing at the discretion of the Commission for good cause.

(e) An intrastate motor carrier desiring to renew its license or certificate should apply for renewal of its license or certificate a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license or certificate has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate motor carrier license or certificate shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate motor carrier operations shall be performed under an expired motor carrier license or certificate.

## PART 3. LICENSE REQUIREMENTS

### 165:30-3-11. Insurance

(a) No ~~intrastate~~ motor carrier whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an insurer authorized or approved by the Oklahoma ~~State~~ Insurance ~~Commission authorized provider~~ Department. No motor carrier whose principal place of business is not in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by ~~a National Association of Insurance Commissioners (NAIC) certified state insurance commission~~ an insurer licensed ~~provider~~ or approved by the insurance regulatory authority of the state of their principal place of business or the Oklahoma Insurance Department. No holder of an authority shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) Every motor carrier shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury, property damage, and including environmental restoration in minimum amounts, of combined single limits, for bodily injuries to, or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or others (excluding cargo). Minimum liability insurance limits as set forth in 49 CFR Part 387 shall also be applicable to intrastate operations unless otherwise specified in subsections (b)(1)-(4).

(1) Motor carriers of property using vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more**:**

(A) Transporting non-hazardous commodities or transporting hazardous waste, materials or substances not listed in 49 CFR Part 387.9 - $750,000.

(B) Transporting hazardous waste, materials, or substances- as required by 49 CFR, Part 387.9.

(2) Motor carriers of property using only vehicles with a GVWR under 10,000 pounds:

(A) Transporting commodities not listed in (B) of this paragraph- $300,000.

(B) Transporting hazardous waste, materials or substances - as required by 49 CFR Part 387.9.

(3) Motor carriers of the following types of property, materials, and products (also known or identified as restricted property) - $350,000:

(A) Sand, rock, gravel, rip-rap, aggregate or dirt.

(B) Asphaltic mixtures and similar mixtures and compositions (excluding concrete and concrete mixtures) used in road, highway and other ground surface paving.

(C) Unprocessed forestry products and by products thereof not in a finished state.

(D) Unprocessed agricultural commodities.

(E) Ordinary livestock.

(4) Motor carriers of passengers (seating capacity includes the driver):

(A) Taxicab service utilizing vehicles having a seating capacity of less than 7 passengers not operated on a regular route or between specified points - $100,000.

(B) Utilizing vehicles having a seating capacity of 15 passengers or less, other than as described in (A) of this paragraph - $1,000,000.

(C) Utilizing vehicles having a seating capacity of 16 or more passengers - $5,000,000.

(5) Motor carriers of household goods - $750,000.

(c) Every ~~intrastate~~ motor carrier of freight, except a ~~an intrastate~~ motor carrier of household goods, shall be exempted from filing proof of cargo liability insurance. Every ~~intrastate~~ motor carrier of household goods shall file with, and be approved by, the Commission an additional certificate on Form H or J that there is in effect a valid bond or insurance policy issued by a State Insurance ~~Commission~~ Department authorized provider as security required to compensate shippers or

consignees for loss of or damage to property coming into the motor carrier's possession. Security in the amount of at least Five Thousand ($5,000) Dollars is required to cover ~~covering each household goods carrying vehicle operated by the motor carrier~~ loss of or damage to property carried on any one motor vehicle in connection with its transportation service and in the amount of $10,000 for the loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place. ~~for the benefit of all persons who may suffer damage to property while in possession of said motor carrier of household goods.~~

(d) Motor carriers of hazardous materials or hazardous waste shall maintain a properly executed Form MCS-82 or MCS-90 in effect as required by 49 CFR 387.

(e) The Commission may by order grant authority to operate or to continue operating as a motor carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section.

(f) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(g) Insurance certificates or surety bonds may be canceled without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or canceled, the motor carrier provides an affidavit stating no operations have been conducted and the effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(h) Insurance certificates or surety bonds not properly cancelled or expired shall be considered expired one year after the motor carrier's authorization to operate has been cancelled or expired.

(i) Insurance certificates or surety bonds approved by this Commission shall be replaced by more recent insurance certificates or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(j) No certificate of insurance shall be filed with the Commission which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(k) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the motor carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the certificate or permit or license.

(l) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(m) When insurance is provided by more than one insurer in order to aggregate security limits for motor carriers, a separate insurance certificate and endorsement is required of each insurer.

(n) Every motor carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the license, or authority of a motor carrier until proper insurance is filed.

(o) Whenever the license or authority of a motor carrier is suspended for failure to maintain in force insurance required by this Section, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).

(p) Whenever a motor carrier fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the motor carrier's certificate or permit, license, or other authority shall be cancelled by operation of law, and without notice. A certificate or permit, license, or other authority so cancelled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the motor carrier was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the motor carrier's own negligence.

(q) Any motor carrier conducting operations under a suspended or cancelled authority, shall not be eligible to apply for a new authority for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

(r) A person may not require indemnification from a motor carrier as a condition to the following:

(1) The transportation of property by the motor carrier.

(2) Entrance onto property by the motor carrier for the purpose of loading, unloading or transporting property.

(3) Subsection (r)(2) of this Section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.

(s) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.

## PART 5. CONDUCTING OPERATIONS

### 165:30-3-32. Shipping documentation

(a) Every shipment shall be accompanied at all times by some form of written document of identification, which may be a bill of lading, freight bill, way bill, receipt, load ticket or other written instrument which sets out the date of shipment,

commodity, weight, point of origin, point of destination, consignor and consignee.

(b) Each shipping document shall represent a single shipment and shall not represent multiple shipments.

(c) ~~Provided nothing contained in this~~ This Section ~~shall~~ does not prohibit any motor carrier from utilizing an electronic system of documentation ~~heretofore or hereafter approved by the Commission including a metered tape parcel registration system,~~ provided the information required in subsection (a) is evident.

**165:30-3-34. Minimum standards**

(a) Every vehicle used for ~~intrastate~~ transportation of passengers or property shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma and the regulations of the USDOT.

(b) Every motor vehicle operating upon the highways of the State of Oklahoma shall be properly registered. Commercial motor vehicles with a GVWR/GCWR of 15,000 pounds or more must be registered by weight prior to transporting property.

(c) A commercial motor vehicle may not be registered for a capacity less than its GVWR/GCWR.

(~~b~~d) Every motor vehicle used for ~~intrastate~~ transportation of passengers or property shall be adequate in size, design, and equipment to perform the transportation and other services required of it. Every vehicle used for transportation requiring specialized equipment shall be equipped with all features and equipment necessary to afford adequate protection to cargo and to the public. No vehicle shall be loaded in excess of applicable weight limits; nor in any event in excess of the reasonable capacity of the vehicle, or in such fashion as to endanger any portion of the cargo.

(~~c~~e) Every motor vehicle used for the ~~intrastate~~ transportation of explosives or any other dangerous substance shall comply with all applicable laws and rules as to safety, placarding and other transportation requirements.

(~~d~~f) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.

(~~e~~g) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

## PART 9. VIOLATIONS

**165:30-3-71. Loading capacity - Safety compliance**

(a) No intrastate motor carrier or private carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the size and weight limits established by the State Statutes. Factors to be considered when an application for suspension or revocation is made are set forth in subsection (d)(1) through (5).

(b) No person, firm or corporation shall assist in the commission of such overweight violation or cause a motor vehicle to be overloaded.

(c) No intrastate motor carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the safety standards established by the state statutes.

(d) A compliance audit may be conducted by the Commission and will be based upon, but not limited to the following:

(1) Frequency of violations.
(2) Pattern of violations.
(3) Fleet size.
(4) Type of operation.
(5) Overweight excess.

(e) Motor carriers obtaining a permit authorizing the operation of an oversize or overweight vehicle shall maintain a copy of the permit in accordance with 165:30-3-33.

## SUBCHAPTER 7. PROCEDURAL RULES

**165:30-7-2. Notice [REVOKED]**

~~(a) Notice of an application relating to intrastate motor carrier authority of household goods shall be published prior to hearing once each week for two (2) consecutive weeks as follows:~~

~~(1) For original certificate as an intrastate common carrier or contract carrier of household goods: in a newspaper of general circulation published in the county seat or the largest city of the county of the applicant's principal place of business; or,~~

~~(2) For transfer of an intrastate certificate or permit of household goods: in a newspaper of general circulation published in the county seat or the largest city in the county in which is located the principal place of business of the transferor and transferee.~~

~~(b) Notice of an application for a rate or tariff change requiring a hearing shall be published prior to hearing once each week for two (2) consecutive weeks in a newspaper of general circulation published in Oklahoma and Tulsa counties.~~

~~(c) Any nonresident of Oklahoma shall be deemed to have its place of business in Oklahoma County for the purpose of this Section.~~

~~(d) All parties not of record interested in any intrastate household goods motor carrier application shall, only for the purpose of receiving further notices concerning the application, file with the Commission's Court Clerk a letter containing the name and address of the party and attorney, if any.~~

~~(e) Notice of all intrastate household goods motor carrier motions, applications and transfers shall be printed on the Commission Docket as prescribed by law for circulation to the public.~~

**165:30-7-5. Forms**

The following forms of the Commission relate to this Chapter:

(1) **Intrastate license forms.**

(A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License

(B) TDF 2 - Application for renewal of Intrastate Motor Carrier License or Certificate

(C) TDF 3 - Application for Change of Name on Intrastate Carrier License or Certificate

(2) **Intrastate certificate ~~or permit~~ forms.**

(A) MCF 1 - Application For~~ Common Carrier~~ Household Goods Certificate ~~and Necessity or Contract Carrier Household Goods Permit~~

~~(B) MCF Application to Transfer Motor Carrier Certificate or Permit of Household Goods~~

~~(C) MCF 4 Motion For Temporary Authority Accompanying Application For Intrastate Carrier Household Goods Certificate of Convenience and Necessity or Permit~~

~~(D) MCF 4 A Motion for Temporary Authority to Transfer Household Goods Certificate or Permit Accompanying MCF 3 Application to Transfer Intrastate Authority~~

~~(E) MCF 5 Application for Change of Name on Intrastate Certificate or Permit~~

~~(F) MCF 6 Application to Temporarily Operate Motor Carrier Household Goods Certificate or Permit As Representative of Estate~~

~~(G) MCF 7 Application For Voluntary Suspension or Discontinuance Of Service of and Intrastate Household Goods Certificate or Permit~~

~~(H) MCF 7 A Application to Reactivate A Household Goods Certificate or Permit Under Voluntary Suspension~~

~~(I) MCF 9 Annual Report~~

(~~J~~ B) Form H - Uniform Motor Carrier Cargo Certificate of Insurance

(~~K~~ C) Form J - Uniform Motor Carrier Cargo Surety Bond

(3) **Interstate Form** - Unified Carrier Registration

(4) **Hazardous Waste forms.**

(A) UPW - Part I - Registration

(B) UPW - Part II - Permit

(C) UPW - Part III - Other Information

(D) UPW - Part IV - Certification

(E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)

(5) **IFTA/IRP forms.**

(A) IRP Schedule A - International Registration Plan Original Application-Schedule A

(B) IRP Schedule B 0 International Registration Plan- Schedule B

(C) IRP Schedule C 0 International Registration Plan Supplemental Application-Schedule C

(D) IRP Schedule G 0 International Registration Plan Declaration of Estimated Miles-Schedule G

(E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards

(F) IRP TAP - International Registration Plan Application for Temporary Permit

(G) IFTA Application - International Fuel Tax Agreement Registration Application

(H) IFTA QTR - International Fuel Tax Agreement Quarterly Report

(6) **Miscellaneous forms.**

(A) TDF 8 - Application for Reinstatement

(B) TDF 14 - Application For a Deleterious Substance Transport Permit

(C) TDF 16 - Application for Identification Devices

(D) TDF 17 - Application for Address Change

(E) TDF 18 - Affidavit of No Operations

(F) TDF 19 - Carrier Identification Report

(G) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance

(H) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies

(I) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond

(J) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds

(K) TDF 15 - Application to Construct or Enlarge a Truck Yard Pit

(L) TDF 15T - Application to Transfer a Truck Yard Pit Permit

(M) TDF 25 - Application for Motor Carrier Rules and Regulations

(N) TDF 26 - Motor Carrier Rules and Regulations Update Notification

~~(O) TDF 27 Motor Carrier Rules and Regulations Change of Address Notification~~

(~~P~~O ) TDF 28 - Vehicle Information Request Form

**165:30-7-8. Review of Applicants for safety fitness**

(a) Applicants for an intrastate household goods certificate, for-hire motor carrier license, intrastate private carrier license, hazardous waste registration or permit, renewal of a certificate or a license ~~or an intrastate motor carrier of household goods certificate~~ shall be reviewed for compliance with rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto. Areas to be reviewed are based upon, but not limited to, the following:

(1) The carrier's USDOT safety rating (if any).

(2) The number of vehicle inspections performed.

(3) The time frame in which the vehicle inspections were performed.

(4) The out of service ratio for applicant's vehicles

(5) The out of service ratio for applicant's drivers.

(6) Review of applicant's driver qualification files.

(7) Review of applicant's vehicle maintenance records.

(8) Verification of applicant's drug/alcohol testing program.

(b) Compliance with the Federal Motor Carrier Safety Regulations and all other requirements shall result in a certificate or license application being approved administratively ~~or being set on the Motor Carrier Docket, if hearing is requir~~ed, unless a protest is timely filed in accordance with OAC 165:5.

(c) ~~The Transportation Division shall notify the Administrative Law Judge of the results of a safety review performed on an applicant for an intrastate motor carrier of household goods certificate.~~ Applicants may be required to attend an Educational Compliance Workshop produced by the Transportation Division.

(d) Failure to attend a scheduled Educational Compliance Workshop or produce documentation which reflects compliance ~~comply~~ with the Federal Motor Carrier Regulations may result in denial or delay of the relief sought.

(e) ~~Holders of an intrastate motor carrier license and an intrastate motor carrier of household goods shall be reviewed on a periodic basis for compliance with the Federal Motor Carrier Safety Regulations.~~ Results of safety reviews may be addressed in a hearing to obtain or renew an intrastate ~~motor carrier~~ license or ~~an intrastate private carrier license~~ an intrastate household goods certificate, or be addressed in a separate hearing before an Administrative Law Judge.

(f) Violations of the Federal Motor Carrier Safety Regulations are considered contempt of the Commission and subject to a fine in accordance with the rules and regulations of the Department of Public Safety in OAC 595:35.

**165:30-7-11. USDOT number**

(a) Every person operating or intending to operate as a motor carrier in intrastate or interstate commerce shall obtain a USDOT number.

(b) Every person registering a commercial motor vehicle for apportionment shall obtain a USDOT number.

(c) Every person applying for an IFTA license shall obtain a USDOT number.

(d) USDOT numbers for interstate operations can be obtained utilizing a MCS-150 form available from FMCSA or online at www.fmcsa.dot.gov.

(e) USDOT numbers for intrastate only operations can be obtained utilizing a ~~Corporation~~ Commission TDF-19 form, a MCS-150 form available from FMCSA or online at www.fmcsa.dot.gov.

(f) Motor carriers, registrants and licensees obtaining a USDOT number for interstate operations shall comply with all provisions of 49 C.F.R. 390.19, with the exception that applicants for apportioned registration must update their MCS-150 a minimum of once every twelve (12) months.

(g) Motor carriers operating intrastate only shall ~~file an updated TDF-19 application in conjunction with their for hire or private carrier license renewal~~ update their MCS-150 or TDF-19 a minimum of once every two years.

~~(h) Motor carriers of household goods operating intrastate only shall file an updated TDF-19 application a minimum of once every two years.~~

(~~i~~h) All holders of a USDOT number shall notify the Commission, utilizing a TDF 19 if intrastate only, or file a new MCS-150 form with USDOT or this Commission ~~Motor carriers operating intrastate only shall file a TDF-19~~ when they cease operations in order to inactivate their USDOT number.

(i) A USDOT number issued to an intrastate carrier will be inactivated when the intrastate carrier does not hold an active authority and two or more Commission letters or notifications mailed to the last known address on file are returned undeliverable.

## SUBCHAPTER 10. INTERSTATE MOTOR CARRIERS

## PART 1. COMPLIANCE

**165:30-10-9. Minimum standards**

All motor carriers shall comply with all provisions of 165:30-3-34.

## PART 3. CONDUCTING OPERATIONS

**165:30-10-13. Shipping documentation**

~~(a) An interstate motor carrier shall be required to carry at all times documentation that provides legal possession of the cargo and shipment information.~~

~~(b) Shipment information must contain, but is not limited to, a description of the cargo and the origin and destination of the cargo.~~All motor carriers shall comply with the provisions of 165:30-3-32.

## SUBCHAPTER 13. INTRASTATE HOUSEHOLD GOODS CERTIFICATES ~~OR PERMITS~~

## PART 1. ~~APPLYING FOR~~ OBTAINING AUTHORITY

**165:30-13-2. Obtaining a household goods certificate ~~or permit~~**

(a) No ~~intrastate~~ motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the intrastate, including intracity, transportation of household goods for hire without first obtaining from the Commission a certificate ~~or permit~~ as provided in this Section.

(1) An applicant for a certificate ~~or permit~~ shall file with the ~~Court Clerk of the~~ Commission a written application on the appropriate form prescribed by the Commission (MCF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a PIN, which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the authority or for additional authority by the same applicant shall be filed under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for authority. Each subsequent application shall also bear a sub-number in sequence.

(3) A certificate ~~or permit~~ shall be personal to the holder thereof, and shall be issued only to an individual, a

corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a certificate ~~or permit~~ does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited except ~~after public hearing and~~ pursuant to a ~~temporary or permanent order of~~ certificate issued by the Commission, and only after all requirements ~~as to filing of tariffs and insurance~~ have been met, ~~and an order granting temporary authority or a certificate or permit has been issued,~~ and identification devices have been obtained. ~~Unless all requirements of this Chapter are met and actual operations commenced within sixty (60) days after final hearing approving an application, the application will be dismissed.~~

(5) The application for a ~~intrastate~~ household goods ~~common carrier authority requiring proof of public convenience and necessity and intrastate household goods contract carrier authority~~ certificate shall be notarized, and shall contain the following information:

(A) Name of applicant, trade name, mailing address, principal place of business address which shall be the registered address for purposes of this Subchapter, telephone number and domicile county of the applicant. The applicant's name must be a legal entity. A trade name or "doing business as" (DBA) may be designated, but cannot be a corporate name or LLC or LLP or another organized entity. If the applicant is an organized entity, a copy of the certificate of incorporation or other instrument as issued by the Oklahoma Secretary of State's Office shall be attached to the application.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors and listing the addresses of each.

~~(C) Full information as to experience and financial responsibility of applicant, sufficient to show fitness to conduct operations for which authority is sought.~~

~~(D) Service proposed to be performed, which shall set out the exact area to be served.~~

(~~E~~C) Declaration of its USDOT number~~,~~. Carriers without a USDOT number must apply for a USDOT number. A USDOT number must be issued to the applicant prior to a certificate being issued.

(D) Declaration of its safety rating and provide a safety summary report ~~which details its safety program and lists all safety violations identified within the prior twelve (12) months. Carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission~~.

(~~F~~E) A size and weight summary report ~~which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.~~

(~~G~~F) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(~~H~~G) A description of all terminal and dock facilities to be utilized for household goods transportation operations. If no facilities exist within the state, the address where vehicles will be parked must be provided.

~~(I) Schedule containing proposed rates and charges to be assessed for performance of transportation, or reference to tariff series to which applicant will become a party.~~

(~~J~~H) The name and address of a process agent for Oklahoma must be filed and maintained for any applicant that does not maintain a physical address in Oklahoma.

(~~K~~I) A declaration that the applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

~~(6) An applicant for permit to operate as a contract carrier of household goods in intrastate commerce shall attach to its application a copy of every contract which sets forth the terms under which service is to be performed; provided that such applicant shall not be authorized to serve more than six (6) contracting shippers at any one time.~~

(b) Every person operating as a motor carrier of household goods pursuant to this Subchapter shall ~~purchase~~ obtain a copy of this Chapter and be familiar with its content as it pertains to motor carriers of household goods.

(c) The Commission may consider any written protests or written complaints filed prior to granting or renewing a household goods certificate. If the Commission elects not to grant or renew a household goods certificate, the application shall be set for public hearing in accordance with Commission rules. At the hearing, the applicant shall have the burden of establishing ~~by proof the following:~~

~~(1) That public convenience and necessity exists for granting the authority sought.~~

~~(2) That the applicant is fit, qualified, and financially able to perform the service and conduct the operations contemplated under the authority sought.~~

~~(3) That the applicant~~ it has the ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma.

(d) After the hearing, the Commission may grant or deny the application in whole or in part; or may impose conditions, stipulations and limitations on the authority as stated in the order.

(e) Applicant may be issued a provisional household goods certificate not to exceed ninety (90) days from the date the application is filed, provided all requirements, with the exception of the educational compliance requirements, for the certificate have been met. Applicant must provide a written request for the provisional certificate. If the provisional certificate is issued, a copy of the provisional certificate must be carried in each vehicle operated by the Applicant.

(f) A certificate shall be valid for one year from date of issuance. Applicants for renewal of a certificate shall comply with OAC 165:30-3-3.

(~~e~~g) A copy of the current certificate ~~or permit, or order granting temporary authority,~~ under which a carrier operates shall be carried at all times in each power unit by the motor carrier.

(~~f~~h) A motor carrier of household goods engaged in ~~incorporate~~ intercorporate hauling shall ~~not~~ be subject to this Subchapter~~, but shall apply for a license under Subchapter 3 of this Chapter~~.

(~~g~~i) No ~~intrastate~~ household goods ~~motor carrier~~ certificate ~~or permit~~ shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies ~~have been satisfied~~ have been satisfied.

(j) An intrastate motor carrier of household goods may additionally engage in intrastate for-hire transportation of property without an intrastate motor carrier license, but may not engage in the intrastate transportation of passengers, deleterious substances or hazardous materials without complying with Subchapter 3 of this Chapter.

(~~h~~k) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

**165:30-13-3. Temporary authority [REVOKED]**

~~(a) A request for temporary intrastate household goods motor carrier authority shall be made by motion.~~

~~(1) An applicant for permanent intrastate motor carrier authority of household goods may, at the same time he files his application or thereafter, file a motion for temporary authority to operate as a motor carrier pending final adjudication of its application. The motion (MCF 4) shall be accompanied by shippers' affidavits or other proof which clearly establishes the necessity for granting temporary authority in advance of hearing on the application for authority. The Commission may, in its discretion, grant an applicant temporary authority to operate as a motor carrier of household goods (only after hearing).~~

~~(2) The motion shall be filed under the permanent PIN assigned the application for permanent authority, along with any filing fee as prescribed by law or by Commission rule.~~

~~(b) Temporary intrastate household goods motor carrier authority allows for provision of service for which there is an immediate and urgent need to meet the requirements of public convenience and necessity to a point or points or within a territory or parts thereof, having no motor carrier service capable of meeting such need; and, the Commissioners may impose any time restriction on the length of the temporary authority that they deem proper.~~

~~(1) All motions for temporary authority shall be set for hearing before an Administrative Law Judge, and notice to the public of the hearing shall appear on the Commission's published motor carrier docket. No witnesses shall appear at the hearing, but such matter shall be considered based upon oral arguments and affidavits presented by the appearing parties. Appeals shall be made to the Commissioners as prescribed in the Commission's Rules of Practice, OAC 165:5.~~

~~(2) The granting of temporary authority shall create no presumption that permanent authority thereafter will be granted, and shall not excuse any proof required by law or by this Chapter in support of the application.~~

~~(c) Transportation services performed under temporary authority for motor carriers of household goods shall be subject to all applicable provisions of law and of this Chapter. No transportation service shall be performed thereunder until appropriate certificates of insurance and tariffs have been filed with the Commission, and identification devices have been obtained. The motor carrier shall have a copy of the temporary authority order in each vehicle prior to operating in Oklahoma.~~

**165:30-13-4. Reissuance of certificate**

(a) Intrastate household goods certificates and permits issued prior to November 1, 2009, shall expire sixty days after the effective date of this Section.

(b) Within sixty days of the effective date of this Section, intrastate motor carriers of household goods holding a valid certificate or permit on November 1, 2009, shall apply for a household goods certificate as set forth in this Subchapter. The filing fee as set forth in OAC 165:30-13-2 (a) (1) shall be waived.

(c) This Section does not apply to any household goods certificates or permits that are suspended or revoked prior to the effective date of this Section.

## PART 3. HOUSEHOLD GOODS CERTIFICATE ~~OR PERMIT~~ REQUIREMENTS

**165:30-13-11. Insurance**

All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-11.

**165:30-13-12. Identification device**

(a) Every motor carrier operating upon the public highways of the State of Oklahoma shall obtain and display a current identification device, issued by this Commission, for each power unit operated by said motor carrier.

(1) Only one (1) identification device is required for each power unit.

(2) The annual fee for each identification device will be as prescribed by law or Commission rule.

(3) Identification devices expire ~~on December 31st of each calendar year, unless the motor carrier additionally holds an intrastate motor carrier license~~ simultaneously with the expiration date of the annual certificate issued to the motor carrier.

(b) No identification device may be sold or otherwise transferred; except if such motor carrier provides a newly acquired vehicle in substitution therefore, each identification device on the discontinued vehicle, if such device is still in the possession of the motor carrier, may be transferred to the substitute vehicle or any subsequently substituted vehicle.

(c) It is the duty of every motor carrier to remove and destroy identification devices upon transfer or sale of a power vehicle.
(d) Identification devices found to be in the possession of a carrier not authorized will be confiscated and returned to the Commission by a motor carrier enforcement officer.
(e) No identification devices will be issued to any motor carrier who does not meet all statutory, regulatory and Commission requirements.

**165:30-13-13. Annual report [REVOKED]**

~~(a) On or before April 15th of each year, every intrastate motor carrier of household goods shall file with the Commission a report of revenues, expenses and other statistics for the calendar year ending on the preceding December 31st, or for its fiscal year ending subsequent to April 15th of the preceding year. An extension of time for filing may be granted by the Transportation Division for a period of not more than thirty (30) days, upon written request.~~

~~(1) Each annual report shall be made on the appropriate form (MCF 9) as prescribed by the Commission. A carrier engaged exclusively in intrastate commerce and operating no more than three (3) power vehicles may attach to the prescribed form, as a statement of income and expense portion only, the schedule thereof from its federal or Oklahoma income tax return.~~

~~(2) Each annual report shall be properly signed, notarized and attested to as follows:~~

~~(A) Report of sole proprietorship must be signed by owner.~~

~~(B) Report of partnership must be signed by one of the partners.~~

~~(C) Report of corporation or limited liability corporation must be signed by officer and attested to by the Secretary or Assistant Secretary, and contain its corporate seal.~~

~~(b) Failure to have on file the prescribed annual report by April 15th, or as extended by authority of the Transportation Division, may result in cancellation of the certificate or permit upon application or motion of the Commission's Transportation Division.~~

~~(c) Any annual report filed after April 15th, or as extended by authority of the Transportation Division, but prior to the day of the hearing to cancel the certificate or permit for failure to have on file the prescribed annual report, shall be accompanied by a delinquent annual report filing fee as prescribed by law or by Commission rule.~~

**165:30-13-14. COD shipments [REVOKED]**

~~(a) Every intrastate motor carrier of household goods transporting shipment(s) requiring collection of any amount of money on delivery (COD) shall maintain on file at all times with the Commission a surety bond or certificate of insurance coverage on Form MCF 8 or equivalent, the amount of Two Thousand Dollars ($2,000.00) to guarantee the collection of and proper transmittal of all money collected under COD shipments. No intrastate motor carrier of household goods shall transport any COD shipment at any time when such bond is not in full force and effect and on file with the Commission.~~

~~(b) Every amount of money collected pursuant to a COD shipment shall be remitted to the consignor within ten (10) days after collection thereof.~~

~~(c) Every intrastate carrier of household goods transporting COD shipments shall maintain a COD register or file containing the following information as to each COD shipment transported:~~

~~(1) The name and address of the consignor and consignee.~~

~~(2) The amount of money to be collected on delivery.~~

~~(3) The origin and destination of the shipment.~~

~~(4) The date of receipt thereof and the date charges were collected.~~

~~(5) Names of each carrier providing any portion of the transportation of the shipment.~~

~~(6) Date on which the money collected was remitted to the consignor.~~

~~(d) Every carrier providing any portion of the transportation shall furnish every other carrier participating in the transportation with the information required by this Section so that the information herein specified shall appear on the COD records of each participating carrier. The COD register shall at all times be open to inspection by any authorized representative of the Commission.~~

**165:30-13-15. Markings**

Every ~~intrastate~~ motor carrier of household goods shall comply with the provisions of 165:30-3-17.

**165:30-13-16. Current address requirement**

All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-16.

**165:30-13-17. Adoption of interstate tariff - filing of affidavit [REVOKED]**

~~(a) Rules, regulations, rates and charges as set forth in Nationwide Household Goods Relocation Tariff STB HB 400-M, including supplements thereto or reissues thereof, Household Goods Carrier's Bureau Committee Agent (hereinafter referred to as "Tariff 400-M") are prescribed as the rules and regulations and maximum allowable rates and charges for all motor carriers engaged in the transportation of household goods, subject to a discount of up to 100%.~~

~~(b) The rules, regulations, rates and charges set forth in Tariff 400-M, subject to a discount of up to 100%, shall be considered binding upon all motor carriers of household goods.~~

~~(c) To the extent any conflict may arise between the subject Tariff and applicable statutes of Oklahoma, the statutes shall prevail.~~

~~(d) Each motor carrier of household goods shall maintain a copy of the subject Tariff at its principal place of business for public inspection.~~

~~(e) Each motor carrier of household goods shall properly complete and place on file a MCF 8 - Tariff Affidavit that attests to the carrier's compliance with this Section.~~

~~(f) A certificate held by a motor carrier of household goods may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for any violation of, or failure to comply with any requirement or provision of Tariff 400-M.~~

## PART 5. CONDUCTING OPERATIONS

**165:30-13-20. Estimates**

(a) Household goods carriers must provide written binding or non-binding estimates.

(b) The written estimate must clearly provide:

(1) Whether it is a binding or a non-binding estimate. Non-binding estimates must be based upon a reasonably accurate estimate of the charges for transportation and accessorial services to be performed.

(2) The form of payment that will be honored at delivery such as cash, certified check, money order, type of credit card, etc.

(3) The date of the estimate.

(4) The signatures of the carrier and of the shipper.

(5) If the household goods carrier's charges will be based upon inventoried items, a written itemized inventory for each shipment must be prepared and attached to the bill of lading.

(6) The shipment will be transported at the released value of $.60 per pound, at no additional cost to the shipper, unless the shipper elects full value protection.

(c) Household goods carriers assessing charges based upon weight must obtain weight tickets of the vehicle before loading and after loading. The weight tickets must include:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) The signature of the weigh master.

(4) The identification of the weight entries as being the tare, gross or net weights.

(5) The last name of the shipper as it appears on the bill of lading (if the vehicle is loaded).

(6) The bill of lading number.

(d) A shipper shall be granted the ability to observe the vehicle weighing or re-weighing as requested.

(e) Household goods carriers assessing charges not based upon weight shall clearly specify the parameters for which charges will be assessed.

(f) Services performed under an estimate are subject to the 110% rule, which means the household goods carrier must deliver the goods once the shipper pays 110% of the estimated charges. The 110% rule still applies to partial shipments when a prorated percentage is paid.

(g) Additional charges may be added based upon mutual agreement of the carrier and the shipper. These charges must be in writing and signed by both parties. Additional charges may not be added after the goods are loaded, except as provided for in OAC 165:30-13-28.

**165:30-13-22. Consumer protection information**

(a) The Commission shall develop consumer protection information to be provided to each prospective household goods shipper or consignor.

(b) The consumer protection information shall contain the following:

(1) Intrastate and intracity household goods carriers are regulated by the Commission.

(2) Written estimates are required.

(3) The types of services provided by household goods vary.

(4) Explanation of valuation.

(5) Information on how to file a claim.

(6) The following recommendations:

(A) Contact more than one household goods carrier for an estimate so services and costs can be compared.

(B) Display of a USDOT number does not indicate the carrier holds an active household goods certificate. Contact the Commission to ensure the prospective household goods carrier is certificated.

(C) Contact the local Better Business Bureau regarding the prospective household goods carrier.

(D) Understand the terms and conditions of the contract.

(E) Understand the final charges the shipper will be required to pay.

(7) Any other information, derived from the Household Goods Act of 2009 or this Chapter, the Commission deems pertinent.

(c) The Commission shall post the consumer protection information online, where it will be accessible to both household goods carriers and the general public.

(d) Every household goods carrier shall provide the consumer protection information to each prospective shipper or consignor when a written estimate is provided.

(e) Household goods carriers may reprint the consumer protection information for handout as provided by the Commission or include the information in their own brochure, including additional information and logos as desired, provided all information required by the Commission is accurately contained within the carrier's brochure and no information inserted by the carrier contradicts or nullifies the Commission required information.

**165:30-13-24. Valuation and liability**

(a) All household goods carriers shall obtain a written valuation selection from the shipper prior to shipment. A household goods carrier must ensure the shipper selects one of the two (2) following valuations:

(1) **Released value.** Released value is the minimum amount a household goods carrier is liable to a shipper for lost or damaged goods. An intrastate household goods carrier may not charge a shipper an extra charge for a released value selection. Under released value, a household goods carrier is responsible, at its option, to replace, repair or settle in cash any article(s) that is lost, damaged destroyed or otherwise not delivered, at an amount of $.60 per pound of the weight of any article.

(2) **Full value.** Full value requires a household goods carrier to replace, repair or settle in cash any article(s) that is lost, damaged, destroyed or otherwise not delivered to the final destination while in the intrastate household goods carrier's custody. The carrier is required, at its option, to repair the article to the extent necessary to restore it to the same condition as when it was received by the carrier; pay the shipper for the cost of the repairs; replace the article with an article of like kind and quality; or, pay the shipper for the cost of article replacement, up to the amount of declared value of the shipment.

(b) Shippers electing full value protection shall declare the total value of their shipment.

(c) Shippers electing full value protection must declare, in writing, any articles that exceed a value of $100 per pound, entitling the shipper to full recovery of the declared value of the article(s), not to exceed the declared value of the shipment.

(d) A household goods carrier shall not be liable for physical loss of or damage to any articles from external cause while being carried or held storage-in-transit due to:

(1) An act, omission or order of shipper.

(2) A defect or inherent vice of the article, including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein.

(3) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack.

(4) A government or sovereign power, or by any authority maintaining or using military, naval or air forces.

(5) An agent of any such government, power, authority or forces.

(6) Any weapon of war employing atomic fission or radioactive force whether in time of peace or war.

(7) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such an occurrence.

(8) Seizure or destruction under quarantine regulations.

(9) Confiscation by order of any government or public authority.

(10) Risks of contraband or illegal transportation or trade.

(11) Terrorist activity, including action in hindering or defending against an actual or expected terrorist activity. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Terrorist activity means any activity which is unlawful under the laws of the United States or any state and which involves any of the following:

(A) The hijacking or sabotage of any conveyance including an aircraft vessel, cab, truck, van, trailer, container or vehicle, or warehouse or other building.

(B) The seizing or detaining and threatening to kill, injure or continue to detain another individual in order to compel a third person, including a governmental organization, to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detailed.

(C) An assassination.

(D) The use of any biological agent, chemical agent or nuclear weapon or device or explosive, firearm or other weapon or dangerous device, other than for mere personal monetary gain with intent to endanger directly or indirectly the safety of one or more individuals or to cause substantial damage to property.

(E) A threat, attempt or conspiracy to do any of the foregoing.

(12) Delay caused by strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person(s) taking part in any such occurrence or disorder, and from loss or damage when carrier, after notice to shipper or consignee of a potential risk of loss or damage to the shipment from such causes, is instructed by the shipper to proceed with such transportation and/or delivery, notwithstanding such risk.

(13) Acts of God.

(14) Delay caused by highway obstruction or faulty or impassable highways or lack of capacity of any highway or bridge or caused by breakdown or mechanical defect of vehicles or equipment or from any cause other than negligence of the carrier, nor shall the carrier be bound to transport by any particular schedule, means, vehicle or otherwise than with reasonable dispatch.

(e) Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination,

(f) The shipper shall indemnify carrier against loss or damage caused by inclusion in the shipment of explosives or dangerous articles or goods.

(g) The shipper, upon tender of the shipment to carrier, and the consignee, upon acceptance of delivery of shipment from carrier, shall be liable, jointly and severally, for all unpaid charges payable on account of a shipment including, but not limited to, sums advanced or disbursed by a carrier on account of such shipment. The extension of credit to either shipper or consignee for such unpaid charges shall not thereby discharge the obligation of the other party to pay such charges in the event the party to whom credit has been extended shall fail to pay such charges.

(h) If for any reason, other than the fault of the household goods carrier, delivery cannot be made to the address shown on the bill of lading or to another address of which carrier has been notified, the household goods carrier may, at its option, cause articles contained in the shipment to be stored in a warehouse selected by it at the point of delivery or at other available points at the cost of the owner, subject to a lien for all accrued charges.

(i) If shipment is refused by consignee at destination, or if shipper, consignee or owner of property fails to receive or claim it within fifteen (15) days after written notice by US mail addressed to shipper and consignee at post office addresses shown on the bill of lading, or if shipper fails or refuses to pay applicable charges in accordance with the written estimate, bill of lading and/or any valid amendments thereto, the household goods carrier may sell the property as follows:

(1) Upon notice at public auction to highest bidder for cash at a public sale to be held at a time and place named by carrier, thirty (30) days notice of which sale shall have been given in writing to shipper and consignee, and there shall have been published at least once a week for two consecutive weeks in a newspaper of general circulation at or near the place of sale, a notice thereof containing a description of the property as described in the bill of lading and the names of the consignor and consignee.

(2) Any perishable articles contained in said shipment may be sold at public or private sale without such notice if, in the opinion of the carrier, such action is necessary to prevent deterioration or further deterioration.

(3) The proceeds of any sale shall be applied toward payment of shipment charges and toward expenses of notice, advertising and sale, and of storing, caring for and maintaining property prior to sale. The balance, if any, shall be paid to the owner of the property.

(j) A shipper may not refuse a partial shipment due to loss of or damage to one or more articles.

**165:30-13-26. Bill of Lading**

(a) No household goods shipments may be loaded until a valid bill of lading has been prepared. A bill of lading must contain:

(1) Date.

(2) The identification number for the shipment (may be a bill of lading number).

(3) The household goods carrier's information as follows:

(A) Legal name and dba (if any).

(B) Mailing address and physical address (if different from mailing address).

(C) Telephone number.

(D) USDOT number as linked to the intrastate household goods certificate.

(E) Other motor carrier information, as required in this subsection, that will participate in the transportation of the shipment.

(4) The shipper's information as follows:

(A) Name.

(B) Mailing address and physical address (if different from mailing address).

(C) Telephone number.

(5) Shipment information as follows:

(A) Agreed upon pick up date and delivery date or agreed period of the entire move.

(B) Origin and destination of shipment.

(C) The inventory list signed by both parties or an inventory list waiver signed by the shipper.

(D) Identification information of the vehicle on which the shipment is loaded.

(6) Payment and charges as follows:

(A) Denote if the estimate was binding or non-binding.

(i) If non-binding, a reasonably accurate estimate of the amount of the total charges, the maximum amount (subject to the 110% rule) that must be paid at the time of the delivery to relinquish possession of the shipment.

(ii) If binding, the amount of charges that must be paid to relinquish possession of the shipment along with the terms of payment.

(B) The form of payment that will be honored upon delivery (which must be the same as shown on the estimate).

(C) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(D) The maximum amount of payment that will be required at the time of delivery to obtain possession of the shipment.

(E) The declared value of the shipment or, if the shipper does not select the full value protection, the released value of the shipment.

(F) The cost to the shipper for full value shipment valuation, if selected by the shipper.

(G) Evidence of any insurance coverage sold to or procured for the shipper from an independent insurer, including the cost incurred for the insurance.

(H) A complete description of any accessorial services ordered and the charges associated with the services.

(I) Whether the shipper will be notified in advance of the charges before delivery. If yes, the shipper must provide fax number or address where the notifications are to occur and via method (fax, email, overnight courier, certified mail, etc.) as well as any additional charges associated with the notification.

(7) Acknowledgments and Signatures as follows:

(A) In the event the motor carrier of household goods reasonably believes an accessorial service is needed to safely transport a shipment, and the shipper refuses to pay for such a service, the carrier must refuse to accept the shipment and note this on the bill of lading.

(B) Acknowledgment by the shipper that the consumer protection information "Moving in Oklahoma" was received at the time or prior to receipt of the written estimate.

(C) Specification of the selection of the released rate of sixty cents (.60) per pound per article which is considerably less than the value of most articles transported or the full value protection with declared value of shipment specified.

(D) Signature of carrier.

(E) Signature of shipper.

(b) A copy of the bill of lading must be provided to the shipper at the time of the shipper's signature.

(c) A bill of lading may be amended only prior to the loading of the shipment and upon mutual agreement between the carrier and the shipper except as provided for in OAC 165:30-13-28. The amendment must be signed by both parties.

(d) The bill of lading may not contain any language purporting to release or discharge the household goods carrier from liability, but may include a statement the property was received

in apparent good condition except as noted on the delivery receipt.

**165:30-13-27. Blank or incomplete documents**

A household goods carrier may provide a blank or incomplete non-binding estimate, bill of lading or other blank or incomplete documents pertaining to the move, as long as all the relevant shipping information is contained within the document to determine the final charges except the actual final shipment weight or other information necessary to finalize the shipping charges. These blank or incomplete areas or forms must be so noted at the time of the carrier's and shipper's signatures.

**165:30-13-28. Additional services**

(a) If the household goods carrier believes additional services are necessary to properly service a shipment after the bill of lading has been issued, the following actions must occur:

(1) The shipper must be allowed a minimum of one hour to determine whether it wants the additional services performed.

(2) If the shipper agrees to pay for the additional services, a written attachment to be made a part of the bill of lading contract must be signed by the shipper.

(b) The shipper is not required to pay for the additional services until a minimum of thirty (30) days after delivery.

(c) If the shipper requests additional services after the bill of lading has been issued, the following actions must occur:

(1) The household goods carrier must advise the shipper of the charges associated with the additional services.

(2) If the shipper agrees to pay for the additional services, a written attachment to be made a part of the bill of lading contract must be signed by the shipper.

(d) The household goods carrier may require full payment at delivery for the additional services, and for 100% of the original binding estimate.

(e) When the household goods carrier is not aware of the need for shuttle services for shipment delivery, and shuttle services are required for shipment delivery, the household goods carrier may require full payment at delivery for the shuttle service.

**165:30-13-31. Compliance with laws and regulations**

(a) All ~~intrastate~~ motor carriers of household goods shall conduct their operations in accordance with all applicable laws of the USDOT, State of Oklahoma and this Subchapter. All certificates ~~and permits~~ heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Subchapter as fully as if those laws and rules were set forth verbatim therein.

(b) No ~~intrastate~~ motor carrier of household goods shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, this Subchapter or, the statutes of the State of Oklahoma. No motor carrier of household goods shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Subchapter or statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person under the influence of alcohol, amphetamines, stimulants or other drugs, in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.

~~(c) An intrastate household goods contract carrier shall not perform transportation except under continuing contract(s), copies of which have been filed with and approved by the Commission. No permit for any household goods contract carrier by motor vehicle shall be issued without the applicant proving by competent evidence that the transport service proposed under the contract is not such that it could be reasonably furnished by existing carriers, and further, that such permit would not jeopardize the existing common carrier service.~~

~~(d) No common motor carrier of household goods shall transport property intrastate as a contract carrier of household goods in the same truck, at the same time, that he is transporting property as a common motor carrier. No common motor carrier of household goods shall transport any property intrastate as a contract carrier which property said carrier is authorized to so transport as a common carrier. No contract motor carrier shall transport property intrastate as a common carrier in the same truck, at the same time, that he is transporting property as a contract carrier.~~

~~(e) Whenever territorial boundaries of authority are expressed in terms of distance in miles from a city or town, the mileage shall be measured in a straight line from the post office of that city or town, or principal post office if there is more than one. In Oklahoma City, the principal post office is located at 320 S.W. 5th Street; and in Tulsa, the principal post office is located at 333 W. 4th Street.~~

**165:30-13-32. Shipping documentation [REVOKED]**

~~(a) Upon receipt of a shipment from a shipper, an intrastate motor carrier of household goods shall issue and deliver to the consignee or consignor a receipt or bill of lading. The instrument, even if prepared by the shipper, shall be deemed issued by the carrier. Each receipt or bill of lading shall contain the following information:~~

~~(1) The name of the issuing carrier.~~

~~(2) The date the shipment was received by the carrier.~~

~~(3) The name and address of the shipper.~~

~~(4) The points of origin and destination.~~

~~(5) The name and address of the consignee.~~

~~(6) The number and exact description of the goods, articles, packages or property shipped, showing separately each item of separate classification or subject to a separate rate or charge. The information shall be in sufficient detail so that the exact classification and all charges may be calculated from information set out on the face of the instrument.~~

~~(7) Where applicable, the actual, declared or released value of the shipment.~~

~~(8) If it relates to a COD shipment, the instrument shall plainly show the exact amount of money required to be collected on delivery, which amount shall appear on the same line as the name of the person who is required to pay it.~~

~~(b) Each shipment shall be supported by a freight bill, which may be a separate instrument or may be a copy of the bill of lading, and shall contain the following information:~~

~~(1) All information required for a bill of lading.~~

~~(2) All charges for transportation and other services in connection with the shipment.~~

~~(3) The date of delivery, which shall be noted by the person accepting or making delivery.~~

~~(4) Receipt of payment of all COD charges collected on delivery, signed by the person receiving payment.~~

~~(c) Every shipment shall be accompanied at all times by some form of written document of identification, which may be a bill of lading, freight bill, way bill, receipt, load ticket or other written instrument which sets out the commodity, rate, weight, revenue, point of origin, point of destination, consignor and consignee.~~

**165:30-13-33. Records**

(a) Every ~~intrastate~~ motor carrier shall maintain accurate records of all operations, including work orders, estimates, bills of lading, freight bills, warehouse receipts, and complete information as to shipper, consignee, origin, destination, commodities hauled, charges, work performed, equipment used and date of shipment or work performed. All records shall be open to inspection at any time by an authorized agent of the Commission.

(b) All records required by this Subchapter shall be maintained at the location last designated by the motor carrier as its principal office. If no location in Oklahoma is so designated, upon demand, the records shall be made available at a location designated by the Commission, at the expense of the motor carrier.

(c) All books, records, accounts and other documents required by this Subchapter ~~or by tariffs on file with the Commission~~ must be retained for a period of not less than three (3) years.

**165:30-13-34. Minimum standards**

~~(a) Every intrastate motor carrier of household goods shall have available sufficient vehicles to reasonably conduct the motor carrier service authorized and required by the certificate or permit~~.

(~~b~~a) Every vehicle used for ~~intrastate~~ transportation of household goods shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma, the regulations of the USDOT and the rules of the Department of Public Safety.

~~(c) Every intrastate motor carrier of household goods shall serve all members of the public within its authority without discrimination in price or service.~~

(~~d~~b) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.

(~~e~~c) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

**165:30-13-35. Credit [REVOKED]**

~~(a) Rates and charges for transportation and other services in connection with every intrastate shipment of household goods shall be collected as follows:~~

~~(1) Charges on a "prepaid" shipment shall be collected before the shipment is accepted by the carrier.~~

~~(2) Charges on a "collect" shipment shall be collected before delivery of the shipment to the consignee or other party authorized to receive the same.~~

~~(b) An intrastate common carrier of household goods may extend credit in the amount of the actual transportation charges to a person responsible for payment thereof, for a period not to exceed seven (7) calendar days after the freight bill is presented for payment. Freight bills presented by mail shall be deemed presented on the date mailed. The freight bill for all transportation charges shall be presented to the person responsible for payment thereof on or before seven (7) calendar days after the date of delivery of the shipment.~~

~~(1) After a carrier has delivered a shipment of freight and collected tariff charges thereon, an undercharge bill for additional charges will be deemed a new freight bill for credit purposes.~~

~~(2) The mailing of a check, draft or money order, when payment by such means is acceptable to the carrier, shall be deemed payment on the date mailed. Upon return of any check unpaid, or upon failure to pay within the time limited by this Section, the carrier shall not extend further credit to such person until satisfactory arrangements for future credit have been made.~~

~~(c) The provisions of this Section shall not apply to:~~

~~(1) The United States, any department, bureau or agency thereof.~~

~~(2) The State of Oklahoma, or any agency or subdivision thereof.~~

~~(3) A county or municipal corporation.~~

**165:30-13-36. Loss, damage and concealed claims**

(a) Every ~~intrastate~~ motor carrier of household goods shall be liable for all loss, damage or injury it causes to goods or property ~~due to any negligence~~ while the same is being carried by it.

(b) A written claim shall be submitted to the household goods carrier and shall contain:

(1) Tender of any agreed upon freight charges.

(2) Facts sufficient to identify the shipment(s) of property involved.

(3) A copy of the bill of lading.

(4) Assertion of liability for alleged loss, damage, injury or delay.

(5) A claim for the payment of a specific or determinable amount of money.

(6) The basis for the amount of the claim, such as the date the article was purchased, original cost, actual cash value at the time of loss or damage, a repair estimate, etc.

(7) When the loss of an entire package or shipment is involved, the consignee will provide a written certified statement the property has not been received from any other source.

(c) A claim shall be filed within nine (9) months after delivery to consignee, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed, except as provided for in (h) of this Section.

(d) A lawsuit shall be instituted against the household goods carrier within five (5) years from the date a notice is received by the claimant that the claim was denied or any portion of said claim was disallowed by the carrier.

(~~b~~e) Every ~~intrastate~~ motor carrier of household goods, upon receipt of a claim in writing for loss of or damage to cargo during transportation, some portion of which was performed by that carrier, regardless of the form in which the claim is presented, shall:

(1) Acknowledge receipt of the claim in writing within thirty (30) days after receipt thereof by the ~~motor~~ household goods carrier.

(2) Commence an investigation in good faith to determine whether the carrier acknowledges or denies liability for the loss or damage.

(3) Either pay the claim in full, or as agreed to by mutual compromise, or deny liability for loss or damage in writing within ninety (90) days after receipt of the original claim by the carrier. Such action shall not be withheld or postponed pending receipt of payment or acknowledgment of liability from connecting carriers.

(~~c~~f) Acknowledgment of liability shall be accompanied by payment in full of the value of property lost or damaged except where subject to ~~limited liability or~~ released value. When a shipper, in the event of loss or damage and without prior approval from the consignee, elects to release a shipment at a value less than the full value of the property shipped, said shipper will indemnify to the consignee the difference between the released ~~or limited valuation paid by the carrier~~ value and the full value of the property shipped. ~~A carrier's liability is limited to the released value or limited liability as stated in the carrier's governing tariff.~~

(~~d~~g) Where intrastate shipments are received by the carrier of household goods from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier with written exceptions covering loss or damage thereto, the carrier shall have the burden of proof to establish nonliability for such loss or damage. Terms and conditions of the bill of lading contract referring to excepted causes shall remain applicable.

(~~e~~h) Where intrastate shipments are received by the carrier of household goods from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier in the same manner with no exceptions noted, such concealed loss or damage claims must be submitted to the carrier by the shipper. Inspections covering loss or damage found after delivery must be requested to the delivering carrier in writing within fifteen (15) days after the delivery of the shipment involved. If more than fifteen (15) days have passed it is incumbent upon the consignee to offer reasonable evidence to the carrier or a representative of the carrier that loss or damage was not incurred by the consignee after delivery by the carrier.

(~~f~~i) Every ~~intrastate~~ motor carrier of household goods shall maintain a separate numbered file on each claim for loss or damage, and shall keep in the file all documents, acknowledgments, instruments, correspondence, memoranda and other writings relating to the claim. Claim files shall be available at all times for inspection by Commission personnel and shall be retained for two (2) years after final disposition.

(j) If a carrier fails to process loss or damage claims as provided herein, or if it fails to express declinations of the claims in writing with proof of nonliability, the carrier may be found in contempt by the Commission after proper notice and hearing. Failure to pay any fine or otherwise resolve the complaint may result in a hearing by the Commission to determine if the operating authority of the carrier shall be revoked.

(k) Whenever property transported by a household goods carrier is damaged, or alleged to be damaged, and is as a consequence thereof not delivered or is rejected or refused upon tender thereof to the owner, consignee or person entitled to receive such property, the household goods carrier shall, after giving due notice to the owner and other parties that may have an interest therein and unless advised to the contrary after giving such notice, will undertake to sell or dispose of such property directly or by the employment of a competent salvage agent.

(1) The household goods carrier will dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein.

(2) The household goods carrier will make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment involved and claim, if any filed thereon.

(3) The household goods carrier will assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(4) Upon receipt of a claim on a shipment on which salvage has been processed in the manner required in this subsection, the household goods carrier will record in its claim file the lot number assigned, the amount of money recovered if any from the disposition of such property and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

(5) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particular of each such transaction or relationship, or both as the case may be.

**165:30-13-37. Leasing of equipment**

(a) All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-37.

(b) ~~Intrastate motor~~ Motor carriers of household goods shall not rent equipment, with or without driver, to a private carrier or to a shipper.

## PART 7. NAME CHANGES ~~AND TRANSFER~~

### 165:30-13-51. ~~Mergers and name~~ Name changes

(a) An application to change the name or business name of the holder of an ~~intrastate~~ motor carrier of household goods certificate ~~or permit~~, without any change in the legal identity of the holder or any change in the ownership of the certificate ~~or permit~~, shall be filed on the appropriate form prescribed ~~(MCF-5)~~ (TDF-3) under the permanent PIN of the holder with appropriate sub-number designation and with such filing fee as prescribed by law or by OAC 165:5. No notice or hearing shall be necessary unless the Commission so requires. Notice, if required, shall be as the Commission shall direct.

(b) Any change in legal identity of the holder of ~~an intrastate~~ a motor carrier of household goods certificate ~~or permit~~, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust shall ~~be deemed a transfer of the certificate or permit. Application for transfer in such a case shall be governed by the provisions of OAC 165:30-13-52~~ require an original application for a certificate.

(c) Incorporation by a sole proprietor in which the sole proprietor is the sole shareholder of the corporation shall be deemed a name change. Incorporation by a partnership in which the partners are the sole shareholders of the corporation shall be deemed a name change.

(d) The merger of a corporate holder of ~~an intrastate~~ a motor carrier of household goods certificate ~~or permit~~ with another corporation under circumstances that the holder is not the survivor therein, shall ~~be deemed a transfer of the certificate or permit~~ require an original application for a certificate. ~~Application for transfer in such a case shall be made by the survivor, and shall be governed by the provisions of OAC 165:30-13-52.~~

(e) The acquisition, through stock ownership or otherwise, of operating control of the business of the holder of ~~an intrastate~~ a motor carrier of household goods certificate ~~or permit~~, by another holder of a certificate ~~or permit~~ or by majority stockholders of a corporate holder, shall ~~be deemed a transfer of the certificate or permit. Application for transfer in such a case shall be governed by the provisions of OAC 165:30-13-52~~ require an original application for a certificate.

(f) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation, shall require an original application for a certificate ~~be deemed a transfer of the intrastate motor carrier of household goods certificate or permit~~. ~~Application for transfer in such a case shall be governed by the provisions of OAC 165:30-13-52. Provided that, these provisions shall not apply to transfers of stock among immediate family members. Immediate family members shall be between and among husband and wife, their parents, their children, and their brothers and sisters.~~

(g) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to ~~effect a transfer of a certificate or permit without notice and hearing as required by this Subchapter~~ circumvent the rules of this Chapter is prohibited.

### 165:30-13-52. Transfer of certificate or permit [REVOKED]

~~No intrastate motor carrier household goods certificate or permit for any operating rights thereunder shall be conveyed, assigned or transferred except by order of the Commission, upon written application and after public hearing. No application for transfer of a portion of the authority or operating rights under a certificate or permit will be considered, except upon showing of exceptional cause therefor.~~

~~(1) An application for the transfer of motor carrier authority evidenced by one or more current certificates or permits shall be made jointly by the transferor and transferee, shall be in writing on the appropriate form prescribed (MCF-3) and filed with the Court Clerk of the Commission, and shall be accompanied by the filing fee as prescribed by law or by Commission rule. Every application for transfer filed on or after April 1st, shall be accompanied by the transferor's current year's annual report, as set forth in OAC 165:30-13-13. The application shall be assigned a PIN which shall be the permanent identification number of the transferee, if the application is approved. Where transferee already is the holder of a certificate or permit, the application for transfer shall be filed under existing permanent PIN of that transferee, with appropriate sub-number designation.~~

~~(2) At the hearing, the applicant shall have the burden of establishing the following:~~

~~(A) Reasonably continuous service in compliance with this Subchapter by the transferor for a period of one hundred eighty (180) days prior to filing the application for transfer, as evidenced by freight bills, invoices, bills of lading and/or other appropriate documentation.~~

~~(B) That the applicant is fit, willing, qualified and financially able to perform the service and conduct the operations contemplated under the authority sought to be transferred.~~

~~(C) That the transfer would be in the public interest and would not tend to create a monopoly or destroy competition.~~

~~(3) After the hearing, the Commission may grant or deny the application in whole or in part or may approve the transfer upon stated conditions or limitations. The Commission may revoke the certificate as to areas not served by the motor carrier not shown by the proof to have been transported by the transferor within one hundred eighty (180) days prior to the application, unless the proof shows that public convenience and necessity then exists for the grant of such authority to the transferee.~~

**165:30-13-53. Transfer upon death of holder of certificate or permit [REVOKED]**

~~(a) Upon death of the holder of an intrastate household goods motor carrier certificate or permit, his duly authorized legal representative shall make written application for temporary authority to continue operations under the motor carrier certificate or permit while the estate is pending, if the authorized legal representative desires to continue operations under the certificate or permit. The applicant shall attach to his application (MCF 6) certified copies of his letters testamentary, or other proof of authority to operate on behalf of the estate, and shall tender with the application a filing fee as prescribed by law or Commission rule. The application shall be filed under the permanent PIN of the deceased holder, with appropriate sub-number. The Commission may, with or without hearing, enter an order authorizing the legal representative to operate under the certificate or permit, pending final disposition of the estate. Such an order does not constitute a transfer of the certificate or permit. Operations shall not commence until applicant has fulfilled all requirements. The representative may adopt in writing the tariffs previously on file by the deceased holder.~~

~~(b) Upon death of the holder of an intrastate household goods motor carrier certificate or permit, where the duly authorized legal representative desires to continue operations under the certificate or permit, an application to transfer the certificate or permit shall be made by the person lawfully succeeding to the interest of the deceased holder. The application shall be in writing on the appropriate form prescribed (MCF 3) and filed with the Court Clerk of the Commission, and shall be accompanied by the filing fee as prescribed by law or by Commission rule. The application shall be filed under a new permanent PIN or under the permanent PIN of the applicant, if it already holds a certificate or permit. The applicant shall attach to its application certified copies of orders of the Court having jurisdiction of the estate, or other proof establishing that the applicant is entitled to have the certificate or permit transferred to it.~~

~~(1) An application for transfer of motor carrier household goods certificate or permit due to death of the holder thereof shall be set for hearing as set forth in OAC 165:30-13-52. Notice shall be given by the applicant as set forth in OAC 165:30-7-2.~~

~~(2) An application to transfer a certificate or permit in the settlement of the estate to a person not by law succeeding to the interest of the deceased holder shall be made pursuant to OAC 165:30-13-52.~~

## PART 9. VIOLATIONS

**165:30-13-71. Loading capacity-Safety compliance**

All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-71.

**165:30-13-72. Leasing of authority**

~~(a)~~ No ~~intrastate~~ motor carrier of household goods certificate ~~or permit~~, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner permit the use thereof, or the exercise of any rights or privileges thereunder by another~~, except as provided in this Section~~. Violation of this Section shall be grounds for revocation of the certificate ~~or permit~~, and shall be grounds for denial of an application for authority to operate as an intrastate motor carrier of household goods.

~~(b) No intrastate motor carrier shall enter into an arrangement or agreement of any kind with any person who is not a regular employee, for the division, on any basis, of transportation revenues, except as provided in subsection (c) of this Section or in OAC 165:30-3-37; any such arrangement or agreement, except as provided for in subsection (c) of this Section or in OAC 165:30-3-37, shall be deemed an unlawful lease of authority.~~

~~(c) An intrastate motor carrier of household goods may appoint a commission agent in a town or community where it maintains no full time employees and compensate the agent according to an agreed division of transportation revenues. The agency contract shall be in writing, shall specify the period for which it is to be in effect or conditions of termination, shall specify the territory to be served and the services to be performed by the agent; and shall prescribe the terms of compensation of the agent or the division of revenues between the parties. The contract shall not provide for any limitation of liability of the carrier in connection with any transportation services. A person may serve as commission agent for more than one (1) motor carrier of household goods. A copy of every contract shall be filed with the Transportation Division of the Commission.~~

**165:30-13-73. Advertising**

(a) All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-75.

(b) Any person who willfully advertises to perform transportation services for which the person does not hold a proper certificate shall be subject to the penalties prescribed for contempt of the Commission.

(c) All advertisements must contain the motor carrier of household goods' USDOT number linked to the carrier's household goods certificate.

**165:30-13-74. Contempt complaint**

All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-76.

## PART 11. SUSPENSION OR CANCELLATION OF AUTHORITY

**165:30-13-91. Voluntary suspension or discontinuance of service [REVOKED]**

~~(a) No intrastate motor carrier of household goods shall suspend or discontinue performance of any service authorized or required under a certificate or permit, except by order of the Commission.~~

~~(b) An intrastate motor carrier of household goods may make written application for permission to suspend or discontinue any or all service. The application (TDF 6) shall be made under the permanent PIN of the holder of the certificate or permit with appropriate sub-number and shall be accompanied by the filing fee as prescribed by law or Commission rule.~~

~~(c) Notice of hearing to suspend or discontinue household goods service shall be placed on the Commission Docket for a period of not less than thirty (30) days prior to the hearing.~~

~~(d) Upon showing of good cause and upon showing of exceptional circumstances, the Commission may in its discretion authorize suspension or discontinuance of household goods service. Suspension will be authorized for a period not to exceed six (6) months, unless the Commission prescribes otherwise in the order.~~

~~(e) If the application is denied in whole or in part and the motor carrier of household goods fails or refuses to continue service required by the certificate, the Commission may revoke all or any part of the certificate or permit affected by the suspension or discontinuance of service.~~

~~(f) Prior to the end of the suspension date, the intrastate household goods motor carrier shall make application to place the certificate or permit on extended voluntary suspension or make application (MCF-7-A) to reactivate the certificate or permit, which shall be made under the permanent PIN of the holder of the certificate or permit with appropriate sub-number, and set for hearing by notice on the Commission Docket. If not accomplished, that certificate or permit shall be cancelled.~~

**165:30-13-92. Involuntary suspension or revocation of a household goods certificate ~~or permit~~**

(a) Any ~~intrastate~~ motor carrier of household goods certificate ~~or permit~~ may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter~~, including but not limited to the following:~~.

~~(1) Charging or collecting fares or charges in excess of or lower than authorized tariffs on file with the Commission, or directly or indirectly giving rebates.~~

~~(2) Discontinuance of any service required under a household goods certificate or permit for a period of thirty (30) days.~~

~~(3) Violation of municipal or state traffic laws, rules, regulations and rules of the road with evidence of conviction of the driver or of the carrier; provided, however, that a certificate or permit shall not be suspended or revoked upon this ground alone, unless it is shown that such violations were of such serious or continuing nature that further operations by the motor carrier would constitute a hazard to public safety;~~

~~(4) Failure to maintain on file with the Commission any of the following:~~

~~(A) Proper certificates of insurance as required by law and this Chapter.~~

~~(B) Proper tariffs.~~

~~(C) Annual report.~~

~~(D) Current address.~~

~~(5) Sale, assignment, transfer or conveyance of a certificate or permit or any rights thereunder, without order authorizing such transfer.~~

~~(6) Lease of authority or operating rights or permitting the use or operation thereof by another.~~

~~(7) Failure to secure or display identification devices, or violation of any provision of this Chapter relating to identification devices.~~

~~(8) Failure to comply with any provision of this Chapter regulating COD shipments, and the collection and remission of COD charges.~~

~~(9) Failure to extend voluntary suspension or reactivate certificate or permit after voluntary suspension ends.~~

~~(10) Any violation of other state statutes or regulations shall be cause to initiate an application for suspension or revocation by staff or other adversely affected persons.~~

(b) An application to revoke or suspend ~~an intrastate~~ a motor carrier of household goods certificate ~~or permit~~ may be filed by a member of the staff of the Commission or by a person adversely affected by the acts alleged. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Commission's Rules of Practice, OAC 165:5.

(c) After hearing, the Commission may grant or deny the application, and may suspend, amend or revoke the certificate ~~or permit~~, or any part thereof or rights thereunder, or the Commission may assess a fine or impose limitations or conditions upon the continuation of operations under the certificate ~~or permit~~ as stated in the order.

**165:30-13-93. Reinstatement of certificate ~~or permit~~**

All ~~intrastate~~ motor carriers of household goods shall comply with all provisions of OAC 165:30-3-103.

**165:30-13-94. Violations**

(a) Every motor carrier of household goods, ~~for-hire motor carrier,~~ shipper, ~~private motor carrier,~~ their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or requirements of this Chapter; or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed ~~Five Hundred ($500.00)~~ One Thousand ($1,000.00) Dollars ~~per violation per day~~ for the first violation and for the second violation within a year, a penalty not to exceed Five Thousand ($5,000.00) Dollars, or as otherwise provided for by law.

(b) All motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or the rules of this Agency.
(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, safety or welfare, upon direction of the Transportation Division Director or his/her designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.
(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the motor carrier.

## SUBCHAPTER 15. INTRASTATE PRIVATE CARRIERS

## PART 5. CONDUCTING OPERATIONS

**165:30-15-14. ~~Legal possession of cargo~~ Shipping documentation**

All intrastate private carriers operating a motor vehicle with a GVWR or GCWR in excess of 26,000 pounds shall ~~be required to establish legal ownership of the contents of such vehicle~~ comply with all provisions of 165:30-3-32.

## SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

**165:30-19-19. Trip permits and hunters permits**

(a) **~~Purpose of permit; validity.~~** ~~The~~ A 72-hour trip permit ~~provided~~ provides full registration to trucks, truck-tractors, trailers, semi trailers, and motorbuses, which are not registered in Oklahoma.

(1) The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.

(2~~b~~) **~~Eligible out of state vehicles.~~** Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a 72-hour trip permit before proceeding through the State of Oklahoma.

(3~~c~~) **~~Where permit may be obtained; costs.~~** Trip permits are available from the Transportation Division of the Commission and Commission contracted wire services. ~~The cost of the permit is set forth by statute and Commission rule.~~ The cost of the permit is set forth by ~~statute and Commission rule.~~ 47 O.S. § 1124 (B). Trip permits obtained through wire services may have additional fees associated with issuance.

(4~~d~~) **~~Effect of expired, altered, or undated permit.~~** An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.

(5~~e~~) **~~Newly purchased trucks to be registered in another state.~~** A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.

(6~~f~~) **~~Receipt.~~** Only one (1) copy of a 72-Hour ~~Permit~~ permit receipt will be given to applicant.

(b) An unladen permit, otherwise known as a hunters permit, provides temporary registration to an apportionable vehicle at the unladen weight of the vehicle for a period of forty-five (45) days.

(1) Hunters permits are typically obtained by a vehicle owner to move the vehicle, without any load, to another jurisdiction when apportioned registration credentials are no longer valid due to the severance of a lease with a motor carrier.

(2) A Hunters permit is recognized as valid registration in all IRP participating jurisdictions at a weight not to exceed the unladen weight of the vehicle or the combined unladen weights of the power unit and trailer, provided however, an unregistered trailer must obtain a separate permit.

(3) Hunters permits are available from the Commission at a fee as prescribed by 47 O.S. § 1124 (C).

(4) The operator of a motor vehicle possessing an expired, altered or undated hunters permit shall be deemed to be in violation of state statutes and the rules of this Commission and shall be subject to full registration and penalty.

## SUBCHAPTER 25. HARVEST PERMITS

**165:30-25-1. Harvest permits**

(a) Motor carriers engaged in the interstate or intrastate commercial transportation of farm products in a raw state on a seasonal basis may desire to meet their vehicle registration, fuel permitting and/or intrastate operating authority requirements via a harvest permit.

(b) An applicant for a harvest permit shall file with the Commission a written application on the appropriate form prescribed by the Commission (TOSS1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(c) The applicant shall be assigned a personal identification number (PIN) which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to extend the harvest permit or to obtain an additional harvest permit by the same applicant shall be filed under the same PIN.

(d) A harvest permit shall be personal to the holder thereof and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity. A trade name or "doing business as" (DBA) may be designated, but cannot be a corporate name or LLC or LLP or another organized entity.

(e) The filing of an application for a harvest permit does not of itself authorize operations by the applicant. Such operations

are prohibited until all requirements have been met and a harvest permit has been issued. All requirements for compliance with this Section shall be completed within ninety (90) days from receipt of the application or the application will be denied and any filing fees paid forfeited.

(f) The harvest permit application shall require the following:

(1) USDOT number of the applicant.

(2) Applicant's Name and DBA, if any.

(3) Type of applicant.

(4) Mailing and physical addresses.

(5) Taxpayer identification number.

(6) Vehicle listing which contains the following information for each vehicle to be operated under the permit:

(A) Owner of the vehicle.

(B) Vehicle registrant, if other than the owner.

(C) Make, model, year, and VIN.

(D) License plate number, State or Province of registration and registration expiration date.

(7) A liability insurance certificate valid in Oklahoma for a minimum of three hundred fifty thousand dollars ($350,000) for each vehicle to be operated under the permit. The insured's name on the insurance certificate must match the owner or registrant's name as shown on the registration of the vehicle. A Form E liability insurance certificate issued on behalf of the motor carrier may be submitted in lieu of individual insurance certificates.

(8) Declaration stating the applicant shall comply with federal safety regulations and the state's size and weight laws and rules.

(9) Requested permit duration.

(10) Required permit effective date.

(g) No harvest permit shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) A copy of the harvest permit must be carried in each vehicle operated under the permit.

*[OAR Docket #10-863; filed 5-18-10]*

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## TITLE 300. GRAND RIVER DAM AUTHORITY
## CHAPTER 20. PURCHASING POLICY

*[OAR Docket #10-907]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
300:20-1-1. [AMENDED]
300:20-1-2. [AMENDED]
300:20-1-3. [AMENDED]
300:20-1-4. [AMENDED]
300:20-1-5. [AMENDED]
300:20-1-6. [AMENDED]
300:20-1-7. [AMENDED]
300:20-1-8. [AMENDED]
300:20-1-9. [AMENDED]
300:20-1-10. [AMENDED]
300:20-1-11. [AMENDED]
300:20-1-12. [AMENDED]
300:20-1-13. [AMENDED]
300:20-1-14. [AMENDED]
300:20-1-16. [AMENDED]

**AUTHORITY:**
Grand River Dam Authority; 82 O.S. § 861 *et seq.*; 82 O.S.Supp.2009, § 862; 82 O.S. § 875.

**DATES:**
**Comment period:**
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February 5, 2010
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**Submitted to Governor:**
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**Submitted to House:**
March 26, 2010
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May 3, 2010
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Failure of the Legislature to diaspprove the rules resulted in approval on May 21, 2010
**Final adoption:**
May 21, 2010
**Effective:**
June 25, 2010

**SUPERSEDED EMERGENCY ACTIONS:**
N/A

**INCORPORATIONS BY REFERENCE:**
N/A

**ANALYSIS:**
The proposed amendments clarify the responsibilities of Grand River Dam Authority's Purchasing Unit. Ordinary acquisitions requiring requisition review procedures have been increased from $2,500 to $5,000 and source selection methods have been revised accordingly. Employees that receive gifts or gratuities shall follow the rules promulgated by the Oklahoma Ethics Commission. The General Manager shall have the authority to approve change orders to contracts provided the total amount of the cumulative change orders does not exceed $50,000 and is reported to the Board of Directors at the next regularly scheduled meeting. Change orders that exceed $20,000 and do not meet the criteria for formal approval by the Board of Directors shall require written approval by the General Manager or Chief Operating Officer. The General Manager may delegate change order approvals and thresholds to other employees for any purchase or contract in the amount of $20,000 or less. All change orders for contracts or purchase orders subject to the Public Competitive Bidding Act shall comply with the provisions of the Act. Assistant General Managers of the Authority shall give notification of any emergencies that are expected to exceed $5,000.

**CONTACT PERSON:**
Gretchen Zumwalt-Smith, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-5545

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

### 300:20-1-1. Introduction to purchasing policy

(a) The material contained herein is designed to explain and facilitate understanding of the Central Purchasing Unit and the Authority's ~~Department, its~~ functions, policies and procedures related to purchasing other than those contracts in excess of $50,000.00 which concern the repair, construction or improvements to GRDA facilities or land. ~~The material will also serve as a guide to the Operating Departments and serve as a tool to provide information and direction to the various departments~~

~~and functions of GRDA. Its primary purpose is to communicate policies and give guidance to personnel in charge of purchases, personnel assigned to the purchasing function and others with delegated purchasing authority.~~ This policy does not apply to acquisitions of ~~contracts for~~ professional services as defined in Section 803 of Title 18, as well as power capacity, energy, transmission and ancillary services, ~~and~~ governmental relations or business ~~expenses~~expense acquisitions described in Section 300:20-1-15(c) or employee training or conference registration acquisitions~~expenses~~. Such ~~contracts~~acquisitions shall be exempt from competitive bidding procedures. The ~~purchase~~acquisition of coal and natural gas, and the delivery of same, may be confidential and therefore the bidding process may deviate from the guidelines set forth herein.

(b) The included policy statements represent the basic intentions and goals of the GRDA Board of Directors. ~~They represent the permanent foundation upon which the Authority operates, and are expected to be relatively independent of the changing technologies and methods used to carry them out. It is the responsibility of all who have been delegated the authority to commit GRDA funds through the purchasing function to adhere to the policies contained herein.~~

(c) The procedures set forth are expressly designed to implement the Board's policy and state law. Procedures will conform to changes in policy or law and when necessary, procedures will be modified on an "as needed basis" to refine the purchasing process.

(d) **Definitions**

(1) **~~Purchasing~~Acquisition.** ~~Identification and recognition of the required need for goods and services in all parts of the organization, and the assurance of satisfaction of those needs at the lowest possible cost, consistent with the best quality of goods required. Purchasing reflects the role of a service department by serving as the primary contact between the various functions of GRDA and its suppliers.~~The process of obtaining items, products, materials, supplies, services (including construction), and equipment by purchase, lease-purchase, lease with option to purchase or rental pursuant to the GRDA Purchasing Policy and Procedures and applicable State laws and directives.

(2) **Bid.** A complete and properly authorized proposal or quote from a vendor or supplier to provide goods, commodities, services, or designated portions for the sums stated and submitted in accordance with solicitation documents.

(3) **Central Purchasing Unit.** The specialist unit within the GRDA Finance Department that is responsible for supervising and managing the acquisitions of materials, supplies, and services that are used by the Authority and for administering procurement policies and procedures.

(4) **Emergency Acquisition.** An acquisition made without following normal acquisition procedures in order to obtain goods or services to meet an urgent and unexpected requirement.

(~~2~~5) **Policies.** Policies, as referred to herein, are pre-decisions made by Management and the Board of Directors for the purpose of giving information and direction. Policies establish basic philosophies and climates, and determine the major values upon which the Purchasing function must operate.

(~~3~~6) **Procedures.** Procedures are the prescribed means of accomplishing policy. Their intent is to provide GRDA personnel with the guidelines and, where appropriate, specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

(7) **Solicitation.** An invitation for bids, a request for proposal, telephone calls, or any document or method used to obtain bids or proposals for the purpose of entering into a contract.

**300:20-1-2. Purpose**

~~(a) In order for GRDA to continue to provide low cost power to GRDA customers, it is imperative that it continually strive for lower costs in every area of its business operation. A large element of cost is purchased material and services, so this activity provides GRDA with an opportunity for cost reduction and control.~~ The overall policy goal of the Authority's acquisition practices is to maintain, at all times, a continuous supply of goods and services necessary to support ~~the production of power by GRDA~~GRDA's operations. Individual aspects of this policy are:

(1) To comply with, in all aspects and without qualification or evasion, the laws of the State of Oklahoma and the GRDA Bylaws governing policy and procedures for ~~purchases~~acquisitions.

(2) To ensure the uninterrupted flow of production by obtaining and ensuring delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent.

(3) The management of inventories of ~~purchased~~acquired goods so as to meet the use requirements of all GRDA departments at the lowest possible cost.

~~(4) To develop reliable alternate sources of supply to meet GRDA requirements.~~

(~~5~~4) To treat all prices, technical information, and other bidder information submitted by suppliers as confidential until after bid openings in order to preserve a good business reputation and obtain competitive pricing.

(~~6~~5) The amicable resolution of complaints on all purchased goods and services.

~~(7) The standardization of materials, supplies, equipment, services and procedures.~~

~~(b) Purchasing is an important activity. The primary responsibility of the Purchasing Department is to provide and operate a system for the purchase of materials, supplies and services, with the objective that they will be available at the proper time and in the proper place in quantity, quality and price consistent with the needs of the Authority. It is necessary that the responsibility for buying materials and services be assigned to a group of people skilled in purchasing techniques.~~

~~(c) To achieve this overall objective, the responsibilities, authorities and controls set forth in this policy must be adhered to by all GRDA employees.~~

**300:20-1-3. Scope**

These policies apply to all Board members, officers, and employees of the Authority. ~~These policies apply to all purchase and purchase related documents prepared or processed within the Authority.~~

**300:20-1-4. Responsibilities**

(a) The Board of Directors is primarily responsible for promulgating a comprehensive Purchasing Policy and for approving ~~purchases~~acquisitions above $50,000.00.

(b) ~~The General Manager is responsible for the actions of the Assistant General Managers and their subordinates who perform purchasing procedures and the General Manager is responsible for approving emergency purchases above $50,000.00.~~ The General Manager shall approve ~~routine purchases~~acquisitions in excess of $5,000 but not more than $50,000 or delegate an approval threshold for such ~~purchases~~acquisitions to the Chief Operating Officer not to exceed $50,000.

(c) The General Manager may delegate acquisition approval not to exceed $5,000.00 to any employee. ~~The Assistant General Managers shall have commitment authority not to exceed $5,000.00 to commit GRDA for materials, equipment, supplies or services. With the approval of the General Manager, an Assistant General Manager may issue a standing order delegating any portion of his commitment authority to supervisors assigned to the Assistant General Manager's area of responsibility. The General Manager may appoint a Purchase Card Administrator to develop and establish spending authority levels for purchase card transactions.~~

(d) ~~Unless otherwise directed by the Board of Directors, an Assistant General Manager designated by the General Manager shall supervise and direct purchasing in compliance with the GRDA purchasing manual.~~

~~(e)~~ The ~~Purchasing Department~~Central Purchasing Unit has the responsibility for obligating the Authority and for making the final determination of source of supply, ultimate quantities purchased, delivery schedule, price, and commercial terms. These decisions will be made in conjunction with other departments as appropriate.

~~(f) The Purchasing Department is responsible for initiating and maintaining effective and professional relationships with suppliers, both actual and potential.~~

(~~g~~e) The ~~Purchasing Department~~Central Purchasing Unit is to serve as the exclusive channel through which all requests regarding prices and products are handled. This ~~Department~~Unit and no other will conduct all ~~correspondence~~communications with suppliers involving prices or quotations. ~~In cases where technical details are necessary, the department requesting an acquisition may correspond with suppliers. In such cases, the Purchasing Department should be provided with copies of all such correspondence.~~ Close communication and coordination between the Central Purchasing Unit ~~Department~~ and the department requesting supplies must occur. ~~This Subsection g does~~Subsections (d) and (e) do not apply to emergency ~~purchases~~acquisitions and small-dollar purchases ~~in an amount designated by the general manager, but~~ that do not ~~to~~ exceed ~~$2,500.00~~$5,000.00.

(f) The Central Purchasing Unit with the approval of the General Manager may develop, test, and implement new acquisition procedures and practices that hold potential for making the Authority's acquisition process more effective and efficient. Examples of such acquisition procedures and practices may include, but not be limited to, electronic commerce for online solicitations, notifications, and award. If such practices substantially vary with any procedures herein, the General Manager will notify the Board of such variances on the monthly Purchase Order report provided to the Board for such acquisitions that exceed $50,000.

~~(h) All employees involved in purchasing activities will work to maintain and enhance the Authority's image by their personal conduct and methods of doing business.~~

~~(i) All employees engaged in purchasing activities will recognize and practice good public relations by giving all callers and visitors courteous treatment.~~

~~(j) Purchasing Department personnel are to obtain and purchase all goods at the lowest possible end-use cost, considering the guidelines of price, service, quality and delivery.~~

~~(k) Purchasing Department personnel are to inform requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices or market conditions.~~

~~(l) Purchasing Department personnel will work to establish and encourage timely delivery of specified goods and services in correct quantities.~~

~~(m) Purchasing Department personnel will negotiate the return of rejected equipment or supplies to the supplier, unless delegated to the user Department by the Superintendent of Procurement.~~

~~(n) The Purchasing/Contracting and Acquisitions Administrator and Purchasing Department personnel will advise management of economic conditions and changes significant to GRDA's interests.~~

**300:20-1-5. Gifts and gratuities**

The Authority and employees shall follow the rules promulgated by the Oklahoma Ethics Commission. ~~This policy provides guidance concerning the receipt of gifts and/or gratuities. The manager responsible for personnel in charge of purchasing has the responsibility to ensure that these employees have an understanding of all relevant policies and procedures when they are first employed.~~

~~(1) No Board member, officer or employee shall directly solicit or accept any compensation, gift, loan, entertainment, favor or service for the purpose of influencing such Board member, officer, or employee in the discharge of their official duties.~~

~~(2) No employee shall permit any influence to conflict with the best interest of the Authority or prejudice the Authority's reputation.~~

~~(3) Association with suppliers' representatives at luncheons or business organization meetings is helpful in establishing better business communications, provided the~~

~~buyer keeps himself free of obligations. Therefore, personnel in charge of purchasing may act as hosts on occasion. Such efforts should be part of their operation expense.~~

~~(4) The responsibility for adherence to this policy is a joint one. Individuals who represent GRDA must be beyond challenge or reproach in every business transaction, and must not allow themselves to be put into a position where their judgments can be influenced.~~

~~(5) Pens, pencils, notepads, etc., which bear a vendor's advertising are considered to be of nominal value and are acceptable.~~

**300:20-1-6. Inspections and defects**

Sound receiving and inspection procedures shall be utilized at all locations where materials or services are received. Every reasonable effort shall be expended to verify the condition of merchandise received and quantities delivered. Departments should work with vendors to resolve discrepancies and if unable to resolve the user department should notify~~Discrepancies shall be communicated to~~ the Central Purchasing Unit~~Department~~ as soon as possible.

**300:20-1-7. Local purchases**

Acquisitions~~Purchases~~ from vendors in the State of Oklahoma will be referred to as local vendors. It will be the policy to encourage meaningful participation by local vendor sources, whenever possible, to provide useful and acceptable quality services or materials at competitive prices. ~~Personnel in charge of purchasing are responsible for making every effort to solicit local vendor bids for products and services.~~

**300:20-1-8. State of Oklahoma statewide and state use contracts**

Non-mandatory statewide contracts awarded by the Department of Central Services (DCS), for use by certain local governments and state agencies may be utilized by GRDA. ~~These contracts cover a variety of needs common to many agencies. A list of available contracts is maintained by DCS Central Purchasing. As a matter of policy, requisitions will be reviewed by those preparing requisitions to determine State Contract availability before orders are placed.~~ Statewide Contracts may~~will~~ be used when the end result is timely delivery of an acceptable quality of goods and services ~~at the maximum end-use value per dollar spent~~. Those preparing requisitions should also consider other contracts (e.g., multistate, multi-governmental, multi-utility, etc.) ~~issued or allowed by DCS Central Purchasing or multi-utility contracts~~ when such contracts ~~would~~may ~~provide the best value~~ be beneficial to GRDA. GRDA must also comply with the applicable provisions statutes and administrative rules related to the State Use Committee.

**300:20-1-9. Purchases for employees**

It shall be the duty of the Central Purchasing Unit~~Department~~ to procure for the Authority and not attempt to invest Authority time in ~~procurement~~acquisitions for the personal gain of its employees. This policy does not~~, of course,~~ include the Authority's program for supplying safety ~~eye glasses or safety shoes~~ equipment for the employee at discounted rates, ~~or~~ to ~~purchases~~acquisitions made for employee recognition purposes as may be allowed by state statutes~~.~~, or such other acquisitions that may be approved by the General Manager.

**300:20-1-10. Requisition review**

This section applies to all ordinary ~~procurements~~acquisitions in excess of ~~$2,500~~$5,000, ~~individual components of a total project or work order in excess of $2,500,~~ or any acquisition~~procurement~~, regardless of amount, that is purchased in accordance with the provisions of 300:20-1-8. The Central Purchasing Unit~~Department~~ shall have the responsibility and authority to review specifications and sources within the following guidelines:

(1) The user and the Central Purchasing Unit~~Department~~ shall be jointly responsible for developing a list of acceptable vendors of a specific product or service whenever necessary~~, with the user being responsible for the technical aspects of the evaluation and the Purchasing Department being responsible for the financial and service aspects~~. Once a list of acceptable vendors has been established, the Central Purchasing Unit~~Department~~ shall be responsible for the selection of vendors from that list who can best respond to the requirements of each particular order.

(2) The Central Purchasing Unit shall review the specifications of each acquisition~~purchase~~ requisition. The review shall include: requests for "sole source or sole brand" acquisitions~~purchases~~; requests for goods of a quality or quantity that seem to be greater or less than required; requests that do not conform to Authority standards; and requests without proper authorization. Buyers shall not materially alter specifications without discussion with the requestor.

(3) Requisitions which do not contain enough specific information will be returned to the requestor for further attention. ~~"Sole source or sole brand" requisitions shall be accompanied by a "Sole Source or Sole Brand Affidavit" completely showing the factual basis substantiating the exclusion of other bidders.~~

**300:20-1-11. Responsibilities, delegation, source selection, evaluations, and disputes**

(a) The ~~purchasing~~acquisition process is primarily the responsibility of the Central Purchasing Unit~~Department and the Chief Financial Officer~~ and requires consideration of several factors. In managing the acquisition~~purchasing~~ process, the Central Purchasing Unit~~Department~~ will coordinate closely with ~~other~~ departments to comply with applicable acquisition~~purchasing~~ requirements and standards. The user departments play a key role in the acquisition~~purchasing~~ process by developing adequate and reasonable specifications for each

acquisition~~purchase~~. Those specifications shall be submitted to and reviewed by the Central Purchasing Unit~~Department~~.

~~(b) Except as prescribed herein, the purchasing process cannot be delegated to employees outside of the Purchasing Department except in circumstances whereby the Chief Financial Officer in coordination with the General Manager or an Assistant General Manager temporarily assigns the other employees to the Purchasing Department or as defined in the internal uniform procedures described herein.~~

(~~c~~b) The Chief Financial Officer or designee has the responsibility of maintaining a uniform set of procedures and forms to service the bid process, the process for non-competitive ~~purchases~~acquisitions (sole source, sole brand, State Use, etc.), and other ~~purchasing~~acquisition matters. Considerations should include the need for forms for vendor notifications, bid analysis and summary, competitive invitations, instructions to bidders, policy statement of bid award, and sealed bid envelopes. Central Purchasing Unit~~Department~~ personnel are responsible for obtaining bids on all material or services covered under this policy as described herein or the internal uniform procedures. Source selection methods shall be of the following types, depending upon the size and nature of the potential purchase:

(1) In accordance with the uniform procedures established by the Chief Financial Officer or designee, ~~$2,500.00~~$5,000.00 or less.

(2) Written Over ~~$2,500.00~~$5,000.00.

(3) Sealed Bids Over $50,000.00.

(4) Verbal/written follow-up on auxiliary boiler fuel, vehicle fuel and emergency confirmatory ~~purchases~~acquisitions in accordance with procedures established by the Chief Financial Officer or designee.

(~~d~~c) The aforementioned thresholds are based on the estimated cost at the time of requisition made by the requisitioner. It is recognized that certain estimated costs may vary significantly with the bid amounts. If time is of the essence, or other appropriate justification is provided to obtain the goods or services, the estimated cost may~~shall~~ govern the selection method~~ upon approval by the General Manager or designee~~. The Central Purchasing Unit may refer such instances to the General Manager. The General Manager or designee may require the requisitioner to justify that a good faith effort was made in developing the original cost estimate.

(~~e~~d) If a dispute arises on purchased goods and services concerning vendor selection, quotation, or evaluation, the affected vendor may contact the Contracting and Acquisitions Agent assigned to the particular purchase for possible resolution of the dispute. If a dispute arises on purchased goods and services concerning the amount due or non-payment to a vendor, the affected vendor may contact the Accounts Payable Supervisor for possible resolution of the dispute. In both cases, should the dispute not be resolved to the vendor's satisfaction, the vendor may contact the GRDA employee designated by the Chief Financial Officer for further discussion.

(~~f~~e) The Chief Financial Officer or designee will cause to be included in each bid request file a bid analysis summary, required ~~affidavits~~certificates, and insurance requirement forms. ~~Purchase orders requiring insurance will be sent to the Assistant General Manager of Regulatory Compliance and Risk Management for review.~~ The following factors ~~in combination, not necessarily listed in their order of importance, will~~ to be considered in reviewing bids and awarding contracts may include, but are not necessarily limited to:

(1) Price

(2) Quality and conformance to specifications, affidavits and insurance requirements

(3) Bidder's previous record of performance and service

(4) Ability of bidder to render satisfactory service, delivery, etc.

(5) Free on Board points and shipping charges

(6) Last purchase cost

(7) Timeliness of delivery

(~~g~~f) The right is reserved to reject any and all bids and to contract as the best interests of the Authority may require.

**300:20-1-12. Change orders**

~~This Policy provides guidance in the Purchasing function concerning change orders and when they are required to be utilized.~~

(~~1~~a) A change order or cumulative change orders which ~~fall within the below listed amounts~~ are in excess of $50,000.00 shall require formal approval by the GRDA Board of Directors. ~~The GRDA Board of Directors must accept the additional adjusted amount prior to GRDA being responsible for payment thereof:~~

~~(A) Change orders to purchase orders or to construction or service contracts more than $50,000.00 up to $1,000,000.00 shall not exceed a 15% cumulative increase in the original amount.~~

~~(B) Change orders to purchase orders or to construction or service contracts more than $1,000,000.00 shall not exceed a 10% cumulative increase in the original amount.~~

(~~2~~b) ~~Any change orders to purchase orders or to construction or service contracts not falling within the two categories specified above shall require written approval by the General Manager of GRDA prior to GRDA being responsible for payment thereof. However, GRDA Board of Directors' approval is not required for change orders in this category unless the total amount of the resulting change order exceeds $50,000.00.~~A change order or cumulative change orders to a purchase order with an original value of $50,000.00 or less, which result in an amended purchase order in excess of $50,000.00, shall require formal approval by the GRDA Board of Directors.

(c) The GRDA Board of Directors must accept the additional adjusted amount of any change order subject to the above provisions prior to GRDA being responsible for payment thereof.

(d) Any change order not subject to the above provisions shall require written approval by the General Manager of GRDA prior to GRDA being responsible for payment thereof.

(e) All change orders shall be processed and approved in accordance with applicable statutory law.

**300:20-1-13. Emergency confirmatory purchase orders**

In the event it becomes necessary to purchase an item or service or a series of related items or services, in which the total amount exceeds $50,000.00, and prior to receiving formal Board approval authorizing such purchase, plus such purchase is mandatory to keep the facilities operating and, or to ensure continuous transmission service, the general manager is authorized to declare an emergency situation and immediately authorize the purchase of~~the~~ necessary materials or services. Emergency purchases in this category will be presented to the GRDA Board for formal approval as confirmatory purchase orders at the next regularly scheduled Board meeting.

**300:20-1-14. ~~Purchasing~~Acquisition procedure**

The Central Purchasing Unit~~Department~~ shall, in conjunction with all other departments, promulgate, publish and maintain uniform procedures for the implementation of this Policy.

**300:20-1-16. Reverse auction bidding**

(a) As an alternative to any applicable ~~purchasing~~acquisition procedure, a reverse auction bidding procedure may be used by the Central Purchasing Unit~~Department~~ to obtain bids for the purchase of goods or services of any type or kind when to do so is the best interest of GRDA. The reverse auction shall be a real-time bidding process in which multiple suppliers, anonymous to each other, submit bids electronically to provide goods or services. GRDA may contract with a third party to conduct reverse auctions on its behalf.

(b) Reverse auctions held by or for GRDA shall be subject to the following:

(1) GRDA shall have the authority to require vendors to register and prequalify prior to participating in a reverse auction. As part of this process, GRDA may require vendors to agree to any terms, conditions or other requirements.

(2) GRDA shall have the authority to determine the criteria that will be used as the basis for making awards.

(3) Reverse auctions shall be held at a previously announced time and internet location and for a previously announced fixed duration. Reverse auction bids shall be accepted until the bid closure unless GRDA determines it is in its best interest to extend the closing time. Bidders must be notified of the extension by public announcement at the internet location at least fifteen (15) minutes prior to the original closing time. A bid may be received after bid closure only due to a significant error or event that affected the electronic receipt of any reverse auction bid.

(4) All reverse auction bids shall be posted and updated electronically and on a real-time basis.

(5) All bids submitted electronically through the reverse auction bidding process are subject to the same public disclosure laws and requirements that govern other bids.

(c) The Central Purchasing Unit~~purchasing department~~ shall develop such procedures and guidelines as necessary to implement this policy.

*[OAR Docket #10-907; filed 5-24-10]*

## TITLE 300. GRAND RIVER DAM AUTHORITY
## CHAPTER 35. LAKE RULES

*[OAR Docket #10-908]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
Subchapter 1. Definitions, Purpose and Application
300:35-1-1. [AMENDED]
300:35-1-5. [AMENDED]
300:35-1-6. [AMENDED]
Subchapter 3. General Provisions
300:35-3-5. [AMENDED]
300:35-3-6. [REVOKED]
300:35-3-12. [AMENDED]
300:35-3-14. [NEW]
300:35-3-15. [NEW]
Subchapter 5. Boating Safety Rules
300:35-5-1. [AMENDED]
300:35-5-3. [AMENDED]
300:35-5-4. [AMENDED]
300:35-5-7. [AMENDED]
Subchapter 7. Vessels
300:35-7-1. [AMENDED]
300:35-7-2. [AMENDED]
300:35-7-4. [AMENDED]
300:35-7-5. [AMENDED]
300:35-7-8. [AMENDED]
300:35-7-12. [AMENDED]
Subchapter 9. Sanctioned Events
300:35-9-2. [AMENDED]
Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities
300:35-11-1. [AMENDED]
300:35-11-2. [AMENDED]
300:35-11-4. [AMENDED]
300:35-11-5. [AMENDED]
300:35-11-6. [AMENDED]
300:35-11-7. [AMENDED]
300:35-11-8. [AMENDED]
300:35-11-11. [AMENDED]
300:35-11-12. [AMENDED]
Subchapter 13. Permits for Dikes, Excavations, Dredgings, Erosion Control Devices, Retaining Walls, and Shoreline Stabilization
300:35-13-1. [AMENDED]
300:35-13-2. [AMENDED]
300:35-13-3. [AMENDED]
300:35-13-4. [AMENDED]
300:35-13-5. [REVOKED]
300:35-13-6. [AMENDED]
Subchapter 15. Commercial Use of the Lakes and Lands of GRDA
300:35-15-1. [AMENDED]
300:35-15-2. [AMENDED]
300:35-15-3. [REVOKED]
300:35-15-4. [AMENDED]
300:35-15-5. [REVOKED]
300:35-15-6. [AMENDED]
300:35-15-7. [REVOKED]
Subchapter 17. Raw Water Permits
300:35-17-1. [AMENDED]
300:35-17-2. [AMENDED]
Subchapter 21. Administration of Rules and Hearings

300:35-21-3. [AMENDED]
300:35-21-4. [AMENDED]
300:35-21-7. [AMENDED]
Subchapter 27. Vegetation Management Plan
300:35-27-3. [AMENDED]

**AUTHORITY:**
Grand River Dam Authority; 82 O.S. § 861 *et seq.*; 82 O.S.Supp.2009, § 862; 82 O.S. § 875

**DATES:**
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N/A

**INCORPORATIONS BY REFERENCE:**
N/A

**ANALYSIS:**
The proposed amendments specify all of the GRDA permits covered by the rules and require that all delinquent fees, plus interest, must be paid prior to a transfer of a permit or license. Provisions are included for payment of all costs associated with violation of the rules, including repair, restoration and reclamation of GRDA lands and water. GRDA may seek an injunction to prevent any violation or unauthorized activity. The rules relating to the minimum age allowable to operate a motor-powered vessel have been revised to correlate with the Kyle Williams Boating Education Safety Act. GRDA must conduct a final inspection before issuance of either a private or commercial permit upon completion of any modification, installation or relocation of a wharf, dock, landing, anchorage, boat house or breakwater, and that modification of these structures require such permit. No existing retaining wall shall be repaired or rebuilt without a permit and approved material shall be utilized. Docks classified as "Not Electrically Wired" shall be prohibited from installation of a permanent electric supply until GRDA has changed the classification and a certificate from an Oklahoma licensed electrical inspector has been received. The construction, modification, installation, and final GRDA approval of docks, landings, anchorages, boat houses, breakwaters, buoys, rail-systems, tram-systems, and fences must be completed within two years for private use and seven years for commercial use. Dredging permits must be completed within two years. However, private or commercial dock permits and dredging permits which were issued on or before March 9, 2005, and were not complete on this date, shall expire seven years of the date of issuance or no later than March 9, 2012, whichever date is earliest. The rules concerning dredging activities have been modified to include a requirement for an approved wetland delineation report and metals testing report prior to commencement of such activities. In addition, dredging activities are prohibited during certain months to avoid potential impact to fish spawning habitat.

**CONTACT PERSON:**
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

## SUBCHAPTER 1. DEFINITIONS, PURPOSE AND APPLICATION

### 300:35-1-1. Definitions

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

**"Authority or GRDA"** means the Grand River Dam Authority.

**"Board"** means the Board of Directors for the Grand River Dam Authority.

**"GM"** or **"CEO"** means the General Manager and/or the Chief Executive Officer of the Grand River Dam Authority.

~~**"GRDA land or GRDA property"**~~**"GRDA land"** or **"GRDA property"** or **"lands of GRDA"** means the land owned by GRDA. The location and boundaries of GRDA land is determined by a legal description (generally described by metes and bounds). Many times, a survey is necessary to determine the boundary of GRDA land. A particular elevation does not necessarily determine the boundary of GRDA land. Additionally, GRDA and/or the U.S. Army Corps of Engineers may have flowage easements over land.

**"Wake"** means the track of waves left by a vessel or other object moving through the water and such waves are greater than the natural waves in the immediate area of the vessel or are cresting and showing white water or may cause injury to any person or property. However, a "no wake zone" is not violated when a vessel is safely proceeding with engine(s) engaged at normal idle speed.

**"Waters of GRDA"** means and refers to the waters of the Grand River and its tributaries, including, but not limited to, Grand Lake O' the Cherokees, Lake Hudson, and the W.R. Holway Reservoir.

### 300:35-1-5. ~~Law enforcement division of GRDA~~ Law enforcement division and compliance division of GRDA

(a) GRDA has created a law enforcement division and compliance division for the purpose of enforcing these Rules on the waters and land of GRDA.

(b) The members of GRDA's law enforcement division are hereby declared to be the enforcement officers for GRDA. The enforcement officers for GRDA may enforce GRDA rules and regulations, those rules and regulations as may be issued pursuant to the provisions of Section 4200 *et seq.* of Title 63 of the Oklahoma Statutes, the provisions of Sections 861 *et seq.* of Title 82 of the Oklahoma Statutes, and all violations of criminal laws occurring within the boundaries of the counties where real property owned or leased by GRDA is located. The enforcement officers shall have the power of peace officers during the performance of their duties, except in the serving and execution of civil process.

(c) The officers shall, in the event of emergency, assist in the rescue of any person who may be in danger and shall assist in the saving of any property that is in danger of being lost or damaged. ~~The officers shall have the authority to stop and board any vessel at any time for the purpose of conducting a safety inspection.~~ They shall require the operator of any vessel operating on the waters of the lakes in any manner which is not in compliance with these Rules, or any applicable state law, to immediately remove said vessel from the lake until compliance has been had.

(d) The officers are charged with the duty of ~~examining and inspecting proposed locations for wharves, docks, dikes, anchorages, boat houses or any proposed structures or improvements to be made upon the waters or lands of GRDA, and issuing certificates of inspection; and~~ causing all vessels to be registered with proper registration numbers, or permit numbers, which shall be displayed upon such vessels.

(e) GRDA's law enforcement officers may cooperate with federal, state and local enforcement officers in the enforcement of all federal and state laws upon the waters, lands and properties of GRDA or any other location within their jurisdiction.

**300:35-1-6. Permitted activities**

No person, firm, partnership, corporation or other entity shall perform any activity which requires a permit prior to the receipt of ~~such permit~~written permission from GRDA. For example, no dock may be placed upon the waters of GRDA until such time as the applicant receives written notice that such activity may take place. ~~In the event a permitted activity takes place~~Any person that performs any activity which requires a permit prior to the issuance of a permit, or written permission from GRDA~~, after notice and an opportunity to be heard as provided in Subchapter 21 herein, it may be ordered that no permit shall be issued for a period of time up to and including three (3) years. Additionally, GRDA may seek an injunction to prevent any further unauthorized activity.~~shall be subject to the penalties set forth in these Rules and law.

## SUBCHAPTER 3. GENERAL PROVISIONS

**300:35-3-5. Transfer or assignment of permit prohibited**

Transfer or assignment of permits or licenses issued hereunder (both private and commercial) shall not be made except with written consent and approval of GRDA. Additionally, all delinquent unpaid fees, plus interest at the rate of ten percent (10%) per annum must be paid prior to a transfer. No person, firm or corporation shall allow his or its name to be used by any other person, firm or corporation to do any work under his or its permit.

**300:35-3-6. Cancellation/termination of permit or license [REVOKED]**

~~(a) Permits and licenses issued pursuant to these Rules are subject to cancellation in the event the holder fails, refuses or omits to comply with any of the requirements of these Rules, the terms and conditions of the permit, or to make payments when due. In addition, GRDA will notify the Oklahoma State Department of Health and the utility company furnishing electricity of any water or irrigation pump reported to be in an unsafe electrical condition.~~

~~(b) Permits and licenses issued under and pursuant to these Rules may be terminated by either party upon giving the other party thirty (30) days written notice prior to the end of any calendar year.~~

**300:35-3-12. Health and sanitation**

(a) All sanitary rules, regulations, and laws shall be complied with prior to the granting or renewal of any GRDA permit.

(b) In the interest of public health, sanitation and safety, there shall be no camping on GRDA's lands except in a designated camping area.

(c) Bottles, cans, garbage, rubbish, refuse, debris, wreckage, bilge water containing oil or grease, or materials used in the process of cleaning the outer surfaces of vessels, or any other material of any kind shall not be thrown into or released upon the lakes or deposited or dumped upon the shores of the lakes or upon any land under the jurisdiction of GRDA.

(d) No septic tank, lateral line or lagoon shall be placed on the shorelands of GRDA. No sewage shall be disposed of in the waters or on the shorelands of GRDA. No person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets ~~(63 O.S.2001, § 4213(B))~~.

(e) The preparation and marking of beaches shall be in such manner as to provide reasonable safety in their use. Commercial beaches shall be provided with adequate and sanitary dressing rooms, toilets, showers and other necessary accessories for public convenience and safety.

**300:35-3-14. Permit applications**

(a) Applications for GRDA permits required by these Rules are available at the permitting office inside the GRDA Ecosystems & Education Center located at the west end of Pensacola Dam in Langley, Oklahoma, by mail at P.O. Box 70, Langley, Oklahoma 74350, by calling 918-782-9594, or on the GRDA website at www.GRDA.com.

(b) In addition to any other requirement that may be applicable to a permit application, GRDA may, in its sole discretion, forward any application to fish and wildlife resource agencies, environmental agencies, and/or tribes for comment.

(c) These Rules cover the following types of GRDA permits:

(1) Private and commercial docks, wharves, landings, anchorages, and boat houses;

(2) Buoys;

(3) Private and commercial breakwaters;

(4) Private and commercial rail-systems and tram systems;

(5) Fences located on GRDA lands;

(6) Boat ramps;

(7) Retaining walls;

(8) Dredging (and excavation);

(9) Erosion control devices;

(10) Shoreline stabilization;
(11) Commercial operations (including dock installer, dredging contractor, commercial boat operator);
(12) Taking of raw water (including irrigation);
(13) Vegetation management plans; and
(14) Sanctioned event.

(d) Permit applications are subject to change without notice. Permitted activities must comply with all standards, rules and regulations in effect at the time the activity commences.

**300:35-3-15. Penalty**

After notice and an opportunity to be heard in accordance with Subchapter 21 herein, any person, firm, partnership, corporation or other entity which violates any Rule in this Chapter (i.e. Chapter 35 Lake Rules), shall be required to pay all costs (including attorneys fees, GRDA staff time, and mitigation) related to the violation including the repair, restoration and reclamation of GRDA lands and waters. Other penalties may include, but are not limited to, suspension or revocation of a permit for a period of up to and including three (3) years. Also, GRDA may seek an injunction to prevent any violation or unauthorized activity.

## SUBCHAPTER 5. BOATING SAFETY RULES

**300:35-5-1. Careful operation of a vessel**

No person shall operate or give permission to operate a vessel in a wake zone at a speed which is other than reasonable and prudent and which shows due regard for the existence of actual or potential hazards and obstacles, or in such a manner as to endanger the life, limb or property of any other person, or in such manner as to create a wake. For the purpose of this rule, "no wake zone" means any area posted with buoys or within one hundred fifty (150) feet of any boat ramp, dock, pier, or anchored or moored vessel. ~~(63 O.S. 2001, § 4210.4(B))~~

**300:35-5-3. Flotation device required**

All vessels shall carry a U.S. Coast Guard approved flotation device (life preserver) for each person on board. The operator of a vessel less than twenty-six (26) feet in length, while under way, shall require each passenger twelve (12) years of age or younger to wear a U.S. Coast Guard approved flotation device. Any person operating or manipulating, or who is a passenger on a personal watercraft, water skis, a sailboard, surfboard, wakeboard, parasail or a similar device shall wear a U.S. Coast Guard approved flotation device. ~~(63 O.S.2001, § 4206.)~~

**300:35-5-4. Sitting and standing in vessel**

No person shall sit or ride on the sides of a vessel, the back of a vessel, a covered bow or the ~~back~~ top of any back seat of a vessel, or stand in a vessel while under way at any speed greater than idle or trolling speed; unless, the vessel is specifically designed for such use~~, pursuant to 63 O.S.2001, §§ 4210.6 & 4210.7~~.

**300:35-5-7. Night speed limit**

It shall be unlawful for any person to operate any vessel upon the waters of GRDA, between the hours of one-half hour after sunset and one-half hour before sunrise at any speed in excess of ~~thirty-five (35)~~ twenty-five (25) miles per hour. ~~Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Fifty Dollars ($250.00). (63 O.S. 2001, § 4219).~~

## SUBCHAPTER 7. VESSELS

**300:35-7-1. Inspection, registration and certificate of safety**

~~(a) All vessels operated upon the waters of GRDA may be inspected at any time by GRDA's Law Enforcement for safety equipment.~~

(~~b~~a) All vessels and equipment used for transportation of the public for pecuniary gain or profit shall be subject to inspection during each permit year by GRDA.

(~~c~~b) All vessels must be licensed under the Oklahoma Vessel and Motor Registration Act.

**300:35-7-2. Loose and derelict vessels**

Any loose, derelict or apparently abandoned vessel found on the lakes, or shores of the lakes, may be impounded by GRDA in the manner provided for by state law.~~, and any expense in connection with its impoundment shall be the responsibility of the owner.~~

**300:35-7-4. Vessel operating distance**

No person shall operate any vessel, including personal watercraft, within fifty (50) feet in proximity to another vessel when running at speeds of over ten (10) miles per hour. ~~(63 O.S.Supp.2004, § 4210(F)).~~

**300:35-7-5. Water muffling**

Except for a sanctioned event, no person shall operate a vessel or motor which is not equipped with a muffler or muffler system in good working order. The use of cutouts, removal of mufflers or muffler baffles, cutting or punching of holes in mufflers or otherwise modifying the original muffler or muffling system installed by the manufacturer or any subsequent muffler or muffling system so as to increase or modify the noise level is prohibited. ~~(63 O.S.2001, § 4208).~~

**300:35-7-8. Minimum age**

~~No person shall cause, allow, authorize, or permit any child under twelve (12) years of age to operate and no child under twelve (12) years of age shall operate any vessel powered by a motor or combination of motors in excess of ten (10) horsepower or any sail powered vessel sixteen (16) feet or greater in length, unless accompanied on the vessel by another~~

~~person sixteen (16) years of age or older. 63 O.S.Supp. 2004, § 4210(G)~~

(a) A person under sixteen (16) years of age shall not operate any vessel powered by a motor or combination of motors in excess of ten (10) horsepower or any sail-powered vessel sixteen (16) feet or greater in length on the waters of this state unless the person has:

(1) Successfully completed a boating safety education course or has passed a proctored equivalency examination which tests the knowledge of information included in the curriculum of such a course and received a Boating Safety Education Certificate as evidence of successful completion of a boating safety education course or an equivalency examination; and

(2) Is accompanied by a competent adult, eighteen (18) years of age or older, who is in a position on or in the vessel to take immediate control of the vessel being operated.

(b) A person under sixteen (16) years of age shall not operate a personal watercraft unless the person has:

(1) Successfully completed a boating safety education course or has passed a proctored equivalency examination which tests the knowledge of information included in the curriculum of such a course and received a Boating Safety Education Certificate as evidence of successful completion of a boating safety education course or an equivalency examination; and

(2) Is under the visual supervision by a competent adult, eighteen (18) years of age or older within a distance of five hundred (500) yards.

**300:35-7-12. Duck Creek boating rules**

Due to the unique nature of Duck Creek on the Grand Lake O' the Cherokees, GRDA implements, from time to time, special boating rules for the area. Please contact the GRDA Lake Patrol, located at the ~~west end of Pensacola Dam~~GRDA Ecosystems & Education Center in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or see the website, www.GRDA.com for the current applicable Duck Creek Boating Rules.

## SUBCHAPTER 9. SANCTIONED EVENTS

**300:35-9-2. Permit required**

No sanctioned event shall be held without a written permit issued by GRDA at least ten (10) days prior to the event. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

## SUBCHAPTER 11. PERMITS FOR WHARVES, LANDINGS, BUOYS, BREAKWATERS AND DOCKING FACILITIES

**300:35-11-1. Private use**

No person, firm, association, partnership or corporation may construct, modify the footprint, install, relocate, transfer or operate any private wharf, dock, landing, anchorage, boat house or breakwater (or any other type of floating structure) on waters or ~~shorelands~~lands of GRDA until the applicant submits a completed application and ~~a private dock permit shall have~~ written permission has been issued by GRDA. Upon completion of any modification, installation, or relocation, the private wharf, dock, landing, anchorage, boat house or breakwater shall be subject to a final inspection by GRDA prior to the issuance of a permit. Such inspection will include verification that the wharf, dock, landing, anchorage, boat house or breakwater was constructed, modified, and/or installed in accordance with the application submitted to GRDA and also in accordance with all applicable laws, regulations, rules and building codes. ~~An application for a private dock permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

**300:35-11-2. Commercial use**

No person, firm, association, partnership or corporation may construct, modify the footprint, install, relocate, transfer or operate any wharf, dock, landing, anchorage, boat house or breakwater (or any other type of floating structure) for pecuniary profit or gain, directly or indirectly, on waters or ~~shorelands~~lands of ~~the lakes~~GRDA until the applicant submits a completed application and ~~a commercial dock permit shall have~~written permission has been issued by GRDA. The Federal Energy Regulatory Commission (FERC) must also approve ~~an application~~ all commercial dock applications prior to installation or modification. Upon completion of any modification, installation, or relocation, the commercial wharf, dock, landing, anchorage, boat house or breakwater shall be subject to a final inspection by GRDA prior to the issuance of a permit. Such inspection will include verification that the wharf, dock, landing, anchorage, boat house or breakwater was constructed, modified, and/or installed in accordance with the application submitted to GRDA and also in accordance with all applicable laws, regulations, rules and building codes. ~~An application for a commercial dock permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

**300:35-11-4. Electrical inspections**

(a) Each commercial and private boat dock (or any other type of floating structure) shall comply with and be maintained in accordance with all laws, regulations and codes regarding electrical systems and wiring.

(b) All commercial and private boat docks constructed, ~~or~~ modified, relocated, or transferred ~~after June 1, 2006~~ shall be required to provide to GRDA, within thirty (30) days

following completion, modification, relocation or transfer a certificate signed by ~~a~~ an Oklahoma licensed electrical ~~contractor~~inspector, evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring.
~~(c) Before a dock permit may be transferred, a certificate signed by a licensed electrical contractor evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring shall be provided to GRDA.~~ Any dock which has been classified as "Not Electrically Wired" shall be prohibited from installing any permanent electric supply until GRDA has issued a classification change which shall require a certificate from an Oklahoma licensed electrical inspector evidencing compliance with all laws, regulations and codes regarding electrical systems and wiring. No temporary electric supply shall be used and left unattended on a dock or walkway. Any temporary electric supply shall be an approved UL Listed Supply Cord and be in good condition with all electrical connectors attached and in use. Any temporary electric supply shall use GFCI (ground fault circuit interrupter) receptacles.

**300:35-11-5. Breakwaters**

(a) A breakwater is a structure used to protect docks, shoreline, or other structures by stopping or slowing waves or wakes.
(b) No breakwater shall be placed in the waters of GRDA without a permit. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~
(c) Breakwaters must be anchored in permanent locations and ~~must~~shall have a minimum of proper solar lighting installed at least every 25 feet across the entire structure. The owner of a breakwater shall be responsible for maintaining it in a safe and environmentally acceptable manner.

**300:35-11-6. Buoys**

(a) No buoy shall be placed or replaced on the waters of GRDA without a permit from GRDA. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~
(b) All buoys placed on the lakes shall be commercially manufactured units approved by the Lake Patrol and shall have reflective tape or paint on the top side. Any buoy not maintained in its proper location ~~by the owner~~ shall be subject to removal by GRDA. Any buoys, lighthouses or other types of markers placed with the permission of or installed and maintained by GRDA are primarily warning devices for the convenience of the public and should not be relied upon solely as navigational aids. GRDA assumes no liability or responsibility for loss or damages to life or property arising out of the public's reliance upon said devices.

**300:35-11-7. ~~Railways, tram systems, fences, ramps and retaining walls~~Rail-systems, tram systems, fences, and boat ramps**

(a) No private or commercial ~~railways~~rail-systems, tram systems, fences, or boat ramps ~~or retaining walls~~ shall be constructed on GRDA property or waters without first obtaining a permit. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~
(b) A rail-system is used to accommodate a watercraft storage facility where standard dock installations are not applicable or desirable.
(c) A tram-system is a device capable of transporting people to and from a boat dock (or other floating structure) either for private, public or commercial use. Tram-systems are typically utilized on steep inclines associated with cliffs, bluffs, or to accommodate individuals with physical limitations.
(~~b~~d) Railways, tram systems, and fences ~~and retaining walls~~ shall be maintained in a manner such that all electrical systems are to code, that environmental guidelines are met, and that the structures are safe and pose no risk or threat to the public.
(~~c~~e) No boat ramp shall be constructed unless the ramp may be accessed by at least twenty-five (25) homeowners in a residential community or the public at large. Approval from the U.S. Army Corps of Engineers, the Federal Energy Regulatory Commission and/or other state and federal agencies may also be required.
~~(d) The applicant shall submit complete and detailed maps, plans and specifications for the proposed construction and its location, including a statement of the purpose(s) for which the work is to be done. The applicant must also be required to furnish a survey prepared by a licensed surveyor or engineer showing the location of GRDA's taking (property) line in the project area and shall have such line staked on the ground.~~

**300:35-11-8. Removal and cancellation for failure to comply**

(a) If, at any time, any ~~such dock, wharf, boat house, breakwater, buoy or any other~~ structure, private or commercial, ~~is not constructed with generally accepted building materials and pursuant to generally accepted construction practices, or~~ is not installed in accordance with the plans and specifications approved by GRDA, fails to meet current minimum standards adopted by GRDA, ~~or if such works are~~ is not kept in good state of repair, ~~and in a good, safe and substantial condition, are~~ has not been inspected by a licensed electrical ~~contractor~~inspector as provided herein, or upon failure of payment of any fee when due, GRDA, after notice and opportunity to be heard in accordance with Subchapter 21 herein, shall have the right to remove or cause to be removed from GRDA's waters and lands such structure and/or cancel any license or permit in the event the owner ~~thereof~~ fails to repair or remove the same after being notified by GRDA to repair or remove the same.
(b) Any loose or abandoned ~~dock~~ structure located on GRDA land or water shall be impounded by GRDA and the owner shall be responsible for any expense incurred by GRDA.

~~GRDA will notify the Oklahoma State Department of Health and the utility company furnishing electricity of any dock reported to be in an unsafe electrical condition.~~

(c) In the event GRDA removes a dock, wharf, boat house, breakwater, buoy, fence, ~~retaining wall, railway~~rail-system, tram system or any other structure, private or commercial, the owner of same shall be required to pay all costs of such removal and may be required to pay all costs related to the repair and reclamation of GRDA lands and waters associated with the removal. Any expenses which remain unpaid in excess of 45 days shall accrue interest at the rate of 10% per annum.

**300:35-11-11. Expiration of permit**

(a) The construction, modification, installation, and final GRDA approval of private docks, landings, anchorages, boat houses, breakwaters, buoys, ~~railways, tram systems, and retaining walls, or approved modifications to same,~~ rail-systems, tram-systems, and fences must be completed within ~~seven (7)~~ two (2) years from the date the ~~permit or modification approval~~ permission to construct or modify is issued ~~unless the permit specifically provides otherwise~~by GRDA.

(b) The construction, modification, installation, and final GRDA approval of commercial docks, landings, anchorages, boat houses, breakwaters, buoys, rail-systems, tram-systems, and fences, walls must be completed within seven (7) years from the date the permission to construct or modify is issued by GRDA and, if applicable, the Federal Energy Regulatory Commission.

(c) Prior to the expiration of the permission to construct or modify, the GRDA Board of Directors may extend the time in which such structure must be completed.

(d) Private or commercial dock permits which were issued on or before March 9, 2005 for the installation of commercial or private docks, which were not complete as of March 9, 2005, shall expire seven (7) years of the date of issuance or no later than March 9, 2012 whichever date is earliest.

(~~b~~e) If the permit expires, the permit is null and void.

**300:35-11-12. Dock modification prohibited**

Any person, firm, corporation, business or other entity must obtain permission from GRDA prior to making any modification, change, addition or improvement to an existing dock, landing, anchorage, boat house, breakwater, buoy, rail-system, tram system, or fence. If ~~a dock~~any such structure will be reconfigured, modified, or expanded from the plans and specifications originally submitted for the construction of the ~~dock~~structure, such change must be approved in advance by GRDA. Approval from the Federal Energy Regulatory Commission (FERC) may also be required. This rule applies to both private docks and commercial docks.

## SUBCHAPTER 13. ~~PERMITS FOR DIKES, EXCAVATIONS, DREDGINGS EROSION CONTROL DEVICES, AND SHORELINE STABILIZATION~~PERMITS FOR DIKES, EXCAVATIONS, DREDGINGS, EROSION CONTROL DEVICES, RETAINING WALLS, AND SHORELINE STABILIZATION

**300:35-13-1. Permit required**

(a) The contour, elevation or surface of any of GRDA's lands or the reservoir bed shall not be changed in any manner whatsoever by the construction of retaining walls, erosion control devices, dams, dikes, jetties, channels, canals or landings until and unless a permit has been issued by GRDA.

(b) No person, firm, partnership, corporation or other entity may excavate, dredge, stabilize or make any improvement or change upon GRDA land or waters until a permit shall have been issued by GRDA. Approval from the Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (Corps), and other state and local agencies may also be required. All such activities shall be performed in strict accordance with the plans and specifications approved by GRDA (and, if required, by FERC and the Corps). Additionally, an approved wetland delineation report and metals testing report shall be required prior to the commencement of any dredging or excavation activity. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

**300:35-13-2. Erosion control devices**

(a) Erosion control devices~~. These devices~~ may be permitted to protect the existing shoreline. These types of structures must not be for the purpose of landscaping or beautifying the area ~~with little erosion control value~~ and will only be permitted if GRDA staff determines that the device is necessary for effective erosion control. In some cases, permission may also be required from the U.S. Army Corps. of Engineers. ~~An application for a permit for an erosion control device is available at GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

(b) During construction activities, GRDA shall require that appropriate erosion and sediment control measures be utilized to prevent pollution of GRDA waters.

(c) All material which accumulates behind sediment control ~~structures must~~devices shall be removed from GRDA land and placed at an upland site above the applicable flowage easement.

(d) Disturbed sites must be promptly stabilized with GRDA approved methods associated with seeding, vegetative planting, erosion control netting, and/or mulch or sediment stabilization material.

(e) Vegetation removed for erosion control ~~project~~projects must be replaced with GRDA approved~~native~~ species of native vegetation.

**300:35-13-3. ~~Excavation and dredging~~Dredging**

(a) All ~~excavation and~~ dredging activities on GRDA-owned property require a permit from GRDA. Dredging is defined as the activities associated with digging, gathering, removing, or deepening of any channel, depression, or cavity to achieve sufficient navigable water depth (i.e. 8' at 742' PD Grand Lake, or 619' msl Lake Hudson.~~An application for such permit may be obtained from the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~ The U.S. Army Corps of Engineers may also require a permit for ~~excavation and~~ dredging activities. Additionally, the Federal Energy Regulatory Commission must approve all dredging activities on GRDA waters requiring the removal of more than 2,000 cubic yards of material. A wetland delineation study must accompany every application and the study must be conducted by a GRDA approved wetland delineation specialist. Dredging activities must be conducted in accordance with the GRDA dredging management plan. These approvals and permits must be obtained prior to commencing any dredging ~~or excavation~~ activity. ~~(b) Excavation~~ Dredging of individual boat channels shall be approved only when GRDA determines there is no other practicable alternative to achieving sufficient navigable water depth and the action would not substantially impact sensitive resources.

(1) No more than two thousand (2,000) cubic yards of material shall be removed for any individual boat channel.

(2) ~~The length, width, and depth of approved boat channels shall not exceed the dimensions necessary to achieve six (6) foot water depths for navigation of the vessel at the minimum projected water elevation.~~Materials from dredging activities must be placed in accordance with all applicable local, state, and federal regulations at an upland site above the applicable flowage easement.

(3) ~~Each side of the channel~~Dredged shoreline perimeter shall have a slope ratio of at least 3:1 and must allow for the drainage of water.

(4) ~~Only one (1) boat channel or harbor may be considered for each abutting property owner.~~Dredging activities are not authorized during the months of April, May, June and July to avoid potential impact to fish spawning habitat.

(5) ~~The grade of the channel must allow drainage of water during reservoir drawdown periods.~~Dredging within vegetated wetlands is not authorized and will not be permitted.

~~(6) Spoil material from channel excavations must be placed in accordance with any applicable local, state, and federal regulations at an upland site above the applicable flood plain.~~

~~(A) Dredging for new or previously authorized areas shall not occur during the months of April, May, June and July to avoid potential impact to fish spawning areas.~~

~~(B) Excavation within vegetated wetlands is not authorized.~~

**300:35-13-4. ~~Shoreline stabilization~~Shoreline stabilization and retaining walls**

(a) GRDA may issue permits allowing adjacent residential landowners to stabilize eroding shorelines on GRDA-owned residential access shoreland. GRDA will determine if shoreline erosion is sufficient to approve the proposed stabilization treatment. No shoreline stabilization activities may be conducted until a permit from GRDA is issued. Shoreline stabilization may include i) the use of biostabilization, ii) the use of riprap to stabilize eroded shorelines, or iii) the use of a retaining wall. ~~An application for a permit may be obtained from the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

(b) Biostabilization of eroded shorelines.

(1) Moderate contouring of the bank may be allowed to provide conditions suitable for planting of vegetation.

(2) Tightly bound bundles of coconut fiber, logs, or other natural materials may be placed at the base of the eroded site to deflect waves.

(3) Willow stakes and bundles and live cuttings of suitable native plant materials may be planted along the surface of the eroded area.

(4) Native vegetation may be planted within the shoreline management zone to help minimize further erosion.

(5) Riprap may be allowed along the base of the eroded area to prevent further undercutting of the bank.

(c) Use of ~~gabions and~~ riprap to stabilize eroded shorelines.

(1) The riprap material must be quarry-run stone, natural stone, or other material approved by GRDA.

(2) Rubber tires, concrete rubble, or other debris ~~salvaged from construction sites~~ shall not be used to stabilize shorelines.

~~(3) Gabions (rock wrapped with wire mesh) that are commercially manufactured for erosion control may be used.~~

(~~4~~3) Riprap material must be placed so as to follow the existing contour of the bank.

(~~5~~4) Site preparation must be limited to the work necessary to obtain adequate slope and stability of the riprap material.

(d) Use of retaining walls for shoreline stabilization.

(1) Retaining walls shall be allowed only where the erosion process is severe and GRDA determines that a retaining wall is the most effective erosion control option ~~or where the proposed wall would connect to an existing GRDA-approved wall on the lot or to an adjacent owner's GRDA-approved wall~~.

(2) GRDA shall inspect the site of the proposed construction and consider whether the planting of vegetation or the use of riprap would be adequate to control erosion.

(3) GRDA shall determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

(4) The retaining wall must be constructed of stone, concrete blocks, poured concrete, ~~gabions,~~ or other materials acceptable to GRDA. Railroad ties, rubber tires,

broken concrete (unless determined by GRDA to be of adequate size and integrity), brick, creosote timbers, and asphalt are not allowed.

(5) Reclamation of GRDA land that has been lost to erosion is not allowed.

(6) No existing retaining wall shall be repaired or rebuilt without a permit from GRDA. Repairs must be made with approved and acceptable material by GRDA.

**300:35-13-5. Penalty [REVOKED]**

~~Any person, firm, partnership, corporation, or other entity which violates this section, after notice and an opportunity to be heard in accordance with Subchapter 21 herein, shall be required to pay all costs related to the repair, restoration and reclamation of GRDA lands and waters associated with the violation.~~

**300:35-13-6. Expiration of permit**

(a) Any permit issued pursuant to Subchapter 13 of these rules must be completed within ~~seven (7)~~two (2) years from the date the permit or modification approval is issued by GRDA. ~~unless the permit specifically provides otherwise.~~

(b) Prior to the expiration of the dredging permit, the GRDA Board of Directors may extend the time in which such dredging activities must be completed.

(c) Dredging permits which were issued on or before March 9, 2005 which dredging activities were not complete as of March 9, 2005, shall expire seven (7) years of the date of issuance or no later than March 9, 2012 whichever date is earliest.

(~~b~~d) If the permit expires, the permit is null and void.

## SUBCHAPTER 15. COMMERCIAL USE OF THE LAKES AND LANDS OF GRDA

**300:35-15-1. Definition**

The keeping or operation of one (1) or more vessels, surfboards, aquaplanes, skis, personal watercraft or like devices, docks, landings, anchorages, marine railways, dry docks or any concession, for pecuniary profit or gain on the water of the lakes or upon the property of GRDA, the carriage of any person, or persons, or of any goods, wares, merchandising or other freight, for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person, shall be deemed commercial use of the waters and lands of GRDA and will be allowed only after a permit has been issued. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

**300:35-15-2. Dock installer's permit**

(a) Any person, firm, partnership, corporation, or any other entity operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the building, ~~and~~ placing, ~~or the~~ transfer, demolition ~~and~~ or removal, of piers, wharves, landings, anchorages, floating boat houses, docks, barges or other floating structures of a stationary or semi-stationary nature upon the waters of GRDA shall obtain an annual permit. Such person or entity shall ~~neither~~ not build, place, transfer, ~~nor~~ demolish or remove a pier, wharf, landing, anchorage, floating boat house, dock, barge or other floating structure of a stationary or semi-stationary nature upon the waters of GRDA until a Dock Installer's permit has been issued by GRDA. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

~~(b) No dock installer shall build and install a pier, wharf, landing, anchorage, floating boat house, dock, barge or other floating structure of a stationary or semi-stationary nature upon the waters of GRDA until such time as the application process found in Subchapter 11 herein has commenced.~~

(~~c~~b) At the time ~~the~~a dock is installed or transferred, the dock installer shall post a permanent sign visible on the dock. The sign shall include the name of the dock installer, the dock installer's phone number and the year the dock was installed. The sign shall measure at least 5" x 5".

(~~d~~c) A dock installer shall build, construct, place, transfer, demolish and remove docks in strict compliance with the plans and specifications approved by GRDA and in accordance with all applicable laws, regulations, rules and building codes. ~~The docks shall be built with generally accepted building materials and in accordance with generally accepted construction practices.~~ All styrofoam, trash and construction materials shall be disposed in an environmentally appropriate fashion and shall not be allowed to remain or float in the waters of GRDA.

**300:35-15-3. Penalty for violation of dock installer's permit [REVOKED]**

~~Any person, firm or corporation who shall violate any provision of this section shall, upon notice and opportunity to be heard in accordance with Subchapter 21 herein, be subject to having the dock installer's permit revoked for a period of time up to, and including, permanent termination. Other penalties may include, but are not limited to, the assessment of all costs associated with the repair and/or reclamation of GRDA lands and waters.~~

**300:35-15-4. Dredging contractor's permit**

(a) Any person, firm or corporation operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the performance of dredging activities or excavation operations upon the lands or waters of GRDA shall obtain an annual permit. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

(b) A dredging contractor shall not perform any activities upon the lands or waters of GRDA until a Dredging Contractor's permit has been issued. Any such ~~structure~~ activity shall be ~~constructed~~ performed and completed in accordance with GRDA requirements and in strict compliance with the application and terms and conditions of the permit.

**300:35-15-5. Penalty for violation of dredging contractor's permit [REVOKED]**

~~Any person, firm or corporation who shall violate any provision of this section shall, upon notice and opportunity to be heard in accordance with Subchapter 21 herein, be subject to having the dredging contractor's permit revoked for a period of time up to, and including, permanent termination. Other penalties may include, but are not limited to, the assessment of all costs associated with the repair and/or reclamation of GRDA lands and waters.~~

**300:35-15-6. Commercial boat operators permit**

(a) Any person, firm or corporation operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the performance of the carriage of any person, or persons, or of any goods, wares, merchandising or other freight, for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person, upon the lands or waters of GRDA shall obtain an annual permit. ~~An application for such permit is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

(b) No vessel, while carrying passengers for hire, shall be operated or navigated except in charge of a person covered by a policy of insurance that clearly covers the scope of duties resulting from such commercial enterprise.

**300:35-15-7. Penalty for violation of commercial boat operators permit [REVOKED]**

~~Any person, firm or corporation who shall violate any provision of this section shall, upon notice and opportunity to be heard in accordance with Subchapter 21 herein, be subject to having the commercial boat operators permit revoked for a period of time up to, and including, permanent termination.~~

## SUBCHAPTER 17. RAW WATER PERMITS

**300:35-17-1. Definition**

(a) For the purpose of these Rules and Regulations, the following terms shall apply ~~term~~ "domestic and household use" shall mean water that is taken, used and consumed by the permittee in and upon his premises for all usual and ordinary household uses and purposes which shall include sprinkling and watering lawns and gardens of not to exceed three (3) acres. ~~A raw water permit shall be obtained for any appropriation of water requiring a hose or pipe extending into the lake and running off GRDA property.~~ The term "irrigation" shall mean water that is taken, used and consumed by the permittee in and upon the premises covered by the permit for the purpose of irrigating lands, crops and vegetables growing in and upon said lands by ditches, canals, sprinkling systems and such other usual and ordinary means of irrigation.

(b) Water rights granted under these Rules and Regulations shall not be construed as the supplying or furnishing of water for domestic purposes to the public; such permits only grant the permittee the right to take and use the water as provided by these Rules and Regulations.

(c) Commercial use of water requires a written contract with GRDA.

**300:35-17-2. Permit required**

The taking of and using waters of GRDA, including water from Ft. Gibson reservoir for domestic and household use or irrigation use shall be allowed only after an annual permit has been issued by the Grand River Dam Authority. ~~An application for such is available at the GRDA Ecosystems Management Office, located at the west end of Pensacola Dam in Langley, Oklahoma, or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594 or on the GRDA website at www.GRDA.com.~~

## SUBCHAPTER 21. ADMINISTRATION OF RULES AND HEARINGS

**300:35-21-3. Hearings for violation of rules**

(a) The general procedures for hearings established by this Subchapter shall apply to proceedings conducted by GRDA for such purposes as suspending or revoking permits, enforcement matters, and assessing costs.

(b) Hearings may be initiated by GRDA staff by issuance of a Notice of Violation or by filing a Petition with the General Manager's Executive Secretary.

(c) For purposes of this subsection, Respondent shall be the person in whose name the permit is currently listed. The Respondent shall be the only person entitled to notice under this subsection.

(~~c~~d) The Notice of Violation or Petition shall inform the Respondent of the matter at issue and, if applicable, the alleged violation. Each Notice of Violation or Petition shall name the Respondent(s) and provide a brief statement of the facts and the relief requested. The Notice of Violation or Petition shall be signed by a GRDA staff member.

(~~d~~e) The Notice of Violation or Petition shall specify that the Respondent may file a response, how and where the response may be filed, the number of days or a date certain within which to file the response, state any scheduled hearing date, place and time or include notice of the opportunity to request an administrative hearing, and shall be served on the named Respondent by certified mail, return receipt requested.

**300:35-21-4. Hearing officer**

(a) The General Manager, or his designee, shall preside at any hearing. The General Manager may contract with an individual that is not employed by GRDA to preside at any hearing. The functions of the hearing officer shall commence upon his/her designation and terminate upon the ~~certification of the record to~~entry of a Final Order issued by the Board of Directors. The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. The hearing officer's authority shall include, but not be limited to:

(1) Arrange and change the date, time and place of hearings and prehearing conferences and issue notice thereof;

(2) Hold conferences to settle, simplify or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Administer oaths and affirmations;

(5) Examine witnesses and direct witnesses to testify;

(6) Receive, rule on, admit, exclude or limit evidence;

(7) Rule on pending motions and procedural items.

**300:35-21-7. Administrative appeal**

~~An appeal~~A challenge from the Board of Director's Final Order shall be made ~~to the Craig County District Court of Oklahoma~~in accordance with Oklahoma law.

## SUBCHAPTER 27. VEGETATION MANAGEMENT PLAN

**300:35-27-3. Permits**

(a) Individuals or entities wishing to engage in a Vegetation Management Activity are required to apply for and obtain a permit from the GRDA Office of Ecosystems Management before conducting any such activities.

(b) In order to be eligible to apply for a permit, an individual or entity must be the owner of the land adjacent to the GRDA land for which the permit is sought. If an applicant is not the adjacent landowner, the landowner must consent to the application.

(c) GRDA will consider applications to allow the removal of trees, shrubs, and vegetation for certain conditions and purposes including:

(1) Hazardous trees which pose substantial risk to the public, adjacent property, or properly permitted structures on Project Land.

(2) Trees, shrubs, and vegetation which are dead, dying, or diseased.

(3) Trees, shrubs, and vegetation considered to be an invasive or noxious species by the Office of Ecosystems Management.

(4) Trees, shrubs, and vegetation which may contribute to unsafe conditions by creating visibility problems (sight line) near waterways, roadways, trails, paths, or other access points, provided nothing in this section shall allow removal of vegetation to improve views of docks from land.

(5) Trees that are crowded from natural competition or that were overplanted may be selectively removed to maintain spacing for optimal tree growth and function.

(6) Trees, shrubs, and vegetation may be selectively removed to create and maintain an access corridor between an adjacent landowner's property and the shoreline. Corridors must consist of natural materials such as native grass, wood chips, or gravel/crushed rock. Placement of such must not involve earth moving or soil disturbance and must minimize ground disturbance and vegetation removal.

(7) Trees, shrubs, and vegetation may be selectively removed when necessary to facilitate another permitted use of Project Land.

(8) Trees, shrubs, and vegetation may be selectively removed for the creation and/or maintenance of a manicured lawn or for general landscaping purposes.

(d) GRDA will consider applications to allow the pruning or trimming of trees, shrubs, and vegetation for certain conditions and purposes including:

(1) Hazardous sections which pose substantial risk to the public, adjacent property, or properly permitted structures on Project Land.

(2) Dead, dying, or diseased sections to improve appearance and health.

(3) Pruning of trees for crown cleaning, crown thinning, and crown restoration.

(4) Pruning of trees, shrubs and vegetation to enhance the view of the lake.

(5) Pruning or trimming of trees, shrubs and vegetation for the creation and/or maintenance of a manicured lawn or for general landscaping purposes.

(e) GRDA will consider applications to allow for other Vegetation Management Activities including:

(1) Landscape plantings.

(2) Removal or pruning for public utility easements.

(3) Planting, removal, or pruning for shoreline stabilization purposes.

(f) In determining whether to grant a permit, the following will be considered and weighed as appropriate:

(1) Current permitted uses in the surrounding area.

(2) The aesthetic and biological impacts of pruning or removal on the vegetation.

(3) The potential for replacement with more desirable vegetation.

(4) The potential impacts on the aesthetic quality of the surrounding area, with consideration given to the views from the land and from the water.

(5) Potential environmental impacts on soils, shoreline/slope stability, water quality, and wildlife habitat.

(6) Special consideration for unique varieties, vegetation of great age, rare vegetation, or vegetation of horticultural or historical significance.

(7) Special consideration for native vegetation in undeveloped landscapes.

(g) Permit applications shall be subject to the following actions:

(1) Approved as submitted.

(2) Approved with modifications/conditions. Examples of modifications or conditions that may be placed on a permit include limiting the allowed activities, requiring activities be performed in a specific manner to minimize impact, and requiring mitigation or other enhancement measures.

(3) Rejected.

(h) Permits shall be valid for one year from the date of issuance and all Vegetation Management Activity authorized must be completed within that period.

(i) No permit shall be required for a utility provider possessing an easement on Project Land to perform Vegetation Management Activities necessary to exercise its rights pursuant to that easement.

*[OAR Docket #10-908; filed 5-24-10]*

## TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
## CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

*[OAR Docket #10-837]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions
330:36-1-4. [AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-7. [AMENDED]
330:36-2-9. [AMENDED]
330:36-2-13.1. [AMENDED]
330:36-2-17. [AMENDED]
Subchapter 4. Development Applications and Selection
330:36-4-2. [AMENDED]
330:36-4-2.1. [AMENDED]
330:36-4-3. [AMENDED]
Subchapter 10. Program Administration [NEW]
330:36-10-1. [NEW]
330:36-10-2. [RESERVED]
330:36-10-3. [NEW]
330:36-10-4. [RESERVED]
330:36-10-5. [NEW]
330:36-10-6. [RESERVED]
330:36-10-7. [NEW]
330:36-10-8. [RESERVED]
330:36-10-9. [NEW]
330:36-10-10. [RESERVED]
330:36-10-11. [NEW]
330:36-10-12. [RESERVED]
330:36-10-13. [NEW]
330:36-10-14. [RESERVED]
330:36-10-15. [NEW]
**AUTHORITY:**
These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
**DATES:**
**Comment Period:**
December 1, 2009 through January 8, 2010
**Public Hearing:**
January 6, 2010
**Adoption:**
March 3, 2010
**Submitted to Governor:**
March 5, 2010
**Submitted to House:**
March 5, 2010
**Submitted to Senate:**
March 5, 2010
**Gubernatorial approval:**
March 25, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in approval on April 30, 2010.
**Final Adoption:**
April 30, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded Rules:**
Subchapter 10. Program Administration [NEW]
330:36-10-1. [NEW]
330:36-10-2. [RESERVED]
330:36-10-3. [NEW]
330:36-10-4. [RESERVED]
330:36-10-5. [NEW]
330:36-10-6. [RESERVED]
330:36-10-7. [NEW]
330:36-10-8. [RESERVED]
330:36-10-9. [NEW]
330:36-10-10. [RESERVED]
330:36-10-11. [NEW]
330:36-10-12. [RESERVED]
330:36-10-13. [NEW]
330:36-10-14. [RESERVED]
330:36-10-15. [NEW]
**Gubernatorial Approval:**
April 24, 2009
**Register Publication:**
26 Ok Reg 1369
**Docket Number:**
09-824
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if said owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of said Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.
**CONTACT PERSON:**
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

**330:36-1-4. Definitions**

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the more restrictive meaning shall be applied.

**"Affiliate"** means any Person that directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any other Person.

**"Allocation"** means the maximum amount of TCA's available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

**"Applicable Fraction"** means the fraction used to determine the qualified basis of a qualified low income building which is the smaller of the unit fraction or the floor space fraction.

**"Applicant"** means any individual, nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Taxpayer and Taxpayer's predecessor in interest, if any, and includes any successor in interest, Transferee, of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Taxpayer or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having any right, title, or interest in the Development.

**"Application"** means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

**"Application Packet"** (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit formal public input on the Application Packet, and provide explanation of any significant changes. Staff will present the following year's proposed AP to the Board of Trustees for approval in at a Board of Trustees meeting. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

**"Area Median Gross Income"** means the median gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

**"Building"** means a Residential Rental Property containing residential Housing Units located on the land and included in the Development. For purposes of the Credit Program, each Building is identified by its Building Identification Number assigned by OHFA BIN and its street address assigned by the United States Postal Service. In case of any inconsistency, the BIN shall control. In the event more than one Building is located on the land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

**"Capital Needs Assessment"** (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures. The physical inspection should include an interview with the on-site manager and maintenance personnel. This assessment should identify deferred maintenance, physical needs, remaining useful life of key components, building material deficiencies and material building code violations that affect the property use, structural and mechanical integrity, and the future physical and financial needs. The assessment must include the cost of labor and materials identified in detail and the extent of future expenditures contemplated to ensure the costs will be addressed through operating and replacement reserves. Components which should be examined and analyzed in this assessment include but are not limited to:

(A) site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utility lines;

(B) structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system and drainage;

(C) interiors, including unit and common area finishes (carpeting, vinyl or tile flooring, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors ; and

(D) mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection and elevators.

**"Carryover Allocation"** means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

**"Carryover Allocation Agreement"** means the contract between Taxpayer and OHFA, authorized and approved by the Trustees, wherein subject to the satisfaction by Taxpayer of the terms, conditions, obligations and restrictions contained therein or in any Resolution of the Trustees, a Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

**"Certifications"** means the representations made under penalties of perjury by the Applicant, Taxpayer, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Development Compliance Period.

**"Code"** means the Internal Revenue Code of 1986, as amended, and in effect at the date of the Regulatory Agreement, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

**"Commitment"** means a representation or agreement of the Taxpayer/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Taxpayer and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Taxpayer with OHFA in connection with the Credit Program.

**"Compliance Period"** means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

**"Consultant"** means any person (which is not an Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

**"Control"** (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies or any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

**"Credit"** means the low-income housing tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

**"Credit Period"** means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is placed in service, for Credit purposes, or if the Taxpayer makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

**"Credit Program"** means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

**"Credit Reservation"** means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

**"Developer"** means the person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Taxpayer of the Development. Developer also includes any other person or organization affiliated with, Controlled by, In Control Of or A Related Party to, the Developer, as determined by OHFA.

**"Development"** means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

**"Development Compliance Period"** means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

**"Development Team"** means the Applicant, architect, attorney, consultant, developer, general contractor, market analyst and/or appraiser, property management company, tax professional, Taxpayer, and the principals of each.

**"Drug"** for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

**"Drug-Related Criminal Activity"** means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

**"Due Date"** if a due date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the due date becomes the next business day.

**"Elderly"** means a person sixty-two (62) years of age or older. This definition is for consideration for the Elderly set-aside ~~and for points~~ in which one hundred percent (100%) of units are for Elderly.

**"Eligible Basis"** means generally the depreciable basis in the property.

**"Extended Use Period"** means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

**"Gross Rent"** means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B); (iii) paid to Taxpayer (on the basis of the low-income status of the Qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Taxpayer to the extent an equivalent amount is paid to the RHS under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first Year of the Credit Period.

**"Hard Construction Costs"** means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, a reasonable contingency can be included.

**"Homeless"** means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status. OR (4) displaced as a result of a major disaster and receives FEMA assistance. Homeless individuals are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

**"Housing Unit"** means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common Area Units are not included.

**"HUD"** means the U.S. Department of Housing and Urban Development.

**"Income"** means the income of one or more Qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

**"IRS"** means the Internal Revenue Service of the Treasury.

**"IRS Form 8609"** means the IRS Form entitled "Low Income Housing Credit Certification" issued by OHFA no later than the end of the calendar year that such Building is Placed-In-Service or to be issued. The IRS Form 8609 establishes the maximum Credit for a Building.

**"IRS Form 8823"** means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

**"Land"** means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

**"Large Development"** means a Development with more than sixty (60) units.

**"LIHTC Program"** means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

**"Low-Income Unit"** means a Housing Unit that is both Rent-Restricted and occupied by Qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of transitional housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer Total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

**"Market Rate Unit"** means a Housing Unit that does not meet the definition of a Low-Income Unit.

**"Minimum Low-Income Housing Set-Aside"** means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by Qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Taxpayer must have selected either: (i) twenty percent (20%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income

is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Taxpayer and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Taxpayer.

**"National Non-Metro Area Median Income"** means as determined and published annually by HUD.

**"Nonprofit"** means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

**"Nonprofit Sponsored Development"** means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

**"OAHTC Program"** means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

**"OHFA"** means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

**"One Year Period (1YP)"** means period commencing on the date on which OHFA and the owner agree to the Qualified Contract price in writing and lasting twelve (12) calendar months.

**"Owner"** means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest of Owner, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

**"Partnership"** means any syndicate, group, pool or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is treated for federal income tax purposes as a partnership and is not considered within the meaning of the Code, a trust or estate or a corporation. A Partnership may be a general Partnership or a limited Partnership and must have partners and an objective to carry on business and divide the gains therefrom.

**"Person"** means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

**"Placed-In-Service" means:** (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for rehabilitation expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

**"Preliminary Application (QCPA)"** means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a request for a qualified contract.

**"Program Rules"** means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

**"Qualified Allocation Plan (QAP)"** means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing will be published by OHFA Staff.

**"Qualified Building"** means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Taxpayer or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

**"Qualified Contract"** means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts

described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

**"Qualified Contract Application (QCA)"** means an application containing all information and items required by the OHFA to process a request for a Qualified Contract.

**"Qualified Contract Price (QCP)"** means calculated purchase price of the development as defined within §42(h) (6) (F) of the Code and as further delineated in Chapter 36 Rules.

**"Qualified Development"** means a Development or Residential Rental Property where an Applicable Percentage or more of the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum Low Income Housing Set Aside.

**"Qualifying Households"** means households whose annual incomes do not exceed the chosen set-aside (which is either 50% or 60%) of the median family income for the area.

**"Regulatory Agreement"** means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

**"Rehabilitation Expenditures"** means amounts that are capitalized and incurred for the addition to or improvement of an Existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

**"Rent-Restricted"** means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the income limitations for Qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

**"Resident"** means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

**"Resolution"** means an official action of the Trustees and includes all Resolutions adopted by the Trustees with respect to a Development.

**"Review Report"** means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the review report for each Application.

**"Rural Area"** means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by contacting the Stillwater USDA-RD office.

**"Rural Development"** means a Development that is, or will be located within a Rural Area. RHS 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

**"Section 8"** means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

**"Selection Criteria"** means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

**"Site Control"** means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Taxpayer has obtained Site Control.

**"Special Needs"** means such targeted populations as may be designated from time to time in an Application Packet by official action of OHFA's Board, which designations may include, but are not necessarily limited to, the homeless, the elderly, persons with mental and physical disabilities and/or disabled persons.

**"State"** means the State of Oklahoma.

**"TCA"** means a federal low-income tax Credit allocation by OHFA to a Development owner pursuant to Section 42 of the Code, these Rules, QAP, the Act, the applicable AP, the Application, and formal action by the OHFA Board of Trustees.

**"Three-Year Period"** for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the owner may no evict or terminate a tenancy of an existing tenant of any low-income unit except for good cause. During the Three-Year Period the owner may not increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code.

**"Threshold Criteria"** means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the Taxpayer and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require no further action by OHFA Staff except to notify the Applicant of the disqualification.

**"Total Housing Units"** means all Housing Units in a Building including both Market Rate Units and Low-Income Units.

**"Total Development Costs"** means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application and in an independent certified public accountant's certification of sources and uses of funds submitted to OHFA.

**"Transfer"** means any sale, transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a transfer, sale, contribution or assignment by the Applicant, Taxpayer or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general Partnership, general partner of a limited Partnership, any party to a joint venture or the manager of a limited liability company.

**"Transferee"** means any and all successor(s) in interest of Taxpayer, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

**"Transitional Housing"** for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

**"Treasury"** means the United States Department of the Treasury.

**"Trustees"** means the Board of Trustees of OHFA.

**"Unit Fraction"** means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of Total Housing Units, whether or not occupied, in the Building.

**"Violent Criminal Activity"** means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

## SUBCHAPTER 2. ALLOCATION PROCEDURES

**330:36-2-7. Award amounts**

(a) The maximum TCA for any one Development proposal shall be established in the AP ~~not exceed $550,000 or $600,000 with any boost~~.

(b) TCAs for amounts less than applied for based upon OHFA's financial and feasibility analyses. In order to make the most efficient, equitable and practicable utilization of the State's tax Credit allocation, the Trustees of OHFA may approve, giving consideration to the recommendations of OHFA's staff, the utilization of funding from other housing programs administered by OHFA which may also result in a decrease in the amount of the TCA approved.

**330:36-2-9. Reallocation of additional tax Credits**

(a) Annually, additional tax Credits may become available for the award of TCAs as the result of:

(1) Development cancellations;

(2) Developments completed under original cost estimates;

(3) Credits allocated but not utilized; or,

(4) Other circumstances.

(b) In keeping with the applicable AP, OHFA may award TCAs based on the amount of Credits available, in the calendar year any such Credits first become available.

(c) ~~OHFA reserves the right, in its complete discretion, to make any adjustments in the amount of TCAs that may be awarded in any cycle of a given calendar year, by increasing or decreasing the amount of TCAs made available in a given cycle.~~ The Trustees reserve the right, to consider allocations of TCAs outside the established reservation period(s) for a given calendar year. The Trustees, in their sole discretion, reserve the right to approve such an allocation of TCAs, provided the facts presented to them demonstrate a special circumstance or need and said allocation promotes the development of residential use housing within the State. Provided however, the Trustees also reserve the right to deny any request for an allocation of TCAs made outside the established reservation period(s) for a given calendar year. Consideration of all allocations of TCAs shall be made at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.

(d) All Credits not awarded in any calendar year shall be carried over for use in the next calendar year, in accordance with the provisions of the Code, these Rules, the applicable AP and/or the formal action of OHFA Trustees.

**330:36-2-13.1. Final Review Report.**

(a) The Staff of OHFA will consider the Applicant's response to the preliminary Review Report prior to issuing the final Review Report and making its recommendations to the

Trustees. The Applicant will be informed of Staff's recommendations prior to the meeting of the Trustees where the Application is being considered. OHFA will mail a copy of the final Review Report and Staff's recommendations by certified mail with return receipt requested or other form of traceable delivery system to provide proof of transmission and receipt.

(b) In the event the Applicant disputes any matter contained in the final Review Report, Applicants must file ten (10) copies of any response(s) to the final Review Report or other information they wish the Trustees to consider not less than forty-eight (48) hours prior to the commencement of the meeting where the Application will be considered. Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be accepted or considered by the Staff or the Trustees.

(c) Failure to respond to Staff's final Review Report in a timely manner may result in the adoption of the final Review Report by the Trustees, including Staff's recommendations and exclusion of any additional documentation proffered by the Applicant for consideration of the Application by the Trustees.

(d) The Applicant's response to the final Review Report must be in writing. ~~Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be accepted or considered by the Staff or the Trustees.~~

**330:36-2-17. Final Allocations**

(a) **Prior approval.** Applicants must have previously been approved for a Reservation, either in a prior year or previously in the calendar year in which the request is made.

(b) **Deadline for filing.** Owner's request for approval of the Final Allocation must be received by OHFA at such date as OHFA may specify in writing to the Owner. Failure to file a timely Final Allocation accompanied by all required documentation may result in the denial of the Final Allocation and a determination by the Trustees that the Credits have been returned by the Applicant.

(c) **Complete filing.** The Final Allocation must be accompanied by all evidence or documentation required by the Program Rules then in effect, and such other information or documentation which may be requested by OHFA, in its sole discretion, to verify compliance with the Code, the Program Rules and the Resolutions, and to verify the amount of the Final Allocation. A complete and executed Regulatory Agreement in the form provided by OHFA and ready for filing, together with the appropriate fees, including without limitation applicable filing fees and compliance monitoring fees, must be filed with the Final Allocation. The Regulatory Agreement shall contain provisions for regulation and enforcement by OHFA and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to the requirements of OHFA.

(d) **Additional requirements.** In addition to the opinions and certifications of professionals which may be required to be filed with OHFA pursuant to 330:36-2-16 in connection with a request for a Carryover Allocation, prior to making a final Allocation, OHFA will require:

(1) An audited certification of the total Development costs, and the eligible basis and qualified basis of each Building in the Development and the sources and uses of funds for the Development prepared from an independent certified public accountant.

(2) All opinions must be in a form satisfactory to OHFA and must indicate that the professional has made an independent inquiry into the matters contained therein.

(e) **Approval.** Upon receipt of a completed Final Allocation, OHFA will conduct a final feasibility analysis. Approval of the Final Allocation is subject to Owner's continued compliance with the Code, the Program Rules, the Resolutions, all terms and conditions of this Agreement, Owner's payment of all fees required by the Program Rule.

(f) **Issuance of Form 8609(s).** Subject to the approval of the Final Allocation by the Trustees, OHFA will, upon notification by Owner that the Development (or any Building therein) has been placed in service, issue IRS Form 8609(s) respecting each such Development (or each Building therein) to the extent required by, and in accordance with, the Code and the Program Rules. No Form 8609(s) shall be issued if OHFA has not received an executed Regulatory Agreement and all Exhibits thereto, ~~together with~~ applicable fees, and resolution of issues acceptable to OHFA's satisfaction.

## SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

**330:36-4-2. Selection of Applications for award of TCAs**

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application may result in the Application being rejected without further review. The Threshold Criteria may include, but are not necessarily limited to the following:

(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice. If the application is considered at a different Board meeting than in the notice, this notification requirement is considered to be met.

(A) **Written Notices.** The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman

of the appropriate county commissioners, state legislators (or their successor) within whose district the development is located at the time of application regarding their intent to submit an application. This written notice shall serve to provide a reasonable opportunity to comment on the application. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice.

(B) **Additional notice requirements.** If the site for the development is not located within the specific corporate limits of an incorporated town or city, but is within two (2) miles of an incorporated town(s) or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice. The requirements for the publication notice will be in the annual AP.

(2) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.

(3) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) is at least a minimum of fifty-one percent (51%) co-general partner, co-managing member, or a controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 26 CFR § 1.469;

(C) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(D) is duly authorized to do business within the State; and

(E) has at least one demonstrable year of affordable housing experience.

(4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is located at the time of application, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions.

(5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their Placed in Service Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. The removal as a General Partner may be considered lack of capacity and performance. Applicants with existing Developments may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, and may include any of their Development team Instances of non performance may include, but not limited to:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) have been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;

(D) events of material uncorrected non-compliance with any Federal or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years.

(F) failure to comply with OHFA's requests for information or documentation on any development funded or administered by OHFA.

(6) **Acquisition Credits.** Applicants requesting acquisition Credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d) (2)(B) have been met or a waiver obtained

from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

~~(7) **Phase I environmental study.** Applicants must submit a Phase I Environmental Assessment of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. In lieu of assessment for existing RHS financed properties to be acquired and rehabilitated, the Applicant and RHS must certify that there are no adverse environmental concerns. Any remediation requirements should be detailed and costs identified in the budget.~~

(7~~8~~) **Financial feasibility and viability.** Applicants must demonstrate with their financing that there are firm commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Commitment letters must include loan amount, interest rate, loan term, debt service coverage ratio (permanent lender), loan amortization period (permanent lender), borrower, loan fees, collateral and conditions precedent to funding. Requirements set out in 36-4-2.~~2~~ 1(b)(c) and (d) are part of the analysis for financial feasibility.

(8~~9~~) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness may include but not be limited to:

(A) site control; and

(B) Applicant must provide preliminary plans or specifications; and

(C) proper zoning for the proposed Development.

(9~~10~~) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local or State public housing authority documents the presence of a client waiting list for affordable housing units in the locale of the proposed development.

(10~~11~~) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital needs assessment performed by a qualified independent third-party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements plus reserves have a useful life that meets the full term of affordability based on extended use agreements. The assessment should also demonstrate the need for the rehabilitation work and in the degree proposed. In addition, all rehab developments must include a complete, detailed tenant income audit that identifies all existing tenants and their income. The audit shall separately identify those tenants whose income exceeds applicable income limits.

(11~~12~~) **Development amenities.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the annual AP.

(c) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and may include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below fifty percent (50%) AMFI to the total number of AHTC units in the project. A sliding scale for points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be awarded for an extension of the term of affordability beyond the minimum required by the Code and established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Locations and points will be established in the annual AP.

(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost beneficial investments or contributions to the proposed Development. Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. Points for this criterion will be established in the annual AP.

(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed development will be analyzed. Support must be directly related and of direct value to the proposed project. Eligible evidence of support and points will be established in the annual AP.

(6) **Applicant/Owner Experience.** Each Application will be analyzed and evaluated as to the experience of the Applicant and/or the Development Team in owning and successfully operating Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP.

(7) **Management Experience.** Each Application will be analyzed and evaluated as to managing or providing management for Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the management team members. Changes in management may not occur after the Reservation without the prior written approval of OHFA.

(8) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. Points available under this criterion

will be established in the annual AP and will be based upon a percentage of units dedicated to special needs.

(9) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. Points available under this criterion will be established in the annual AP. To be eligible, the market study must indicate a need for family units.

(10) **Tenant ownership.** Points available to applicants proposing for single family home ownership after the Compliance Period will be established in the annual AP. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which will be evaluated for feasibility.

(11) **Preservation of 15 year old affordable housing units ~~from pre-1990~~.** Points and criteria may be established in the AP for the preservation of affordable housing.

(12) **Energy Efficiency of a development.** Points will be established in the AP to encourage energy efficiency of developments. This may be a separate point category, or it may be combined within another threshold or selection category.

(13) **Historic Nature of a development.** Points will be established in the AP regarding the historic nature of developments. This may be a separate point category, or it may be combined within another threshold or selection category.

(14) **Negative Points.** OHFA Staff will deduct points for records of poor performance. Point deductions will be established in the AP.

(15) **Tie-breaker.** In case there are applications with the same final score in any set-aside, a drawing shall occur at the Board of Trustees meeting in which the applications are being considered for funding. All applications with the same score in any set-aside will be entered in the drawing. The first application drawn, will be funded first, the second application drawn, will be funded next, and so forth until such time as the tax credits have been allocated under the set-aside. Applications not drawn under a set-aside will be placed in the next set-aside in which they qualify in rank score order.

(d) **OHFA discretion.** Not withstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2.1(c), the OHFA Board of Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if allocation is:

(1) in compliance with Code Section 42;

(2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and

(3) determined by the Trustees to be in the interests of the citizens of the State.

**330:36-4-2.1. General program requirements and limitations**

(a) **General.**

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:

(1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.

(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:

(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs;

(B) General Overhead may not exceed two percent (2%) of the hard construction costs; and

(C) Builders Profit may not exceed eight percent (8%) of the hard construction costs.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs.

(B) General Overhead may not exceed two percent (2%) of the hard construction costs; and

(C) Builders Profit may not exceed six percent (6%) of the hard construction costs.

(d) **Underwriting standards.**

(1) **Operating and replacement reserves.**

(A) Minimum operating reserves must equal six months of projected operating expenses plus:

(i) debt service payments and

(ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal $250.00 per unit annually for new construction and $300.00 for rehabilitation developments.

(C) Developer guarantees or letters of Credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate financial capacity and liquidity. OHFA will also consider the developer's track record and the number of other guarantees outstanding.

(D) Notwithstanding the foregoing, these underwriting standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural Housing 515 or 538, and such program provides for sufficient budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio will be established in the AP.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Minimum hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of $20,000 in hard construction costs per unit will be expended or at least twenty percent (20%) of eligible basis, whichever is greater.

(6) **Buildings Designated by OHFA to receive increase in credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the annual AP.

(e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the Final Allocation Application is submitted to OHFA ~~IRS Form 8609 is issued for a building~~. Due dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) calendar days after the Certificate of Occupancy is issued for the last building in the project, the Taxpayer must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the Development. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused Credits.

(f) **Construction time period.** Construction, not including site prep work, must begin within Construction, not including site prep work, must begin within nine (9) months of the last calendar day of the month of the Credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax Credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Taxpayer, Owner or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.

(h) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

**330:36-4-3. Fees**

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be $500.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be $1,000.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be $2,000.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be $3,000.00;

(E) for scattered sites, the application fee shall be $500.00 per site, up to a maximum of $3,000.00.

(F) For non-profit sponsored Developments the application fee shall be $500.00.

(2) **Reservation fees.** A non-refundable Reservation fee of two percent (2%) of the reservation amount is due within fourteen (14) calendar days of notification from OHFA of the approval of a Reservation. Non-payment may result in revocation of credits.

(3) **Allocation fee.** An Allocation fee shall be paid in an amount equal to eight percent (8%) of the total TCA, but in any event not less than $1,000.00. The Allocation fee must be paid at the time a request for Carryover allocation is submitted to OHFA ~~accompany the Final Allocation or Carryover Allocation request.~~ A Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA. Non-payment may result in revocation of credits.

(4) **Processing fee.** A processing fee of three quarters of one percent (.75%) of the TCA must accompany the request for a final Allocation. A service fee of $100.00 must accompany the Request for Final Allocation of Credit. Form 8609(s) will not be issued unless this fee has been received by OHFA.

(5) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies).

(6) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the compliance period and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the Compliance fee is not paid within thirty (30) calendar days of the due date, then a Late Fee will be assessed. The Late Fee is equal to ten percent

(10%) of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 ~~or by taxable or tax exempt bonds~~ (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and RHS ~~or the bond issuer~~ wherein the RHS ~~or bond issuer~~ agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be $210.00 per Development per year, plus $9.00 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and RHS ~~or the bond issuer~~ wherein RHS ~~or the bond issuer~~ agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be $350.00 per Development per year, plus $19.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be $275.00 per Development per year.

(D) For all other Developments the fee shall be $350.00 per Development, plus $19.00 per OAHTC unit per year within any building within the Development.

(7) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed $30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(8) **Ownership/General Partner transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership/general partner of the Development or any of the Buildings therein, a fee of three percent (3%) of the amount of annual tax Credit allocation, but no less than $2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(9) **Management Transfer fees.** In the event that the owner submits a request for approval of a transfer of the management company of the Development, a $500.00 fee per development shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(10) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, must be reimbursed by the Owner within ten (10) calendar days of OHFA's statement of same. Failure to do so may result in the rejection of consideration of the Application.

(11) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(12) **Compliance Workshops.** A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.

(13) **Qualified Contract fees.** Submission deadlines for these fees will be established in the Qualified Contracts Application materials. Preliminary Application (PA) fee shall be $1,500.00. Additionally, the Qualified Contract Application (QCA) fee shall be $12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the applicant. Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an all inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and applicants will receive notice of the charge and reason.

(14) **Late fees.** The Form 8609(s) will not be issued unless these fees have been received by OHFA.

(A) **Progress reports.** Progress reports as required in 36-4-2.2 when filed late will be assessed a late fee of $10.00 per calendar day, per each late report.

(B) **Carryover Allocations.** Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost certifications, opinions and documents shall incur $100.00 late fee per calendar day.

(C) **Final Allocations.** Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost certifications, opinions and documents shall incur $100.00 late fee per calendar day.

(D) **Transfer Documents.** Owners who fail to timely file all requirements in regard to the transfer of ownership or general partnership interest (or other type of entity) may incur $25.00 late fee per calendar day.

(E) **Acknowledgment of Placed in Service Form.** Owners who fail to timely file an Acknowledgment of Placed In Service Form in accordance to timelines established in the AP shall incur $10 late fee per calendar day.

## SUBCHAPTER 10. CREDIT ASSISTANCE/STIMULUS LEGISLATION

**330:36-10-1. Purpose**

The purpose of this Subchapter is to outline OHFA's procedures for implementing new funding resources specifically identified for use in connection with the OAHTC Program. The American Recovery and Reinvestment Act (ARRA), enacted on February 17, 2009 provides new federal stimulus programs for eligible Owners of Credit Developments. The purpose of this Subchapter is to outline OHFA's procedures for implementing the stimulus programs of the ARRA and future programs which may be authorized and funded federally or at the state level.

**330:36-10-2. [RESERVED]**

**330:36-10-3. Authority**

OHFA has been designated as the State's housing credit agency responsible for the Allocation of Credits made available to the State. This authority provides that OHFA shall administer any funding resources directed to the OATHC Program. Both the "Tax Credits: Exchange" and the "Tax Credit Assistance Program (TCAP)" sections of ARRA provide that these funds shall be administered by the "State Housing Credit Agency".

**330:36-10-4. [RESERVED]**

**330:36-10-5. Definitions**

Reference is made to 330:36-1-4 and the Section 42 of the Code for any words or terms used in this Subchapter.

**330:36-10-6. [RESERVED]**

**330:36-10-7. Tax Credits: Exchange**

(a) The ARRA provides that OHFA has the option of exchanging certain Credit Allocations to the State for a cash payment to OHFA. The cash payment received by OHFA may be used by OHFA to make ARRA sub-awards to selected Applicants who qualify under the QAP for a Credit Reservation and Allocation. In OHFA's sole discretion for the best use of these funds, these sub-awards may be made in the form of either a grant or a loan.

(b) OHFA shall develop an Application process for applying for ARRA funds. The Application process will be consistent with the QAP and Section 42 of the Code and any regulations provided by Treasury as to the use of the funds made available under ARRA for sub-awards.

(c) At the time of the Application for an ARRA sub-award, the Applicant must demonstrate a good faith effort to obtain investments commitments for Credits previously allocated to the Owner.

(d) The Owner of the Buildings(s) identified in the Carryover Allocation Agreement and/or Regulatory Agreement receiving an ARRA sub-award must maintain said Building(s) as Qualified Low-Income Building(s) during the Development Compliance Period. Failure to maintain the Building(s) as Qualified Low-Income Building(s) shall result in the recapture of the ARRA sub-award.

(e) Recipients of ARRA sub-awards will be required to enter into such agreements and documentation as OHFA, in its sole discretion, deems necessary to ensure that the provisions of any requirements of the U.S. Department of the Treasury, these Chapter 36 Rules, the Code, any relevant rules, regulations, rulings or other guidance issued by the IRS and terms of the ARRA sub-award are met throughout the Development Compliance Period. Required agreements and documentation may include without limitation, loan documentation, an amended Carryover Allocation Agreement and/or Regulatory Agreement and Owner guarantees.

**330:36-10-8. [RESERVED]**

**330:36-10-9. Tax Credit Assistance Program (TCAP)**

(a) The ARRA provides funds through the HOME Investment Partnership Program (the "HOME Program") for awards to certain Owners of Credit Developments. These funds have been designated Tax Credit Assistance Program (TCAP) by HUD. In OHFA's sole discretion for the best use of these funds, these awards may be made in the form of either a grant or a loan.

(b) OHFA will develop an Application process for awarding TCAP funds to eligible Credit Development Owners. The Application process will be consistent with the QAP and Section 42 of the Code and any regulations provided by Treasury or HUD as to the use of funds made available under the ARRA for awards.

(c) The Application for the TCAP funds will include a competitive component. Evaluation Criteria will be developed, but will include, without limitation, a priority for Developments expected to be completed and Placed in Service by February 17, 2012.

(d) Any Owner failing to expend awarded TCAP funds within the time period specified in the TCAP Award Agreement between the Owner and OHFA shall return the funds to OHFA for redistribution.

(e) Recipients of ARRA TCAP funds will be required to enter into such agreements and documentation as OHFA, in its sole discretion, deems necessary to ensure that the provisions of any requirements of the U.S. Department of the Treasury, HUD, these Chapter 36 Rules, the Code, any relevant rules, regulations, rulings or other guidance issued by the IRS and terms of the ARRA TCAP are met throughout the Development Compliance Period. Required agreements and documentation may include without limitation, loan documentation, an amended Carryover Allocation Agreement and/or Regulatory Agreement and Owner guarantees.

**330:36-10-10. [RESERVED]**

**330:36-10-11. Asset Management**

(a) OHFA shall perform asset management functions to ensure compliance with section 42 of the Code and the continued

long term viability of Building(s) funded by either form of assistance identified in this Subchapter. OHFA may sub-contract this function to another entity (ies).
(b) Any Building(s) receiving funds pursuant to the Grant Program of the TCAP shall be subject to all restrictions and regulations of the OAHTC Program, Section 42 of the Code and, as applicable, the HOME Program.

**330:36-10-12. [RESERVED]**

**330:36-10-13. Fees**
(a) Fees will be calculated based on original Tax Credit award and shall comply with Subchapter 4, Section 4-3. All Fees as set out in these Chapter 36 Rules will be due and payable at such times as OHFA instructs Applicants.
(b) An annual Asset Management Fee shall be due and payable at such times as OHFA instructs Applicants for each year of the Development Compliance Period. The Fee shall be subject to Oklahoma Department of Central Services Central Purchasing guidelines.

**330:36-10-14. [RESERVED]**

**330:36-10-15. Other Enactments of Law**
In the event additional federal or state assistance/stimulus programs benefiting the OAHTC Program become available to the State through OHFA, OHFA shall immediately implement such procedures as OHFA deems necessary, in its sole discretion, to access these funds for the purpose of Allocating, granting, awarding, etc. to Qualified Owners of Tax Credit Developments. The process developed for the current economic stimulus programs available and future enactments of law will be consistent with the goals of the QAP, the Chapter 36 Rules, Section 42 of the Code and any relevant rules, regulations, rulings or other guidance issued by the IRS and, as relevant the regulations of the HOME Program and guidance from HUD. The Application process and procedures developed will be reviewed annually by OHFA through normal procedures.

*[OAR Docket #10-837; filed 5-12-10]*

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

*[OAR Docket #10-872]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. Human Resources Management Division
Part 1. General Provisions
340:2-1-1 through 340:2-1-2 [AMENDED]
340:2-1-6 [AMENDED]
Part 3. Internal Human Resources
340:2-1-25 [REVOKED]
340:2-1-26 through 340:2-1-29 [AMENDED]
Part 5. Administrative Procedures
340:2-1-56 through 340:2-1-57 [AMENDED]
Part 7. Recruitment, Selection, and Placement Policy and Procedures
340:2-1-75 through 340:2-1-80 [AMENDED]
340:2-1-82 through 340:2-1-85 [AMENDED]
340:2-1-86 [REVOKED]
340:2-1-88 [AMENDED]
340:2-1-93 [AMENDED]
**(Reference APA WF 10-01)**
**AUTHORITY:**
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.
**DATES:**
**Comment period:**
February 16, 2010 through March 18, 2010
**Public hearing:**
None requested
**Adoption:**
March 23, 2010
**Submitted to Governor:**
March 23, 2010
**Submitted to House:**
March 23, 2010
**Submitted to Senate:**
March 23, 2010
**Gubernatorial approval:**
April 28, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2010.
**Final adoption:**
May 19, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
Subchapter 1 of Chapter 2 permanent rule amendments: (1) update rules as they relate to process, procedures, or a change in form name or number; (2) clarify language; and (3) revoke obsolete or duplicative rules.
**CONTACT PERSON:**
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

## PART 1. GENERAL PROVISIONS

**340:2-1-1. Purpose**
The ~~Purpose~~ purpose of this Subchapter is to describe the Oklahoma Department of Human Services (OKDHS) rules governing the appointment ~~and administration of the Oklahoma Department of Human Services (OKDHS)~~ of employees including reinstatements, interagency transfers, direct hires, and applicants, as permitted by the Oklahoma Personnel Act.

**340:2-1-2. Appointing authority**

~~(a)~~ Section 4 of Article XXV, of the Constitution of the State of Oklahoma provides that the Director of the Oklahoma Department of Human Services (OKDHS), subject to the control of the Oklahoma Commission for Human Services, has the power and duty to employ personnel of OKDHS. ~~Consequently, as~~ As the executive and administrative officer of OKDHS, the Director ~~likewise~~ has final responsibility for all administrative decisions affecting personnel actions of OKDHS. Authority to appoint employees in the unclassified service~~,~~ is found in Section 26.17 of Title 56 and Sections 840-5.3 through 5.5 of Title 74 of the Oklahoma Statutes.

~~(b) The decision to place a position or employee in the unclassified service is based primarily on whether the duties assigned to the position are policy-making or are confidential in nature. Additional factors that may be considered in this decision relate to rank in the organization, executive level reporting relationships, responsibilities for defining program direction, or the presence of executive duties and responsibilities.~~

**340:2-1-6. Investigation of employees accused of ~~child~~ abuse or neglect**

The Oklahoma Department of Human Services (OKDHS) is responsible for receiving and investigating complaints of ~~child~~ abuse and neglect. When an employee of OKDHS is alleged to have abused or neglected a ~~child or children in his or her care~~ vulnerable person, special procedures are followed to provide outside accountability and to assure the employee that an unbiased investigation is completed. These procedures are outlined in OAC 340:75-3-6.1(c) and OAC 340:5-1-8(2).

## PART 3. INTERNAL HUMAN RESOURCES

**340:2-1-25. Application [REVOKED]**

~~(a) **Persons seeking initial employment.** Any person interested in securing initial employment in the classified service may take the open competitive examination through the Office of Personnel Management (OPM). The person must meet the minimum education and experience qualifications for the job family for which he or she is applying. Application must be submitted to the OPM designated application system for eligibility determination and approval for merit testing as appropriate.~~

~~(1) Applications for non-competitive positions in the classified service are submitted to the OPM designated application system. These are primarily used in residential facilities and group homes.~~

~~(2) Form 11PE001E, Application for Employment, is provided to the applicant prior to the initial interview or at the time of contact when his or her name appears within the hiring rule on an OPM E-List. The applicant returns Form 11PE001E to the local Oklahoma Department of Human Services (OKDHS) office.~~

~~(3) The interviewing official or local administrator is responsible for preparing Form 11PE006E, Form Letter to Employment Reference, or Form 11PE007E, Form Letter to Personal Reference. The applicant has a right to review the information obtained from these inquiries.~~

~~(4) The interviewing official is responsible for explaining benefits and conditions of employment.~~

~~(5) Applications of persons recommended for employment are sent by the selecting official to the appropriate local office or the designated Human Resources Management Division (HRMD) office with the completed Form 11PE076E, Applicant List, and as applicable the OPM E-List.~~

~~(b) **Permanent classified employee or applicant for reinstatement.** An application for an announced position is submitted directly to OKDHS Human Resources Management Division (HRMD). An OKDHS employee must submit a valid Form 11PE012E, Data Summary Sheet. An interagency applicant electing to use Form OPM 4B, Personal Data Summary Sheet, in lieu of Form 11PE012E is required to complete a supplemental questionnaire provided by HRMD to be considered for an interview. If Form OPM 4B is utilized, the job announcement number and a means to contact the applicant must be provided.~~

~~(1) The interviewing official or local administrator is responsible for preparing Form 11PE006E or Form 11PE007E. The applicant has a right to review the information obtained from these inquiries.~~

~~(2) The interviewing official is responsible for explaining benefits and conditions of employment.~~

~~(3) The application of a person recommended for employment is sent by the selecting official to the appropriate local office or the designated HRMD office with the completed Form 11PE076E and, as applicable, the OPM E-List.~~

~~(c) **Unclassified service.** OKDHS may post positions in the unclassified service. [OAC 340:2-1-76(13)] A person interested in applying for an unclassified position submits any of the documents listed in this subsection and any additionalrequested documentation to HRMD. An acceptable application is:~~

~~(1) a resume with a cover letter or a transmittal document that identifies the announcement number and a means to contact the applicant. In order to be eligible to be considered for an interview, the applicant is required to complete a supplemental questionnaire provided by HRMD; or~~

~~(2) Form 11PE012E.~~

**340:2-1-26. Employment and assignment**

(a) **Selection from Office of Personnel Management (OPM) E-List.** The process to fill a position is initiated by use of Form 11PE031E, Announcement Requisition, which is forwarded to the Human Resources Management Division (HRMD), Oklahoma Department of Human Services (OKDHS). When HRMD is notified of vacancies~~, and these~~ that are not filled by promotion, demotion, transfer, or reinstatement in accordance with OKDHS recruitment, selection, and placement policy and procedures, HRMD may request an OPM E-List which may be used in accordance with OAC 340:2-1-84(b). OPM supplies names of eligible ~~individuals~~

persons. The hiring rule is the top ten available eligibles, or anyone whose name is tied with the lowest ranked eligible within the hiring rule. [OAC 530:10-9-92 and 74 O. S. § 840-4.13] OKDHS may make its selection from the OPM E-List within the hiring rule. In selecting new personnel from the OPM E-List, OKDHS may consider any information legally available concerning each applicant, including data recorded on the application, reports of interviews with applicants and references, performance evaluations, letters of reference, and background checks. OKDHS does not discriminate in any of its employment policies and is an equal opportunity employer.

(b) **Utilization of multiple continuous announcement (MCA).** OKDHS may announce that applications will be accepted for a specified period of time in anticipation that numerous vacancies will occur during the period of the announcement. Criteria for the establishment of an MCA is determined by HRMD. When MCA is utilized:

(1) individual announcements are not utilized for the same job family descriptor at the same unit location;

(2) applicant lists may be issued to selecting official beginning ten calendar days after announcement opens and up to ten calendar days after the announcement closes; and

(3) an applicant will have his or her name removed from further consideration for MCA when the applicant:

(A) fails to respond to an invitation for an interview;

(B) fails to respond to a request for additional information;

(C) declines an interview; or

(D) declines a job offer.

(~~b~~c) **Determination of availability.** Upon receipt of the OPM E-List, HRMD forwards the ~~OPM~~ E-List to the requesting official. This official contacts applicants on the list by mail or e-mail to determine if the applicants are available for an interview.

(1) If an applicant declines an offer of appointment, fails to report for an interview, or fails to report for duty, the circumstances are documented for the record. An eligible ~~candidate~~ applicant may be considered to have declined and may be removed from consideration when he or she:

(A) fails to reply to a written invitation to interview within seven calendar days, exclusive of the date of mailing;

(B) is contacted by e-mail with an invitation to interview and fails to respond to the electronic inquiry within 72 hours; or

(C) verbally declines an opportunity to interview with a representative of OKDHS.

(2) Information regarding a selected applicant's availability for appointment is transmitted to HRMD with any other pertinent information obtained regarding the applicant at the time. Form 11PE076E, Applicant List, is returned to HRMD and as relevant, the OPM E-List.

~~(3) Appointment to certain positions within OKDHS requires the completion of a background check. [OAC 340:2-1-56]~~

(~~4~~3) A conditional offer of employment, Form 11PE009E, Conditions of Employment, is made to an applicant pending the passing of the required drug screening. [OAC 340:2-1-43(b)(1)]

(4) Appointment to certain positions within OKDHS requires the completion of a favorable background check. [OAC 340:2-1-56]

(~~c~~d) **Notice of appointment.** Since OKDHS administers statewide programs, staff are assigned in accordance with the particular needs of OKDHS. Form OPM-14, Request for Personnel Action, showing the OPM position identification number, job family with level and job code, place of assignment, pay band and salary, is provided to the new employee as notice of his or her appointment.

**340:2-1-27. Report of entrance on duty**

(a) **Required documents.** On the day a new employee enters on duty, the supervisor of the unit of assignment completes Form 11AD068E, Report of Accession, and forwards it to the Human Resources Management Division (HRMD). Documents attached to Form 11AD068E include:

(1) a copy of the employee's Social Security card. The employee's name on all personnel and payroll records is shown exactly as it appears on the Social Security card. If the employee is unable to provide the required original Social Security card, the employee must present a receipt of application for the replacement card within three business days of entering on duty ~~or the employee will be immediately separated from duty~~;

(2) Secretary of State (SOS) Form 100, Loyalty Oath. A signed, written loyalty oath is required for each new employee. A new SOS Form 100 is submitted with each appointment following a consecutive 30-day break in service;

(3) Form W-4, Employees Withholding Allowance Certificate, or Form W-5, Earned Income Advance Payment Certificate;

(4) Form 515-01-97R, Enrollment Application in State Retirement, except for temporary appointments~~. It is mandatory that each employee enrolls in the Oklahoma Public Employees Retirement System, except for temporary appointments~~;

(5) Notice of Employee's Right to Continue Group Health Coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA), except for temporary appointments;

(6) Form ~~11PE201D~~ 11PE021E, ~~Application Supplement~~ Additional Application Information;

(7) Form 10PL023E, Employee Longevity Service Worksheet, except for temporary appointments;

(8) Department of Homeland Security, United States Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification. Pursuant to the Immigration Reform and Control Act of 1986, Form I-9 is completed by the employing unit on the first day of employment. If the employee is unable to provide the acceptable original document(s) as listed on the Form I-9, the employee

must present a receipt for the application for the document(s) within three business days of entering on duty or the employee will be immediately separated from duty. However, an employee working three days or less must produce the required original documents for the completion of Form I-9 on the first day of duty. An employee who presented a receipt for the application of a document must present the required original document within 90 calendar days of entering on duty or he or she will be immediately separated from duty;

(9) verification of tribal affiliation, if the employee wishes designation as Native American;

(10) insurance benefits enrollment forms, except for temporary appointments;

(11) Form 11AD133E, Employee and Non-employee Acknowledgment of Confidentiality ~~of Computer Accessible Case Records and Computer and Internet Usage Restrictions~~; and

(12) the employee's acceptance of the conditional job offer, Form 11PE009E, Conditions of Employment, agreeing to classification, status, salary and to serving a probationary period upon entrance to the classified service as a direct hire, as a reinstatement, or any other hire that does not utilize the Office of Personnel Management (OPM) E-List.

(b) **Missing documents.** If all documents are not available on the date of entry on duty, all available documents are submitted. Missing documents are submitted as soon as possible, but no later than required by law to ensure accurate compensation. All of the documents listed in (a)(1) through (12) of this Section are required in accordance with state and federal laws.

**340:2-1-28. Probationary or trial period, classified service**

(a) **Probationary period upon initial appointment.** The probationary period for any appointed employee is one-year or until waived after the employee has served six months. The probationary period may not be extended beyond one year but may be adjusted, per Merit Rule OAC 530:10-11-36. An employee in a leave without pay status in excess of 40 working hours will have the probationary period adjusted equal to his or her leave without pay time in excess of 40 hours.

(1) The probationary period is a working test period during which a classified employee is required to demonstrate fitness for the job family and level to which appointed. The decision to grant a probationary employee permanent status is based upon written evaluations, recommendations, or other pertinent information. ~~The division may require early~~ Early award of permanent status ~~to be~~ is reviewed and approved ~~above supervisor level~~ at division level or designee. When permanent status is granted, the employee and OPM receive confirmation from the Human Resources Management Division (HRMD).

(2) Services of an employee on probationary status may be terminated at any time.

(3) Employee benefits are available to probationary employees in accordance with specific benefit policies.

(4) A change in shift assignment or significant change of duties of a probationary employee, in excess of 30 calendar days, requires prior approval of OPM.

(5) A probationary employee is not:

(A) eligible for promotion or demotion;

(B) eligible to apply for OKDHS job announcements until successful completion of the probationary period;

(C) transferred from the original locality where appointed;

(D) changed from part-time to full-time; and

(E) transferred to a position in another job family.

(6) A probationary or permanent OKDHS employee may apply for a job through the OPM application system. If a job offer is subsequently made, the offer is to a new appointment and the employee is required to:

(A) resign from the old position at the time of acceptance; and

(B) serve a new one-year probationary period in the new position.

(b) **Trial period upon promotion or ~~lateral~~ transfer.** A classified employee who is promoted or ~~laterally~~ transferred to a different job family and level serves a six-month trial period in the job family and level to which the employee is promoted or ~~laterally~~ transferred. The trial period may be waived in writing at any time.

~~(1) During the trial period, if an employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family and level, at the salary the employee would have received if the promotion or lateral transfer had not taken place.~~

~~(2) The reason for denying permanent status in the promotional or lateral transfer position is submitted in writing to the employee before the end of the trial period, and a copy is filed with OPM.~~

(c) **Trial period upon voluntary demotion.** Voluntary demotion of a classified OKDHS employee requires a six-month trial period. The voluntarily demoting employee is notified in writing of a trial period prior to the effective date of the voluntary demotion. The trial period may be cancelled at any time.

~~(1) During the trial period, if the employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family.~~

~~(2) The employee is provided written notice of the reason for failure to allow the employee to acquire permanent status in the job to which demoted. A copy is filed with OPM.~~

(d) **Failure to complete trial period.** If an employee's performance does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family and level, at the salary the employee would have received if the promotion, demotion, or transfer had not taken place. The employee is provided written notice of the reason for failure to acquire permanent status in the job.

(~~d~~e) **Interagency transfer or reinstatement.** Permanent, classified employees of other Oklahoma state agencies may

transfer in permanent status unless the selecting authority elects to require appointment as a reinstatement to include a probationary period as a condition of employment. ~~Interagency transfers, including demotions, promotions, and lateral transfers, require a six month trial period, provided OKDHS utilizes the employee's previously held job family and level. A six month trial period is required for interagency in-class transfers, as well. The employee must be notified in writing prior to entering on duty that a trial period is required. The trial period may be waived in writing at any time.~~

~~(1) If the employee does not prove satisfactory in the new job, the employee is reinstated to a position within the receiving agency in the former job family in the same pay band for which the employee is qualified at the salary the employee would have received if the promotion, demotion, or lateral transfer had not taken place.~~

~~(2) The employee is provided written notice of the reasons for denying the employee permanent status in the job, and a copy is filed with OPM.~~

**340:2-1-29. Appointments**

(a) **Types of appointments.** All appointments are made either to the classified service or to specific positions in the unclassified service. Appointments are made in accordance with applicable Oklahoma Administrative Code (OAC) Rules, Merit System of Personnel Administration Rules (Merit Rules), and Oklahoma Department of Human Services (OKDHS) policy.

(1) **Classified service.** Classified service refers to employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration (Merit System) by constitutional amendment or state statute.

(2) **Unclassified service.** Unclassified service refers to employees and positions excluded from coverage of the Merit System, by constitutional amendment, state statute, or executive order and approved by the OKDHS Director. Employment in the unclassified service is considered employment-at-will.

(b) **Reinstatement.** A former employee, who had permanent status in the classified service, ~~is~~ may be eligible to apply on OKDHS job announcements to be considered for reinstatement in accordance with OKDHS policy. The Human Resources Management Division (HRMD) obtains verification from the Office of Personnel Management (OPM) of the applicant's eligibility for reinstatement at the time of application.

(1) Reinstatement eligibility may equal up to the period of service ~~in probationary and subsequent~~ that results in permanent classified status.

(2) If a permanent, classified employee leaves a permanent, classified position for an unclassified position with no break in service, [OAC 530:10-15-10(c)(1)(G)] the period of time during which the person is eligible for reinstatement begins on the date of separation from the unclassified position rather than the date of separation from the classified position.

(3) The unclassified service does not add to the period of time eligible for reinstatement.

(4) Reinstatements to the classified service are probationary under the terms outlined in OAC 340:2-1-28 for new employees, provided the former employee has been notified, and has acknowledged in writing an understanding that probation is a condition of the job offer.

(5) Enter on duty date must occur before reinstatement eligibility expires. An applicant whose eligibility date expires within ~~21 calendar~~ 30 working days of the closing date of an individual announcement is notified that:

(A) there is insufficient time for the selection process to be completed prior to the end of his or her eligibility; and

(B) he or she may compete for appointment in the classified service by submission of an application to OPM if the position is announced on OPM'S application system. [Merit Rule OAC 530:10-9-10]

(c) **Direct hire and hard to fill appointments.** Appointments in the classified service made under the direct hire and hard to fill~~, Merit Rule 530:10-9-110 require serving~~ positions serve a probationary period even if a probationary period was served for a previous appointment with any Oklahoma state merit agency.

(d) **Temporary appointments.** When OKDHS requires the service of persons on a temporary basis, a person may be appointed into the unclassified service without regard to other provisions governing appointments. No person is appointed under this provision for more than a total of 999 hours in a 12-month period from the date of initial hire with any or all state agencies. Temporary appointments do not confer any privileges, rights of appeal, or rights of position, transfer, reinstatement, nor any other rights to any classified position under the Merit System, nor is any temporary employee entitled to any employee benefits. Local administrators and supervisors are responsible for ensuring that temporary employees do not work more than 999 hours within a 12-month period from the date of initial hire. [74 O.S. § 840-5.5(A)(8)]

(e) **Dual appointments.** When an OKDHS employee seeks additional employment with another state agency, the employee must complete Form 11AD042E, Request for Approval of Other Employment, which requires the division director's approval. The division director refers to the Fair Labor Standards Act to review for any potential overtime and/or budgetary issues.

## PART 5. ADMINISTRATIVE PROCEDURES

**340:2-1-56. Criminal history checks**

Criminal history checks are completed for all employees appointed to or transferring to positions that are sensitive or critical in nature or to positions that work directly with children.

(1) Personnel handling restricted data are considered, for purposes of this Section, to be in a sensitive position. Criminal history checks are completed on designated positions within the Field Operations Division, Children and Family Services Division, ~~Office~~ Support Services Division, and ~~the~~ Developmental Disabilities Services

Division. Applicants for positions requiring criminal history checks are advised that, if selected for the position, a favorable criminal history check is required.

(2) Divisions are responsible for designation of positions that require criminal history checks. Divisions must consistently obtain criminal histories on any ~~individual~~ person selected to fill a position requiring criminal history checks.

(3) Criminal history checks are obtained prior to employment for staff of child care facilities when 24-hour, supervised care is provided, as in group homes, and include a search of Department of Corrections files maintained pursuant to the Sex Offenders Registration Act. [10 O.S. § 404.1]

(4) Criminal history checks are required only on the applicant who is recommended for the position.

(5) Criminal history checks are also obtained on any Oklahoma Department of Human Services (OKDHS) employee selected for transfer to a position that requires a criminal history check.

(6) Criminal history checks are considered restricted information and are protected accordingly. The results of these investigations are maintained in a separate file and are not made a part of the local or Human Resources Management Division personnel files. The history check is maintained for the duration of employment of the ~~individual~~ person and for one year from the date of the report for employees who separate from OKDHS.

(7) Certain OKDHS volunteers and health care providers are required to have history checks.

**340:2-1-57. ~~Smoking~~ Tobacco policy**

In all buildings, offices, and facilities owned, leased, or otherwise occupied by the Oklahoma Department of Human Services (OKDHS), ~~smoking~~ tobacco use is not permitted except in designated areas if available.

(1) **Outside ~~smoking~~ use of tobacco.** Possession of ~~lighted~~ tobacco in any form within 25 feet of the entrance or exit of any building, office, or facility owned, leased or otherwise occupied by OKDHS is prohibited.

(2) **Designation of ~~smoking~~ tobacco use areas.** If adequate space exists, the ~~Office~~ Support Services Division (~~OSSD~~ SSD) director may designate at least one ~~smoking~~ tobacco use area in each building or facility. ~~Smoking~~ These areas must be adequately vented to the outside to eliminate smoke in both smoking and nonsmoking areas. ~~OSSD~~ SSD determines if adequate space exists and whether ventilation is sufficient to allow an area to be designated for smoking. ~~Smoking~~ Tobacco use areas ~~shall~~ are not ~~be~~ used for public business.

(3) **State vehicles.** All state vehicles owned, leased, or otherwise utilized by OKDHS are considered ~~nonsmoking~~ a non-tobacco use area.

(4) **Responsibilities.** Administrators and supervisors are responsible for the enforcement of this policy. Appropriate signs such as "No ~~Smoking~~ Tobacco Use Within 25 feet of Building" ~~and "Smoking Area" are obtained by contacting the Departmental Services Unit, OSSD, State Office~~ are posted

## PART 7. RECRUITMENT, SELECTION, AND PLACEMENT POLICY AND PROCEDURES

**340:2-1-75. Policy on equal opportunity for employment**

(a) The Oklahoma Department of Human Services (OKDHS) is an equal opportunity employer and has as its employment goal the recruitment, selection, and placement of persons most likely to become productive, motivated employees. To accomplish this goal, procedures designed to meet the hiring process objectives include:

(1) recruiting qualified ~~candidates~~ applicants who have the general knowledge, skills, and abilities to perform the variety of work available in OKDHS;

(2) selecting ~~individuals~~ persons who meet minimum qualifications and can perform the essential functions and who are or will become successful employees of OKDHS;

(3) placing employees in positions suited to their qualifications where they are successful in providing a variety of services to the citizens of Oklahoma;

(4) ensuring that all employment decisions are based on job-related qualifications and consistent with applicable laws, rules, policies, procedures, and regulations governing such actions; and

(5) providing OKDHS employees career development and advancement opportunity consistent with this policy.

(b) In the administration of the employment policies and practices, OKDHS does not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, national origin, disability, or political affiliation or opinion. OKDHS takes affirmative action to ensure that applicants and employees are treated in a non-discriminatory way. Such employment actions include, but are not limited to, hiring, promotion, demotion, or transfer, recruitment, or recruitment advertising, layoff, or termination, rates of pay, or other forms of compensation, and selection for training.

(c) The policies in this Part apply throughout OKDHS, except where a separate policy has been issued, or a pilot is being tested as provided in OAC 340:2-1-76(10).

**340:2-1-76. Appointments and changes in employee classification not subject to vacancy posting provisions**

Unless otherwise indicated, the local administrator submits Form 11PE031E, Announcement Requisition, to the Human Resources Management Division (HRMD) to effect personnel vacancies. Appointments and changes in employee job family descriptor (JFD) and level or position not subject to the vacancy notice posting provisions of the policies in this Part are:

(1) temporary appointments;

(2) detail to special duty or other temporary assignments that do not affect an employee's base JFD and level or classification;

(3) intra-agency lateral transfer of a permanent employee from one position to another position in the same JFD and level, in-class, or another JFD in the same pay band;

(4) voluntary and involuntary demotion to a vacant position;

(5) direct reclassification made when a new JFD is adopted that better describes an incumbent's job;

(6) position reallocation;

~~(7) classified service noncompetitive job level;~~

(~~8~~7) career progression promotions;

(~~9~~8) positions limited to the prescribed length of time of the course of training or extension study;

(~~10~~9) positions where OKDHS has elected to establish separate policies or to test pilot rules within specific organizational units, and where such policies are publicized prior to implementation;

(~~11~~10) positions converted from the classified to the unclassified service, or from the unclassified to the classified service by appointment, reinstatement, or position reallocation of an incumbent in accordance with applicable Merit System of Personnel Administration Rules (Merit Rules) and OKDHS policy and procedures;

(~~12~~11) transfer of an employee, position, or both, from one work organization to another; and

(~~13~~12) positions in the unclassified service. The OKDHS Director may waive the vacancy posting provisions of this policy for positions in the unclassified service. Approval of a waiver request may not be delegated, except for unclassified lawyer positions exempt from OKDHS vacancy posting procedures.

**340:2-1-77. Vacancy posting procedures**

(a) **Vacancy posting decision.** All vacant positions in the classified service are posted in accordance with the rules in this Section prior to the filling of such vacancies except as provided in OAC 340:2-1-76.

(b) **Vacancy posting for positions in the classified service.**

(1) Each posting is posted for a minimum of ten working days excluding holidays and weekends with the exception that positions that generally have a satisfactory pool of ~~candidates~~ applicants may be posted for a minimum of six working days.

(2) Listings of recruitment announcements are posted on the Oklahoma Department of Human Services (OKDHS) InfoNet under Employee Self-Service and the external http://www.okdhs.org/ Web site.

(c) **Vacancy posting for positions in the unclassified service.** Positions in the unclassified service are posted for application, except as provided in OAC 340:2-1-76(~~13~~12). The process outlined in this Section may be used or, at the discretion of the appointing authority, applications may be solicited through newspapers, journals, or other recruiting methods.

~~(d) **Trial period upon interagency promotion or demotion.** A non-OKDHS employee selected for interagency promotion or demotion is required to serve a trial period in accordance with OAC 340:2-1-28(b), (c), and (d) and the Merit System of Personnel Administration Rules (Merit Rules) governing such actions. The determining factor is whether the former job held by the new employee is within OKDHS existing JFDs.~~

(~~e~~d) **Notification of cancellation.** A vacancy posting may be canceled at any time by the OKDHS Director, senior administrator, division director, area director, local administrator, or HRMD. Notice of cancellation is provided to HRMD. If the cancellation occurs before Form 11PE076E, Applicant List, is issued, then HRMD notifies all applicants of the cancellation. If the cancellation occurs after Form 11PE076E is issued, the local administrator notifies all applicants on Form 11PE076E and any other contacted ~~candidates~~ applicants from the Office of Personnel Management (OPM) E-List.

(~~f~~e) **Vacancy posting extension of application period.** If a decision is made to extend the posting period beyond the initial request, a new announcement number is not required. The requesting official coordinates the extension of the announcement with HRMD. All requests to extend the announcement period are made to HRMD while the announcement is still open.

(~~g~~f) **Reposting of an announcement.** To repost a position, a new vacancy posting is issued by HRMD.

**340:2-1-78. Method of application**

(a) ~~To be eligible to compete for a position, an applicant must ensure that a properly completed current version of Form 11PE012E, Data Summary Sheet, is received at the designated location by the application deadline as specified on the vacancy posting. Alternate methods of submission include:~~ **Application for classified employment or reinstatement.** Persons seeking initial appointment or reinstatement in the classified service must apply through the Office of Personnel Management (OPM) for specific posted job announcements. Applicants must meet the minimum education and experience qualifications for the positions, and if required, must complete merit testing.

~~(1) faxing the application to the designated location in the job announcement. Fax telephone numbers are located on Form 11PE012E; or~~

~~(2) sending the application as an attachment to an e-mail for announcements that allow e-mail applications. E-mail applications are sent to the Web address specified in the job announcement. If invited to interview, the applicant is required to sign the application attesting to the authenticity of the information before a hiring decision is made. Failure to sign the application when requested results in withdrawal of the application from further consideration.~~

(b) ~~An OKDHS employee interested in intra-agency transfer or demotion for a specific position which has not been announced with an OKDHS Job Announcement number must submit a written request, which may be an e-mail message to the local administrator of the position.~~ **Receipt of application information.** An application must be received at the location specified for submission in the job announcement by 5:00 p.m. on the announcement closing date, using Form 11PE012E, Application for Employment. To be considered for an interview,

an interagency applicant who elects to use Form OPM-4B, Personal Data Summary Sheet, in lieu of Form 11PE012E is required to complete Form 11PE021E, Additional Application Information, provided by the Human Resources Management Division (HRMD). If Form OPM-4B is utilized, the job announcement number and means to contact the applicant must be provided.

(c) ~~An illegible, incomplete, or obsolete application, as determined by the Human Resources Management Division (HRMD), is not accepted. The applicant is notified.~~ **Lateral or demotion transfer.** A permanent, classified OKDHS employee may submit a written request to the local administrator to voluntarily transfer to a specific position which has not been announced.

(d) **Unclassified service.** OKDHS may post positions in the unclassified service per OAC 340:2-1-76(12).

(1) If the announcement is restricted to OKDHS employees, any current or former OKDHS employee, including temporary service, may apply using Form 11PE012E.

(2) If the announcement is open to applicants from all sources, any applicant may apply by submitting:

(A) Form 11PE012E; or

(B) a resume with a cover letter or transmittal document that identifies the announcement number and a means to contact the applicant. A Form 11PE021E provided by HRMD must be completed to be considered for an interview.

(e) **Submission options.** A valid employment application must be received at the location designated for submission in the job announcement by 5:00 p.m. on the closing date. Options for submission include:

(1) e-mail. Attach completed application to e-mail and send to jobs@okdhs.org. Receipt is acknowledged within one workday. Signature is not required at the time of submission when sent by e-mail, but signature is required if invited to interview;

(2) fax. Send application to 405-521-6902. Application must be signed;

(3) mail. Including UPS overnight express. Send to OKDHS Attn: HRMD, P. O. Box 25352, Oklahoma City, OK 73125. Application must be signed; or

(4) overnight express with a carrier other than USPS. Send to OKDHS, HRMD, 2400 N. Lincoln Boulevard, Oklahoma City, Oklahoma. Application must be signed.

**340:2-1-79. Eligibility to compete for positions in the classified service**

(a) Eligible applicants must possess the required minimum education and experience for the job family descriptor (JFD) and level and any announced selective qualifications within 30 days of the closing date of an announcement.

(b) If the vacancy posting indicates Oklahoma Department of Human Services (OKDHS) employees only, then ~~applicants~~ an applicant must be a:

(1) current permanent, classified OKDHS employee;

(2) former permanent, classified OKDHS employee with current permanent, classified status with another state agency;

(3) current unclassified, OKDHS employee with reinstatement eligibility to the classified service; or

(4) former permanent, classified OKDHS employee with reinstatement eligibility to the classified service.

(c) If the vacancy posting indicates all sources, then applicants must:

(1) meet any of the criteria listed in subsection (b) of this Section;

(2) be a current permanent, classified employee with another state agency; or

(3) be a former permanent, classified employee with another state agency with reinstatement eligibility to the classified service.

(d) If the vacancy posting is for a JFD which has been approved by the Office of Personnel Management (OPM) under the Model Project agreement, indicating all sources, then any applicant meeting the education and experience requirements may apply directly to the location indicated in the job announcement.

(~~d~~e) If the vacancy posting indicates all sources, after complying with OAC 340:2-1-84(b), the selecting official may consider~~:~~ applicants from an OPM E-List.

~~(1) candidates from an Office of Personnel Management (OPM) E-list; or~~

~~(2) candidates entitled to benefits under the Special Disabled Veterans Employment Act, exempt from OPM examination requirement. [72 O.S. § 403]~~

~~(e) If the vacancy posting indicates all sources permitted by Merit Rules or OKDHS only, the selecting official may consider candidates with severe disabilities pursuant to Section 840-4.12G of Title 74 of the Oklahoma Statutes certified as severely disabled through the Department of Rehabilitation Services, and exempt from OPM examination requirements.~~

~~(1) Minimum qualifications for the JFD and level must be met by the applicant.~~

~~(A) The applicant possesses a letter issued by OPM to the applicant stating the JFD and level for which the applicant is qualified.~~

~~(B) The OPM eligibility letter expires after one year, if not renewed.~~

~~(2) The selecting official may:~~

~~(A) accept the applicant's letter and application directly up to the closing date of the announced position; or~~

~~(B) refer the applicant to apply on internal OKDHS announced positions.~~

~~(3) Section 840-4.12G of Title 74 of the Oklahoma Statutes does not apply to permanent classified employees seeking promotion, demotion, or an intra-agency transfers.~~

**340:2-1-80. Eligibility to compete for positions in the unclassified service**

(a) If the vacancy posting indicates Oklahoma Department of Human Services (OKDHS) employees only, applicants must be current, temporary, or former employees of OKDHS.

(b) If the vacancy posting indicates all sources, any person may be recruited and compete.

**340:2-1-82. Job-related selection criteria**

(a) At the time a decision is made to fill a position, the supervisor of the position is responsible for reviewing and determining job-related selection criteria based on the duties of the position. These job-related selection criteria are used to develop interview questions and any other selection procedures, such as skill assessments, simulations, or case studies. The Human Resources Management Division (HRMD) is available to assist with development of interview questions.

(b) The selecting official is normally in the program's upper organizational structure for the position being filled. The selecting official is identified on Form 11PE076E, Applicant List, when it is returned to HRMD.

(c) The selecting official considers local affirmative action goals and reviews the job-related information in paragraphs (1) through (~~2~~3) of this subsection when selecting applicants for interview and making the selection decision. Job-related information is:

(1) Form ~~11PE001E~~11PE012E, Application for Employment~~, Form 11PE012E, Data Summary Sheet,~~ or resume; ~~and~~

(2) the employee's most recent Form OPM-111, Performance Management Process (PMP), which must be considered if available. Selection advisory committees may also review earlier Forms OPM-111 only when done consistently for all applicants~~.~~; and

(~~d~~3) ~~Work~~ work histories, if available, job-related references, and other job-related documents may be considered if done consistently for all ~~candidates~~ applicants.

(~~e~~d) The selecting official is responsible for validation of work experience and education required for the position. ~~For example, if the minimum requirement for a position is a bachelor's degree, a copy of the transcript or signed registrar's letter affirming the degree has been awarded, must be reviewed.~~

(~~f~~e) A felony conviction does not exclude an applicant from being hired as an employee of the State of Oklahoma. Before making a conditional job offer to an applicant with a felony conviction, written approval in the form of a memo or e-mail must be obtained from the division director or the executive officer to whom the division director reports. This approval is included in the official personnel file.

**340:2-1-83. Selection advisory committee for positions in the classified ~~and unclassified~~ service**

(a) A committee is established by the selecting official or designee to provide assistance in the consideration, interview, and selection process of ~~candidates~~ applicants for any classified supervisory, ~~or~~ managerial, or Fair Labor Standards Act (FLSA) exempt position. Upon request, the requirement for a committee may be waived. A waiver request, including justification, must be submitted to the Human Resources Management Division (HRMD) director for consideration. If there is only one ~~candidate~~ applicant, a committee is not required.

(b) Initial and any subsequent committees must have at least three members, one of whom must be from outside the program or division of the vacant position.

(c) The selecting official does not serve as a member of any committee.

(d) A selection advisory committee is not required for entry-level and nonsupervisory positions. When a local administrator elects to use a committee for such positions, there is no minimum member requirement and the requirement for one member to be from outside the program or division is waived. The selecting official may delegate responsibility for conducting interviews or include other staff members in the interview process for entry-level and nonsupervisory positions as an alternative to use of a committee.

(e) This procedure may be utilized when filling an unclassified position, although it is not a requirement.

**340:2-1-84. Interviews for positions in the classified service**

~~(a) When a position is announced as open to applicants from all sources, interviews may be conducted at the discretion of the selecting official from the Office of Personnel Management (OPM) E-List, Fair Employment Practices Act (FEPA) List, and Form 11PE076E, Applicant List.~~

(~~b~~a) ~~The selecting official ensures at least five candidates from~~ If there are five or fewer applicants who are current Oklahoma Department of Human Services (OKDHS) employees on the Form 11PE076E, Applicant List, they are all invited for an interview. ~~The minimum interview requirement applies only to current Oklahoma Department of Human Services (OKDHS) employees. Once a decision is made on the five candidates to be interviewed, if one or more applicants declines~~ Applicants who decline an invitation to interview~~, they~~ do not need to be replaced. If five or fewer ~~candidates~~ applicants are on Form 11PE076E, all are offered an interview. ~~Candidates~~ Applicants interviewed within the last six months for the same job family descriptor and level by the same selecting official or identical selection advisory committee need not be interviewed again. Such prior interviews are considered toward meeting the minimum interview requirement.

(b) When a position is announced as open to applicants from all sources, after complying with the rules in subsection (a) of this Section, interviews may be conducted at the discretion of the selecting official from the Office of Personnel Management (OPM) E-List and Fair Employment Practices Act (FEPA) List.

(c) If interviews have not been completed and an amended applicant list is issued, the procedures described in (1) and (2) apply. If the number of current OKDHS employees invited to interview:

(1) did not meet the agency requirement to invite five, any OKDHS employees added to the eligible list must be invited to interview; or

(2) met the agency requirement to invite five, it is the selecting official's discretion as to whether to extend an invitation to any current OKDHS employees added to the eligible list.

(~~c~~d) The selecting official at his or her discretion may fill the position, cancel, or reannounce the position.

(~~d~~e) The selecting official ~~ensures~~ is responsible for ensuring that the interview time, date, and location ~~and any approved~~

~~selective qualification~~ are conveyed to ~~candidates~~ applicants selected for interviews.

(~~e~~f) A permanent classified employee of OKDHS or any other agency is responsible for submitting the most recent finalized Form OPM-111, Performance Management Process (PMP), at the time the interview is held, unless required to provide it prior to the interview.

(~~f~~g) An OKDHS employee interviewed through these procedures is considered on duty when prior supervisory notification is given and he or she is currently a permanent status employee. Travel expenses are the responsibility of the employee. Time away from duty to interview for a position outside of OKDHS is charged as annual leave.

**340:2-1-85. Final selection**

(a) The local administrator is responsible for completing Form 11PE076E, Applicant List, obtaining reviews or approvals from higher management levels, and forwarding the completed Form 11PE076E immediately to the Human Resources Management Division (HRMD) upon the employee's acceptance of a conditional job offer. In a human services center, the county director is responsible for reviewing Form 11PE076E to ensure compliance with the Oklahoma Department of Human Services (OKDHS) policy and Merit System of Personnel Administration Rules governing the selection process and signing the form to indicate the review has taken place.

(b) The salary approved for the selection is in compliance with OAC 340:2-1-87.

(c) The selected applicant is notified of the conditions of employment using Form 11PE009E, Conditions of Employment, and if the appointment is accepted the form is filed in the official personnel file.

(d) The selecting official ensures that all applicants on the Form 11PE076E are notified of the final selection decision.

**340:2-1-86. Delegation of responsibility for vacancy posting and selection procedures [REVOKED]**

~~The Human Resources Management Division (HRMD) director or designee may approve the delegation of responsibility for vacancy posting and procedures to divisions, facilities, or local offices. Such delegation must comply with all applicable Oklahoma Department of Human Services (OKDHS) policy and Merit System of Personnel Administration Rules.~~

~~(1) Local administrators may delegate authority to recommend the final selection of candidates.~~

~~(2) If the local administrator approves the selection, he or she obtains the required clearances through all supervisory channels prior to submission of the selection to HRMD for finalization.~~

~~(3) All dates are tentative until the local personnel office is notified by HRMD of finalization of Form 11PE031E, Announcement Requisition. Employee transfers and effective dates are in compliance with OAC 340:2-1-85.~~

**340:2-1-88. Alternate hiring levels**

(a) Alternate hiring levels are authorized by the Office of Personnel Management (OPM) where there are bona fide trainee levels for full performance jobs, or where the Oklahoma Department of Human Services (OKDHS) experiences recruiting difficulties for a specific job family descriptor (JFD) and level.

(b) Hiring at the alternate hiring level may be a result of a position reallocation decision, vacancy announcement, or actions exempt from the announcement process. Position reallocation alternate hiring level is authorized if the position incumbent is ineligible for reclassification due to qualifications, status, examination, or if the employee is in a trainee status and has not completed a prescribed training program and is performing duties below the full performance level.

(c) Employees hired at an alternate hiring level may progress to the next level upon completion of probation, if applicable, and upon meeting minimum education, experience, and licensure requirements.

**340:2-1-93. Applicants who have previously been discharged from employment in the classified service**

~~(a) Involuntary discharge from the classified service does not bar a former employee from applying for appointment under the reinstatement provisions of Merit System of Personnel Administration Rules (Merit Rules). The Human Resources Management Division (HRMD) contacts the Office of Personnel Management (OPM) to verify reinstatement eligibility. If the applicant is a former state employee who was discharged, this information is included with the application.~~

~~(b)~~ Before making a bona fide job offer to any previously discharged state employee, written approval in the form of a memo or e-mail must be obtained from the ~~leader~~ director of the hiring division or the chief officer to whom the division ~~leader~~ director reports. This approval is included in the official personnel file.

*[OAR Docket #10-872; filed 5-19-10]*

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

*[OAR Docket #10-873]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 13. Contracts and Purchasing Unit
Part 1. Contracts and Purchasing Unit [REVOKED]
340:2-13-10 through 340:2-13-14.11 [REVOKED]
340:2-13-14.13 through 340:2-13-14.15 [REVOKED]
340:2-13-14.17 through 340:2-13-14.18 [REVOKED]
Part 5. Products and Nonprofessional Services [REVOKED]
340:2-13-47 through 340:2-13-48 [REVOKED]
340:2-13-50 [REVOKED]
340:2-13-53 through 340:2-13-59 [REVOKED]
Part 7. Contracts and Purchasing [NEW]
340:2-13-75 through 340:2-13-104 [NEW]

Appendix K. Professional Service Contract Affidavit Form [REVOKED]
**(Reference APA WF 10-04)**

**AUTHORITY:**
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; OAC 580:15-6-3; and the Oklahoma Central Purchasing Act, Sections 85.1 through 85.45k of Title 74.

**DATES:**
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2010.
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n/a

**INCORPORATIONS BY REFERENCE:**
n/a

**ANALYSIS:**
Subchapter 13 of Chapter 2 permanent rule amendments amend and create rules to: (1) modify the dollar threshold related to certain purchasing procedures; (2) ensure compliance with the Oklahoma Central Purchasing Act; (3) reflect current contract and purchasing practices; and (4) improve readability and clarity of the rules. Rules are amended to reorganize rules in a more logical order, revoke language that is obsolete or internal Oklahoma Department of Human Services (OKDHS) procedure, and revoke an obsolete appendix.

**CONTACT PERSON:**
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 13. CONTRACTS AND PURCHASING UNIT

## PART 1. CONTRACTS AND PURCHASING UNIT [REVOKED]

### 340:2-13-10. Purpose [REVOKED]

~~(a) The Contracts and Purchasing Unit's responsibilities are to:~~

~~(1) develop and update policies and procedures for DHS contracts, grants, and agreements;~~

~~(2) provide a format for standard contract provisions;~~

~~(3) review proposed contracts and acquisitions for compliance with DHS policies and procedures;~~

~~(4) monitor progress of acquisitions through the contract process, DHS, Cabinet Secretary, Department of Central Services;~~

~~(5) receive and review as appropriate, copies of financial audits and program evaluations of vendors;~~

~~(6) spot check contract monitoring and enforcement activity by divisions;~~

~~(7) participate, when requested, in contract negotiations;~~

~~(8) monitor compliance with contract terms and other aspects of the Department's dealings with contractors and grantees;~~

~~(9) provide technical assistance in the development of solicitation documents;~~

~~(10) participate in major projects involving acquisitions procuring professional services;~~

~~(11) avoid, neutralize, or mitigate organizational conflicts of interest by preventing:~~

~~(A) the existence of conflicting roles that might bias a contractor's judgment; and~~

~~(B) unfair competitive advantage, such as an advantage existing where a contractor competing for award of a contract possesses proprietary information obtained from a state official without proper authorization or source selection information that is relevant to the contract but not available to all competitors and such information assists that contractor in gaining award of the contract; and~~

~~(12) ensure funding is available and is encumbered prior to processing the acquisition.~~

~~(b) The Contracts and Purchasing Unit ensures DHS follows uniform policies and procedures relating to the procurement of supplies, equipment, construction, and professional and non-professional services required by the Department for the effective discharge of its responsibilities.~~

### 340:2-13-11. Definitions [REVOKED]

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

~~**"Change order"** means a written transaction that modifies an original purchase order.~~

~~**"Closing date"** means the date and time an invitation to bid or request for quotation specifies after which bids or quotations will not be accepted.~~

~~**"CPO"** means a certified procurement officer certified by the Department of Central Services, Central Purchasing Division Director authorized to make acquisitions for a state agency.~~

~~**"DCS"** means Department of Central Services which is the state agency authorized by Title 74 of the Oklahoma Statutes, Central Purchasing Act as the procurement agency for state government.~~

~~**"Fixed rate"** means a rate that has been established for contracts for services a supplier provides to persons directly benefiting from the services.~~

~~**"High technology system"** means advanced technological equipment, software, or services that a state agency uses or intends for use by a unit or group within the state agency.~~

~~**"ITB"** means invitation to bid, the document submitted to DCS by the agency, used in solicitation for competitive bids, containing all contractual requirements and specifications. Department of Central Services attaches the DCS invitation to bid form and distributes the form to potential bidders.~~

~~**"Noncollusion affidavit"** means a document pursuant to the Oklahoma Central Purchasing Act the supplier submits for all contract acquisitions.~~

~~**"Nonencumbered contract"** means a contract that the State Purchasing Director or a state agency establishes that provides for an unspecified quantity of items or services, or an unspecified delivery date of goods and services.~~

~~**"Oklahoma Corrections Industries"** means a program of the State Board of Corrections for utilization of prisoners for the manufacture of items or products for use by state agencies.~~

~~**"Open market acquisition"** means an acquisition a state agency or the State Purchasing Director makes from a supplier from the open market.~~

~~**"OSF"** means Office of State Finance, the state agency authorized by Title 62 of the Oklahoma Statutes to encumber and disburse agency funds.~~

~~**"Registered supplier"** means a supplier that registers with the Central Purchasing Division pursuant to Department of Central Services Central Purchasing procedures.~~

~~**"Request for proposal"** means a request a state agency or the State Purchasing Director sends to suppliers for submission of proposals for acquisitions.~~

~~**"Services"** or **"contractual services"** means directly engaging the time and effort of a supplier for the primary purpose of performing an identifiable task rather than furnishing an end item.~~

~~**"Sole brand"** means an acquisition that by specifications restricts the acquisition to one manufacturer or brand name.~~

~~**"Sole source"** means an acquisition which by specification restricts the acquisition to one supplier.~~

~~**"Split purchase"** means breaking up, failing to consolidate, or making incremental purchases of a known quantity of an acquisition into components with the intent to and for the purpose of evading the dollar amount at which the Oklahoma Central Purchasing Act requires competitive bidding or agency rules require solicitation of quotations from three or more suppliers.~~

~~**"State Use Committee"** means a committee that certifies severely disabled individuals and sheltered workshops as eligible participants, and establishes the State Use Committee procurement schedule for state agency use.~~

~~**"Statewide contract"** means a contract, for specific acquisitions, entered into by state agencies during a specified period with a provision allowing agencies to place orders for items, products, services or contractual services when the state agency needs them.~~

~~**"Supplier (vendor) complaint"** or **"performance evaluation"** means information provided to the Contracts and Purchasing Unit or Central Purchasing Division that indicates supplier performance for acquisitions.~~

**340:2-13-12. Legal base [REVOKED]**

~~Contracting procedures are established pursuant to Section 85 of Title 74 of the Oklahoma Statutes. Procedures stated become effective upon review and approval of the Director of Department of Central Services pursuant to Section 85.39 of Title 74 of the Oklahoma Statutes. Further agency approvals are also required.~~

**340:2-13-13. General contracting procedures as pertains to professional service requirements [REVOKED]**

~~(a) **General requirements.** The contract must contain terms and conditions consistent with DHS rules. The requisitioning unit is responsible for ensuring that the content of all contracts has been reviewed and found acceptable by the Contracts and Purchasing Unit. The Contracts and Purchasing Unit may give prior approval for an entire group of specified contracts for which the format has been previously approved. However, when the Contracts and Purchasing Unit has given prior approval for signing of a form contract, the requisitioning unit must furnish a copy of the contract with original signatures. In the case of provider contracts, and other frequently awarded contracts, the requisitioning unit is responsible for ensuring that the basic contract format and any departures from it are cleared by General Counsel and Contracts and Purchasing Unit staff. If any clauses are on separate documents, three originals are required with original signatures and notary seals, if appropriate. As the Department engages in many types of contracts, the requisitioning unit may consult the Contracts and Purchasing Unit for advice, but requirements generic to most professional services contracts are:~~

~~(1) three original signed copies of the contract or agreement;~~

~~(2) contract work plan, if contract amount exceeds $25,000;~~

~~(3) Form ADM-87, Contract Requisition Justification, if contract amount exceeds $25,000;~~

~~(4) Form ADM-2, Department of Human Services Requisition, indicating funding, coordination, and clearance with all affected units and divisions;~~

~~(5) Form ADM-S-32, Sign-Off Slip, when documents require submission to the Director;~~

~~(6) three original noncollusion affidavits which include the non-kickback clause and assurance that the contractor will not employ state employees that participated in the contract development;~~

~~(7) advance acquisition approval document from federal grantor agency if required or if the contract supports a new program or project;~~

~~(8) applicable clauses as listed in OAC 340:2-13-14.10; and~~

~~(9) OSF Form 25, Professional and Personal Services Contract Exemption Request, if a purchasing freeze has been declared by the Governor or Director and acquisition is not exempt as a freeze exception.~~

~~(b) **Coordination and clearance.** Form ADM-2 is the vehicle used by the Contracts and Purchasing Unit to ensure that~~

~~proper coordination and clearance of a professional service contract has occurred. Requisitioning units originating contracts, agreements, and grants are responsible for coordinating contractual documents with affected entities who have responsibilities related to the subject matter addressed. Contracts, agreements, or grants reaching the Contracts and Purchasing Unit without appropriate review are returned to the requisitioning unit for completion. Form ADM-2 becomes part of each official contract file. Form ADM-S-32 is required when any part of the contractual packet requires review or approval from the Director. The division administrator, the person coordinating contracts within that division, as well as all divisions affected by the proposed contract must indicate approval prior to submission of the contract packet to the Contracts and Purchasing Unit. Signature delegation is authorized by separate memorandum from the Director. Prior to specific written delegation, only the Director is authorized to obligate the Agency contractually.~~

~~(c) **Use of Contracts and Purchasing Unit files and records.** The Contracts and Purchasing Unit is the official repository for all original agreements, contracts, and grants except those for which repository is authorized by the Director. Contract files are maintained a minimum of three years. Therefore, divisions or requisitioning units must forward any agreement, contract or grant in their files to the Contracts and Purchasing Unit. A standardized format of the agreement is on file and any changes are coordinated with the Contracts and Purchasing Unit. Any correspondence affecting the contract must also be forwarded to the Contracts and Purchasing Unit. Contracts and Purchasing Unit staff provide copies of any documents desired from the files. The Contracts and Purchasing Unit central file contains:~~

~~(1) official record copy of the contract;~~
~~(2) amendments;~~
~~(3) compliance audits or reviews;~~
~~(4) historical vendor performance;~~
~~(5) Form ADM-2; and~~
~~(6) other related documents.~~

~~(d) **Contract restrictions - former state employees.** The Agency may not enter into a professional services contract with any person who has been employed by DHS within one year after the termination date of the individual's state employment unless specifically exempted by statute.~~

~~(e) **Performance evaluation.** An annual performance evaluation is required of the services provided under a professional service contract with emphasis on issues of poor performance. Unsatisfactory performance includes, but is not limited to, failure to comply with terms or conditions of the contract or lack of supporting documentation regarding reports, claims, and similar documents. An example of a problem that may be encountered is evidence of financial instability of the vendor such as the vendor's inability to pay incurred debts.~~

~~(1) Annual evaluations address the deficiencies of the performance of the vendor during the contractual period. Evaluations are completed by the division or requisitioning unit responsible for initiating the contract within 90 days after the end of each contract year or the end of the term of the contract.~~

~~(2) The designated contract monitor reviews vendor performance on a regular basis as appropriate to the individual contract. Pertinent issues are addressed as discovered, rather than at year end. The designated contract monitor documents any confirmed performance deficiencies in writing and forwards the written documentation with any extenuating circumstances cited, to the Contracts and Purchasing Unit for inclusion in the vendor's files and transmits them to DCS, if applicable.~~

~~(f) **Report.** If the work product of a contract is a report, two copies of the report are delivered to the Contracts and Purchasing Unit, which files a copy with the State Librarian and Archivist.~~

~~(g) **Needs assessment justification.** Prior to the contract process, the requisitioning unit must complete a needs assessment justification and develop the requirements and work plans to determine the appropriate procurement method.~~

~~(h) **Contract revisions.** Contracts must not be revised after printing. The use of correction fluid is prohibited in the contract or agreement. Any revisions must be initialed by all parties, with one line drawn through the original information, on all contract originals.~~

~~(i) **Coordination with DCS.** All contacts, either written or verbal, by DHS staff directed to DCS regarding contractual issues are coordinated via the Contracts and Purchasing Unit CPO.~~

~~(j) **Payments against service contracts.** Any payment request for contracted services is audited diligently by the program division to ensure that the claim strictly adheres to the terms and conditions of the contract. Claims are to correspond with the line item budgets submitted by the provider with the original contract. Any claim submitted for a cost reimbursement contract must include proper receipts. If a revision of the contract becomes necessary, a claim is not processed reflecting that revision prior to final approval of the revision by all affected entities, including DCS if applicable. A contract may not be executed for professional services providing for nonuniform payments throughout the duration of the contract if the services throughout the duration of the contract are similar and consistent without specific authorization and written justification by the Director of Central Purchasing Division, DCS. Payment for services pursuant to a contract are made only after services are rendered.~~

~~(k) **Contract payment methods.** Regardless of the method utilized to secure a contract, such as competitive bid, fixed rate, sole source or sole brand or inter-agency agreement, payment methods differ according to the particular requirements of an individual contract. A brief explanation of the various contract payment methods traditionally utilized are given in (1) - (3) of this subsection.~~

~~(1) **Cost-reimbursement payment.** The cost-reimbursement payment method provides for payment to the contractor of reasonable, allocable, and allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. A specific budget is ratified at contract execution, and any deviation from the budget requires DHS approval unless otherwise specified in the contract. Vendors must provide documentation that~~

~~supports claims prior to approval and payment of claims. Maximum amount specified in contract award is for budgetary purposes only. Vendors receive reimbursement only for allowable costs incurred. Funds utilized to remit payment must be associated with the specific service period.~~

~~(2) **Fixed rate payment.** The fixed rate payment method provides payment per unit of service as specified in the contract. Vendors normally provide documentation regarding clients served, hours performed, and other pertinent information, and payment is not contingent upon actual costs incurred by the individual vendor. All related expenses such as travel expenditures and per diem are inclusive in rate unless otherwise specified in the original contract. Funds utilized to remit payment must be associated with the specific service period.~~

~~(3) **Payment by deliverables.** In the payment by deliverables method, payment is remitted upon satisfactory acceptance by DHS of individual phase, component, or percentage of total project by increment completed and approved by the DHS project manager. These contracts are usually competitively bid. Bidders quote price per phase, component, or total project and payment is limited to original bid quotation, regardless of actual expenses incurred by the vendor. Payments based upon completion of deliverables may be remitted from funds encumbered for contract when originally issued, if valid, and are not associated with any service period. Any services provided exclusive of the specific deliverables, if allowable per the contract terms, must reflect funding associated with the period in which services were provided, usually hourly increments.~~

~~(l) **Material and equipment furnished contractually.** It is unlawful to enter into a contract in which DHS furnishes material and equipment to be used by the vendor or provider in the performance of the contract if the contract allows the vendor or provider to acquire ownership of the material or equipment during or after the term of the contract other than through competitive bidding or a public sale procedure, except in inter-governmental agreements.~~

**340:2-13-14. Methods of contracting for professional services [REVOKED]**

~~Formal solicitation as authorized by statutes is the preferred method of procurement when offers of service must be considered. Situations in which non-competitive awards may be appropriate and requirements relating to selection of procedure methods are defined by Oklahoma's Central Purchasing Act, Section 85 of Title 74 of the Oklahoma Statutes and briefly listed as:~~

~~(1) exempt professional services. Specific professions that are exempt from competitive bid are described in Section 803 of Title 18 of the Oklahoma Statutes;~~

~~(2) fixed rate contracts. As specified in the Central Purchasing Act, the contract must provide direct services to clients and be approved by the Commission for Human Services and DCS;~~

~~(3) contracts in which both parties are governmental entities;~~

~~(4) sole source or sole brand contracts. These contracts are utilized only when one source or one brand is singularly and peculiarly qualified;~~

~~(5) a service requirement. A service requirement is not repetitive and the total cost does not exceed $2,500; and~~

~~(6) training registration.~~

~~(A) Registration fees for conferences, workshops, seminars, and the like are exempt from the Oklahoma Central Purchasing Act bidding requirements if all the criteria listed in (i) - (iv) are met.~~

~~(i) Training is generic, for example, not scheduled exclusively for DHS staff.~~

~~(ii) Training is billed by individual employee and no other fees are billed, such as travel and per diem for trainer.~~

~~(iii) Registration fees do not include any provision for meals or lodging.~~

~~(iv) Any associated agreements do not require any obligation of payment prior to attendance.~~

~~(B) Training conferences involving numerous divisions and staff are consolidated when possible. Requisitioning units may submit claims not exceeding $2,500 cumulatively directly to DHS Office of Finance for direct payment, and consult with Office of Finance staff for complete instructions. When the total Agency obligation exceeds $2,500, or in the event vendors require any Agency issued purchase order prior to registration, the procedures included in (i) and (ii) of this paragraph apply.~~

~~(i) The registration packet consists of a completed Form ADM-2, Department of Human Services Requisition, with the names of the prospective attendees, date of training, and total amount of the seminar or conference. A copy of a brochure, agenda, or similar document must be attached.~~

~~(ii) The Contracts and Purchasing Unit CPO(s) reviews the packet, produces a Form CP-3C, Contract, and distributes the form to the requisitioning unit, DHS Office of Finance, and the vendor.~~

**340:2-13-14.1. Competitive bid procedures utilized for acquisitions of professional services requirements exceeding $25,000 [REVOKED]**

~~In order to process those contracts requiring competitive bid, the steps in (1) - (2) of this Section are required.~~

~~(1) **Written request and contract justification.** If the final product of the contract is a study or a written proposal, the requisitioning unit completes Form ADM-89, Professional Services Contract Affidavit. The requisitioning unit initiates the contract packet which consists of a written request for the contract in the form of:~~

~~(A) an invitation to bid (ITB);~~

~~(B) Form ADM-87, Contract Requisition Justification;~~

~~(C) a detailed work plan including designation of the individual(s) responsible for monitoring contractor performance;~~

~~(D) Form ADM-2, Department of Human Services Requisition; and~~

~~(E) suggested prospective bidders, including full name and address.~~

~~(2) **Bids.** Bid specifications and statements of work for professional service contracts are originated within the requisitioning unit and subsequently reviewed by the Contracts and Purchasing Unit. The requisitioning unit must be as specific as possible describing contractual goals and requirements as the ITB, in conjunction with the successful bid, serves as the contract upon award. DCS mandates specific terms and conditions which apply only to the purchase of hardware and software. Upon request, DHS Contracts and Purchasing Unit provides assistance in preparing the ITB, furnishing language as required by DCS. No underlying agreements are entered into by the Agency with the vendor or bidder. Underlying agreements are held by DCS as illegal contracts. Therefore, all contractual requirements and conditions of the requisitioning unit must be inserted into the ITB and not addressed by way of a separate agreement after the successful bidder is selected. Initial coordination with the Contracts and Purchasing Unit and DCS ensure timely processing and alleviate future problems. If the requisitioning unit wishes to evaluate bids and recommend awards of contract, the request must be indicated on Form ADM-2.~~

~~(A) **Advertising of ITB.** Requisitioning units may wish to advertise the ITB in order to obtain bids from all sources. By coordinating with the Contracts and Purchasing Unit, the requisitioning unit ascertains the ITB number and deadline date assigned by DCS. After securing the appropriate divisional approval, the advertisement providing the bid subject, name, and telephone number of the appropriate DCS agent, and deadline date may then be placed by the requisitioning unit.~~

~~(B) **Pre-bid conference.** The requisitioning unit may determine the ITB warrants a pre-bid conference with all prospective bidders. The request must be noted within the ITB. The DCS agent coordinates the conference and indicates the date, time, and location when processing the ITB. This is a formal hearing in which prospective bidders may request clarification of issues specified in the ITB. An Agency representative familiar with contracting procedures as well as an individual familiar with the ITB must be in attendance along with the cognizant CPO. Information provided by the Agency must only involve issues addressed in the original ITB in order to maintain the integrity of the competitive bid process. The ITB may be amended if the DCS agent determines that the information requires notification of all prospective bidders. The bid deadline date may be extended to allow sufficient preparation time. The requisitioning unit must require attendance of the pre-bid conference to ensure all bidders are provided the same information. DCS serves as the authorized agent in the entire bid process. Any bidder inquiries must be referred to DCS to ensure a competitive process.~~

~~(C) **Evaluation of bids.** The State Purchasing Director may authorize any agency to complete part or all of the evaluation process, but DCS is the sole authority determining any such recommendation. When requesting this authorization, the ITB must contain objective evaluation criteria. The weighted evaluation tool utilized by the evaluation committee must be attached for review by DCS.~~

~~(D) **Transmission of bids.** After the bids are reviewed by the DCS agent, the Contracts and Purchasing Unit coordinates the transmittal of bid copies to the requisitioning unit.~~

~~(E) **Scoring of bids.** Each evaluator reviews the bids independently and scores each item listed on the tool appropriately. The committee may request that staff of Internal Audit of the DHS Office of Inspector General evaluate the financial portion of the bids and provide that information to all members of the committee prior to review of the bids. The committee members must then convene and determine the best bid at the lowest cost. Alternate bids provided by the same bidder are reviewed and scored separately.~~

~~(F) **Committee recommendations.** The committee discusses only those bids in which there is a wide variance among members. Committee members may then explain the reasoning for their position. If clarification warrants, a committee member may then revise his or her recommendation, avoiding any influence from other committee members. If it becomes apparent that some additional clarification from a specific bidder is required, the committee may request that DCS contact the bidder. If the bid contains mathematical errors or other omissions, the committee evaluates the bid as originally submitted.~~

~~(G) **Submission of recommendations to Contracts and Purchasing Unit.** The final recommendation is submitted to the appropriate division administrator of the requisitioning unit, with all original individually signed scoring sheets, summary, and associated documents such as results from confirmation of references.~~

~~(H) **Contracts and Purchasing Unit review.** All information is reviewed, approved, or both, by a CPO of the Contracts and Purchasing Unit and routed for appropriate signature. If the total award(s) exceeds the original estimate significantly, the packet may be submitted to the Director for approval, or decisions made regarding rejecting the bids and starting the process again.~~

~~(I) **Bidder inquiries.** Any inquiries from bidders must be directed to DCS.~~

~~(J) **Awards of contract.** If recommendations are approved by DCS, awards are distributed by DCS to~~

~~the successful bidders and DHS Contracts and Purchasing Unit.~~

~~(K)~~ ~~**Renewal process.**~~ ~~If specified in the original ITB, the contract may be renewed annually by DCS Form CP-CO-1, Change Order.~~

~~(i)~~ ~~In addition to the standard information routinely required, data which must also be included is:~~

~~(I)~~ ~~identification of which year of the total agreement period is being renewed, for example, second or third;~~

~~(II)~~ ~~description of the proposed renewal contract period and the total contract agreement period; and~~

~~(III)~~ ~~associated funding codes related to the renewal contract period. The original purchase order number applies for the entire contract period.~~

~~(ii)~~ ~~Any revisions to the terms of the original contract requires formal modifications, with approval signatures of all parties. [OAC 340:2-13-14.11]~~

**340:2-13-14.2. Sole source or sole brand contracts [REVOKED]**

~~(a)~~ ~~**Utilization.**~~ ~~Sole source or sole brand contracts are utilized only when the products or services are very specialized or for which great acquired expertise is needed~~ ~~**and**~~ ~~only one person or entity is singularly and peculiarly qualified to provide such products or services. If any doubt exists regarding the unique nature of the contractor, competitive bids must be sought. A court order requiring the purchase of certain products or services, but which does not specify specific vendors or providers are not acceptable as a substitute for Form ADM-88, Sole Source or Sole Brand Acquisition Affidavit, or otherwise invalidate the requirement for competitive bid procedures. The steps in (b) of this Section are taken to process this type of contract.~~

~~(b)~~ ~~**Contract, justification, and affidavit.**~~ ~~The requisitioning unit initiates the contract packet which consists of:~~

~~(1)~~ ~~Form ADM-90, Contract. Form ADM-90 is a standardized contract for most professional services. To ensure that the requisitioning unit has completed the proper coordination and clearance, Form ADM-2, Department of Human Services Requisition, is attached to the contract;~~

~~(2)~~ ~~Form ADM-87, Contract Requisition Justification, for professional and nonprofessional services contract as justification for the contract. A detailed work plan is attached to this form when the requirement is for professional services. The work plan is in outline form, addressing each section of Form ADM-87 and includes designation of the individual(s) responsible for monitoring contractor performance;~~

~~(3)~~ ~~Form ADM-86, Product Requisition Justification, is attached to the requisition if a product is requisitioned;~~

~~(4)~~ ~~Form ADM-89, Professional Service Contract Affidavit, if the final product of the contract is a study or a written proposal. The purpose of this form is to ensure the vendor has not previously entered into a contract with DHS or any other state agency which would result in a substantial duplication of the final product required by the proposed contract;~~

~~(5)~~ ~~Form ADM-88, Sole Source or Sole Brand Acquisition Affidavit, if sole source or sole brand acquisition;~~

~~(6)~~ ~~Form ADM-2, Requisition; and~~

~~(7)~~ ~~OSF Form 25, Professional and Personal Services Contract Exception Request, if applicable. Contracts and Purchasing Unit staff secures the Cabinet Secretary's signature on OSF Form 25 during the approval process.~~

~~(c)~~ ~~**Contracts and Purchasing Unit actions on sole source or sole brand acquisitions exceeding $2,500 but not exceeding $25,000.**~~ ~~The Contracts and Purchasing Unit reviews the packet and takes the actions described in (1) - (3) of this subsection.~~

~~(1)~~ ~~Form ADM-88 is reviewed by the appropriate Contracts and Purchasing Unit staff. All attempts to obtain alternate sources must be documented. The appropriate division administrator must approve Form ADM-88 prior to submission to the Contracts and Purchasing Unit. The Contracts and Purchasing Unit CPO documents the reasons a sole source or sole brand acquisition is necessary and retains a written record for three fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was awarded.~~

~~(2)~~ ~~If the CPO determines that the acquisition is in fact a sole source or sole brand acquisition, Form ADM-88 is forwarded for signature by the Director or designee in the Director's absence.~~

~~(3)~~ ~~Upon approval by the Director, the Contracts and Purchasing Unit issues a purchase order and retains all documents for three years following the acquisition completion date.~~

~~(d)~~ ~~**Contracts and Purchasing Unit actions on sole source or sole brand acquisition in excess of $25,000.**~~ ~~The Contracts and Purchasing Unit reviews the packet and takes the actions described in (1) - (2) of this subsection.~~

~~(1)~~ ~~Contracts and Purchasing Unit staff reviews Form ADM-88 for adequacy, evidence of division administrator or level of higher authority signature, and if appropriate, forwards the documents to the Director for approval and signature.~~

~~(2)~~ ~~After approval by the Director, the Contracts and Purchasing Unit submits the contract packet to DCS for review and issuance of a contract. DCS distributes the contract to the vendor and Contracts and Purchasing Unit. The Contracts and Purchasing Unit makes further distribution of the contract to the requisitioning unit and file.~~

**340:2-13-14.3. Professional services method [REVOKED]**

~~(a)~~ ~~**Utilization.**~~ ~~Professional service contracts are utilized when the service needed is predominantly advisory or intellectual in character or involves client support rather than manual work or the supplying of equipment, supplies, or other merchandise. Professional services include those services requiring special, usually advanced education and skill. The two~~

~~types of professional services contracts utilized by the Agency are exempt and non-exempt.~~

~~(b) **Professional services contracts exempt.** The professional services within the definition of exempt are:~~

~~(1) physician, surgeon, or doctor of medicine;~~
~~(2) osteopathic physician or surgeon;~~
~~(3) chiropractor;~~
~~(4) chiropodist-podiatrist;~~
~~(5) optometrist;~~
~~(6) veterinarian;~~
~~(7) architect;~~
~~(8) attorney;~~
~~(9) dentist;~~
~~(10) public accountant;~~
~~(11) psychologist;~~
~~(12) physical therapist;~~
~~(13) registered nurse;~~
~~(14) professional engineer;~~
~~(15) land surveyor;~~
~~(16) registered pharmacist;~~
~~(17) speech pathologist or speech therapist;~~
~~(18) audiologist;~~
~~(19) occupational therapist; and~~
~~(20) perfusionist.~~

~~(c) **Bidding.** The requirement for competitive bidding may not be avoided by the expedient choice of one of the professional categories. The fact that someone engaged to perform non-exempt services may also be licensed to perform exempt professional services is immaterial.~~

~~(d) **Professional services contract exempt procedures on acquisitions in excess of $25,000.** In order to process exempt professional service contracts through the system, the requisitioning unit initiates the contract packet which consists of the forms listed in (1) - (5) of this subsection.~~

~~(1) Form ADM-90, Contract, a standardized contract for most personal or professional services, is completed according to the instructions for the form. To ensure that the requisitioning unit has completed the proper coordination and clearance, Form ADM-2, Department of Human Services Requisition, is attached.~~

~~(2) Form ADM-87, Contract Requisition Justification, is completed as a justification for the contract. A detailed work plan is attached to Form ADM-87. The work plan must designate an individual with responsibility for monitoring the contract.~~

~~(3) A copy of a current license or certification pertaining to the particular profession for which the contract is requested must be attached.~~

~~(4) Form ADM-89, Professional Service Contract Affidavit, is used if the final product of the contract is a study or a written proposal to ensure that the vendor has not previously entered into a contract with DHS or any other state agency which would result in a substantial duplication of the final product.~~

~~(5) OSF Form 25, Professional and Personal Services Contract Exception Request, if applicable, is completed. Contracts and Purchasing Unit staff secures the Cabinet Secretary's signature on this form during the approval process.~~

### 340:2-13-14.4. Professional services contracts non-exempt in excess of $25,000 [REVOKED]

~~Non-exempt professional services contracts are processed via the competitive bid method. In order to process these contracts, the procedures described in OAC 340:2-13-14.1 are followed.~~

### 340:2-13-14.5. Contracts or agreements with other governmental entities [REVOKED]

~~(a) **Competitive bidding exception.** A contract or agreement with another governmental entity, such as a state agency, state university, or county is exempt from the competitive bidding requirement. The agreement must be specific as to the method of service delivery and describe in detail the specifications required for successful performance. DHS must approve the method of selection regarding subcontractors utilized by the governmental entity.~~

~~(b) **Contract.** The requisitioning unit initiates the contract packet, which consists of:~~

~~(1) three original sets of the contract or agreement, with original signatures affixed by the other governmental party;~~

~~(2) Form ADM-2, Department of Human Services Requisition, is attached to ensure that the requisitioning unit has completed the proper coordination and clearance; and~~

~~(3) Form ADM-S-32, Sign-Off Slip, is required prior to submission to the Director or designee.~~

~~(c) **Contract exceptions.** Form ADM-87, Contract Requisition Justification, work plan, noncollusion affidavits or any assurances such as debarment or suspension are not required when contracting with another governmental subdivision. However, five clauses which must be included in contracts with other governmental subdivisions are:~~

~~(1) Americans with Disabilities Act;~~
~~(2) termination;~~
~~(3) modification;~~
~~(4) unavailability of funding; and~~
~~(5) billing.~~

~~(d) **Non-financial agreements.** All agreements with governmental or private entities, whether financial or non-financial, must be submitted to the Contracts and Purchasing Unit prior to approval by the Director or designee.~~

### 340:2-13-14.6. Contracts under $25,000 [REVOKED]

~~In order to be exempt from the sealed competitive bid process administered by DCS, an entire project must not exceed $25,000. An agreement must be in place prior to procurement of professional services in excess of $2,500. If the requisitioning unit is aware initially that the total cost of the entire requirement exceeds the Agency limit, inclusive of any option period renewals, competitive bids must be obtained via DCS, regardless of the number of individual clients involved.~~

~~As per the Central Purchasing Act, separate contracts or acquisitions for the individual components of a total project or service or split purchasing for the purpose of evading the requirement of competitive bidding is deemed a felony. [74 O.S. 1991, Section 85.7 (A)(1)] As professional service requests are rarely exempt from the competitive bid process, requisitioning units must contact the Contracts and Purchasing Unit for coordination and approval.~~

~~(1) **Contracts not exceeding $2,500.** A contract for one-time services which does not exceed $2,500 is exempt from the competitive bid requirement. To process these contracts through the system:~~

~~(A) submit two original sets of the contract or agreement, with original signatures affixed by the supplier. The agreement must describe in detail all requirements, and the method of service delivery; and~~

~~(B) attach Form ADM-2, Department of Human Services Requisition, to ensure that the requisitioning unit has completed the proper coordination and clearance. Form ADM-87, Contract Requisition Justification, work plan, and noncollusion affidavit are not required when the total contract does not exceed $2,500. Form CP-3C, Contract, is printed by the Contracts and Purchasing Unit and distributed to the contractor and the requisitioning unit.~~

~~(2) **Contracts in excess of $2,500 but not exceeding $10,000.** Contracts in excess of $2,500 but not exceeding $10,000 are used when the service exceeds $2,500 but not $10,000 cumulatively. In order to process this type of contract, the steps in (A) through (F) of this paragraph are required.~~

~~(A) The requisitioning unit solicits price quotations from at least three vendors, either orally or in writing. If quotations are solicited in writing, Form CP-11, Request for Quotations (RFQ), is utilized. Complex acquisition solicitations must be in writing and copies of specifications provided suppliers when requested. Quotations solicited orally are documented on Form CP-12, Quotation/Proposal Checklist.~~

~~(i) Upon the vendor's request, vendors are afforded at least 24 hours in which to prepare and provide a quotation.~~

~~(ii) Solicited vendors are provided with a noncollusion affidavit. The vendor submits with the quotation a notarized sworn statement of noncollusion with the original signature prior to specified closing date of quotations.~~

~~(iii) The contract is awarded to a vendor providing the **lowest** and **best** or **best value** quotation. If the contract is awarded to other than the bidder offering the lowest price, detailed written documentation is submitted to the Contracts and Purchasing Unit justifying the decision.~~

~~(B) A record containing forms mentioned in paragraph (2)(A) of this section is made for each acquisition completed under the procedures in paragraph (2) of this subsection and documentation is forwarded to the Contracts and Purchasing Unit within 24 hours to verify compliance with the rules established by the Director of Central Purchasing Division, DCS. Each record includes:~~

~~(i) two original agreements, with original signatures affixed, describing in detail all contractual requirements and specifications. Coordination with the Contracts and Purchasing Unit is suggested regarding applicable clauses and requirements;~~

~~(ii) the name, address, federal employer identification (FEI) number, and telephone number of each solicited vendor, identifying minority vendors as such;~~

~~(iii) date, time, and amount of each quotation, the first and last name of the person providing each quotation, and the first and last name of the person receiving and recording each quotation;~~

~~(iv) written explanation for requiring a sole vendor or for selection of other than the lowest quote; and~~

~~(v) any other data or information that is required or necessary to indicate compliance with the requirement listed in paragraph (2) of this Section.~~

~~(C) The Contracts and Purchasing Unit is the official repository for the records and documentation required by this section and all records and documentation are made available to the Director of DCS or designee, and to the State Auditor and Inspector, upon request. Records are maintained a minimum of three years. All records are considered public records in accordance with the Open Records Act. [51 O.S. 1992, Section 24A.1 et seq.]~~

~~(3) **Contracts in excess of $10,000 but not exceeding $25,000.** Procedures detailed in paragraph (2) of this Section are followed in the solicitation of quotations for acquisitions in excess of $10,000 but not exceeding $25,000. At least three suppliers must be solicited for quotations and the supplier with whom a contract is executed is required to complete a contract noncollusion affidavit with original signature. Individuals soliciting quotations are encouraged to utilize DCS, Central Purchasing Division's registered supplier listing. Access to this listing is available on the DHS Office of Finance AS400 mainframe system.~~

**340:2-13-14.7. Fixed rate contracts [REVOKED]**

~~A contract for a service furnished to persons directly benefiting from that service may be qualified for a fixed and uniform rate and is not subject to competitive bid procedures. The exception to competitive bid procedures must not be used to employ consultants or to purchase products. The steps in paragraphs (1) - (2) of this section are taken to process a fixed rate contract that is awarded individually by DCS.~~

~~(1) The requisitioning unit initiates the contract packet consisting of:~~

~~(A) Form ADM-90, Contract, or a standard contract previously approved by the Contracts and Purchasing Unit and General Counsel;~~

~~(B) Form ADM-2, Department of Human Services Requisition, to ensure that proper coordination and clearance has occurred and funding is indicated;~~

~~(C) Form ADM-87, Contract Requisition Justification, as justification for the contract. A detailed work plan is attached to this form. The work plan is completed in outline form, addressing each section of Form ADM-87; and~~

~~(D) Form ADM-91, Affidavit (Fixed Rate), stating that the rate for this service has been established at a uniform rate and is not subject to the competitive bid process.~~

~~(2) The award of contract is issued by DCS.~~

**340:2-13-14.8. Master fixed rate contracts [REVOKED]**

~~DHS is authorized to make payment for several categories of direct client services internally via the DHS Finance Computer System, rather than the Office of State Finance. Department of Central Services has agreed to award master contracts, with one award per category of standardized contracts, such as foster care. Prior approval from DHS Office of Finance and Contracts and Purchasing Unit is required.~~

~~(1) **Contract, justification, and affidavit.** The requisitioning unit initiates the contract packet, which consists of:~~

~~(A) a completed blank standard contract previously approved by the Contracts and Purchasing Unit and General Counsel;~~

~~(B) a completed Form ADM-2, Department of Human Services Requisition, to ensure proper coordination and clearance has occurred;~~

~~(C) a completed Form ADM-87, Contract Requisition Justification, as justification for the contract. A detailed work plan is attached to this form;~~

~~(D) Form ADM-91, Affidavit (Fixed Rate), stating that the rate for this service has been established at a uniform rate and is not subject to the competitive bid process; and~~

~~(E) a complete listing of all providers, including full name, address, and federal employer identification (FEI) number. Providers are instructed to provide the same FEI number and name they provide the Internal Revenue Service in reporting income.~~

~~(2) **Form ADM-2.** The Form ADM-2 indicates that no funds will be encumbered by the master contract award.~~

~~(3) **Submission to DCS.** Upon receipt of signed Form ADM-2, the Contracts and Purchasing Unit submits the packet with DCS Form CP-2, Purchasing Requisition, to DCS for approval and the award of contract is issued and distributed to appropriate units. The vendor on the award is listed as the Department of Human Services.~~

~~(4) **Provider additions.** Requests must be submitted to Contracts and Purchasing Unit periodically, listing providers, including addresses and IRS identifying numbers, that have been added since the initial master contract was awarded. The Contracts and Purchasing Unit submits information to DCS for inclusion in the original provider list.~~

~~(5) **Contract authorization.** In order to ensure that no payments are issued to fixed rate service providers without benefit of a contract, every individual provider contract listed in the master contract require an individually generated internal contract number, issued by the Contracts and Purchasing Unit.~~

**340:2-13-14.9. Local projects [REVOKED]**

~~(a) **Introduction.** Local project funding contract is defined in Executive Order 95-26 as an agreement to accomplish a public purpose and where the direct benefits of such a contract accrue primarily to the local population rather than the state as a whole. The order provides that local project funding contracts are awarded on the basis of merit, as measured by the Agency's objective criteria and that Agency rules and procedures for making such awards are adopted through rules, as provided by law.~~

~~(b) **Submission of contracts.** When DHS determines that a local project should be funded and is prepared to submit a contract to the Office of State Finance (OSF) for encumbrance, the Agency attaches a completed OSF Form 81, Local Project Funding Notification of Award of Contract, to each contract submitted.~~

~~(c) **Responsibilities of DHS Contracts and Purchasing Unit.** The Contracts and Purchasing Unit is charged with reviewing and monitoring the local project funding contracts and awards to ensure selection is based upon merit. This includes sign-off authority that each award program contains programmatic goal guidelines based upon:~~

~~(1) a criteria for use of local project funding;~~

~~(2) local project advertised as prescribed by OSF;~~

~~(3) Contracts and Purchasing Unit ensuring proper procedures are followed; and~~

~~(4) Contracts and Purchasing Unit submitting DCS Form OSF-81 for the Director's signature.~~

**340:2-13-14.10. Contract clauses [REVOKED]**

~~Coordination with Contracts and Purchasing Unit staff regarding contract clauses is suggested, as the requirements vary according to type and nature of the contract. Inclusion of clauses not applicable to individual contracts create potential conflicts that may result in award protests and disputes with contractors.~~

~~(1) **Access and retention of records.** The supplier agrees to maintain sufficient books, records, ledgers, and documentation for the purpose of inspection, monitoring, auditing, and evaluating the expenditures by the supplier. Financial records must accurately account for the revenues and related expenditures per approved budget by DHS contract and by service type using accepted accounting procedures. The supplier agrees to make such books, records, ledgers, and documentation records accessible at reasonable times to representatives of the Department for inspection, audit, and certification as it is~~

~~deemed necessary by the Department. Fiscal and program records are maintained during the term of this contract and for a period of three years following termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are maintained until all issues arising out of the action are resolved or the end of the three year period, whichever is later.~~

~~(2) **Equal opportunity employer.** The vendor is an equal opportunity employer, a provider of services, assistance, or both, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375. The provider ensures compliance with the American with Disabilities Act of 1990 [Public Law 101-336], and amendments to, and all requirements imposed by regulations pursuant to this Act.~~

~~(3) **Energy efficiency.** Suppliers receiving over $100,000 in federal funding are required to comply with energy efficiency laws. The language inserted in all contracts which exceed $100,000 in federal funding is: "The contractor agrees to meet mandatory standards and policies relating to energy efficiency in compliance with the Energy Policy and Conservation Act." [P.L. 94-165]~~

~~(4) **Environmental protection.** Suppliers receiving over $100,000 in federal funding are required to comply with environmental protection laws. The language inserted in all contracts which exceed $100,000 in federal funding is: "If the payments pursuant to the contract are expected to exceed $100,000, the contractor must comply with Section 306 of the Clean Air Act [42 U.S.C. 1857 (L)], Section 508 of the Clean Water Act [33 U.S.C. 1638], Executive Order 11738, and Environmental Protection Agency (EPA) Regulations [40 C.F.R. Part 15], which prohibit the use under nonexempt federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities."~~

~~(5) **Construction contracts.** The laws and regulations given in (A)-(C) of this paragraph provide requirements for construction contracts.~~

~~(A) **Copeland Act.** If the contract calls for construction or repair, the supplier must comply with the Copeland "Anti-Kickback" Act [18 U.S.C. 874] as supplemented in Department of Labor regulations. [29 C.F.R., Part 3]~~

~~(B) **Davis-Bacon Act.** If the contract calls for construction in excess of $2,000, the supplier must comply with the Davis-Bacon Act [40 U.S.C. 27a to 1-7] as supplemented by Department of Labor regulations. [29 C.F.R., Part 5]~~

~~(C) **Contract work hours.** If the contract calls for construction in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers, the supplier must comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act [40 U.S.C. Sections 327-330] as supplemented by the Department of Labor regulations. [29 C.F.R., Part 5]~~

~~(6) **Termination.** It is agreed by both parties that this agreement may be terminated by notice in writing by either party 30 days before termination date.~~

~~(7) **Cancellation.** Only subparagraph (A) or subparagraph (B) of this paragraph is applicable. Subparagraph (A) applies to all non-governmental contracts and subparagraph (B) applies to all governmental contracts. In the event the supplier fails to meet the terms and conditions of the contract or provide services in accordance with the provisions of the contract, the Department of Human Services:~~

~~(A) via the awarding authority, DCS, may cancel the contract upon written notice of default to the supplier. Such cancellation is not an exclusive remedy but is in addition to any other rights and remedies provided by law. In the event a Notice of Cancellation is issued, the supplier has the right to request a review of such decision as provided by the rules and regulations promulgated by DCS, Central Purchasing Division; or~~

~~(B) may cancel the contract upon written notice of default to the supplier. Such cancellation is not an exclusive remedy but is in addition to any other rights and remedies provided by law.~~

~~(8) **Modification.** Only subparagraph (A) or subparagraph (B) of this paragraph is applicable when a contract is modified. Subparagraph (A) applies to all non-governmental contracts and subparagraph (B) applies to all governmental contracts.~~

~~(A) Any modification or amendments to the contract must be in writing, agreed to by both parties, and approved by DCS.~~

~~(B) Any modification or amendments to the contract must be in writing and agreed to by both parties.~~

~~(9) **Compliance with law.** The supplier is subject to all applicable state and federal laws, rules and regulations, and all amendments. The supplier agrees to devote special attention to its responsibilities under state statutes. Observance of the compliance with the requirements of state statutes is the responsibility of the supplier, without reliance on or direction by the Department.~~

~~(10) **Subcontracting.** The services to be performed under the contract are not subcontracted in whole or in part, to any other person or entity without written approval by the Department. The terms of this contract and such additional terms as the Department may require are included in any subcontract, and approval of the subcontract does not relieve the supplier of any responsibility for performing this contract.~~

~~(11) **Grievance.** Suppliers providing direct care services to Department of Human Services' clients are required to operate a system of resolving grievances by service recipients. The language utilized in direct care service contracts is: "The supplier operates a system for resolution of grievances by recipients of the services~~

~~provided under the contract regarding the substance or application of any written or unwritten policy or rule of the supplier, or any decision, behavior or action by contractor, its agents or employees. The grievance system used by the supplier is subject to approval by the Department."~~

~~(12) **Travel.** The travel expenses to be incurred by the supplier or grantee pursuant to the contract for services are included in the total amount of the contract award. DHS only pays travel expenses, including per diem, specified in and charged against the total amount of the contract award. In addition, the Department does not reimburse travel expenses in excess of the rate established by the Oklahoma State Travel Reimbursement Act. The supplier or grantee is responsible for all travel arrangements and provides supporting documentation when submitting claims for reimbursement.~~

~~(13) **Lobbying.** If the payments pursuant to the contract are expected to exceed $100,000, the supplier must certify that federal funds have not been nor will be used to influence making of the award as prohibited by 31 USCA 1352. A standard disclosure form is submitted for any non-federal funds used for influencing the award as required by 31 USCA 1352.~~

~~(14) **Debarment and suspension.** In accordance with 31 USCA 6101, Executive Order 12549, the supplier certifies that they are not presently or have not in the last three years been debarred, suspended, proposed for debarment, declared ineligible by any federal department or agency, or convicted of a fraud related crime.~~

~~(15) **Drug-free workplace.** Inclusion of this clause differs among the various governing federal agencies and must be verified with the requisitioning unit's federal liaison. The drug-free workplace language utilized is: "In compliance with the Drug-free Workplace Act, 102 Stat. 4304, suppliers agree to provide a drug-free workplace by establishing policies, awareness programs, and notification processes. Suppliers also agree that they do not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance."~~

~~(16) **Nepotism.** Contracts with non-profit agencies contain the language addressing nepotism. The language utilized is: "The supplier, the supplier's governing board or body, or both, agrees to develop a written policy addressing any and all nepotism situations." Nepotism situations include, but are not limited to:~~

~~(A) rent or leasing;~~

~~(B) staffing;~~

~~(C) board membership;~~

~~(D) contracted services;~~

~~(E) acquisition of real property and equipment;~~

~~(F) client-staff relationships;~~

~~(G) board membership to staff employment;~~

~~(H) auditing; and~~

~~(I) other situations which might fairly represent a conflict of interest.~~

~~(17) **Renewal clause.** Divisions which competitively bid services and wish to renew those services on an annual basis insert the renewal clause: "DHS reserves the unilateral right to renew competitively bid contracts annually, for a period not to exceed three years."~~

~~(18) **Audit clause.** The provider employing two or more individuals to supply services through a contract that also expends in excess of $300,000 in federal funds per year has a certified independent audit conducted in accordance with **Government Auditing Standards** and OMB Circular A-133.~~

~~(A) The provider that receives in excess of $25,000 in state or federal funds also has a certified independent audit of its entire operations conducted in accordance with **Government Auditing Standards.** The financial statements are prepared in accordance with Generally Accepted Accounting Principles and the report includes a supplementary Schedule of State Awards listing all state revenues and expenditures by contract and a Supplementary Schedule of Revenue and Expenditures by function and funding source. For cost-reimbursed or cost-settled contracts, a separate schedule of revenue and expenditures is prepared by contract period. The certified independent audit covers the period for which the contract was in effect. The audit is performed by a certified public accountant or public accountant who has a valid and current permit to practice accountancy in the State of Oklahoma. The Department retains the right to approve the selection of and examine the work papers of the auditor. Approval is not withheld unreasonably.~~

~~(B) The provider submits three copies of the annual audit report to the Office of Inspector General, P.O. Box 25352, Oklahoma City, Oklahoma 73125, plus a copy of the management letter, within 90 days of the conclusion of the provider's fiscal year.~~

~~(C) The provider, at the request of the Agency, State Auditor, or both, provides books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract for examination.~~

~~(19) **Liability insurance and indemnification clauses.** Only subparagraph (A) or subparagraph (B) of this paragraph is applicable.~~

~~(A) The provider is not required to purchase liability insurance for the benefit of DHS, its employees, and its agents as a condition of the contract. However, the provider agrees to indemnify and hold harmless DHS, its employees, and its agents for any and all claims or causes against the same that may arise from the provider's performance of the contract.~~

~~(B) The contractor or grantee is required to carry liability insurance in an amount and form satisfactory to DHS to adequately compensate persons for injury to their person or property occasioned by an act of negligence by the contractor or grantee, its agent, employee, or the like. A "Certificate of Insurance" is attached showing the State of Oklahoma as a certificate holder. The insurance policy must contain provisions that the Agency is notified if the insurance carrier intends to cancel or not renew the policy.~~

~~Further, the contractor agrees to indemnify and hold harmless DHS against any and all bodily injuries and property damages, deficiencies, or liabilities resulting from any negligence on the part of the contractor or nonfulfillment of any term or condition of this contract. The contractor indemnifies and holds harmless DHS under the contract from any and all assessments, judgments, costs, legal and other reasonable expenses incidental.~~

~~(20) **Americans with Disabilities Act.** The provider ensures compliance with the Americans with Disabilities Act of 1990 [Public Law 101-336] and all amendments and requirements imposed by the regulations issued pursuant to this act.~~

~~(21) **Client confidentiality.** The provider ensures compliance with DHS' requirements pertaining to the protection, use, and release of personal information. The provider holds confidential all personal information regarding individuals, including lists of names, addresses, photographs, records of evaluation, and all other records of the client. This information may not be disclosed, directly or indirectly, without written consent.~~

~~(22) **Material or equipment purchased contractually.** Cost-reimbursement contracts contain the language: "Any equipment or other tangible object purchased with the funds provided by this contract is the property of the Department of Human Services and is held, maintained, and insured by the contractor for the benefit of the Department. Upon termination, for whatever reason, the Department may demand the return of such equipment or materials at the contractor's sole cost and expense. The provider ensures notification of the Department prior to relocation or substantial alteration of such equipment or materials."~~

~~(23) **Disclosure of bid content.** If a bid response contains information that the respondent does not want used by the Department of Human Services for any other purpose than evaluation of the bid, the pages containing such information are marked by the respondent with the statement: **"This information must not be duplicated or used in whole or part for any purpose other than evaluation of the bid."** The contract itself is a public document available for public inspection in accordance with the Open Records Act.~~

~~(24) **Preclusion from resulting contracts.** Bidders that have provided any consulting services or technical assistance that resulted in any specifications or concepts in this ITB, either directly or via a subcontractor, is precluded from the award of such contract and from securing a subcontractor that has provided such services.~~

~~(25) **Force majeure.** The vendor is not liable for any damages resulting from any delay in delivery or failure to give notice of delay which directly or indirectly results from the elements, acts of nature, delays in transportation, delays in delivery by any cause beyond the reasonable contract of the vendor.~~

~~(26) **Disallowance of claims.** In the event that any payments are subsequently disallowed by federal or state authorities due to negligence of performance of the supplier, supplier agrees to reimburse DHS in an amount equal to the disallowance.~~

~~(27) **Supporting documentation.** The contractor ensures that all costs billed are supported by documentation that includes copies of paid invoices, payroll records, and time reports and approved methods for application of indirect costs. The supplier further ensures that all billings are based on actual costs incurred.~~

~~(28) **Supplier relationship.** The contract does not create an employment relationship. Individuals performing services required by the contract are not employees of the State of Oklahoma nor the Department of Human Services. Supplier's employees are not considered employees of the State of Oklahoma nor the Department of Human Services for any purpose and are not eligible for benefits accruing to state employees.~~

~~(29) **Billing.** Claims for reimbursement of services must be submitted within 90 calendar days from the provision of services. Supporting encumbrances may be canceled upon a lapse of six months from the actual provision of services, unless specified otherwise in the contract. If the Department of Human Services or the State of Oklahoma finds that an overpayment or underpayment has been made to the supplier, the Department may adjust any subsequent payments to the supplier to correct the account. A written explanation of the adjustment is issued to the supplier with an explanation as to the manner in which a request for reconsideration may be made. The Department may withhold a part or all of a final payment until the account is settled, or to ensure compliance with all the terms of the contract.~~

~~(30) **Alcohol and drug testing.** When a contract requires the transportation of 16 or more clients in one vehicle, the language included in the contract requiring alcohol and drug testing is: "Supplier ensures compliance with Section 6, Public Law 102-143, 49 CRF 1.51, requiring random alcohol and drug testing of certain commercial drivers."~~

~~(31) **Competition.** When award or sub-award of a contract is made to institutions of higher learning include the language: "All procurement transactions are conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient is alert to organizational conflicts of interest as well as noncompetitive practices among suppliers that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective supplier performance and eliminate unfair competitive advantage, suppliers that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations to bid, requests, or both, for proposals are excluded from competing for such procurements. Awards are made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations clearly state all requirements that the bidder or offeror will fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids~~

~~or offers may be rejected when it is in the State's interest to do so."~~

**340:2-13-14.11. Contract addenda pertaining to professional services contracts [REVOKED]**

~~Any modification to the awarded contract terms must be approved by both parties and by DCS with the exception of increases of service requirements in fixed rate contracts and select contracts initiated by the Commodities Distribution Unit.~~

~~(1) **Request for contract change.** A modification of contract terms is drafted and approved by the provider or vendor. Any modification must be authorized by those parties that originally signed the contract. Note exceptions stated in this subsection. The requisitioning unit attaches Form CP-CO-1, Change Order, providing pertinent reference numbers for DCS to the modification and submits it to the Contracts and Purchasing Unit. The same requirements apply for modifications as the original contract concerning original signatures, number of copies, and the like.~~

~~(2) **Budget revisions.** All requests for cost reimbursement contract budget revisions must be submitted to the Contracts and Purchasing Unit for review and transmittal to DCS. DCS must approve and maintain on file each contract budget revision. Total line-item budget revisions generally do not exceed ten percent of the contract not-to-exceed amount.~~

**340:2-13-14.13. Initiation of services [REVOKED]**

~~Services must not be initiated by a provider or vendor whose contract is pending final award. Providers must be cautioned that receipt of the provider contract does not ensure an approved award of contract and services must not be initiated until the approved award of contract is received. In the event it is discovered that services may have been authorized prior to issuance of a proper contract, the requisitioning unit immediately contacts the Contracts and Purchasing Unit for coordination with the Office of General Counsel to determine the Department's liability in the issue. The DHS Office of Finance coordinates with the Contracts and Purchasing Unit concerning any claims presented for payment that exceed the statutory or Agency limits that appear to have been authorized without benefit of a contract.~~

**340:2-13-14.14. Contract monitoring [REVOKED]**

~~(a) Each division must assign sufficient staff to conduct periodic monitoring of services provided under a contract. These individuals must provide extensive support to new providers without prior experience in governmental accounting to assure that the services provided under the contract are in accordance with the terms and that the clients receive the maximum benefit from the contractual services. Contractual records must be established in accordance with the A.I.C.P.A. Audit and Accounting Guide for State and Local Governmental Units.~~

~~(b) The contract monitor must serve as a liaison, resolving any issues upon discovery related to generally accepted accounting and auditing practices. The monitor is also responsible for periodic on-site review of provider programmatic records, assuring compliance with all contract terms throughout the contract period.~~

**340:2-13-14.15. Conflict of interest [REVOKED]**

~~All agency employees must avoid any appearance of a potential conflict of interest by refraining from:~~

~~(1) serving on the board of any agency in which a contract is in effect between any agency and that employee's assigned division; and~~

~~(2) serving as an officer of the Board if any DHS division has a current contract in effect with the agency in question.~~

**340:2-13-14.17. Prohibited acts - state employees, agencies, and elected officials [REVOKED]**

~~Refer to State Ethics Commission Rules for rules regarding prohibited acts of state employees, agencies, and elected officials in the contracting process.~~

**340:2-13-14.18. Cancellation of contracts [REVOKED]**

~~(a) Department of Central Services (DCS) is the sole authority for the awarding, amending, and cancellation of contracts. When a division desires to cancel a contract prior to the original ending date, the procedures in (1) - (4) of this subsection are followed.~~

~~(1) The requisitioning unit submits a memo with signature by the division administrator to the Contracts and Purchasing Unit requesting the contract cancellation and provides background information justifying the request and the effective date for cancellation. As per terms of the contract, a minimum of 30 days notice must be provided to the contractor by DCS.~~

~~(2) The Contracts and Purchasing Unit advises DCS of the cancellation request.~~

~~(3) DCS mails the cancellation notice to the contractor by certified mail, return receipt requested, citing the cancellation effective date.~~

~~(4) After all outstanding claims for services provided prior to the cancellation effective date have been settled, the requisitioning unit prepares Form CP-CO-1, Change Order, to liquidate any outstanding balance and submits it to the Contracts and Purchasing Unit.~~

~~(b) If the cancellation procedures are not followed and the requisitioning unit sends written notice of cancellation to the contractor, the cancellation is not valid nor binding.~~

## PART 5. PRODUCTS AND NONPROFESSIONAL SERVICES [REVOKED]

**340:2-13-47. Procedures for processing requisitions for other than professional services to the Contracts and Purchasing Unit [REVOKED]**

~~Form ADM-2, Department of Human Services Requisition, is used for requisitioning services, equipment, and supplies through the Contracts and Purchasing Unit.~~

**340:2-13-48. Methods [REVOKED]**

~~(a) **Ordering products available from state wide contracts.** Unless specifically exempted by statute or DCS State Purchasing Director, all products available from state wide contracts must be purchased under the procedures in this Section.~~

~~(1) To requisition products available from state wide contracts, the requisitioning unit submits Form ADM-2, Department of Human Services Requisition, to the Contracts and Purchasing Unit.~~

~~(2) The Contracts and Purchasing Unit reviews Form ADM-2 for adequacy and either enters the necessary information into the automated requisition file for printing of a release document or transmits a DCS Central Purchasing Form 2, (CP-2), Purchasing Requisition, to Central Purchasing Division (CPD) for processing by CPD.~~

~~(3) Upon receipt of Form CP-2, CPD issues a release against the appropriate state wide contract.~~

~~(4) The CPD, DHS Contracts and Purchasing Unit, or both, provides copies of the release to vendor, DHS Office of Finance, requisitioning unit, and the official Contracts and Purchasing Unit file.~~

~~(b) **Products not exceeding $25,000.** Purchases in which the product is not available from the procurement schedule established by the State Use Committee, mandatory use state wide contracts, or Oklahoma Corrections Industries, the product needed is a one time acquisition, and the cost of the product, including shipping and handling, does not exceed $25,000 are exempt from processing by CPD. **Separate purchases for individual components of a total project, services, or split purchasing for the purpose of evading the competitive bid requirement constitutes a felony.** These purchase methods may be utilized by requisitioning units as delegated by administrators down to division levels except for the acquisition of products or services procured through CPD as scheduled buys or through lease purchase agreements. Requisitioning units not desiring to accomplish purchase actions may submit their requirements to the Contracts and Purchasing Unit for processing according to procedures described in paragraphs (1) - (3) of this subsection. Requisitioning units who choose to accomplish purchases in accordance with rules in this Section process the acquisitions according to procedures described in paragraphs (4) - (5) of this subsection.~~

~~(1) To requisition the purchase, the requisitioning unit submits Form ADM-2 to the Contracts and Purchasing Unit.~~

~~(2) The Contracts and Purchasing Unit reviews the requirement for adequacy of the description of the requirement and prepares and issues Form ADM-106, Authority to Purchase, or Form CP-3C, Contract, as appropriate.~~

~~(3) The Contracts and Purchasing Unit forwards a copy to the requisitioning unit, vendor, contractor, or both, and maintains the official Contracts and Purchasing Unit file.~~

~~(4) Purchases not exceeding $2,500 accomplished by requisitioning units are processed as required by the Department of Human Services, Office of Finance.~~

~~(5) Purchases in excess of $2,500 but not exceeding $10,000 are processed as described in (A) - (E) of this paragraph.~~

~~(A) The requisitioning unit determines if the acquisition is available from a mandatory statewide contract, a State Use Committee procurement schedule, Oklahoma Correction Industries, scheduled acquisition, or nonencumbered contract. Acquisitions are made from one of these sources if the product or service is available. The requisitioning unit determines if the product or service is available from a nonmandatory statewide contract to determine if the open market price exceeds the price of the nonmandatory statewide contract. If the acquisition is available from a nonmandatory statewide contract at a lower price than can be obtained from an open market vendor, it is purchased from the nonmandatory statewide contract if the vendor can make delivery by the required delivery date. In the event a statewide contract vendor cannot provide the product or service in a manner suitable to the Department, the statewide contract price is annotated on Form CP-11, Request for Quotations (RFQ), or Form CP-12, Quotation/Proposal Checklist, for documentation of purchases prior to forwarding the required documents to the Contracts and Purchasing Unit.~~

~~(B) The requisitioning unit solicits price quotations from three or more vendors, either orally or in writing. If quotations are solicited in writing, Form CP-11 is utilized. Complex acquisition solicitations for quotations must be in writing and copies of specifications provided to suppliers. Quotations solicited orally are documented on Form CP-12. Upon the supplier's request, the supplier must be afforded at least 24 hours in which to prepare and provide a quotation.~~

~~(C) The purchase must be made from the solicited vendor providing the **lowest** and **best** or **best value** quotation. A detailed, written explanation of the reason must be documented if the purchase is being made from other than the vendor offering the lowest price. Certified minority businesses are entitled to bid preference of five percent~~

~~(D) A record is made of each acquisition completed under the procedures in this subsection and documentation is forwarded to the Contracts and Purchasing Unit within 24 hours to verify compliance with the rules established by the Director of CPD, DCS, and for the issuance of Form CP-3C. Each record includes:~~

~~(i) a description of the goods or services;~~

~~(ii) the name, address, federal employer identification (FEI) number, and telephone number of~~

~~each solicited vendor, identifying minority vendors as such;~~

~~(iii) the date, time, and amount of each quotation including:~~

~~(I) the name, first and last, of the person providing each quotation; and~~

~~(II) the name, first and last, of the person receiving and recording each quotation;~~

~~(iv) a written explanation or Form ADM-88, Sole Source or Sole Brand Acquisition Affidavit, for selection of other than the lowest bid; and~~

~~(v) any other data or information that is required or necessary to show compliance with this subsection.~~

~~(E) The Contracts and Purchasing Unit is the official repository for the records and documentation required by this subsection and all records and documentation are made available to the director or designee of DCS, the State Auditor and Inspector, or both, upon request. Records are maintained for a minimum of three years. All records are considered public records in accordance with the Open Records Act. [51 O.S., Supp. 1990, Section 24A.1 et seq]~~

~~(6) For contracts in excess of $10,000 but not exceeding $25,000, procedures detailed in the paragraph (5) of this subsection are followed in solicitation of quotations in excess of $10,000 but not exceeding $25,000. At least three suppliers must be solicited for quotations and they must be provided with a noncollusion affidavit to be submitted by the supplier before quotation closing. Individuals soliciting quotations are encouraged to utilize DCS, CPD's registered supplier listing. Access to this listing is available on DHS Office of Finance AS400 mainframe system. Procedures established in paragraph (5) of this subsection are also adhered to when acquiring specifically prescribed nonmedical assistive technology related items for individuals under 16 years of age who are recipients of Supplemental Security Income which are prescribed by a physician, qualified sensory aids specialist, or qualified special education instructor.~~

~~(c) **Competitive bid contracts.** This type of contract is used when the product or service requirement is not available through state wide contracts, other mandatory sources, and the estimated cost of the product or service is more than $25,000. In order to process this type of purchase the processes outlined in paragraphs (1) - (3) of this subsection are accomplished.~~

~~(1) The requisitioning unit completes and submits Forms ADM-2 and ADM-86, Product Requisition Justification, or ADM-87, Contract Requisition Justification, and OSF Form 25, Professional and Personal Services Contract Exemption Request, freeze exception documentation, if applicable, to the Contracts and Purchasing Unit.~~

~~(2) The Contracts and Purchasing Unit reviews Forms ADM-2, ADM-86, and ADM-87 for adequacy, prepares DCS Form CP-2, and obtains necessary approvals.~~

~~(3) The Contracts and Purchasing Unit forwards a copy of DCS Form CP-2 to CPD, the requisitioning unit, and maintains an official record in the unit. Central Purchasing Division forwards the Contracts and Purchasing Unit and vendor a copy of the resultant award document. In turn, Contracts and Purchasing Unit provides copies to DHS Office of Finance, the requisitioning unit, and maintains a copy for the file.~~

~~(4) Construction services requirements must be processed through DCS Construction and Properties Division. Requisitioning units may solicit written quotations on requirements not exceeding $12,500, provide the written quotations and Form ADM-2 or CAP Form 102, Project Requisition, necessary plans and specifications to DHS Contracts and Purchasing Unit for review and transmittal to the Construction and Properties Division for award of a contract. Projects estimated to exceed $12,500 must be competitively bid by the Construction and Properties Division. Twenty five copies of plans and specifications along with Form ADM-2 or CAP Form 102 are submitted to DHS Contracts and Purchasing Unit for review and transmittal to Construction and Properties Division. For assistance in preparing adequate plans and specifications, contact DHS Architectural and Engineering of~~

**340:2-13-50. Telephone calling cards [REVOKED]**

~~The Contracts and Purchasing Unit is responsible for reviewing, issuing, and controlling telephone calling card requests for the Agency.~~

**340:2-13-53. Emergency purchases [REVOKED]**

~~(a) Rules of DCS Central Purchasing Division, define an emergency as an unforeseen occurrence, condition, or serious environmental situation. Requisitions pursuant to this section are not required prior to emergency acquisitions not exceeding $35,000. The procedures listed in paragraphs (1) - (4) of this subsection are adhered to in processing of emergency requests that are within the purview of the Central Purchasing Act.~~

~~(1) During normal State Office work hours, any division administrator who becomes aware that an emergency as defined in this Section exists, declares an emergency. All facts are presented by telephone to the Contracts and Purchasing Unit. The Contracts and Purchasing Unit coordinates the situation with the Contracts and Purchasing Unit Administrator for direction, makes notifications, and takes action as required.~~

~~(2) After normal State Office work hours, if it is determined that an emergency exists, a division administrator or designee takes action necessary to resolve the situation.~~

~~(3) In either situation described in paragraphs (1) and (2) of this subsection, it is understood that in-house capabilities or resources are used or referred to for guidance or assistance to remedy the situation.~~

~~(4) The next work day, a memo describing the emergency, Form ADM-2, Department of Human Services Requisition, and supporting documentation are forwarded to the Contracts and Purchasing Unit for processing to DCS Central Purchasing Division.~~

~~(b) Emergency purchases exempt from the provisions of the Public Competitive Bidding Act processed under the purview of the DCS Construction and Properties Division.~~

~~(1) The Chief Administrative Officer, Director, of DHS may declare an emergency situation in which event the provisions of the Competitive Bid Act with reference to bids do not apply, but such authority is not extended to any contract exceeding $25,000, and the Commission for Human Services (Commission) has delegated such authority by two thirds of all members.~~

~~(2) The President Pro Tempore of the State Senate and Speaker of the House of Representatives are notified of such action within ten 10 days. Notification includes a statement of the reasons for the action and it is recorded in the official minutes of the Commission.~~

~~(3) The Commission declares by a two thirds vote of all members of the Commission that an emergency exists. No monetary threshold on the emergency contract amount applies.~~

~~(4) Reasons for declaring an emergency and not complying with the provisions of the Public Competitive Bidding Act are entered into the official minutes of the Commission. Copies of the minutes are provided to the State Construction Administrator of DCS.~~

~~(5) The Contracts and Purchasing Unit submits a requisition to the State Purchasing Director within five days following the acquisition together with a statement of emergency.~~

**340:2-13-53.1. Purchase of client clothing [REVOKED]**

~~Although exempt from the Central Purchasing Act, clothing requirements for the Department's clients are bid whenever deemed feasible by Department officials in charge of the various programs. Competitive bids are solicited when it is determined that large quantities of clothing for clients are required. Individual one time clothing acquisitions for clients may be procured at the discretion of the responsible official for the program.~~

**340:2-13-53.2. Purchase of food by DHS group homes [REVOKED]**

~~Purchase of food for group homes operated by the Department are not included within the purview of the Central Purchasing Act and are not subject to competitive bid requirements. Group home employees may make purchases as delegated by program officials. Processing of claims will be in accordance with the procedures established by DHS Office of Finance, Claims Processing Section. Purchases should be made from the available local sources. Use of alternate sources is encouraged if economically feasible.~~

**340:2-13-54. Additional coordinations, reviews, and approvals [REVOKED]**

~~(a) **Purchase Review Committee.** During periods of severe budget constraints, as determined by the Governor or DHS Director, a Purchase Review Committee reviews proposed purchases and approves or disapproves the acquisition based upon need. Requisitioning units are advised when a purchasing freeze has been initiated and types of commodities affected. The requisitioning unit routes requisitions to the Contracts and Purchasing Unit for transmittal to the Purchase Review Committee.~~

~~(b) **Data processing requisitions.** In accordance with DHS:2-41-1(6) requisitions for all computer software, hardware, or both, require review and approval of the Data Services Division (DSD) prior to submittal to the Contracts and Purchasing Unit for processing. Requisitions received without DSD coordination are returned to the requisitioning unit for compliance.~~

**340:2-13-55. Inspection and rejection [REVOKED]**

~~The requisitioning unit inspects all goods at the time of delivery. Any goods which are damaged, fail to meet contract specifications, or contain latent defects are not accepted if detected while delivery is made.~~

~~(1) When the requisitioning unit receives or rejects goods or services that do not fulfill the requirements of the contract, the requisitioning unit contacts the vendor to resolve the matter. If the matter cannot be resolved between the requisitioning unit and the vendor, the Contracts and Purchasing Unit is notified in writing within a reasonable time. All pertinent facts are provided, specifically the discrepancy in the goods or services ordered and the goods or service received, the name and telephone number of the person or vendor contacted concerning the discrepancy, and a concise statement of facts. The Contracts and Purchasing Unit makes every effort to rectify problems on orders issued by this office and requisitioning units are notified of the results. The Contracts and Purchasing Unit reviews documentation on problems encountered with vendors issued contracts by DCS Central Purchasing Division (CPD), Form CP-3, Vendor Performance Quality Report Form, and forwards the form to CPD for action with an information copy to the receiving activity.~~

~~(2) It is the responsibility of the vendor to remove the defective goods and replace them with conforming products within a reasonable time after notice of rejection. All related costs are the responsibility of the vendor.~~

**340:2-13-56. Change orders [REVOKED]**

~~Change orders are not processed against contracts when it increases the total acquisition price in excess of ten percent, with the exception of fixed rate social services contracts as defined in Section 85.7A.(11) of Title 74 of the Oklahoma Statutes. Fixed rate contracts may be increased in excess of ten percent if the total amount revised is based upon actual utilization of services. In this instance, a signed bilateral modification is not required.~~

~~(1) **Change order forms.** Form CP-CO-1, Change Order, is submitted to the Contracts and Purchasing Unit.~~

~~The requisitioning unit requesting the change order is responsible for ensuring the change order information reflects all contract documents, such as purchase order, previous change order information, and any claims history including outstanding or pending claims.~~

~~(2) **Authorized signature.** Upon receipt of Form CP-CO-1 in the Contracts and Purchasing Unit, the form is processed as required.~~

~~(3) **Discrepancies.** Any requests for cancellation of unexpended balances are verified via the Office of State Finance Automated Outstanding Purchase Order File. If the information provided on Form CP-CO-1 differs from that listed by Office of State Finance by more than $10, the Form CP-CO-1 is returned to the requisitioning unit for clarification. If unable to resolve the issue, the unit contacts the DHS Office of Finance for assistance. Sufficient funding must remain to support all expenditures related to that specific purchase order.~~

~~(4) **Revision of DHS files.** Upon notification from DCS, the Contracts and Purchasing Unit revises the DHS Requisition file on Finance AS 400 System records to reflect the change. No funds are released until receipt of enacted change order from DCS.~~

~~(5) **Bulk purchases.** Purchases of bulk items such as meat, poultry, fuels, and printed material do not require a Form CP-CO-1 to allow for an overshipment of less than 10% of the purchase order. The claim for payment may be submitted to the DHS Office of Finance without the requirement for a change order to increase or decrease the purchase order.~~

**340:2-13-57. Department of Central Services contact [REVOKED]**

~~All communication, either written or verbal, by DHS staff directed to DCS concerning contractual matters, are coordinated via the Contracts and Purchasing Unit CPO(s).~~

**340:2-13-58. Payment against purchase orders or contracts [REVOKED]**

~~Payment for products or services pursuant to a purchase order or contract is made only after products have been provided or services rendered. Contact the Contracts and Purchasing Unit for specifics regarding advance payments.~~

**340:2-13-59. Equipment furnished to the vendor [REVOKED]**

~~It is unlawful to enter into a contract in which a state agency furnishes material/equipment to be used by the vendor in the performance of the contract if the contract allows the vendor to acquire ownership of the material/equipment during or after the term of the contract in any manner other than through competitive bidding or a public sale procedure.~~

## PART 7. CONTRACTS AND PURCHASING

**340:2-13-75. Purpose and legal base**

(a) **Purpose.** The purpose of this Subchapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Department of Human Services (OKDHS). The Contracts and Purchasing Unit is an internal unit of OKDHS and provides the mechanism for the acquisition of goods, equipment, and non-professional and professional services for the operation of OKDHS. These rules are superseded by the Oklahoma Department of Central Services (DCS) Purchasing Administrative Rules (OAC 580:15) whenever DCS has final approval of an acquisition.

(b) **Compliance.** OKDHS complies with provisions of the Oklahoma Central Purchasing Act, State Use Committee, State Purchase Card Procedures, other statutory provisions and rules of the Central Purchasing Division (CPD) for OKDHS acquisitions. Except as otherwise provided, all contractual services, supplies, materials, and equipment which are used, consumed, or spent by OKDHS in performance of its official functions, are made in conformance with this policy and paid with OKDHS funds.

(c) **Legal base.** OKDHS contracting and purchasing procedures are established pursuant to Section 85.1 et seq. of Title 74 of the Oklahoma Statutes (O.S.) and become effective upon review and approval of the DCS State Purchasing Director pursuant to Section 85.39 of Title 74 O.S.

**340:2-13-76. Delegation of OKDHS**

The authority to procure certain needed products and services is delegated to Oklahoma Department of Human Services (OKDHS) from the Oklahoma Department of Central Services (DCS) Central Purchasing Division (CPD).

**340:2-13-77. Funding**

Funding for acquisition is determined in accordance with approved budget work program allocations. Necessary internal budget transfers for unexpected acquisitions are completed prior to the purchase of any good or service.

**340:2-13-78. Records retention**

The Oklahoma Department of Human Services (OKDHS) retains records for each acquisition and contract in accordance with OAC 580:15-6-4. OKDHS retains purchasing records in the Contracts and Purchasing Unit for all acquisitions of goods or services. The records include the contract, evaluations, and all supporting and required documentation. Associated payment records are retained in the OKDHS Finance Division.

**340:2-13-79. OKDHS audit responsibilities**

Acquisition records are made available by the Oklahoma Department of Human Services (OKDHS) for audit by the Department of Central Services Audit Division and the State Auditor and Inspector Audit Team.

**340:2-13-80. Penalties for noncompliance of purchasing procedures**

The Oklahoma Department of Human Services (OKDHS) complies with the Department of Central Services (DCS) requirements regarding purchasing procedures.

(1) The DCS Director may:

(A) require retraining of OKDHS procurement officers;

(B) reduce the purchasing competitive bid limit;

(C) transmit written findings of noncompliance to the State Auditor and Inspector for further investigation.

(2) If the DCS Director reasonably believes any purchase reported by the DCS State Purchasing Director constitutes a criminal violation of the Oklahoma Central Purchasing Act by OKDHS employees, the certified procurement officer, or vendor, the DCS Director transmits the report to the Attorney General for investigation.

**340:2-13-81. Definitions**

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

**"Acquisition"** means all types of purchases necessary to perform the duties assigned to the Oklahoma Department of Human Services (OKDHS), to include every means by which OKDHS obtains any materials, supplies, services, or equipment.

**"Award"** means the issuance of a purchase order to the selected supplier.

**"Best value"** means an award method that uses criteria established by the Oklahoma Central Purchasing Act and outlined under Section 85.2(2) of Title 74 of the Oklahoma Statutes.

**"Certified procurement officer"** or **"CPO"** means a state employee authorized to make acquisitions for a governmental entity by the Oklahoma Department of Central Services (DCS).

**"Commodity code"** means a system of words and numbers designed to identify and list commodities or services by classes and sub-classes and used to identify products or services to be purchased by the state.

**"Contract"** means all types of agreements, regardless of what they may be called, used for the procurement or disposal of goods or services.

**"Contracts and Purchasing Unit"** means the unit authorized by DCS as responsible for all agency procurement for OKDHS.

**"Customer"** means OKDHS employee generating the necessary documents and activities to acquire a desired good and/or service.

**"DCS"** means Department of Central Services.

**"Director"** means the Director of OKDHS.

**"Equipment"** means all personal property acquired for use by OKDHS which is in the nature of a tool, device, or machine and is deemed to include all personal property used or consumed by OKDHS which is not included within the category of materials and supplies.

**"Exempt professional service"** means those professional services exempt from competitive bidding pursuant to Section 85.7(2) of Title 74 and Section 803 of Title 18 of the Oklahoma Statutes.

**"Goods"** means products, material, supplies, and includes all property except real property acquired by OKDHS.

**"Governmental entity"** means any department, commission, council, counsel, court, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity of the executive, legislative, or judicial branch of the jurisdiction.

**"Invitation to Bid"** or **"ITB"** means a type of solicitation a governmental entity or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

**"Modification"** means all types of written alterations to a provision of a contract, regardless of what they may be called, accomplished by mutual agreement of the parties to the contract.

**"Non-collusion certification"** means the signed declaration by a supplier that they nor anyone subject to their direction or control has paid, given or donated, or agreed to pay, give, or donate to any office or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring a contract.

**"Non-professional service"** means services which are predominately physical or manual in nature and are, generally, not licensed and may involve the supplying of products.

**"Non-responsive"** means a response or offer that does not conform to the mandatory or essential requirements contained in the solicitation.

**"Professional service"** means services which are predominantly advisory or intellectual in nature, or involve support rather than supplying equipment, supplies, or other merchandise. Professional services include services to support or improve OKDHS policy development, decision making, management, administration, or the operation of management systems.

**"Real property"** means land and it's permanently affixed buildings or structures or any property which is not personal property.

**"Request for proposal "** or **"RFP"** means a type of solicitation a governmental entity or DCS issues to suppliers requesting proposals for goods or services.

**"Request for quotation "** or **"RFQ"** means a solicitation where quotes are obtained from suppliers without formal advertising and for expenditures within OKDHS authority.

**"Requestor"** means the individual within OKDHS initiating the contract.

**"Solicitation"** means a request for goods or services via an ITB, request for proposal, or request for quotation.

**"Supplier" or "vendor"** means an individual or business entity that sells or desires to sell goods or services to governmental entities.

**340:2-13-82. General contracting and purchasing provisions**

(a) The Oklahoma Department of Human Services (OKDHS) has the statutory authority to directly purchase or

acquire goods, services, or equipment in compliance with the provisions of the Oklahoma Central Purchasing Act.

(b) Goods, services, and equipment for OKDHS are acquired by and in accordance with the statutes of the State of Oklahoma by:

(1) statewide contracts;
(2) State Use Committee procurement schedule;
(2) inter-governmental;
(3) authority order;
(4) fixed rate;
(5) exempt professional services;
(6) competitive solicitation;
(7) sole source or sole brand acquisitions; and
(8) donations.

**340:2-13-83. Supplier registration**

Suppliers wanting to be notified of open solicitations with the Oklahoma Department of Human Services (OKDHS) must register with Department of Central Services Central Purchasing Divisions (DCS CPD).

**340:2-13-84. Reports of supplier non-compliance to DCS**

Reports of supplier poor performance or non-compliance must be reported by the Oklahoma Department of Human Services (OKDHS) to Department of Central Services (DCS) and may affect a supplier's opportunity to provide future services to the State of Oklahoma.

**340:2-13-85. Contact with suppliers**

Contact by an Oklahoma Department of Human Services (OKDHS) employee with potential suppliers is not prohibited. However, it is strongly discouraged because any supplier that provides information used in a solicitation or receives information from OKDHS about a future solicitation creates the appearance of impropriety. These suppliers could be precluded from future contract awards. The appearance of bias is created by such meetings regardless of intent.

**340:2-13-86. Internal solicitation**

If a supplier wishes to submit a response to a solicitation, the supplier must comply with the instructions provided in the solicitation. It is the supplier's responsibility to read and understand the instructions and terms and conditions provided in the solicitation. Failure to comply with the instructions and terms and conditions in the solicitation may deem the bid non-responsive. Questions must be directed to the Oklahoma Department of Human Services (OKDHS) Contracts and Purchasing Unit certified procurement officer (CPO) listed in the solicitation.

**340:2-13-87. Solicitation response submission**

(a) Solicitation responses may be submitted in person, by fax, e-mail, or mail service to the Oklahoma Department of Human Services (OKDHS). Responses must be received at the location and by the date and time stated on the solicitation. It is the sole responsibility of the supplier to ensure delivery requirements are met. OKDHS is not responsible for the receipt of late responses. Responses not received prior to the due date and time shown on the solicitation are deemed non-responsive, without exception.

(b) The response must be:

(1) submitted in strict conformity with the instructions to the supplier;
(2) signed by an authorized representative of the supplier;
(3) signed in ink with full knowledge and acceptance of all its provisions; and
(4) typewritten or written in ink, and corrections must be initialed by a representative of the supplier prior to the submission of the bid. Penciled bids are not accepted.

(c) The Department of Central Services (DCS) Form 004, Certification for Competitive Bid and/or Contract (Non-Collusion Certification), must be completed and returned.

(d) All responses are stamped with the date and time upon receipt in the Contracts and Purchasing Unit.

(e) Responses are reviewed after the designated date and time of closing by the appropriate Contracts and Purchasing Unit certified procurement officer (CPO).

(f) Awards are made upon conclusion of the response evaluation.

(g) Any questions pertaining to the clarification of the solicitation are directed to the CPO shown on the solicitation.

(h) Any manufacturer, trade names, brand names, information, and/or catalog numbers listed in the specification are for information and are not intended to limit competition. The supplier may offer any brand which meets or exceeds the specification for any item(s). If necessary, the suppliers must explain in detail the reason(s) why the proposed requirements may be satisfied with a substitute product. Bids lacking any written indication of intent to quote an alternate brand are received and considered in complete compliance with the specifications as listed on the solicitation.

(i) A response constitutes a legal offer which becomes part of the contract upon acceptance by OKDHS pursuant to OAC 340:2-13-88(i).

**340:2-13-88. Award of contract**

(a) The responses are forwarded to the requestor for review to determine compliance with the solicitation specifications. The requestor makes a recommendation of award. The recommendation is reviewed by Contracts and Purchasing Unit certified procurement officer (CPO) to ensure compliance with all Oklahoma Department of Human Services (OKDHS) rules, policies, and procedures.

(b) The CPO has the right to waive minor deficiencies or informalities in a response provided that, in the CPO's judgment, the best interest of the state would be served without prejudice to the rights of the other supplier(s).

(c) Tie responses may develop between suppliers. If these suppliers are equal in price and all specifications, the award is determined by a coin toss.

(d) OKDHS reserves the right to award based on best value as defined in Section 85.7 of Title 74 of the Oklahoma Statutes and pursuant to the provisions of the Oklahoma Department of Central Services, rules OAC 580:15-4-11(h).
(e) The solicitation may be awarded on an all or none basis or by item or groups of items, as specified in the solicitation. OKDHS also reserves the right to award to more than one supplier.
(f) OKDHS reserves the right to reject, in part or whole, any response.
(g) The OKDHS Contracts and Purchasing Unit CPO sends a purchase order as acceptable notification of a valid and binding contract with a supplier.
(h) All awards are made under the terms and conditions as outlined in OAC 340:2-13-89 and any additional terms and conditions as described in the solicitation.
(i) The purchase order, solicitation, and the successful supplier's response constitute a binding contract and will be interpreted under Oklahoma Law.
(j) All ethics rules and laws related to conflicts of interest and conducting business with public officials apply to any acquisition by OKDHS.

**340:2-13-89. Terms and conditions for acceptable responses**

(a) All responses submitted are subject to the terms and conditions as listed in the solicitation.
(b) Supplier may not alter terms and conditions as stated in the solicitation.

**340:2-13-90. Protest of award**

(a) Suppliers that submitted responses have ten business days from contract award to submit a written protest to the Oklahoma Department of Human Services (OKDHS) Contracts and Purchasing Unit containing reasons for said protest.
(b) OKDHS Contracts and Purchasing Unit programs coordinator reviews the protest and contract award documentation and responds to the protesting supplier.

**340:2-13-91. State Use Committee**

If a product or service required by the Oklahoma Department of Human Services (OKDHS) is included in the State Use Committee procurement schedule, OKDHS secures the product or service from a qualified nonprofit agency providing employment to people with severe disabilities, providing the product or service is available within the period required per Sections 3001 et seq. of Title 74 of the Oklahoma Statutes.

**340:2-13-92. Statewide contracts**

(a) If the product or service required is on a **mandatory** statewide contract, the Oklahoma Department of Human Services (OKDHS) certified procurement officer (CPO) purchases the product or service from that contract, regardless of price.
(b) If the product or service required is on a **non-mandatory** statewide contract, the product or service may be purchased from the contract, but it is not required.

**340:2-13-93. Oklahoma Correctional Industries**

(a) If the product or service is available from the State Use Committee procurement schedule and from the Oklahoma Correctional Industries (OCI), OKDHS makes the purchase from the State Use Committee procurement schedule.
(b) If OCI can provide a comparable product or service, they must be one of the suppliers from whom a bid is solicited.

**340:2-13-94. Exempt professional service contracts**

(a) The professional services exempt from competitive bidding pursuant to Section 85.7(2) of Title 74 and Section 803 of Title 18 of the Oklahoma Statutes are:
(1) physician, surgeon, or doctor of medicine;
(2) osteopathic physician or surgeon;
(3) chiropractor;
(4) podiatrist;
(5) optometrist;
(6) veterinarian;
(7) architect;
(8) attorney;
(9) dentist;
(10) public accountant;
(11) psychologist;
(12) physical therapist;
(13) registered nurse;
(14) professional engineer;
(15) land surveyor;
(16) pharmacist;
(17) occupational therapist;
(18) speech pathologist;
(19) audiologist;
(20) perfusionist;
(21) professional counselor;
(22) marital and family therapist;
(23) social worker; and
(24) dietician.
(b) The Oklahoma Department of Human Services (OKDHS) requires proof of current, Oklahoma professional certification or license of all suppliers providing exempt professional services described in this Section.
(c) The requirement for competitive bidding may not be avoided by entering into a contract with an individual licensed in one of the professional categories identified in this Section to perform non-germane services. For example, a lawyer may not be awarded a contract to serve as an investment counselor without competitive bidding.

**340:2-13-95. Sole source or sole brand acquisitions exceeding $5,000 and not exceeding $50,000**

(a) The Oklahoma Department of Human Services (OKDHS) is not required to seek competitive solicitations for goods or services, if the customer affirms that the goods or services may only be obtained from a single or sole source.
(b) OKDHS must seek competitive solicitations for sole brand acquisitions. Criteria which may be sufficient to justify a sole source or sole brand contract are:

(1) only a specified make, model, or brand will meet OKDHS needs, even though the makes, models, or brands are available from multiple vendors. A brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of vendors solicited. This restricts competition in that only suppliers able to supply a specified make, model, or brand are permitted to compete;

(2) market research clearly shows that there is only one responsible vendor and it can be demonstrated that no other supplies or services satisfies OKDHS requirements;

(3) requirement is for additional units or replacement parts of specified makes and models of technical equipment and only one vendor is available;

(4) OKDHS needs to purchase supplies or services from the original vendor in the case of a follow-on contract because award to any other supplier would result in substantial duplication of costs that would not be recovered through competition or in unacceptable delays in fulfilling agency requirements;

(5) purchase of a brand name commercial item that is used for authorized resale;

(6) OKDHS has an unusual and compelling urgency for supplies or services and would be seriously injured unless permitted to limit the number of suppliers from which it solicits bid/proposals; or

(7) OKDHS needs to acquire services of an expert, such as expert services to support a current or anticipated litigation or dispute, involving OKDHS in any trial, hearing, or proceeding whether or not the expert is expected to testify.

**340:2-13-96. Acquisitions of $5,000 or less**

(a) Any acquisition for an amount of $5,000 or less is exempt from competitive solicitation procedures. The items may be acquired via an authority order or purchase card, when possible, and pursuant to the provisions of the Oklahoma Department of Central Services rules OAC 580:15-6-6. However, all acquisitions of service, or those containing a service component, in any amount, require a supplier specific purchase order issued by the Contracts and Purchasing Unit.

(b) Split purchases may not be made for the purpose of evading the dollar threshold for competitive solicitations.

**340:2-13-97. Acquisitions in excess of $5,000 and not exceeding $10,000**

(a) If the acquisition is for an amount exceeding $5,000, but is not more than $10,000, the certified procurement officer (CPO) determines if the goods or services are available from a mandatory statewide contract or State Use supplier, a governmental agency, or non-mandatory statewide contracts. If the goods or services are available through one of these methods, the Oklahoma Department of Human Services (OKDHS) acquires the goods or services in this manner.

(1) If the acquisition is not available utilizing one of the methods stated in this Section, OKDHS acquires the goods or services by an open market solicitation.

(2) The CPO solicits quotes from at least three suppliers, if available, from the registered supplier list in the appropriate commodity classification that is maintained by the Department of Central Services (DCS) Central Purchasing Division. Additional potential suppliers may also be solicited.

(3) The CPO secures written price quotations and delivery dates from suppliers.

(4) If OKDHS and the supplier execute a contract for the acquisition, the supplier submits DCS Form 004, Certification for Competitive Bid and/or Contract (Non-Collusion Certification), pursuant to Section 85.22 of Title 74 of the Oklahoma Statutes.

(5) OKDHS pays the supplier within 45 days following receipt, inspection, and acceptance of the acquisition.

(6) OKDHS retains documents and records of each acquisition for three years following acquisition date.

(7) All records and documentation are made available to the State Auditor and Inspector or the DCS State Purchasing Director upon request. All contracting and purchasing records required to be open under the Open Records Act are available.

(b) OKDHS may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.

(c) OKDHS may issue change orders to increase a purchase order for an acquisition not to exceed ten percent of the original purchase order total price unless the solicitation is based on a per unit price. In that case, increases may be made in excess of ten percent.

**340:2-13-98. Acquisitions in excess of $10,000 and not exceeding $25,000**

(a) If the acquisition is for an amount exceeding $10,000, but is not more than $25,000, the certified procurement officer (CPO) determines if the goods or services are available from a mandatory statewide contract, State Use supplier, another governmental agency, or non-mandatory statewide contracts. If the goods or services are available through one of these methods, the Oklahoma Department of Human Services (OKDHS) acquires the goods or services in this manner.

(1) If the acquisition is not available utilizing one of the methods stated in this Section, OKDHS acquires the goods or services by an open market solicitation.

(2) The CPO solicits quotes from at least ten suppliers, if available, from the registered supplier list in the appropriate commodity classification that is maintained by the Department of Central Services (DCS) Central Purchasing Division. Solicited suppliers are rotated. Additional potential suppliers may also be solicited.

(3) The CPO secures written price quotations and delivery dates from suppliers.

(4) If OKDHS and the supplier execute a contract for the acquisition, the supplier submits DCS Form 004, Certification for Competitive Bid and/or Contract (Non-Collusion Certification), pursuant to Section 85.22 of Title 74 of the Oklahoma Statutes.

(5) OKDHS pays the supplier within 45 days following receipt, inspection, and acceptance of the acquisition.

(6) OKDHS retains documents and records of each acquisition for three years following acquisition date.

(7) All records and documentation are made available to the State Auditor and Inspector or the DCS State Purchasing Director upon request. All contracting and purchasing records required to be open under the Open Records Act are available.

(b) OKDHS may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.

(c) OKDHS may issue change orders to increase a purchase order for an acquisition not to exceed ten percent of the original purchase order total price unless the solicitation is based on a per unit price. In that case, increases may be made in excess of ten percent.

**340:2-13-99. Acquisitions in excess of $25,000 and not exceeding $50,000**

(a) If the acquisition is for an amount exceeding $25,000, but is not more than $50,000, the certified procurement officer (CPO) determines if the goods or services are available from a mandatory statewide contract, State Use supplier, another governmental agency, or non-mandatory statewide contracts. If the goods or services are available through one of these methods, the Oklahoma Department of Human Services (OKDHS) acquires the goods or services in this manner.

(1) If the acquisition is not available utilizing one of the methods stated in this Section, OKDHS acquires the goods or services by an open market solicitation.

(2) The CPO solicits quotes from all currently registered suppliers from the registered supplier list in the appropriate commodity classification that is maintained by the Department of Central Services (DCS) Central Purchasing Division. Additional potential suppliers may also be solicited.

(3) The CPO secures written price quotations and delivery dates from suppliers.

(4) If OKDHS and the supplier execute a contract for the acquisition, the supplier submits DCS Form 004, Certification for Competitive Bid and/or Contract (Non-Collusion Certification), pursuant to Section 85.22 of Title 74 of the Oklahoma Statutes.

(5) OKDHS pays the supplier within 45 days following receipt, inspection, and acceptance of the acquisition.

(6) OKDHS retains documents and records of each acquisition for three years following acquisition date.

(7) All records and documentation are made available to the State Auditor and Inspector or the DCS State Purchasing Director upon request. All contracting and purchasing records required to be open under the Open Records Act are available.

(b) OKDHS may not make split purchases for the purpose of evading the dollar threshold for competitive solicitations.

(c) OKDHS may issue change orders to increase a purchase order for an acquisition not to exceed ten percent of the original purchase order total price unless the solicitation is based on a per unit price. In that case, increases may be made in excess of ten percent.

**340:2-13-100. Acquisitions in excess of $50,000**

Products and services with an estimated cost of over $50,000 are sent to Department of Central Services (DCS) Central Purchasing to bid the requisition, award the purchase order and process change orders after contract award.

**340:2-13-101. Emergency purchases not exceeding $100,000**

Any emergency acquisition or contract is approved by the Oklahoma Department of Human Services (OKDHS) Director.

**340:2-13-102. Contract monitoring and evaluation**

Service contracts are monitored by the project monitor as named on the Work Plan submitted with the requisition. The project monitor ensures that services are obtained in accordance with the contract requirements.

**340:2-13-103. Purchase card**

(a) All purchase card acquisitions must comply with the provisions of the State of Oklahoma Purchase Card Procedures as issued by the Department of Central Services Central Purchasing Division.

(b) The Oklahoma Department of Human Services (OKDHS) retains records for each acquisition and contract in accordance with State of Oklahoma Purchase Card Procedures.

**340:2-13-104. Trade-in of equipment**

The Oklahoma Department of Human Services (OKDHS) may use agency items of equipment as trade-in when making a like acquisition with prior written approval of the Department of Central Services (DCS) State Purchasing Director. Fair market value is determined and that amount may be used to offset cost of the new item. The DCS Director of Central Purchasing may assist on determination of fair market value of an item.

## APPENDIX K. PROFESSIONAL SERVICE CONTRACT AFFIDAVIT FORM [REVOKED]

State of Oklahoma
Department of Human Services
PROFESSIONAL SERVICE CONTRACT

A F F I D A V I T

PA#

I,_____, FEI/SS# _____

have not previously entered into a contract with the agency or any other state agency which would result in a substantial duplication of the final product required by the proposed contract.

SIGNED:_____

STATE OF _____ SS.
COUNTY OF _____

Before me, the undersigned, a Notary Public, in and for said County and State, on this ____ day of _____, 19___, personally appeared _____ to me known to be the identical person who subscribed the name of the maker thereof to the within and foregoing instrument as its _____ _____ and acknowledged to me that _he executed the same as h__ free and voluntary act and deed and as the free and voluntary act and deed of such agency, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

_____
Notary Public

My Commission expires:_____

Oklahoma DHS Issued 6-1-87 Adm-89

PROFESSIONAL SERVICE CONTRACT AFFIDAVIT FORM Adm-89

Purpose of Form

Any person prior to entering into a professional services contract with a state agency for which the final product is a written proposal or study shall sign a sworn statement certifying, to the best of his/her knowledge, that he/she has not previously entered into a contract with the Department of Human Services or any other state agency which would result in a substantial duplication of the final product required by the proposed contract.

Instructions for Preparation of Form

The form is prepared in ink or typewritten. This form is prepared by requesting unit.

PA#: Enter the purchase authorization number. Number is obtained from the budget system and is used on all documents pertaining to agreement.

I, _____: Enter the name of the person providing services.

FEI/SS# _____: Enter vendors federal employer identification or social security number.

SIGNED: For vendors signature.

Notary Public: To be filled out by notary at time the vendor signs.

Okla. DHS Issued 6-1-87 1

*[OAR Docket #10-873; filed 5-19-10]*

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

*[OAR Docket #10-871]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Conditions of Eligibility - Income
Part 3. Income
340:10-3-40 [AMENDED]
Subchapter 10. Conditions of Eligibility - Deprivation
340:10-10-5 [AMENDED]
340:10-10-7 [AMENDED]
Subchapter 15. Conditions of Eligibility - Citizenship and Alienage
340:10-15-1 [AMENDED]
**(Reference APA WF 09-12 and WF 10-03)**
**AUTHORITY:**
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 7301 of Public Law 109-171, Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)]; Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006; Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008; and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act of 2009, and Sec 8120 of PL 111-118.
**DATES:**
**Comment period:**
February 16, 2010 through March 18, 2010
**Public hearing:**
None requested
**Adoption:**
March 23, 2010
**Submitted to Governor:**
March 23, 2010
**Submitted to House:**
March 23, 2010
**Submitted to Senate:**
March 23, 2010
**Gubernatorial approval:**
April 28, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2010.
**Final adoption:**
May 19, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 15. Conditions of Eligibility - Citizenship and Alienage
340:10-15-1 [AMENDED]
**(Reference APA WF 09-12)**
**Gubernatorial approval:**
August 18, 2009
**Register publication:**
27 Ok Reg 17
**Docket number:**
09-1239
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
Chapter 10 Subchapters 3, 10 and 15 permanent rule amendments: (1) clarify what educational assistance is disregarded as income; (2) clarify how child support received in excess of monthly current ordered support is considered; (3) update eligibility for Iraqis and Afghans admitted as special immigrants for Temporary Assistance for Needy Families (TANF) benefit; (4) remove outdated language; and (5) update language to current terminology.
**CONTACT PERSON:**
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

### PART 3. INCOME

**340:10-3-40. Income disregards**

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

(1) the food benefit allotment under the Food and Nutrition Act of 2008;

(2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) ~~education~~ educational assistance including grants, ~~including~~ work study, ~~and~~ scholarships, ~~that are~~ fellowships, educational loans on which payment is deferred, veterans education benefits, and the like if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. When the educational assistance is serving the same purpose as TANF cash assistance such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide.

(C) If the loan agreement is not written, Form 08AD103E, Loan Verification, must be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan.

(D) When copies of written agreements or Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary

of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.

(A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.

(B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.

(C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowance(s) for school expenses made available upon petition in writing from trust funds of the student;

(7) income from trusts of a child(ren) included in a TANF benefit if it is determined by the worker that funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) income from accounts, stocks, and bonds held under the control of a third party if the funds are designated for educational purposes for a child(ren) in a TANF benefit even if the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000. Each state and various organizations receive some Title V funds. These organizations include:

(A) Experience Works;

(B) National Council on Aging;

(C) National Council of Senior Citizens;

(D) American Association of Retired Persons (AARP);

(E) United States (US) Forest Service;

(F) National Association for Spanish Speaking Elderly;

(G) National Urban League;

(H) National Council on Black Aging; and

(I) National Council on Indian Aging.

(10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Investment Act (WIA) including Job Corps income and WIA earned income received as wages;

(11) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), unless the gross amount of AmeriCorps*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(14) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;

(15) any income of an adult or child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. His or her individual income is considered by the Social Security Administration in determining eligibility for SSI. This includes any payment made by the Developmental Disabilities Services Division through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;

(16) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;

(17) earnings of a child(ren) in a TANF benefit who is a full-time student;

(18) government rental or housing subsidies by governmental agencies, for example, Housing and Urban Development (HUD) which are received in-kind or in cash for rent, mortgage payments, or utilities;

(19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies, which could include uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals or supplies;

(20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(21) advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(22) refunds of state EITC as a result of filing a state income tax return;

(23) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(24) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(25) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
(26) interests of individual Indians in trust or restricted lands;
(27) income up to $2,000 per calendar year received by individual Indians, which is derived from leases or other uses of individually owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as unearned income;
(28) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
(29) payments made to persons because of their status as victims of Nazi persecution;
(30) interest accrued from the deposits made by an person into an Individual Development Account (IDA) up to $2,000;
(31) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;
(32) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;
(33) reimbursements made to a foster care parent(s) or a potential foster care parent(s); and
(34) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans.

## SUBCHAPTER 10. CONDITIONS OF ELIGIBILITY - DEPRIVATION

### 340:10-10-5. Requirement for assignment of support rights and cooperation

(a) As a condition of eligibility, when the reason for deprivation is absence, each applicant or recipient of Temporary Assistance for Needy Families (TANF) must assign to the Oklahoma Department of Human Services (OKDHS) any support rights, ~~accrued,~~ including cash medical, that is pending~~, and~~ or continuing ~~of~~ for any ~~other~~ family member included in the assistance unit. This assignment **excludes** amounts ordered for past due or judgment amounts for persons who have never received TANF prior to this application. For persons who have previously received TANF, the assignment **includes** past due or judgment amounts previously assigned to OKDHS for the period of time the applicant received TANF. Failure to assign support rights makes the assistance unit ineligible for TANF. ~~This also includes Title IV-E benefits. Support rights may also be assigned for Medical Assistance (MA) and State Supplemental Payment (SSP) for the blind and disabled when the recipient is a minor with a parent absent from the home, as well as MA custody cases when OKDHS has temporary custody.~~
(b) As a condition of eligibility for TANF, each applicant or recipient must cooperate with OKDHS in obtaining support for each child of the individual. Failure of the applicant or recipient to cooperate without good cause may be indicated either during the intake interview or at any time further action by the recipient is necessary.
(c) If the applicant or recipient refuses to cooperate with OKDHS without good cause, the cash assistance must be reduced by 25% of the TANF payment standard the next effective date.
(d) The ~~Child Support Enforcement Division (CSED)~~ Oklahoma Child Support Services (OCSS) district office makes the determination that an individual is not cooperating in establishing paternity or in establishing, modifying, or enforcing a support order as required by Section 454(29) of the Social Security Act. Non-cooperation is indicated by:
(1) failure to appear at a ~~CSED~~ OCSS district office to provide information or evidence relevant to the case;
(2) refusal to complete and sign documents necessary to take legal action against the absent parent(s) when requested to do so by the ~~CSED~~ OCSS district office;
(3) failure to comply with an order for genetic testing for the individual and the appropriate child to determine paternity;
(4) failure to appear as a witness at an administrative or district court hearing or other proceeding when cooperation is essential for the next step in providing child support services;
(5) failure to provide information, or attest to lack of information, under penalty of perjury;
(6) failure to forward to ~~CSED~~ OCSS all child support payments received from the absent parent(s) after receiving the initial TANF benefit;
(7) refusal to make a repayment agreement or to comply with a repayment plan when child support payments are retained; and
(8) failure to notify ~~CSED~~ OCSS of the pursuit of private legal action affecting the status or amount of a support obligation.
(e) When ~~CSED~~ OCSS determines the individual is cooperating, the worker is notified and the 25% penalty is removed the next effective date.

### 340:10-10-7. Oklahoma Department of Human Services (OKDHS) responsibilities in relation to support payments

(a) **Referral to ~~the Child Support Enforcement Division (CSED)~~ Oklahoma Child Support Services (OCSS).** Federal regulations require referral to ~~CSED~~ OCSS no later than two working days after the Temporary Assistance for Needy Families (TANF) benefit is issued based on deprivation due to absence. The appropriate completed ~~CSED~~ OCSS forms supplement the computer-generated referral and are submitted, with the exception of good cause, to ~~CSED~~ OCSS. Information which may have an effect on support enforcement

may become known after the ~~CSED~~ OCSS district office referral has been made.

(b) **Receipt of child support or spousal support.** For purposes of this Subchapter, child support is defined as voluntary monetary contributions or court-ordered obligations. When a child support order also contains an order for spousal support which may be referred to as alimony or support alimony in Oklahoma, the obligation for spousal support must also be assigned to the Oklahoma Department of Human Services (OKDHS). At the application interview, the applicant is informed of the responsibility to forward to the Oklahoma Centralized Support Registry (OCSR) any support payments received from the absent parent(s) after TANF certification.

(1) **Payments received during application period.** ~~All child~~ Child support payments for current monthly court-ordered support reported by an applicant during the time prior to certification are considered as income. Voluntary child support payments are considered as income. For purposes of rules in this Chapter, certification is considered the date of the supervisor's signature authorizing payment. Support anticipated to be received after certification is not considered as the client has agreed by signing the application to submit any future payments to OCSR.

(2) **Payments received after certification.** Any support payments brought to the human services center (HSC) by the client after certification must be forwarded to OCSR. Payments are not sent in the form of cash. When OCSS receives child support in excess of the monthly court ordered amount, the excess payment may be sent to the client. The client receives this excess amount and it is considered as unearned income.

(3) **Retained support payments.** If the worker becomes aware that the client has retained assigned support payments, the ~~CSED~~ OCSS district office is contacted with this information.

(A) The client is considered as not cooperating if:

(i) assigned support paid directly to the client is retained;

(ii) he or she refuses to repay a retained support overpayment in full or sign a repayment plan;

(iii) he or she fails to make payments according to the repayment agreement; or

(iv) he or she retains assigned direct support payment even if any overpayment has been repaid in full or a repayment plan is being followed.

(B) The ~~CSED~~ OCSS district office determines whether non-cooperation has occurred and notifies the worker. When non-cooperation is determined, the TANF cash assistance is reduced by 25% of the TANF payment standard and the support is considered as income the next effective date.

(C) When notified by ~~CSED~~ OCSS that the client has resumed cooperation, the worker removes the 25% penalty and no longer considers the support as income. The cash assistance is increased the next effective date.

(4) **Child support and other income exceeds cash assistance.** When a support payment is received that is greater than or equal to that month's TANF cash assistance, the TANF cash assistance must be closed the next effective date. If the TANF cash assistance is not closed timely, any child support payment received during that month or subsequent months is retained by ~~CSED~~ OCSS for reimbursement of TANF payments made for those months or any preceding months. When child support, spousal support, or both, causes ineligibility, the family is entitled to continued medical benefits in accordance with OAC 340:10-3-75. Following reimbursement of all TANF cash assistance, any excess payment remaining is forwarded to the client.

(5) **Federal and/or state tax intercept payments.** Federal and/or state tax intercept is used for the collection of current and past due child support payments, including interest owed.

(A) Tax intercept payments collected by ~~CSED~~ OCSS prior to the client's current receipt of TANF and held for six months may be distributed to the client and is considered as a resource the month following the month of receipt.

(B) Tax intercept payments collected for interest owed on past due child support may be forwarded to the client when the principle amount of past due child support has been paid off.

~~(c) **Arrearage in child support payments.** CSED determines the amount of child support owed by the absent parent, which includes any arrearages. Arrearages are amounts that are past due for previous months. When a child support payment received by OKDHS during any given month includes arrearages, paragraphs (1) through (2) of this subsection apply.~~

~~(1) Any portion of the arrearages for months during which the family was receiving TANF is considered as reimbursement to OKDHS for the TANF received by the family.~~

~~(2) The only payment from such arrearages made to the family is that portion, if any, which exceeds the total TANF payments.~~

(~~d~~c) **Child support services after TANF closure.** At the time the TANF benefit is closed, the client is advised that he or she can receive non-TANF Child Support Services with no further application, no fee required, nor charge for collection deducted. This service occurs automatically unless the client specifically requests in writing that ~~CSED~~ OCSS not provide the service or the client becomes ineligible for non-TANF Child Support Services for some other reason.

## SUBCHAPTER 15. CONDITIONS OF ELIGIBILITY - CITIZENSHIP AND ALIENAGE

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

(a) A person eligible to be included in a Temporary Assistance for Needy Families (TANF) benefit, must be either:

(1) a citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa and Northern Mariana Islands. A person may be a citizen of the U.S. by being born in the U.S. or by being born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS) a bureau of the U.S. Department of Homeland Security; or

(2) a qualified alien described as:

(A) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(B) an alien who is paroled into the U.S. under Section 212(d)(5) of INA for a period of at least one year;

(C) an alien who is granted conditional entry pursuant to Section 203(a)(7) of INA as in effect prior to April 1, 1980;

(D) an alien who is granted asylum under Section 208 of INA;

(E) a refugee who is admitted to the U.S. under Section 207 of INA;

(F) an alien whose deportation is withheld under Section 241(b)(3) of INA;

(G) an alien who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(H) battered aliens and their children or parents as defined in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended; [8 U.S.C. 1641(c)]

(I) an alien and his or her eligible relatives who are victims of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000 which was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003;

(J) an Iraqi admitted ~~under~~ in special immigrant status ~~pursuant to Section 525 of Division G of Public Law (P.L.) 110-161 of the Consolidated Appropriations Act of 2008,~~ as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)], and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181, ~~of~~ the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008, and Section 8120 of P.L. 111-118. ~~An Iraqi~~ The person must be treated as a refugee ~~for a time limited period and may be eligible for benefits for up to eight months from the date he or she is granted special immigrant status if the person meets all other program requirements. After the time limited eligibility period ends, the Iraqi is ineligible for a TANF benefit for a five year period beginning on the date of the alien's entry into the U.S. with a qualified alien status~~; or

(K) an Afghan admitted ~~under~~ in special immigrant status ~~pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act of 2008 and~~ as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)] and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009, and Section 8120 of P.L. 111-118. The person must be treated as a refugee ~~for a time limited period and may be eligible for benefits for up to six months from the date he or she is granted special immigrant status if the person meets all other program requirements. After the time limited eligibility period ends, the Afghan is ineligible for a TANF benefit for a five year period beginning on the date of the alien's entry into the U.S. with a qualified alien status~~.

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

(1) admitted to the U.S. as a refugee;

(2) granted asylum;

(3) one whose deportation is being withheld;

(4) a Cuban or Haitian entrant;

(5) admitted to the U.S. as an Amerasian immigrant;

(6) lawfully residing in the state and is a veteran of the U.S. armed forces, on active duty, or is that person's spouse or unmarried dependent child; or

(7) is a victim of a severe form of trafficking.

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

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

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

(f) All persons born in the U.S. are, with rare exceptions, U.S. citizens. Documents of citizenship or national status of persons from certain U.S. territories or possessions listed in (a)(1) of this Section may not be in their possession nor

available. Their status can usually be determined by birth certificate, passport, or other official document.

*[OAR Docket #10-871; filed 5-19-10]*

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

*[OAR Docket #10-879]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-9 [AMENDED]
340:75-1-12 [AMENDED]
340:75-1-12.2 [AMENDED]
340:75-1-12.6 [AMENDED]
340:75-1-14 [AMENDED]
340:75-1-16 through 340:75-1-18.1 [AMENDED]
340:75-1-18.2 [REVOKED]
340:75-1-18.3 through 340:75-1-18.4 [AMENDED]
340:75-1-20 through 340:75-1-21
340:75-1-23 [AMENDED]
340:75-1-23.1 [NEW]
340:75-1-29 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-44 through 340:75-1-46 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-151 through 340:75-1-152 [AMENDED]
340:75-1-152.3 through 340:75-1-152.8 [AMENDED]
340:75-1-154 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-1 through 340:75-3-2 [AMENDED]
340:75-3-4 through 340:75-3-7.1 [AMENDED]
340:75-3-7.2 [REVOKED]
340:75-3-7.3 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [NEW]
340:75-3-8 through 340:75-3-8.4 [AMENDED]
340:75-3.8.5 through 340:75-3-8.6 [REVOKED]
340:75-3-9.1 [AMENDED]
340:75-3-10.1 through 340:75-3-10.3 [AMENDED]
340:75-3-11 through 340:75-3-13 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-9 [AMENDED]
340:75-4-12.1 [AMENDED]
340:75-4-12.2 [REVOKED]
340:75-4-13 through 340:75-4-14 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-1 [AMENDED]
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31.5 [AMENDED]
340:75-6-40 through 340:75-6-40.6 [AMENDED]
340:75-6-40.7 [REVOKED]
340:75-6-44 through 340:75-6-46 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48 through 340:75-6-48.3 [AMENDED]
340:75-6-49 through 340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 [AMENDED]
340:75-6-85.1 [REVOKED]
340:75-6-85.2 through 340:75-6-85.6 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
340:75-6-114 through 75-6-115.1 [REVOKED]
340:75-6-115.3 through 340:75-6-115.10 [REVOKED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-14 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-37.1 [AMENDED]
340:75-7-41 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-52 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-9 through 340:75-8-10 [AMENDED]
340:75-8-13 through 340:75-8-14 [AMENDED]
Part 3. DDSD Services for Children in Custody
340:75-8-40 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233 through 340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250 [AMENDED]
340:75-11-265 [AMENDED]
Part 23. Specialized Community Homes
340:75-11-287 [AMENDED]
Part 25. Non-funded and Funded Contracted Level B Placements
340:75-11-301 [AMENDED]
Part 29. Non-funded and Funded Level C Placements
340:75-11-330 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-6 [AMENDED]
340:75-15-8 [REVOKED]
Part 6. Adoption Process
340:75-15-41 [REVOKED]
340:75-15-41.1 [NEW]
340:75-15-43 [REVOKED]
Part 8. Adoptive Placement Process
340:75-15-59 [REVOKED]
340:75-15-61 through 340:75-15-62 [REVOKED]
Part 10. Integrated Family Assessment and Preparation Process
340:75-15-85 [REVOKED]
340:75-15-92 [REVOKED]
Part 12. Post Placement Services
340:75-15-103 [AMENDED]
340:75-15-106 through 340:75-15-108 [REVOKED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.1 [AMENDED]
340:75-15-128.2 [AMENDED]
340:75-15-128.5 [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment

340:75-16-28 through 340:75-16-30 [AMENDED]
340:75-16-34 [REVOKED]
340:75-16-37 through 340:75-16-38 [AMENDED]
**(Reference APA WF 09-06, 09-08, 09-10, 09-19)**

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, and 4 of the Oklahoma Constitution; the Oklahoma Children's Code of Title 10A of the Oklahoma Statutes including but not limited to, Sections 1-1-102, 1-1-105, 1-2-101, 1-2-102, 1-2-105, 1-2-106, 1-2-107, 1-2-108, 1-3-102, 1-4-102, 1-4-107, 1-4-201, 1-4-203, 1-4-204, 1-4-205, 1-4-306, 1-4-503, 1-4-601, 1-4-704, 1-4-705, 1-4-706, 1-4-707, 1-4-709, 1-4-710, 1-4-711, 1-4-801, 1-4-802, 1-4-803, 1-4-804, 1-1-805, 1-4-806, 1-4-807, 1-4-808, 1-4-809, 1-4-810, 1-4-811, 1-4-812, 1-4-813, 1-4-901, 1-4-904, 1-4-909, 1-6-101, 1-6-102, 1-6-103, 1-6-107, 1-6-108, 1-7-103, 1-7-104, 1-7-105, 1-7-106, 1-7-107, 1-7-109, 1-7-110, 1-7-111, 1-7-113, 1-7-115, 1-9-102, 1-9-103, 1-9-104, 1-9-107, 1-9-110, 1-9-114, 1-9-119 (HB 2028, HB 1734, and SB 339); Section 230.65 of Title 56 of the Oklahoma Statutes; the Fostering Connections to Success and Increasing Adoptions Act of 2008 at House Resolution (H.R.) 6893, Public Law (PL)110-351; H.R. 5403, PL 109-239; the Deficit Reduction Act of 2005; Parts 261.2, 261.60, 261.61 and 262.2 of Title 45 of the Code of Federal Regulations (CFR); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193; the Balanced Budget Act of 1997, PL 105-33; and Parts 98 and 99 of Title 45 of the CFR.

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July 1, 2010

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-12.2 [AMENDED]
Subchapter 6. Permanency Planning
Part 8. Role of the Child Welfare Worker
340:75-6-48 [AMENDED]
Subchapter 15. Adoptions
Part 14. Post Adoption Services
340:75-15-128.2 [AMENDED]
340:75-15-128.5 [AMENDED]
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Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-31.4 [AMENDED]
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Subchapter 15. Adoptions
Part 14. Post-Adoption Services
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Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
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340:75-1-12 [AMENDED]
340:75-1-12.2 [AMENDED]
340:75-1-12.6 [AMENDED]
340:75-1-14 [AMENDED]
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340:75-1-18.3 through 340:75-1-18.4 [AMENDED]
340:75-1-20 through 340:75-1-23 [AMENDED]
340:75-1-23.1 [NEW]
340:75-1-29 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-44 through 340:75-1-46 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-151 through 340:75-1-152 [AMENDED]
340:75-1-152.3 through 340:75-1-152.8 [AMENDED]
340:75-1-154 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-1 through 340:75-3-2 [AMENDED]
340:75-3-4 through 340:75-3-7.1 [AMENDED]
340:75-3-7.2 [REVOKED]
340:75-3-7.3 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [NEW]
340:75-3-8 through 340:75-3-8.4 [AMENDED]
340:75-3.8.5 through 340:75-3-8.6 [REVOKED]
340:75-3-9.1 [AMENDED]
340:75-3-10.1 through 340:75-3-10.3 [AMENDED]
340:75-3-11 through 340:75-3-13 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-9 [AMENDED]
340:75-4-12.1 [AMENDED]
340:75-4-12.2 [REVOKED]
340:75-4-13 through 340:75-4-14 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-1 [AMENDED]
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31.5 [AMENDED]
340:75-6-40 through 340:75-6-40.6 [AMENDED]
340:75-6-40.7 [REVOKED]
340:75-6-44 through 340:75-6-46 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48 through 340:75-6-48.3 [AMENDED]
340:75-6-49 through 340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 through 340:75-6-85.6 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
340:75-6-114 through 75-6-115.1 [REVOKED]
340:75-6-115.3 through 340:75-6-115.10 [REVOKED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]

Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-14 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-37.1 [AMENDED]
340:75-7-41 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-52 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-9 through 340:75-8-10 [AMENDED]
340:75-8-13 through 340:75-8-14 [AMENDED]
Part 3. DDSD Services for Children in Custody
340:75-8-40 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233 through 340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250 [AMENDED]
340:75-11-265 [AMENDED]
Part 23. Specialized Community Homes
340:75-11-287 [AMENDED]
Part 25. Non-funded and Funded Contracted Level B Placements
340:75-11-301 [AMENDED]
Part 29. Non-funded and Funded Level C Placements
340:75-11-330 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-6 [AMENDED]
340:75-15-8 [REVOKED]
Part 6. Adoption Process
340:75-15-41 [REVOKED]
340:75-15-41.1 [NEW]
340:75-15-43 [REVOKED]
Part 8. Adoptive Placement Process
340:75-15-59 [REVOKED]
340:75-15-61 through 340:75-15-62 [REVOKED]
Part 10. Integrated Family Assessment and Preparation Process
340:75-15-85 [REVOKED]
340:75-15-92 [REVOKED]
Part 12. Post Placement Services
340:75-15-103 [AMENDED]
340:75-15-106 through 340:75-15-108 [REVOKED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-28 through 340:75-16-30 [AMENDED]
340:75-16-34 [REVOKED]
340:75-16-37 through 340:75-16-38 [AMENDED]
**(Reference APA WF 09-19)**

**Gubernatorial approval:**
March 26, 2010

**Register publication:**
27 Ok Reg 1092

**Docket number:**
10-647

**INCORPORATIONS BY REFERENCE:**
n/a

**ANALYSIS:**

The proposed revisions to Subchapters 1, 3, 4, 6, 7, 8, 11, 13, 15, and 16 of Chapter 75 amend the rules to bring them into conformity with federal and state statutory requirements, and the Oklahoma Department of Human Services (OKDHS) enhanced Practice Model for Child Welfare Services initiative. Several pieces of significant legislation were enacted during the First Session of the 52nd Legislature in 2009, including: (1) House Bill 2028 (HB 2028) that updated, reformed, and recodified the laws relating to deprived children known as the Oklahoma Children's Code; (2) HB 1734 that significantly affected the operations of OKDHS Child Welfare Services; and (3) the incorporation of requirements from the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. Other revisions broaden eligibility for the Supported Permanency Program and amend the rules to allow OKDHS to pay child care services under certain circumstances as a part of adoption assistance.

**CONTACT PERSON:**

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**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

**SUMMARY:**

340:75-1-9 is amended to condense and restructure the section by moving information to Instructions to Staff (ITS).

340:75-1-12 is amended to clarify the system for the resolution of grievances.

340:75-1-12.2 is amended to correspond with updated statutory terminology.

340:75-1-12.6 is amended to update: (1) to whom a fair hearing may be granted; and (2) terminology and form numbers.

340:75-1-14 is amended to update terminology and delete instructive information for agency staff.

340:75-1-16 is amended to: (1) include prepetition emergency custody order determinations; (2) delete requirements not mandated to OKDHS; (3) delete instructive information for agency staff for inclusion in ITS; (4) clarify mandate for release of a child when the adjudication hearing is not timely held; and (5) provide for teleconference hearings.

340:75-1-17 is amended to update statutory language regarding adjudicatory hearings and reasonable efforts not required to reunify family.

340:75-1-18 is amended to update dispositional hearing guidelines, dispositional options, court determinations, and placement preferences.

340:75-1-18.1 is amended to: (1) update statutory requirement for permanency planning meetings; and (2) delete information moved to ITS.

340:75-1-18.2 is revoked to delete statutorily revoked process for permanent care and custody transfer to another person.

340:75-1-18.3 is amended to delete statutorily revoked permanent care and custody transfer process and replace with new statutory authority for permanent guardianship process.

340:75-1-18.4 is amended to: (1) clarify the provisions of a reasonable efforts not required to prevent removal or reunite the child and family determination by the court; and (2) delete and reposition instructive information to ITS.

340:75-1-20 is amended to: (1) clarify court review requirements consistent with statutory amendments; and (2) delete from rule requirements not mandated to OKDHS.

340:75-1-21 is amended to: (1) update statutory information in relation to post-adjudication review board (PARB) reviews and OKDHS employees participation on the boards; and (2) delete requirements not mandated to the agency.

340:75-1-23 is amended to update cites to statutory procedures for termination of parental rights.

340:75-1-23.1 is added to outline statutory authority for reinstatement of parental rights.

340:75-1-29 is amended to clarify potential assignment of cases.

340:75-1-42 is amended to update statutory cites and disclosure of information requirements.

340:75-1-44 is amended to update statutory cites and authority for disclosure of client information and records without a court order.

340:75-1-45 is amended to: (1) update statutory cite and information regarding release of records pursuant to a court order; and (2) delete outdated procedures for release of information.

340:75-1-46 is amended to update information related to the uniform Consent for Release of Information form state agencies are mandated to use.

340:75-1-151 is amended to update the terminology used in the Oklahoma Children's Services (OCS) referral procedure.

340:75-1-151.1 is amended to update consultation requirement related to a contracting agency's right to decline cases.

340:75-1-151.2 is amended to include parent aide as a participant in the Comprehensive Home-Based Service (CHBS) intake staffing.

340:75-1-152 is amended to delete direction to staff for placement in ITS.

340:75-1-152.3 is amended to update terminology for consistency and form number.

340:75-1-152.4 is revoked as it is an obsolete process.

340:75-1-152.5 is amended to removed ITS from rule for placement in ITS.

340:75-1-152.6, 340:75-1-152.7, 340:75-1-152.8, and 340:75-1-154 are amended to: (1) update sentence structure; (2) update reasons for OCS case suspensions; (3) to update terminology; and (4) delete instructive information for placement in ITS.

340:75-3-1 is amended to update terminology and statutory cites.

340:75-3-2 is amended to: (1) include legislative intent in family intervention; (2) update statutory definitions; and (3) delete agency-defined vernacular for placement in ITS.

340:75-3-4 is amended to clarify the scope of Child Protective Services (CPS).

340:75-3-5 is amended to clarify roles of other entities in child abuse and neglect investigations.

340:75-3-6 is amended to clarify the role of the OKDHS Abuse and Neglect Hotline.

340:75-3-6.1 is amended to outline the types of exceptional reports of abuse and neglect considered for assessment or investigation.

340:75-3-7 is amended to update report screening requirements and terminology.

340:75-3-7.1 is amended to update priority guidelines and move instructive information to ITS.

340:75-3-7.2 is revoked as information is repositioned in other sections.

340:75-3-7.3 is amended to update statutory language regarding when an assessment or investigation is conducted.

340:75-3-7.4 is added to set out general protocols for CPS assessments and investigations.

340:75-3-7.5 is added to detail assessment protocol in relation to statutory requirements.

340:75-3-8 is amended to update terminology and statutory language in relation to investigation protocol.

340:75-3-8.1 is amended to: (1) update the investigation protocol for addressing reports of abuse or neglect in a foster or trial adoptive home; and (2) delete instructive information for repositioning in ITS.

340:75-3-8.2 is amended to delete instructive information regarding child care center or home investigations for repositioning in ITS.

340:75-3-8.3 is amended to update tagline.

340:75-3-8.4 is amended to update statutory cites and delete instructive information for repositioning in ITS.

340:75-3.8.5 and 340:75-3-8.6 are revoked as information is repositioned to other sections.

340:75-3-9.1 is amended to: (1) clarify that child deaths may be reviewed by OKDHS Critical Incidents Review Committee or by an OKDHS administrative investigation; and (2) delete information repositioned to ITS.

340:75-3-10.1 is amended to: (1) update safety determination and responses protocol; (2) add CW joint response with law enforcement protocol; (3) outline restoration of custody to parent, legal guardian, or custodian protocol when a child is in protective custody protocol; (4) update statutory authority for removal of children in diverse legal statuses; and (5) delete obsolete or instructive information from rule for repositioning in ITS.

340:75-3-10.2 is amended to update statutorily mandated findings in child abuse and neglect investigations.

340:75-3-10.3 is amended to update terminology.

340:75-3-11 is amended to update statutory cites and venue for filing child abuse and neglect legal actions.

340:75-3-12 is amended to: (1) update statutory cites and terminology for the Child Abuse and Neglect Information System also known as KIDS; and (2) delete information repositioned from rule to ITS.

340:75-3-13 is amended to: (1) outline statutory requirements for prevention and intervention-related services and associated determinations; (2) clarify disclosure of findings or conclusions to other professionals and the reporter of abuse and neglect; and (3) delete instructive information for staff for placement in ITS.

340:75-4-9 is amended to: (1) clarify the purpose of voluntary family-centered services; and (2) update terminology and statutory cites.

340:75-4-12.1 is amended to outline voluntary family-centered services and supports provided and delete instructive information for repositioning to ITS.

340:75-4-12.2 is revoked and information repositioned to another section of rule.

340:75-4-13 is amended to update Family-Centered Services requirements and processes.

340:75-4-14 is amended to: (1) move instructive information to ITS; and (2) update terminology for consistency with enhanced Practice Model.

340:75-6-1 is amended to update the purpose and philosophy of permanency planning.

340:75-6-4 is amended to revise statutory definitions and reposition agency definitions to ITS.

340:75-6-30 is amended to clarify visitation processes between children, parents, and siblings and move instructive information to ITS.

340:75-6-31 is amended to: (1) update statutory cites and terminology; and (2) clarify statutory authority for reunification with a parent and legal guardianship in relation to permanency planning for children.

340:75-6-31.1 is amended to delete obsolete requirements and include potential requirement by court for a permanency planning review prior to permanency hearings.

340:75-6-31.2 is amended to: (1) delete instructive information for repositioning in ITS; and (2) clarify when a Temporary Assistance for Needy Families (TANF) recipient may continue eligible for benefits when the child is in OKDHS custody.

340:75-6-31.3 is amended to update statutory language regarding trial reunification.

340:75-6-31.4 is amended to update supported permanency procedures and outline procedures for Title IV-E subsidized guardianships.

340:75-6-31.5 is amended to update agency division name and name of a legislative act related to establishment of paternity.

340:75-6-40 is amended to clarify the purpose of the case plan and delete instructive information for repositioning in ITS.

340:75-6-40.1 is amended to delete obsolete language regarding the placement plan and include requirements for the newly structure Child's Individualized Service Plan (ISP).

340:75-6-40.2 is amended to clarify the requirements of the placement provider information.

340:75-6-40.3 is amended to explain the purpose of the Family Functional Assessment and delete instructive information repositioned in ITS.

340:75-6-40.4 is amended to: (1) revamp the ISP process to concur with statutory requirements; (2) delete instructive information for repositioning in ITS; and (3) delete obsolete requirements.

340:75-6-40.5 is amended to: (1) delete instructive information for repositioning in ITS; and (2) set out requirements for court reviews, including process on how to handle social records.

340:75-6-40.6 is amended to: (1) clarify the purpose of case contacts; and (2) delete instructive information for repositioning in ITS.

340:75-6-40.7 is revoked as obsolete.

340:75-6-44 is amended to: (1) enhance process for case planning in heinous and shocking cases or cases in which reasonable efforts to reunify are not required; and (2) delete obsolete process.

340:75-6-45 is amended to update procedure for case planning for incarcerated parents to conform to statutory revisions.

340:75-6-46 is amended to: (1) delete instructive information for repositioning in ITS; and (2) update agency name and syntax.

340:75-6-48 is amended to delete instructive information for repositioning in ITS; and (2) detail statutory requirement for visitation with foster children.

340:75-6-48.1 is amended to explain the role of the child's attorney and related statutory authority.

340:75-6-48.2 is amended to correct syntax and update statutory cite related to child's court-appointed special advocate or guardian ad litem.

340:75-6-48.3 is amended to delete duplicative information found in ITS related to runaway or abducted children.

340:75-6-49 is amended to clarify statutory authority for selecting placement in accord with the child or parent's religious faith and delete instructive information repositioned in ITS.

340:75-6-50 is amended to: (1) include statutorily mandated assurance of school attendance for children eligible for Title IV-E foster care maintenance payments; and (2) delete instructive information repositioned in ITS.

340:75-6-85 is amended to: (1) include legislative intent for children placed outside the home; and (2) update placement considerations for children in OKDHS custody.

340:75-6-85.1 is revoked and information placed in other sections of rule or ITS.

340:75-6-85.2 is amended to update statutory requirements for placement preferences and diligence required to identify and notify relatives.

340:75-6-85.3 is amended to clarify statutory requirements for sibling placement.

340:75-6-85.4 is amended to clarify that in most cases, the adoptive home is the relative or kin family with whom the child is currently placed.

340:75-6-85.5 is amended to update statutory authority for protective supervision of cases.

340:75-6-85.6 is amended to: (1) delete instructive information repositioned in ITS; and (2) clarify syntax.

340:75-6-88 is amended to: (1) update statutory cite requiring OKDHS to provide medical care to children in OKDHS custody; and (2) delete instructive information for repositioning in ITS.

340:75-6-91 is amended to update terminology and delete instructive information repositioned in ITS.

340:75-6-110 is amended to combine information from other sections of rule into one section outlining the Independent Living program and related requirements.

340:75-6-114, 340:75-6-115, 340:75-6-115.1, 340:75-6-115.3, 340:75-6-115.4, 340:75-6-115.5, 340:75-6-115.6, 340:75-6-115.7, 340:75-6-115.8, 340:75-6-115.9, and 340:75-6-115.10 are revoked and repostioned in 340:75-6-110 or related ITS.

340:75-7-2 is amended to update statutory cites and definitions related to foster home care.

340:75-7-12 is amended to update foster home care applicant requirements.

340:75-7-14 is amended to update and clarify Bridge resource applicant's training requirements.

340:75-7-15 is amended to update and clarify background investigation and assessment requirements for Bridge resource applicants.

340:75-7-18 is amended to: (1) restructure information related to Bridge resource family assessments; (2) update terminology; and (3) delete instructive information repositioned in ITS.

340:75-7-24 is amended to update terminology.

340:75-7-37 is amended to add responsibilities to the child for Bridge resource parents.

340:75-7-37.1 is amended to: (1) update statutory language related to recruitment of Bridge resource homes; and (2) delete instructive information repositioned to ITS.

340:75-7-41 is amended to update statutory language related to placement considerations and requirements.

340:75-7-52 is amended to update terminology and specify when foster care maintenance payments may begin.

340:75-7-65 is amended to clarify procedures for informal arrangements for babysitting and update terminology.

340:75-7-94 is amended to describe when a resource home is closed and delete instructive information repositioned in ITS.

340:75-8-1 is amended to clarify purpose of therapeutic foster care (TFC) and update statutory cites.

340:75-8-6 is amended to update statutory cites and syntax.

340:75-8-7 is amended to correct syntax and update terminology.

340:75-8-9 is amended to correct age of children served by TFC.

340:75-8-10 is amended to update terminology to conform to statutory language.

340:75-8-13 and 340:75-8-14 are amended to delete instructive information repositioned in related ITS.

340:75-8-40 is amended to delete instructive information from rule repositioned in related ITS.

340:75-11-230 is amended to update statutory cites and definitions related to contracted community-based residential care (CBRC) providers.

340:75-11-233 is amended to: (1) update statutory cites; and (2) clarify when children younger than 10 years of age may be placed in CBRC.

340:75-11-233.1 is amended to delete instructive information repositioned in related ITS.

340:75-11-237 is amended to: (1) update statutory and policy cites; and (2) clarify use of physical force in CBRC.

340:75-11-239 is amended to correct agency name.

340:75-11-240 is amended to: (1) update statutory cites; and (2) clarify when consent is needed for certain types of medical care.

340:75-11-250 is amended to: (1) clarify time frame for contracted CBRC to complete the comprehensive assessment of the child; and (2) update form number.

340:75-11-265 is amended to update form number.

340:75-11-287 is amended to update statutory cite.

340:75-11-301 is amended to clarify that referrals to the non-funded Level B group homes are made by the contract liaison to the specific facility.

340:75-11-330 is amended to clarify how referrals are received for funded and non-funded contractors.

340:75-13-65 is amended to update statutory requirements for consent for medical care for children in OKDHS custody.

340:75-15-6 is amended to clarify the scope of the adoption program.

340:75-15-8 is revoked as duplicative information or because information was repositioned in another section of rule or ITS.

340:75-15-41 is revoked as duplicative information or information repositioned in another section of rule or ITS for clarity and conciseness.

340:75-15-41.1 is new to clarify statutory requirements for adoption placement considerations.

340:75-15-43 is revoked as duplicative information or information repositioned in another section of rule or ITS for clarity or alignment of subject matter.

340:75-15-59, 340:75-15-61, and 340:75-15-92 are revoked as information is repositioned to another section for clarity and alignment of subject matter.

340:75-15-62 and 340:75-15-85 are revoked as subject matter repositioned in another section.

340:75-15-103 is amended to: (1) clarify services provided to children in adoptive homes; and (2) include statutory language related to post-adoption contact agreements.

340:75-15-106, 340:75-15-107, and 340:75-15-108 are revoked as information is repositioned to another section for alignment of subject matter.

340:75-16-28 is amended to: (1) update statutory cite; and (2) delete instructive information repositioned in related ITS.

340:75-16-29 is amended to update definitions related to inpatient mental health treatment and reposition definition specific to OKDHS to related ITS.

340:75-16-30 is amended to: (1) delete contractor agency name; and (2) add statutory provision for telephonic or teleconference hearings.

340:75-16-34 is revoked as either duplicative or information repositioned in another section of related rule or ITS.

340:75-16-37 is amended to delete information repositioned in related ITS.

340:75-16-38 is amended to: (1) correct agency name; and (2) clarify that consent for extraordinary medical care is required.

*[OAR Docket #10-879; filed 5-19-10]*

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

*[OAR Docket #10-883]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4.1 [AMENDED]
340:110-1-6 [AMENDED]
340:110-1-8 through 340:110-1-8.1 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-9 [AMENDED]
340:110-1-9.2 through 340:110-1-9.3 [AMENDED]
340:110-1-10 [AMENDED]
340:110-1-10.1 [NEW]
340:110-1-13 through 340:110-1-15 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-43.1 [AMENDED]
340:110-1-45 through 340:110-1-47.1 [AMENDED]
340:110-1-51 through 340:110-1-52 [AMENDED]
340:110-1-54 through 340:110-1-55 [AMENDED]

Subchapter 3. Licensing Standards for Childcare Facilities
Part 1. Requirements for Child Care Centers
340:110-3-2 through 340:110-3-3 [AMENDED]
340:110-3-5 through 340:110-3-6
340:110-3-7.1 [AMENDED]
Part 2. Requirement for Part-day Children's Programs
340:110-3-36 through 340:110-3-37 [AMENDED]
340:110-3-39 through 340:110-3-42 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-85 [AMENDED]
340:110-3-88 [AMENDED]
340:110-3-89.1 [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-146 through 340:110-3-147 [AMENDED]
340:110-3-153 [AMENDED]
340:110-3-153.1 [AMENDED]
340:110-3-168 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-221 through 340:110-3-226 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 1. Requirements for Child-Placing Agencies
340:110-5-3 through 340:110-5-4 [AMENDED]
340:110-5-6 through 340:110-5-8 [AMENDED]
340:110-5-12 [AMENDED]
**(Reference WF 09-14 and WF 10-02)**

**AUTHORITY:**
Commission for Human Services; Article XXV, Sections 2, and 4 of the Oklahoma Constitution; Child Care Facility Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes including Sections 404.3 (Senate Bill 478); and 401, 402, 403, 404, 404.1, 405, 405.2, and 406 (House Bill 1742).

**DATES:**
**Comment period:**
February 16, 2010 through March 18, 2010
**Public hearing:**
None requested
**Adoption:**
March 23, 2010
**Submitted to Governor:**
March 23, 2010
**Submitted to House:**
March 23, 2010
**Submitted to Senate:**
March 23, 2010
**Gubernatorial approval:**
April 28, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 19, 2010.
**Final adoption:**
May 19, 2010
**Effective:**
July 1, 2010

**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4.1 [AMENDED]
340:110-1-6 [AMENDED]
340:110-1-8 through 340:110-1-8.1 [AMENDED]
340:110-1-9 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-43.1 [AMENDED]
340:110-1-45 through 340:110-1-47 [AMENDED]
340:110-1-51 [AMENDED]
Subchapter 3. Licensing Standards for Childcare Facilities
Part 1. Requirements for Child Care Centers
340:110-3-5 through 340:110-3-6 [AMENDED]
340:110-3-7.1 [AMENDED]
Part 2. Requirement for Part-day Children's Programs
340:110-3-39 through 340:110-3-42 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-85 [AMENDED]
340:110-3-88 [AMENDED]
340:110-3-89.1 [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-153 [AMENDED]
340:110-3-153.1 [AMENDED]
340:110-3-168 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-223 through 340:110-3-226 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 1. Requirements for Child-Placing Agencies
340:110-5-7 through 340:110-5-8 [AMENDED]
340:110-5-12 [AMENDED]
**(Reference APA WF 09-14)**

**Gubernatorial approval:**
August 18, 2009
**Register publication:**
27 Ok Reg 48
**Docket number:**
09-1253

**INCORPORATIONS BY REFERENCE:**
n/a

**ANALYSIS:**
The proposed revisions to Subchapters 1, 3, and 5 of Chapter 110 amend rules for child care facilities and child placing agencies relating to the establishment child care worker registry (Child Care Restricted Registry). Revisions to Oklahoma Child Care Facilities Licensing Act required the Commission for Human Services to promulgate rules effective July 1, 2010 to establish and maintain this registry that will be accessible to the public through an on-line database. Other revision to rules relate to: (1) criminal history investigations; and (2) parent notification regarding liability insurance. Revisions reflect changes in state statute during the 2009 legislative session.

**CONTACT PERSON:**
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

**SUMMARY:**
340:110-1-4.1 is amended to: (1) reflect addition of new division forms developed for the Child Care Restricted Registry; (2) delete some division forms; and (3) revise forms to meet parent notification requirements with regard to documentation of liability insurance and criminal history reviews. Other form development assists in the process of Emergency Order requests, Alternative Compliance referrals, and criminal history review results documentation.

340:110-1-6 is amended to clarify division practice regarding reopening of a family child care home and withdrawal of application and to reflect new procedures regarding criminal history reviews that are necessary prior to issuance of a license.

340:110-1-8 is amended to: (1) reflect a child care facility's compliance with specified requirements for liability insurance documentation and criminal history reviews as it relates to permit and license issuance; and (2) include the deletion of the provisional license.

340:110-1-8.1 is amended to reflect Child Care Restricted Registry search procedures and to reflect revisions to procedures for criminal history investigations as it relates to the issuance of permit or license, and facilities currently permitted or licensed.

340:110-1-8.3 is amended to reflect clarifications to division practice.

340:110-1-9 is amended to reflect clarifications to division practice regarding on-going monitoring, the change in name of facilities and health approval of additional food preparation spaces.

340:110-1-9.2 is amended to reflect addition of Child Care Restricted Registry procedures regarding complaint investigations and clarify division practice.

340:110-1-9.3 is amended to reflect addition of Child Care Restricted Registry procedures regarding non-compliant facilities and clarify division practice regarding alternative compliance requests.

340:110-1-10 is amended to reflect addition of Child Care Restricted Registry procedures regarding revocation or denial of licenses.

340:110-1-10.1 is issued to reflect policy regarding the Child Care Restricted Registry.

340:110-1-13 is amended to reflect revisions to unlicensed investigation timeframes.

340:110-1-14 is amended to reflect revisions to public inspections of licensing files.

340:110-1-15 is amended to reflect revisions to grievance response procedures. 340:110-1-43.1 is amended to: (1) reflect revision to some form names and addition of forms already being utilized; (2) delete some division forms; and (3) revise forms with regard to criminal history reviews. Other additional forms were developed for the Child Care Restricted Registry and to provide criminal history review results.

340:110-1-45 is amended to clarify division practice regarding the withdrawal of application and to reflect new procedures regarding criminal history reviews that are necessary prior to issuance of a license.

340:110-1-46 is amended to: (1) reflect a child care facility's compliance with specified requirements for liability insurance documentation and criminal history investigations as it relates to permit and license issuance; and (2) include the deletion of the provisional license.

340:110-1-47 is amended to reflect clarifications to division practice regarding on-going monitoring, the change in name of facilities, fire approval, health approval of additional food preparation spaces, and closure of inactive facilities.

340:110-1-47.1 is amended to reflect addition of Child Care Restricted Registry procedures regarding complaint investigations and clarify division practice regarding referrals to Office of Inspector General.

340:110-1-51 is amended to reflect Child Care Restricted Registry search procedures and to reflect revisions to procedures for criminal history reviews as it relates to the issuance of permit or license and facilities currently permitted or licensed.

340:110-1-52 is amended reflect addition of Child Care Restricted Registry procedures regarding revocation or denial of licenses and to clarify division practice of Emergency Orders.

340:110-1-54 is amended to reflect revisions to grievance response procedures.

340:110-1-54.1 is amended to reflect revisions to unlicensed investigation timeframes.

340:110-1-55 is amended to reflect revisions to public inspections of licensing files.

340:110-3-5 is amended to reflect revisions to terms used regarding child welfare investigative findings and to reflect revisions to notification regarding liability insurance which requires posting of insurance exception.

340:110-3-6 is amended to: (1) reflect requirements for Child Care Restricted Registry documentation; (2) reflect deletion of parent notification for insurance exception being maintained in children's records; and (3) include procedures regarding documentation of criminal history reviews.

340:110-3-7.1 is amended to reflect: (1) procedures regarding Child Care Restricted Registry and revisions to reporting procedures regarding suspected child abuse or neglect; and (2) revisions to procedures regarding criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-3-39 is amended to reflect revisions to: (1) terms used regarding child welfare investigative findings; and (2) notification regarding liability insurance which requires posting of insurance exception.

340:110-3-40 is amended to reflect procedures regarding documentation for liability insurance and posting of insurance exception notice.

340:110-3-41 is amended to: (1) reflect requirements for Child Care Restricted Registry documentation; (2) reflect deletion of parent notification for insurance exception being maintained in children's records; and (3) include procedures regarding documentation of criminal history reviews.

340:110-3-42 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; (2) revisions to reporting procedures regarding suspected child abuse or neglect; (3) revisions to procedures regarding criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-3-85 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; (2) revisions to reporting procedures regarding suspected child abuse or neglect; and (3) revisions to procedures regarding criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-3-88 is amended to: (1) reflect requirements for Child Care Restricted Registry documentation; (2) revisions to terms used regarding child welfare investigative findings; (3) reflect deletion of parent notification for insurance exception being maintained in children's records; and (4) include procedures regarding documentation of criminal history reviews.

340:110-3-89.1 is amended to reflect procedures regarding documentation for liability insurance and posting of insurance exception notice.

340:110-3-153 is amended to reflect procedures regarding documentation for liability insurance.

340:110-3-153.1 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; and (2) revisions to procedures regarding criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-3-168 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; and (2) exemption of submission of criminal history review requests to licensing if hospitals contract with Oklahoma Health Care Authority. Documentation of record searches are maintained at the facility and made available to licensing upon request.

340:110-3-223 is amended to reflect revisions to: (1) terms used regarding child welfare investigative findings; and (2) notification regarding liability insurance which requires posting of insurance exception.

340:110-3-224 is amended to reflect procedures regarding documentation for liability insurance and posting of insurance exception notice.

340:110-3-225 is amended to: (1) reflect requirements for Child Care Restricted Registry documentation; (2) reflect deletion of parent notification for insurance exception being maintained in children's records; and (3) include procedures regarding documentation of criminal history reviews.

340:110-3-226 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; (2) revisions to reporting procedures regarding suspected child abuse or neglect; and (3) revisions to procedures regarding criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-3-2, 340:110-3-36, 340:110-3-81, 340:110-3-221, and 340:110-5-3 are amended to reflect additions to definitions regarding the Child Care Restricted Registry.

340:110-3-3, 340:110-3-37, 340:110-3-82, 340:110-3-146, 340:110-3-147, 340:110-3-222, and 340:110-5-4 are amended to reflect prohibitions regarding the Child Care Restricted Registry.

340:110-5-6 is amended to reflect revisions to reporting procedures regarding suspected child abuse or neglect.

340:110-5-7 is amended to reflect procedures regarding documentation for liability insurance.

340:110-5-8 is amended to reflect: (1) procedures regarding Child Care Restricted Registry; and (2) revisions to procedures for criminal history investigations for facilities prior to issuance of permit and facilities currently permitted or licensed.

340:110-5-12 is amended to reflect: (1) requirements for Child Care Restricted Registry documentation; and (2) procedures regarding documentation for criminal history reviews.

*[OAR Docket #10-883; filed 5-19-10]*

## TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION
## CHAPTER 30. OKLAHOMA STATE BUREAU OF INVESTIGATION LABORATORY

*[OAR Docket #10-884]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

375:30-1-2 [AMENDED]

Subchapter 3. Collection and Submission of DNA Samples from the Oklahoma Department of Corrections

375:30-3-1 through 375:30-3-3 [AMENDED]

Subchapter 5. Collection and Submission of Forensic Evidence for DNA Profiling
375:30-5-2 through 375:30-5-4 [AMENDED]
Subchapter 7. Analysis of State DNA Offender Databank Samples
375:30-7-1 through 375:30-7-3 [AMENDED]
Subchapter 9. Removal of DNA Records from State DNA Database
375:30-9-2 [AMENDED]
Subchapter 11. General Rules for Submission of Evidence
375:30-11-1 through 375:30-11-5 [AMENDED]
375:30-11-7 [AMENDED]

**AUTHORITY:**
Oklahoma State Bureau of Investigation; 74 Oklahoma Statutes, Section 150.28 and 75 Oklahoma Statutes, Section 250 *et seq.*

**DATES:**
**Comment period:**
February 16, 2010 through March 19, 2010
**Public hearing:**
March 19, 2010
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March 19, 2010
**Submitted to the House:**
March 19, 2010
**Submitted to the Senate:**
March 19, 2010
**Gubernatorial Approval:**
April 14, 2010
**Legislative approval:**
Failure of the legislature to disapprove the rules resulted in approval on May 14, 2010
**Final adoption:**
May 14, 2010
**Effective:**
July 31, 2010

**SUPERSEDED EMERGENCY ACTIONS:**
N/A

**INCORPORATIONS BY REFERENCE:**
N/A

**ANALYSIS:**
The amended sections would amend the rules regarding collection and submission of DNA samples to the OSBI Laboratory. They also amend the rules for packaging, submission, and disposition of evidence submitted to the OSBI Laboratory for forensic testing. Rules will standardize DNA sample and other evidence collection and submission procedures thereby making OSBI forensic testing more economical and efficient.

**CONTACT PERSON:**
Jimmy Bunn Jr., Legal Counsel, OSBI, 6600 N. Harvey, Oklahoma City, OK., 73116, 405-879-2605

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 31, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 375:30-1-2. Definitions

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

~~**"CODIS"** means the Combined DNA Index System which is the national DNA identification index system which is maintained by the Federal Bureau of Investigation.~~

**"CODIS"** means the Combined DNA Index System and refers to the entire network of databases that house DNA profiles (offender, forensic, missing person, etc.). There are three levels of CODIS, including the Local DNA Index System (LDIS), the State DNA Index System (SDIS) and the National DNA Index System (NDIS). NDIS is the National DNA Index System which is maintained by the FBI and contains DNA profiles uploaded from participating state laboratories.CODIS means the Combined DNA Index System and refers to the entire network of databases that house DNA profiles (offender, forensic, missing person, etc.). There are 3 levels of CODIS, including the Local DNA Index System (LDIS), the State DNA Index System (SDIS) and the National DNA Index System (NDIS). NDIS is the National DNA Index System which is maintained by the FBI and contains DNA profiles uploaded from participating state laboratories.

**"CODIS laboratory"** means the databasing unit of the OSBI Laboratory.

**"DNA"** means deoxyribonucleic acid.

**"DNA laboratory"** means the DNA unit of ~~the~~ any OSBI ~~Central~~ Laboratory doing casework.

**"DNA offender sample"** means a biological sample from person identified in OS 74-150-27a.

**"DNA profile"** means the collective results of all DNA identification tests from an individual's DNA sample.

**"DNA record"** means all DNA identification information ~~stored in the State DNA database or CODIS~~ database or SDIS stored in the State CODIS database or SDIS.

**"DNA sample"** means a ~~blood~~ biological sample submitted to the OSBI ~~Central~~ DNA ~~Laboratory~~ laboratories for the purpose of conducting DNA tests in order to obtain a DNA profile.

**"DOC"** means the Oklahoma Department of Corrections.

**"Offender"** means a person who has been ~~convicted of crime which is specified~~ identified required to submit a DNA sample in ~~22 O.S. 1994, Section 991a(I)~~ 74 Oklahoma Statutes, Section 150.27a.

**"OSBI"** means the Oklahoma State Bureau of Investigation.

**"Prisoner"** means a person who is supervised by DOC, or any division thereof, and is in inmate status.

**"Sample submission card"** means a piece of paper or cardboard which is a suitable medium for preserving biological samples ~~of body fluids in the form of stains~~ for laboratory analysis, and which is provided to law enforcement agencies by OSBI ~~for the purpose of preserving body fluid samples for DNA analysis~~.

**"Stain card"** means a piece of paper or cardboard which is a suitable medium for preserving ~~blood~~ biological samples, in the form of stains, for laboratory analysis.

**"State DNA database"** means DNA information collected by OSBI from the State DNA ~~offender~~ databank ~~and population databank, which is used for casework and quality control~~ the repository of DNA profiles collected from crime scene evidence, missing person's cases, and/or offenders~~.~~means the repository of DNA profiles collected from crime scene evidence, missing person's cases, and/or offenders.

~~**"State DNA offender databank"** means the repository of DNA samples collected from offenders which is maintained by OSBI.~~

## SUBCHAPTER 3. COLLECTION AND SUBMISSION OF DNA SAMPLES FROM THE OKLAHOMA DEPARTMENT OF CORRECTIONS

**375:30-3-1. Function; scope**

This Subchapter outlines the procedures outlined in Title 22 O. S.1994, Section 991a et seq., for ~~the Oklahoma Department of Corrections to collect and submit~~ collection and submission of DNA from ~~convicted felons~~ offenders to the ~~DNA~~ CODIS laboratory.

**375:30-3-2. Training of ~~DOC employees~~ personnel to collect DNA offender samples**

~~DOC~~ Agencies authorized shall designate employees to collect and preserve DNA offender samples ~~from offenders~~. All employees ~~of DOC~~ who are authorized to collect DNA offender samples shall receive training from the ~~DNA~~ CODIS laboratory on the proper methods and procedures for the collection, handling, and preservation of DNA offender samples.

**375:30-3-3. Collection of and submission of DNA offender samples**

The OSBI shall promulgate rules concerning the collection and submission of DNA offender samples. The OSBI shall determine the type of equipment, collection procedures, and reporting documentation to be used by authorized collection facilities.

(1~~a~~) Collection of DNA offender samples ~~from offenders~~.

(A~~1~~) Authorized ~~DOC~~ personnel shall collect DNA offender samples from all ~~prisoners~~ offenders individuals ~~received at the Lexington Reception and Assessment Center or otherwise received into the custody of DOC who have been convicted of any crime specified in 22 O.S. 1994, Section 991a(I)~~.

(B~~2~~) The ~~DNA~~ CODIS laboratory shall provide ~~DOC with~~ kits to be used for collection of DNA offender samples. ~~Each kit shall contain enough stain cards to preserve four (4) DNA samples.~~

(C~~3~~) Immediately after a DNA offender sample is collected ~~from an offender~~:

(i~~A~~) The ~~blood~~ sample shall be preserved by the same person who ~~drew~~ collected the sample ~~on a stain cards or stain cards provided by OSBI~~.

(ii~~B~~) The person ~~preserving~~ collecting the sample shall adhere to all kit instructions. ~~make four (4) blood stains on separate stain cards or on distinct and separate sections of the same stain card.~~

(iii~~C~~) The person ~~drawing~~ collecting the DNA offender sample shall preserve and label the sample before ~~drawing a~~ collecting another DNA offender sample ~~from another offender~~.

(D) DNA offender samples not properly collected or labeled may be be rejected and returned.

(2~~b~~) Submission of DNA offender samples to the OSBI.

(A~~1~~) DNA offender samples ~~collected by DOC~~ shall be delivered in person ~~by an employee of DOC~~ or by mail within ten (10) days after collection to the following address: Oklahoma State Bureau of Investigation, ~~Central Laboratory~~ Forensic Science Center, ~~2132 N.E. 36th Street,~~ 800 East Second Street, ~~Oklahoma City,~~ Edmond, Oklahoma 73034.

(B~~2~~) Deliveries of DNA offender samples may be made Monday through Friday (except state holidays) between the hours of 8:00 a.m. and 5:00 p.m.~~, or at other times by prior arrangement between DOC and the DNA laboratory.~~

(C~~3~~) DNA offender samples submitted to the ~~DNA~~ CODIS laboratory ~~by DOC~~ shall be labeled according to kit instructions. ~~The labels attached to each sample shall contain the following information:~~

~~(A) the full name of the offender from whom the sample was taken,~~

~~(B) the DOC number of the offender from whom the sample was taken (if the DOC number is not available then the Social Security number is to be used),~~

~~(C) the race and sex of the offender from whom the sample was taken, and~~

~~(D) the date of birth of the offender from whom the sample was taken.~~

## SUBCHAPTER 5. COLLECTION AND SUBMISSION OF FORENSIC EVIDENCE FOR DNA PROFILING

**375:30-5-2. Submission of DNA samples to the OSBI**

(a) **Agencies eligible to submit samples.** Any ~~law enforcement~~ agency ~~of this state~~ authorized by statute to request the assistance of the OSBI may submit samples of body fluids or other materials from items of evidence to the DNA laboratory ~~for DNA analysis~~.

~~(1) Law enforcement agencies which do not have forensic laboratories may submit the cases to the OSBI laboratory system. An OSBI forensic serologist will perform the initial evaluation of evidence and may forward the appropriate samples to the DNA laboratory when quantity and quality of the biological materials is sufficient for DNA profiling.~~

~~(2) Law enforcement agencies which have forensic laboratories may submit samples which have been evaluated by their forensic serologist and determined to be of sufficient quantity and quality for DNA profiling.~~

(b) Types of samples which may be submitted.

~~(1)~~ All samples of body fluid submitted to the DNA laboratory for DNA analysis shall be in dried form or an appropriate substrate.

~~(2) Blood samples must be analyzed and confirmed to be of human origin before submission to the DNA laboratory for DNA analysis.~~

~~(A) All blood samples must be submitted on 1 $\frac{1}{2}$″ × 2″ cotton toweling rectangles, unless the evidence does not lend itself to submittal on cloth.~~

~~(B) Submission of blood which does not lend itself to submittal on cloth shall be done by arrangement with the DNA laboratory supervisor.~~

~~(3) Semen samples submitted to the DNA laboratory for DNA analysis must be analyzed, and sperm must be observed, or partially decomposed sperm cells with a positive p-30 (prostatic antigen) must have been identified.~~

~~(4) Samples of other types of body fluids or other materials may be submitted to the DNA laboratory for DNA analysis under special arrangement between the DNA laboratory supervisor and the submitting agency.~~

(c) Required information.

(1) All agencies submitting a sample to the DNA laboratory for DNA analysis shall provide the following information with each sample submitted.

(A) The full name of the requesting agency.

(B) The address of the requesting agency.

(C) The name of the requesting officer (contact person).

(D) Email and telephone number of requesting officer.

(~~D~~E) The type of body fluid or other material the submitting agency believes the sample to be (blood, semen, hair, etc.).

(~~E~~F) A brief summary of the case under investigation in connection to which the sample is being submitted.

(~~F~~G) Information on how the sample was collected and the location that the sample was collected from.

(2) The DNA sample shall be delivered to ~~the following address: Oklahoma State Bureau of Investigation, Central Laboratory, 2132 N.E. 36th Street, Oklahoma City, Oklahoma.~~ any OSBI laboratory.

(3) Deliveries of DNA samples may be made Monday through Friday (except state holidays) between the hours of 8:00 a.m. ~~And~~ and 5:00 p.m.~~, or at other times by prior arrangement with the DNA laboratory~~.

**375:30-5-3. Referral of cases to outside laboratories**

(a) The DNA laboratory may submit evidence to an outside laboratory for DNA analysis if special circumstances exist making the outside laboratory better equipped to examine the evidence.

~~(b) Submission of evidence to outside laboratories for DNA analysis must be approved in advance by the administrator of the OSBI Central Laboratory~~.

(~~c~~b) Payment arrangements for DNA analysis by outside laboratories must be made in advance by the submitting agency.

**375:30-5-4. Notification of parties when a potential DNA database match occurs**

(a) When the DNA analysis of evidence submitted to the DNA laboratory matches the DNA profile of an offender in the ~~DNA~~ CODIS database:

(1) the ~~DNA~~ CODIS laboratory shall re-examine the DNA offender sample according to ~~the DNA analysis protocol~~ current CODIS policy and procedures to verify the result,

(2) the OSBI shall attempt to verify the identity of the sample donor fingerprint submitted with the DNA offender sample~~, and~~.

~~(3) no person or party shall be notified of the DNA match, except employees of the OSBI whose duties involve the analysis of DNA samples, unless and until the match is verified according to DNA analysis protocol~~

(b) ~~Upon verification of the result, the DNA~~ The CODIS laboratory shall notify ~~the law enforcement~~ all appropriate ~~agency~~ agencies ~~which submitted the sample, or the office of the district attorney who exercises jurisdiction over the case, or both the law enforcement agency and the district attorney~~.

(c) After being notified of a ~~DNA~~ potential match, the district attorney's office or the submitting agency shall make an arrangement ~~with DOC~~ to have a DNA sample taken from the offender or suspect whose DNA offender profile matches the DNA in the evidence~~, if the offender is in DOC custody~~.

~~(1) The offender's DNA sample shall be collected by an employee of DOC in the same manner defined in 375:30-1-1 et seq.~~

~~(2) DOC shall submit the sample to the DNA laboratory in the required manner defined in 375:30-1-1 et seq.~~

## SUBCHAPTER 7. ANALYSIS OF STATE DNA OFFENDER DATABANK SAMPLES

**375:30-7-1. Function; scope**

This Subchapter outlines the procedures for the analysis of the ~~blood~~ DNA offender samples received for DNA profiling and placement into the OSBI DNA Offender Database.

**375:30-7-2. Processing of samples at the OSBI**

The ~~DNA~~ CODIS laboratory shall cause DNA profiling analysis to be performed on all ~~State~~ DNA offender ~~databank~~ samples received ~~from DOC~~ and shall place the DNA profiles into the ~~State~~ OSBI DNA offender database.

**375:30-7-3. Referral of analysis to other private or governmental laboratories**

(a) The ~~DNA~~ CODIS laboratory may submit ~~State~~ DNA offender ~~databank~~ samples to other private or government laboratories for DNA analysis.

(b) Submission of samples to other laboratories must be approved in advance by the Assistant Director of Criminalistics.

(c) The ~~DNA~~ CODIS laboratory will specify integrity, quality control, and privacy measures to be employed by the laboratory receiving and analyzing the samples.

(d) The ~~DNA~~ CODIS laboratory will specify the genetic loci to be profiled and the technology to be used in the analysis of the samples.

## SUBCHAPTER 9. REMOVAL OF DNA RECORDS FROM STATE DNA DATABASE

### 375:30-9-2. Removal of DNA records from the OSBI DNA Offender Database

(a) A DNA record can only be removed from the OSBI DNA Offender Database ~~if the following are provided by the offender who is the subject of the record:~~ upon the subject of the record obtaining an order of expungement pursuant to 22 Oklahoma Statutes, Sections 18 and 19.

~~(1) a written request for removal of his/her DNA record from the State DNA database;~~

~~(2) a certified letter from the court clerk in the county where the conviction was set aside containing notification of the details of the reversal of the conviction to the DNA laboratory;~~

~~(3) a certified letter from the district attorney of jurisdiction that charges will not be refiled and there will be no more action pursuant to that specific matter; and~~

~~(4) a signed, sworn, and notarized affidavit declaring that he/she does not fall under any requirements set forth by the Sex Crimes Registration Act and has no other convictions which would require him/her to submit to DNA testing.~~

(b) Removal of a DNA record from the OSBI DNA Offender Database shall be accomplished by removing any ability to connect the profile with the identity of the subject offender. ~~The autoradiograph and profile shall remain in the State DNA database for statistical and quality control purposes only.~~

## SUBCHAPTER 11. GENERAL RULES FOR SUBMISSION OF EVIDENCE

### 375:30-11-1. Function; Scope

This subchapter outlines the general procedures to be followed, in the absence of more specific administrative rule, in submitting samples or evidence to the ~~Oklahoma State Bureau of Investigation~~ OSBI Laboratory and the disposition of such samples or evidence after analysis or testing by ~~Oklahoma State Bureau of Investigation Laboratory (~~OSBI Laboratory~~)~~.

### 375:30-11-2. Definitions

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

**"Criminalistic Examination Report"** means a document prepared by an employee of the OSBI Laboratory reporting any results of test(s) performed on an item(s) of evidence.

**"Evidence"** means all tangible materials acquired during the course of an official criminal investigation and submitted to the Oklahoma State Bureau of Investigation Laboratory for forensic analysis.

**"Evidence control number"** means a unique number applied at submittal of evidence (except DUI, DUID, and ~~convicted felon~~ DNA offender samples). This number serves as internal tracking for evidence under Oklahoma State Bureau of Investigation Laboratory control.

**"Evidence release form"** means the form used to document the return or release of evidence to the courts, prosecutors, OSBI employees, original requesting agencies, or other legally entitled persons or entities~~, OSBI Form#C3020D~~.

**"Original requesting agency"** means the law enforcement agency having jurisdiction in the criminal case which made the request for forensic services of the Oklahoma State Bureau of Investigation Laboratory.

**"Requesting officer"** means the person requesting examination of submitted evidence for the original requesting agency.

**"RFLE"** means Request for Laboratory Examination form~~, OSBI Form #C3020A~~.

**"Submitting officer"** means the person delivering evidence to an OSBI laboratory for the original requesting agency.

**"Uniform Controlled Dangerous Substances Act"** means Title 63 Oklahoma Statutes, Section 2-101 et seq.

### 375:30-11-3. Evidence submissions to the Oklahoma State Bureau of Investigation

(a) Evidence from criminal investigations will be accepted from law enforcement personnel by the following methods:

(1) In person;

(2) U.S. Mail-except firearms and clandestine drug laboratory evidence;

(3) Private courier (UPS, Federal Express, etc.);

(b) Only evidence from criminal investigations, where criminal charges may be filed, will be accepted by the OSBI.

(c) Evidence from civil cases or product cases such as food or drugs purchased from a retailer or vending machine suspected of being contaminated or faulty will not be accepted for analysis by the OSBI Lab.

(1) All such cases will be referred to the Consumer Protection Division of the Oklahoma State Health Department.

(2) Criminal tampering of products or suspected poisoning evidence will be accepted for analysis by the OSBI.

(d) No explosive devices, explosive samples or post-blast samples will be accepted for submittal to the OSBI Laboratory.

(e) Clandestine laboratory evidence (i.e. chemicals, glassware, equipment, etc.) will be accepted for submittal for analysis by the OSBI only in small, representative samples or if a very small lab, provided it is safely packaged, can safely be stored short term in an OSBI Laboratory, and does not endanger an OSBI employee. Any exception to this rule must be approved by the OSBI Criminalistic Services Division Director or their designee prior to such submission. The OSBI Laboratory is not a long term storage facility for clandestine labs or other hazardous chemical waste. Only representative samples of clandestine drug lab evidence will be retained for analysis or court as long as needed. All other clandestine laboratory materials will be destroyed at the discretion of the OSBI by a licensed hazardous waste contractor in accordance with all applicable local, state, and federal regulations.

(f) All items of evidence held by the OSBI pursuant to these rules will be stored in secure evidence storage areas approved by the OSBI Criminalistic Services Division Director.
~~(g) Evidence not requiring forensic analysis ( hold only cases) will not be accepted for submittal to the OSBI Laboratory without specific approval of the OSBI Criminalistic Services Division Director.~~

**375:30-11-4. Request for Laboratory Examination form**

(a) All submissions of evidence to an OSBI Laboratory shall be accompanied with ~~a~~ an RFLE ~~(Form #C3020A)~~. The only exceptions are as follows:

(1) Mailed ~~toxicology~~ blood alcohol kits-A photocopy of the kit form shall replace the RFLE;

(2) Convicted felon DNA kits DNA offender samples

(b) The requesting/submitting officer shall completely and legibly fill out the RFLE.

(1) All evidence submitted shall be itemized on the RFLE or an attachment to the RFLE.

(2) A statement of facts or incident report and submitting agency's case number may be attached to the RFLE. This information may be forwarded to the OSBI laboratory at a later date if requested by an OSBI Laboratory Analyst.

(3) The RFLE should also clarify the types of examinations requested and any special needs of the requesting/submitting agency.

(4) Prior to submitting ~~a~~ an RFLE with evidence, the submitting officer shall:

(A) Unload all firearms submitted and document the unloading on both the RFLE and the container holding the firearm.

(B) Label and package all known carcinogens, mutagens, highly toxic substances, volatile or foul smelling chemicals or compounds in a manner to assure the safety and security of OSBI Laboratory personnel.

(C) Properly and safely package and label ~~syringes,~~ knives~~,~~ and other sharp objects and biological samples using hazard labels and protective containers ~~provided by the OSBI~~.

(5) A separate RFLE must be completed for each case, and for each time additional evidence is submitted for an existing laboratory case.

**375:30-11-5. Sealing of evidence**

Evidence submitted within an evidence container shall be properly sealed so that its contents cannot readily escape and in a manner so that opening the container would result in obvious damages/alteration to the container or its seal. Staples alone shall not constitute proper sealing. Proper sealing also includes initials across the seal. The following is a guide to the proper sealing of evidence for submission to the OSBI Laboratory. All submissions of evidence shall meet or exceed these guidelines or they will not be accepted by the OSBI Laboratory.

(1) Boxes-All ~~non-sealed edges of~~ boxes containing evidence, including both the top and bottom of the box should be sealed with two inch tape, 3M Brand #3750 or equal.

(2) Sacks and bags-All sack-like containers should be sealed by folding down the flap of the sack across the top and placing a continuous piece of 2 inch tape, 3M Brand #3750 or equal, across the fold and around the sack edges.

(3) Envelopes- The top unsealed flap of the envelope should be completely sealed along the seam using two inch tape, 3M Brand #3750 or equal, or with evidence tape. ~~The bottom factory sealed flap shall be sealed with either one continuous piece of tape as set forth herein for the top flap or with two separate pieces on each corner.~~

(4) Cans and buckets with lids-One continuous piece of evidence tape across the top and down the sides of the container or two separate pieces of evidence tape across from each other shall be used to seal all such containers. Clear adhesive tape should not be used.

(5) Kits-Sexual assault kits, ~~toxicology~~ blood alcohol kits and other purchased evidence submittal kits are acceptable with the seals provided by the kit manufacturer.

(6) Evidence not sealable in a container-Such evidence shall be properly sealed by taping and initialing a seal over the area of interest to be tested. If such seal would obliterate, destroy, or alter the evidence, then identify the area of interest by circling or marking nearby.

(7) Weapons which require only test firing or serial number restoration-Such evidence may be tagged with a plastic identification tag instead of being sealed in a container.

**375:30-11-7. Disposition of evidence**

(a) Evidence required for trial in the prosecution of a crime may be released to the prosecutor or the courts.

(b) Any alleged controlled dangerous substance submitted to an OSBI Laboratory for analysis shall not be released to any person or laboratory other than the original requesting agency or requesting officer absent an order of a district court if analysis of the submitted material reveals it is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of Oklahoma.

(1) All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substance Act and seized or surrendered pursuant to the provisions of that Act shall be destroyed by or at the direction of the OSBI Criminalistic Division Director or his designee in compliance with 63 O.S., Sec. 2-508.

(A) The OSBI may, at its discretion, prior to such destruction, preserve samples of such substances for testing.

(B) Any such property submitted to the OSBI which the Director or the OSBI Criminalistic Services Director deems to be of use for investigative, training, educational, or analytical purposes may be retained in lieu of destruction.

(2) All raw materials, products or equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Substances Act, which are used or intended for use in the manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act seized or surrendered pursuant to the provisions of that Act shall be destroyed by or at the direction of the OSBI Criminalistic Division Director or his designee.

(A) The OSBI may, at its discretion, prior to such destruction, preserve samples of such substances for testing.

(B) Any such property submitted to the OSBI which the Director or the OSBI Criminalistic Services Division Director deems to be of use for investigative, training, educational, or analytical purposes may be retained in lieu of destruction.

(c) The OSBI Laboratory will not store completed drug case evidence for the original requesting agency. ~~more than two years from the date of submission. After two years such~~ Evidence ~~evidence~~ will be returned to the original requesting agency if authorization for destruction is not received from the original requesting agency. Exceptions to this policy may only be granted by the OSBI Criminalistic Services Division Director or their designee.

(d) All firearms test fire bullets and/or casings may be maintained by the OSBI Laboratory, in accordance with OSBI policy.

(e) Disposition of toxicology evidence shall be handled in accordance with 47 O.S., Section 759.

(f) Latent prints submitted to, or developed by, the OSBI Laboratory, and ten-print and major case fingerprint impressions, may be retained by the OSBI Laboratory .

(g) Derivative samples of biological evidence (i.e., stains, slides, cuttings) may be retained by the OSBI Laboratory.

(h) All other evidence received by the OSBI Laboratory, not specifically addressed in these administrative rules, will be returned to the original requesting agency or requesting officer after completion of analysis or testing and issuance of the Criminalistic Examination Report.

(1) Such evidence will generally be returned in person, but may be returned by certified mail with return receipt requested.

(2) Upon release of evidence to an original requesting agency or requesting officer, or other agency authorized by these rules, or evidence released for any other purpose, the individual receiving such evidence shall legibly sign and date an Evidence Release Form ~~(OSBI Form #C3020D)~~.

(A) The Evidence Release Form shall also be legibly signed and dated by the OSBI employee releasing the evidence.

(B) The Evidence Release Form ~~Shall~~ shall be completed in accordance with OSBI policy and procedure ~~reflect an OSBI evidence control number, item number, and a brief description of all items and containers being released~~.

(i) Evidence submitted to an OSBI laboratory for analysis will not be released to private citizens except by court order, or, under extraordinary circumstances, upon the written approval of the OSBI Criminalistic Services Division Director.

*[OAR Docket #10-884; filed 5-20-10]*

## TITLE 380. DEPARTMENT OF LABOR
## CHAPTER 30. PROTECTION OF LABOR

*[OAR Docket #10-913]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Wage Claim Procedures
380:30-3-4 [AMENDED]
380:30-3-8 [AMENDED]
**AUTHORITY:**
Department of Labor; 40 O.S. §165.7, Protection of Labor
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**Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2010
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**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
The purpose of the proposed amendments to Subchapter 3 is to clarify inconsistencies between the two sections. Currently, OAC 380:30-3-4 requires all motions and briefs to be filed thirty (30) days before the hearing and allows discovery to be conducted until ten (10) days before the hearing. However, OAC 380:30-3-8 requires the parties to complete all discovery and file all motions and briefs no later than the date of the pre-hearing conference. The past practice of the Oklahoma Department of Labor is to require all discovery to be completed by the pre-hearing conference because all exhibits must be filed by that date. These amendments will require all discovery to be completed by the pre-hearing conference date and eliminate the requirement that all motions and briefs be filed by the pre-hearing conference date.
**CONTACT PERSON:**
Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 3. WAGE CLAIM PROCEDURES

### 380:30-3-4. Procedures prior to hearing

(a) Upon receipt of a request for a hearing after issuance of an Order of Determination, the claim shall be transferred to the Legal Division of the Department, which shall set a date and time for the hearing and notify the parties as required by law, or as instructed by the parties. The parties may file whatever motions, pleadings, briefs, or other papers they deem appropriate, including but not limited to motions to dismiss and motions for summary judgment. Dispositive motions may be ruled upon either at hearing or prior thereto, with or without benefit of oral argument, by the Commissioner. Unless good cause is shown, motions and briefs shall be filed at least thirty (30) days prior to the hearing of the Claim; shall be served upon the opposing party, counsel, and the Department in a timely manner; and shall not exceed 25 pages in length, exclusive of exhibits or attachments. Any response to a motion or brief shall be filed within fifteen (15) days thereafter, unless good cause is shown. All pleadings and papers shall be styled in the following manner: "BEFORE THE DEPARTMENT OF LABOR, STATE OF OKLAHOMA, IN RE: (Respondent), Claim No., (Name of Claimant)."

(b) Subpoenas will be issued by the Commissioner upon request of either party. The party requesting the subpoena shall be responsible for service in a timely manner, in accordance with the Administrative Procedures Act, 75 O.S. § 315, and the Oklahoma Pleading Code, 12 O.S. § 2004.1. All subpoenas issued by the Department shall allow at least ten (10) days for compliance. Subpoenas duces tecum shall set the date of compliance either at or before the pre-hearing conference, if any. Otherwise, the date for compliance shall be at least ten (10) days prior to the hearing.

(c) Subject to the provisions of the Administrative Procedures Act, parties may obtain discovery in any manner provided for under the Oklahoma Discovery Code, 12 O.S. § 3225 et seq., and in accordance with the rules and provisions contained therein. Discovery shall be completed no later than ~~ten (10) days before hearing~~ the pre-hearing conference.

(d) The Commissioner reserves the authority to dismiss a claim set for hearing at any time for lack of jurisdiction over the parties or subject matter of the claim.

(e) Unless for good cause shown, no request for continuance of any hearing shall be considered unless the same is presented in writing to the Commissioner at least three (3) days prior to the scheduled docket date. Continued cases shall be placed on the next available hearing docket, but no earlier than 30 days after the original scheduled date without written consent of both parties. No case shall be continued more than twice unless good cause is shown.

### 380:30-3-8. Pre-hearing conferences

(a) The Commissioner, upon motion of either party or upon the Commissioner's own motion, may order a pre-hearing conference prior to hearing. Such conference will be held at least ten (10) days in advance of the scheduled hearing date, and the parties shall be notified at least ten (10) days prior to the conference of the time, place, and date thereof.

(b) When a pre-hearing conference is ordered, parties and/or their counsel shall appear and exchange the following:

(1) A brief statement of the case, list of stipulations, and requested remedy;

(2) A list of all witnesses who have direct knowledge of the facts surrounding the issues of the Claim and who are expected to be called at the hearing;

(3) A list of all documents and exhibits, and the original or a copy of each document or exhibit, to be offered into evidence at the hearing;

(4) A list of all witnesses for whom a subpoena is required. The list shall include the name and address of each witness, and a brief statement of testimony to be offered by that witness. The Department will not issue subpoenas without this information.

(c) The parties shall provide two copies to the Department of all documents submitted, in addition to those exchanged between them. Unless good cause is shown, no witnesses, documents or other evidence will be admitted at hearing unless the same have been submitted at the pre-hearing conference.

(d) Failure to appear at the pre-hearing conference may result in dismissal, default judgment, or other sanction unless good cause is shown.

(e) The parties shall complete their discovery, if any, ~~and file all motions and briefs~~ no later than the date of the pre-hearing conference. All motions and briefs shall be filed in accordance with the deadlines set forth in OAC 380:30-3-4.

*[OAR Docket #10-913; filed 5-26-10]*

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## TITLE 380. DEPARTMENT OF LABOR CHAPTER 45. OKLAHOMA HAZARD COMMUNICATION STANDARD [REVOKED]

*[OAR Docket #10-915]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Chapter 45. Oklahoma Hazard Communication Standard [REVOKED]
**AUTHORITY:**
Department of Labor; 40 O.S. §407, Oklahoma Occupational Health and Safety Standards Act
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July 1, 2010
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n/a
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n/a
**ANALYSIS:**
Effective July 1, 2009, the Oklahoma Department of Labor adopted the Hazard Communication Standard in 29 CFR 1910.1200, subject to the exception that the information and training required under 29 CFR 1910.1200(h) is required annually. Therefore, the Oklahoma Hazard Communication Standard in Chapter 45 is no longer effective.
**CONTACT PERSON:**
Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

### 380:45-1-1. Purpose [REVOKED]

~~(a) The purpose of this rule is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to Oklahoma public sector employers and employees.~~

~~(b) This rule applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.~~

~~(c) In work operators where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this rule applies to these operations only as follows:~~

~~(1) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;~~

~~(2) Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet as soon as possible for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,~~

~~(3) Employers shall ensure that employees are provided with information and training in accordance with this standard (except for the location and availability of the written hazard communication program under this standard), to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.~~

### 380:45-1-2. Definitions [REVOKED]

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

~~**"Aggregate amount"** means any combination of hazardous material(s) as defined by this Chapter.~~

~~**"Article"** means a manufactured item other than a fluid or particle:~~

~~(A) which is formed to a specific shape or design during manufacture;~~

~~(B) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and~~

~~(C) which under normal conditions of use does not release more than very small quantities, *e.g.*, minute or trace amounts of a hazardous chemical and does not pose a physical hazard or health risk to employees.~~

~~**"Asbestos containing material"** means any material that has been determined by a competent laboratory facility to contain more than one percent (1%) asbestos by weight.~~

~~**"Chemical"** means any element, chemical compound or mixture of elements and/or compounds.~~

~~**"Chemical manufacturer"** means an employer with a workplace where chemical(s) are produced for use or distribution.~~

~~**"Chemical name"** means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstract Service (CAS) rules of nomenclature or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.~~

~~**"Combustible liquid"** means any liquid having a flashpoint at or above 100°F (37.8°C), but below 200°F (93.3°C), except any mixture having components with flashpoints of 200°F (93.3°C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.~~

~~**"Commissioner"** means the Commissioner of Labor.~~

~~**"Common name"** means any designation or identification, such as code name, code number, trade name, band name or generic name used to identify a chemical other than by its chemical name.~~

~~**"Compressed gas"** means:~~

~~(A) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°F (21.1°C); or~~

~~(B) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C); or~~

~~(C) A liquid having a vapor pressure exceeding 40 psi at 100°F (37.8°C) as determined by ASTM D-323-72.~~

~~**"Container"** means any bag, barrel, bottle, box, can, cylinder, drum, storage tank, reaction vessel, or the like that contains a hazardous chemical. For purposes of this section,~~

~~pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.~~

~~**"Distributor"** means a business other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.~~

~~**"Employee"** means a person permitted to work by an employer in employment.~~

~~**"Employee representative"** means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this rule. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorized.~~

~~**"Employer"** means any entity of the state and its political subdivisions, which has in its employ one or more individuals performing services for it in employment.~~

~~**"Explosive"** means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.~~

~~**"Exposure or exposed"** means that an employee is subjected in the course of employment to a level above that allowed by 29 CFR 1910 of a chemical that is a physical or health hazard, and includes accidental or possible exposure. "Subjected" in terms of health hazards includes any route of entry (*e.g.*, inhalation, ingestion, skin contact or absorption).~~

~~**"Facility"** means all buildings and other stationary items located on contiguous property under common ownership or control.~~

~~**"Fire department"** means any duly constituted fire department operating under the authority of Title 11 article XXIX fire departments or Title 19 Chapter 21 fire protection districts meeting the definition of employer. Industrial fire brigades are excluded from this definition. However, fire departments and industrial fire brigades are covered by regulations of other agencies.~~

~~**"Flammable"** means a chemical that falls into one of the following categories:~~

~~(A) **"Aerosol, flammable"** means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;~~

~~(B) **"Gas, flammable"** means~~

~~(i) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or~~

~~(ii) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;~~

~~(C) **"Liquid, flammable"** means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up ninety-nine (99) percent or more of the total volume of the mixture.~~

~~(D) **"Solid, flammable"** means a solid, other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, ore retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than on-tenth of an inch per second along its major axis.~~

~~**"Flashpoint"** means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested according to general industry standards. Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.~~

~~**"Foreseeable emergency"** means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.~~

~~**"Hazardous chemical"** means any chemical which is a physical hazard or a health hazard.~~

~~**"Hazard warning"** means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for "physical hazard" and "health hazard" to determine the hazards which must be covered.)~~

~~**"Health hazard"** means chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers; hepatotoxins, nephrotoxins, neurotoxins, and agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes. 29 CFR 1910.1200 Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.~~

~~**"Identity"** means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.~~

~~**"Immediate use"** means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.~~

~~**"Label"** means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.~~

~~**"Laboratory"** means an educational or testing facility where relatively small quantities or hazardous chemicals are~~

~~used on a non-production basis. This definition does not include research laboratories.~~

~~**"Manufacturer"** means a person or establishment where hazardous chemicals are produced, synthesized, extracted, imported, or otherwise made for use or distribution.~~

~~**"Material safety data sheet"** (MSDS) means written or printed material concerning a hazardous chemical which is prepared in accordance with 29 CFR 1910.1200 (g).~~

~~**"Mixture"** means any combination of two ro more chemicals if the combination is not, in whole or part, the result of a chemical reaction.~~

~~**"Organic peroxide"** means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms have been replaced by an organic radical.~~

~~**"Oxidizer"** means a chemical other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.~~

~~**"Physical hazard"** means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.~~

~~**"Proprietor"**means the owner, manager, or other person or organization which has control over any location where hazardous chemicals are present, and which is subject to the jurisdiction of employer subject to the provisions of this Chapter.~~

~~**"Produce"** means to manufacture, process, formulate, blend, extract, generate, emit, or repackage.~~

~~**"Pyrophoric"** means a chemical that will ignite spontaneously in air at a temperature of 130°F (54.4°C) or below.~~

~~**"Research laboratory"** means a specially designated area used primarily for research and/or development, and not primarily involved in the production of goods in which hazardous chemicals are used.~~

~~**"Responsible party"** means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.~~

~~**"Service contractor"** means any person, company, or corporation that provides a service to the employer with or without a written agreement.~~

~~**"Safety coordinator"** means an employee who has been designated by an employer to coordinate all safety programs of the employer. Employers may designate more than one employee to assist by fulfilling specific functions, but the safety coordinator must have ultimate responsibility for implementing the safety programs.~~

~~**"Significant amount"** means any amount of hazardous material(s) meeting the criteria in 380:445-5-5(c).~~

~~**"Specific chemical identity"** means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.~~

~~**"Trade secret"** means any confidential formula, pattern, process, device, information, or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. 29 CFR 1910.1200 Appendix D sets out the criteria to be used in evaluating trade secrets.~~

~~**"Unstable (reactive)"** means a chemical which in the pure state, or as produced or transported, will rigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.~~

~~**"Use"** means to package, handle, react, emit, extract, generate as a byproduct, or transfer.~~

~~**"Water-reactive"** means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.~~

~~**"Wet floor"** means a floor which is used on an occasional to routine basis to collect, contain, maintain or transmit standing liquids.~~

~~**"Work area"** means a room or defined space in a workplace where hazardous chemicals are produced, or used and where employees are present.~~

~~**"Workplace"** means any location away from home, permanent or temporary, where any employee performs any work related activity in the course of his/her employment. This includes any establishment, job site, or project at one geographical location containing one or more work areas. Included are all pertinent conditions, structures, machines, vehicles, apparatus, devices, equipment and materials therein.~~

**380:45-1-3. Findings of the Commissioner of Labor [REVOKED]**

~~The Oklahoma department of Labor recognizes that many places of work pose potential acute and chronic health hazards to employees who are exposed to varying forms and concentrations of hazardous chemicals. Additionally, the Oklahoma Department of Labor recognizes that public employers and public employees have a right and need to know the properties and potential safety and health hazards of substances to which they may be exposed, and that such knowledge is essential to reducing the incidence and cost of occupational illness and injury. The Oklahoma department of Labor, therefore, intends by these regulations to ensure the transmission of necessary information to public employees regarding the properties and the potential hazards of hazardous chemicals in the workplace.~~

**380:45-1-4. Provisions of these regulations [REVOKED]**

~~The rights and duties set forth in these regulations apply to all public employers who use hazardous chemicals in this State; to any person who imports and sells hazardous chemicals to any public employer in this State; and to manufacturers who produce, repackage, distribute and sell hazardous chemicals to any public employer in this State; and to the proprietor of any location where hazardous chemicals are present, and which are subject to fire protection by employees pursuant to this Chapter. The provisions of these regulations apply to hazardous chemicals which are present in the workplace, as a result of workplace operations, in such a manner that employees may be exposed under normal conditions of work or in a reasonably foreseeable emergency resulting from workplace operations.~~

**380:45-1-5. Exclusions [REVOKED]**

~~(a) These regulations do not apply to:~~

~~(1) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;~~

~~(2) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, compensation and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with Environmental Protection Agency regulations;~~

~~(3) Tobacco or tobacco products;~~

~~(4) Wood or wood products, including lumber which will not be processed, where the chemical manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility (wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut, generating dust, are not exempted);~~

~~(5) Articles (as that term is defined in 380:45-1-2);~~

~~(6) Food or alcoholic beverages which are sold, used, or prepared in a retail establishment (such as a grocery store, restaurant, or drinking place), and foods intended for personal consumption by employees while in the workplace;~~

~~(7) Any drug, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (e.g., tablets or pills); drugs which are packaged by the chemical manufacturer for sale to consumers in a retail establishment (e.g., over the counter drugs); and drugs intended for personal consumption by employees while in the workplace (e.g., first aid supplies);~~

~~(8) Cosmetics which are packaged for sale to consumers in a retail establishment, and cosmetics intended for personal consumption by employees while in the workplace;~~

~~(9) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended;~~

~~(10) Nuisance particulates where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered under this section;~~

~~(11) Ionizing and nonionizing radiation, except that ionizing radiation shall be included in the placarding requirements of this standards; and~~

~~(12) Biological hazards.~~

**380:45-1-6. Applicable national standards [REVOKED]**

~~Appendices A, B, D, and E of 29 CFR 1910.1200 shall be automatically adopted by incorporation as currently published and as hereafter may be revised in the Code of Federal Regulations.~~

## SUBCHAPTER 2. HAZARD DETERMINATION [REVOKED]

**380:45-2-1. Applicability [REVOKED]**

~~This subsection shall only apply to public sector chemical manufacturers.~~

**380:45-2-2. Hazard determination methods [REVOKED]**

~~Public sector chemical manufacturers and importers shall follow the hazard determination procedures in 29 CFR 1910.1200(d)(1) (6).~~

## SUBCHAPTER 3. EMPLOYER RESPONSIBILITIES [REVOKED]

**380:45-3-1. Chemical inventory lists [REVOKED]**

~~(a) Each employer shall develop and maintain a current Chemical Inventory List (CIL) containing the common and trade names of all hazardous chemicals present in the workplace. Such CILs may be compiled for the workplace as a whole or for individual work areas. A master CIL shall be maintained by the agency safety coordinator in alphabetical order cross referenced to their chemical names. Any new hazardous chemical introduced into the workplace shall be added to the CIL within 15 working days. The list shall be reviewed at least annually. Documentation of this review shall be maintained.~~

~~(b) A chemical exposure record shall be maintained for each employee who has had a chemical exposure documenting the type of exposure(s) received throughout their employment in the workplace. This documentation shall include the names(s) of the chemical(s), the date(s) of exposure(s) and any other pertinent information to adequately make any necessary medical determinations should medical problems arise in the future. This information shall:~~

~~(1) be stored for not less than 40 years; or~~

~~(2) be provided to employees on a regular periodic basis, or upon termination in a form that includes the following statement, "You should preserve this report for future reference."~~

~~(c) Whenever an employer discovers that an employee has received a potentially hazardous exposure to any substance or agent covered under this Chapter, the employer shall immediately notify the employee of the exposure and take such steps as may be necessary to provide medical evaluation, monitoring, or treatment.~~

**380:45-3-2. Material safety data sheets [REVOKED]**

~~(a) The employer shall maintain in the workplace copies of the required material safety data sheets for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)~~

~~(b) where employees must travel between workplaces during a workshift, *i.e.*, their work is carried out at more than one geographical location, the material safety data sheets may be kept at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.~~

~~(c) When any new hazardous chemical is to be introduced into the workplace, the MSDS sheets shall be on file prior to beginning use of the chemical.~~

~~(d) Material safety data sheets shall also be made readily available, upon request, to employee representatives and to the authorized employees of the Oklahoma Department of Labor.~~

**380:45-3-3. MSDS and labeling chemicals provided by research laboratories to other employers [REVOKED]**

~~(a) Laboratory employers that ship hazardous chemicals developed by that laboratory to another employer are considered to be either a chemical manufacturer or a distributor under this rule, and thus must ensure that any containers of hazardous chemicals leaving the laboratory are labeled with:~~

~~(1) Identity of the hazardous chemical(s);~~

~~(2) Appropriate hazardous warning; and~~

~~(3) Name and address of the chemical manufacturer, importer, or other responsible party.~~

~~(b) In addition, an MSDS shall be provided which shall comply with 29 CFR 1910.1200(g)(1) (6).~~

**380:45-3-5. Access to written records: availability [REVOKED]**

~~(a) Upon request by an affected employee or employee representative, the employer shall assure access to copies of the CIL(s) and MSDS(s) required by these regulations and shall ensure that they are readily accessible as soon as possible in a reasonable time, place, and manner, but in no event later than one working day after the request for access is made.~~

~~(b) In addition, whenever any affected employee or employee representative requests a copy of the CIL and MSDS, the employer shall, within fifteen days, assure that either a copy or a mechanical means to copy is provided. In case of a medical emergency, the information shall be provided immediately.~~

**380:45-3-6. Labeling [REVOKED]**

~~(a) The employer shall ensure that every container in the work area containing a hazardous chemical shall bear a label indicating the chemical or product name. This label shall include:~~

~~(1) Identity of the hazardous chemical(s) contained therein; and~~

~~(2) Appropriate hazard warning, or alternatively words, pictures, symbols or combination thereof, which provide at least general information regarding the hazards of the chemical(s), and which, in conjunction with the other information immediately available to employees under the Hazard Communication Standard, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical. Research laboratories are only required to comply with the parts of this item deemed necessary or appropriate by the individual employer.~~

~~(b) Employers shall require that all containers of hazardous chemicals be labeled according to 29 CFR 1910.1200(f) at the time of receipt.~~

~~(c) Employers shall ensure that labels on containers are not defaced or removed. The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well. The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. For purposes of this section, drugs which are dispensed by a pharmacy to a health care provider for direct administration to a patient are exempted from labeling.~~

~~(d) Employers shall be required to label piping systems only at the valve or valves located at the point at which a substance enters the workplace's piping system, and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a substance from the piping system.~~

~~(e) This rule does not require labeling of the following chemicals:~~

~~(1) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;~~

~~(2) Any chemical substance or mixture as such terms are defined in the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;~~

~~(3) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 151 et seq.), and regulations issued under those Acts, when they are subject to the labeling requirements under those Acts by either the Food and Drug Administration or the Department of Agriculture;~~

~~(4) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such~~

~~terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms;~~

~~(5) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission; and,~~

~~(6) Agricultural or vegetable seed treated with pesticides and labeled in accordance with the Federal Seed Act (7 U.S.C. 1551 et seq.) and the labeling regulations issued under that Act by the Department of Agriculture.~~

**380:45-3-7. Training and information program [REVOKED]**

~~(a) Each employer shall provide employee training and information designed to communicate to each employee the hazardous chemicals to which they may be exposed.~~

~~(b) This training and information shall be provided within the first thirty days of employment and/or transfer, but prior to being placed in the area where exposure might take place, and at least annually.~~

~~(1) Training shall include at least:~~

~~(A) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area;~~

~~(B) The physical and health hazards of the chemicals in the work area;~~

~~(C) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and~~

~~(D) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheets, and how employees can obtain and use the appropriate hazard information.~~

~~(2) Information shall include, but not be limited to:~~

~~(A) The requirements of this section;~~

~~(B) Any operations in their work area where hazardous chemicals are present; and~~

~~(C) The location and availability of the written hazard communication program, including the CILs and MSDS required by this section.~~

~~(c) The employer shall provide additional instruction whenever the employee may be routinely exposed to additional hazardous chemicals or chemicals which require special precautions, or whenever the employee's potential for exposure is increased due to changes in work practices, or through the introduction of new toxic and hazardous chemicals or equipment.~~

**380:45-3-8. Written hazard communication program [REVOKED]**

~~Employers shall develop and implement a written hazard communication program which at least describes how the requirements specified in this subchapter will be met. This program must also include methods used to inform employees of the hazards of non-routine tasks performed by employees or by outside contractors and the hazards associated with chemicals contained in unlabeled pipes in their work areas. This program must be reviewed and updated at least annually. Documentation of this review must be maintained. A copy of this program shall be maintained at each primary workplace facility where it has been determined that hazardous chemicals are present in the workplace.~~

## SUBCHAPTER 5. FIRE SAFETY [REVOKED]

**380:45-5-1. List of work areas: facility map [REVOKED]**

~~Proprietors shall provide to the person responsible for the administration and direction of a fire department in a county, municipality, or political subdivision and having fire protection authority over the proprietor's location, including the state fire marshal, fire chief or fire administrator, or that person's designee:~~

~~(1) A list of work areas, sufficiently identified by name and location, where hazardous chemicals are consistently generated by, used by, stored at, or transported from the proprietor's facility. The list shall contain chemical and common name of each substance;~~

~~(2) A facility description map indicating:~~

~~(A) the entire premise occupied by the business,~~

~~(B) the streets,~~

~~(C) adjacent occupancies,~~

~~(D) location of open storm drains inside and outside,~~

~~(E) utility shut off locations,~~

~~(F) hazardous chemical locations including storage areas,~~

~~(G) loading areas,~~

~~(H) sumps,~~

~~(I) wet floors,~~

~~(J) underground tanks,~~

~~(K) fire department connections,~~

~~(L) nearest hydrants,~~

~~(M) at least three emergency contact phone numbers,~~

~~(N) piping systems, and~~

~~(O) any information that the proprietor believes would be important to emergency response personnel.~~

~~(3) Any fire department may request from a proprietor additional information concerning the location, pursuant to the provisions of these regulations, that may be reasonably required to protect the safety and health of employees and the employer shall provide the additional information upon request.~~

~~(4) Research laboratories are exempt from this section and are covered under 380:45-5-4.~~

**380:45-5-2. Supply of information [REVOKED]**

~~The person responsible for the administration and direction of the fire department in a county, municipality, or political subdivision, including the state fire marshal, fire chief or fire administrator, or that person's designee shall maintain the information provided by the proprietor under 380:45-5-1(1) of this section. Copies of this information shall be provided:~~

~~(1) To the fire suppression companies primarily responsible for fire suppression at the workplaces within their jurisdiction;~~

~~(2) To fire prevention and inspection divisions within the same jurisdiction; and~~

~~(3) Upon request to any fire department employee or a representative of fire department employees.~~

**380:45-5-3. Confidentiality of information [REVOKED]**

~~No fire department, fire department employee, or representative of fire department employees receiving location information and pursuant Subchapter 5 shall make this information available to the public.~~

**380:45-5-4. Research laboratory [REVOKED]**

~~Each proprietor of a research laboratory shall establish a communication and information exchange program with the fire department which shall be designed to assist the fire department in adequately preparing to respond to emergencies at the laboratory facility.~~

**380:45-5-5. Placarding [REVOKED]**

~~(a) **Signs required and adoption by reference.** The proprietor shall post signs which shall comply with this Chapter. The proprietor need not comply with the sign posting requirements of 380:45-5-5(a)(2) if the building, structure, or location within the building or structure does not contain a significant amount of the hazardous chemical as defined in 380:45-5-5(c). The national Fire Protection Association's standard system for identifying fire hazards of chemicals based on NFPA Standard 704 as currently published and as hereafter may be revised shall be adopted by incorporation. If a building or structure has a floor space of five thousand (5,000) square feet or less, a proprietor shall post a sign on every side of th outside of the building or structure identifying the highest degree of hazard in each category, as defined in NFPA 704, contained in the building or structure. If the building has more than five thousand (5,000) square feet, in addition to the signs posted outside, the proprietor shall post a sign at the place within the building where significant amounts of hazardous chemicals are permanently stored to identify the type of hazardous chemical. If hazardous chemicals are moved within the building, the proprietor shall also move the sign or post an additional sign at the location(s) where the hazardous chemical is moved. This subsection applies to significant amounts of a hazardous chemical as defined in 380:45-5-5(c).~~

~~(b) **Proprietor variance applications.** A proprietor may make application to the Commissioner for less stringent sign posting requirements.~~

~~(1) The proprietor shall make written application for a variance.~~

~~(2) The proprietor shall have the burden of proof to show that compliance imposes undue hardship on the proprietor and that the less stringent sign posting requirements as proposed by the proprietor offer substantially the same degree of notice and protection to emergency responders.~~

~~(c) **Significant amounts.** The Oklahoma Department of Labor will recognize documented limits set by the state or local Fire Marshal having jurisdiction. In the absence of such documented limits the following will apply: A chemical meeting any of the following criteria shall be considered a "significant amount" of hazardous chemicals:~~

~~(1) Any amount of a hazardous chemical which is classified according to the U.S. Department of transportation as:~~

~~(A) Class 1, Divisions 1.1, 1.2, and 1.3 - Explosives with a mass explosion hazard, a projection hazard or predominantly a fire hazard;~~

~~(B) Class 6, Division 6.1 - Toxic materials;~~

~~(C) Class 5, Division 5.2 - Organic peroxides;~~

~~(D) Class 4 - Flammable solids, spontaneously combustible materials and dangerous when wet materials;~~

~~(E) Gases (stored in cylinders) toxic by inhalation; or~~

~~(F) Any radioactive material requiring a license under the atomic energy act.~~

~~(2) The aggregate amount of hazardous chemical(s) stored, placed, or used at the workplace is greater than or equal to fifty five (55) gallons of liquid or five hundred (500) pounds of non-liquid or eight hundred (800) cubic feet of pressurized gas where the numerical rating of the hazardous chemical based on the NFTA 704 system results in a:~~

~~(A) Health rating of greater than or equal to two (2), or~~

~~(B) Flammability rating greater than or equal to two (2), or~~

~~(C) Reactivity rating of greater than or equal to one (1). If the hazardous chemical is a combination of the liquid and non-liquid states, the aggregate amount measurement shall be made considering the combined poundage.~~

~~(d) **Recommended communications.** It is recommended that the local fire departments and proprietors meet to collaborate on the types and amounts of hazardous chemicals as well as any unusual hazards which may be encountered by emergency response personnel.~~

**380:45-5-6. Procedure for non-compliance [REVOKED]**

~~If a public sector employer fails to comply with the requirements of Subchapter 5, the fire chief in the jurisdiction of the proprietor may file a written complaint with the Commissioner.~~

~~(1) The Commissioner may rely on the information provided by the fire chief and immediately issue a notice of non-compliance to the agency or may conduct an investigation or inspection pursuant to the Oklahoma Hazard Communication Standard.~~

~~(2) In the event of a hearing, notice of non-compliance shall be sent by certified mail and shall set forth that the public sector employer named have an opportunity to be heard, upon demand by the agency. In the event the agency demands a hearing, the Commissioner may conduct the said hearing.~~

~~(3) In the event the public sector employer does not demand a hearing within thirty days of the receipt of notice of non-compliance, the Commissioner shall, without further notice, issue an order for compliance which shall be a final agency action pursuant to the Oklahoma Occupational Health and Safety Standards Act.~~

~~(4) In the event the issue of non-compliance comes for hearing before the Commissioner, the Commissioner may, at the conclusion of the hearing, issue an order for compliance which shall be a final agency action pursuant to the Oklahoma Occupational Health and Safety Standards Act or dismiss the complaint.~~

## SUBCHAPTER 7. EMPLOYEE RIGHTS AND RESPONSIBILITIES [REVOKED]

**380:45-7-1. Employee protection [REVOKED]**

~~If any employee has requested information pursuant to 380:45-3-5, and has not received the information within the specified time period, the employee may then refuse to work with the substances or at the location for which the request was made. An employer may not discharge or initiate any adverse personnel action against any employee because the employee has exercised his/her right under this provision. An employer may not request or require any employee to waive any rights under these regulations and in any event if such waivers are executed they shall be null, void and unenforceable.~~

**380:45-7-2. Disciplinary action [REVOKED]**

~~Employees working in areas where exposure(s) to hazardous chemicals exist shall be required to perform their jobs in accordance with precautions communicated to them during training and information programs. Employers may take appropriate disciplinary action when an employee does not comply with the precautionary measures this Chapter mandates.~~

**380:45-7-3. Hazardous exposure [REVOKED]**

~~An employee, upon receiving a potentially hazardous exposure to any substance or agent covered under this Chapter, shall immediately notify the employer of such exposure.~~

## SUBCHAPTER 11. ENFORCEMENT [REVOKED]

**380:45-11-1. Enforcement [REVOKED]**

~~The provisions of these regulations hall be enforced pursuant to the provisions of Title 40, Chapter 10 Oklahoma Occupational Health and Safety Standards Act.~~

## SUBCHAPTER 13. EFFECTIVE DATES [REVOKED]

**380:45-13-1. Hazardous material containers [REVOKED]**

~~Hazardous material containers shipped subsequent to November 25, 2085, shall be accompanied by material safety data sheets.~~

**380:45-13-2. Employer compliance [REVOKED]**

~~Employers shall be in compliance with all provisions of this Chapter by October 1, 2000.~~

## SUBCHAPTER 15. ASBESTOS NOTICE AND LABELING [REVOKED]

**380:45-15-1. Labeling [REVOKED]**

~~Pipes, boilers, storage vessels, structural members, or equipment with insulating material that might be removed, penetrated, damaged, or otherwise disturbed by repair, remodeling, renovation, maintenance, or other activity, shall be labeled with cautionary labels. Such caution labels shall be printed in letters of sufficient size and contrast as to be readily visible and legible. Each room or area where the conditions requiring such labels exist shall have a minimum of one such label, and such additional labels as may be necessary to ensure ready visibility and legibility. Such equipment with asbestos containing material shall bear the following label:~~

~~DANGER~~
~~CONTAINS ASBESTOS FIBERS~~
~~AVOID CREATING DUST~~
~~CANCER AND LUNG DISEASE HAZARD~~

**380:45-15-2. Asbestos notice [REVOKED]**

~~For facilities with asbestos containing material used as acoustical material on ceilings or walls, employers or their representatives having administrative jurisdiction over such facilities shall ensure that a notice is posted informing employees of~~

~~the presence of asbestos in the workplace and which contains at least the following:~~

~~NOTICE TO EMPLOYEES~~

~~This facility has been inspected for the presence of asbestos containing material.~~

~~Asbestos containing material is present in this facility.~~

~~Asbestos containing material may cause health problems.~~

**380:45-15-3. School inspections [REVOKED]**

~~Schools inspected pursuant to the Environmental Protection Agency's asbestos inspection program (40 CFR Part 763) and having complied with the notification requirement contained therein (40 CFR 763.6) shall be exempt from the requirements of 380:45-15-2.~~

## SUBCHAPTER 19. HAZARD COMMUNICATION COMMITTEE [REVOKED]

**380:45-19-1. Establishing a committee [REVOKED]**

~~In order to more effectively administer the Oklahoma State Hazard Communication (Right To Know) Standard, the Commissioner of Labor may, when needed, establish a committee to study emergency response and hazard communication problems.~~

*[OAR Docket #10-915; filed 5-26-10]*

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# TITLE 380. DEPARTMENT OF LABOR CHAPTER 50. ABATEMENT OF FRIABLE ASBESTOS MATERIALS RULES

*[OAR Docket #10-917]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions [AMENDED]
Subchapter 4. Project Design Requirements [AMENDED]
Subchapter 5. Contractor, Supervisor, and Worker Licensing and Requirements [AMENDED]
Subchapter 6. Training Requirements [AMENDED]
Subchapter 9. Contractor Procedures [AMENDED]
Subchapter 11. Laboratory Requirements [AMENDED]
Subchapter 13. Glovebag Operations [AMENDED]
Subchapter 15. Worker and Work Area Protection [AMENDED]
Subchapter 17. Minimum Abatement Standards [AMENDED]
Subchapter 19. Variances [AMENDED]
Subchapter 21. Non-Friable Asbestos Containing Material Procedures [REVOKED]
Subchapter 23. Miscellaneous Friable Asbestos Material Abatement Procedures [AMENDED]
**AUTHORITY:**
Department of Labor; 40 O.S. §453, Oklahoma Asbestos Control Act
**DATES:**
**Comment period:**
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**Public hearing:**
February 25, 2010
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March 29, 2010
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May 5, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2010
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May 22, 2010
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**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
Several provisions of Chapter 50 are amended. Some of the more important changes deal with air monitoring, decontamination units, and electrical requirements. Air monitoring technicians must follow sampling procedures and maintain an on-site daily activity log. Decontamination facilities must be attached to the work area for projects ten (10) square feet or twenty-five (25) linear feet and greater. A variance may be requested if these requirements cannot be met. The informal policy statement regarding situations where it is not possible to shut down all electrical power to the asbestos work area is added to these rules. Several other changes are made in these proposed amendments to the administrative rules.
**CONTACT PERSON:**
Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

**380:50-1-2. Definitions**

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

**"Abatement crew"** means the workers on an asbestos abatement project at any given time.

**"ACBM"** means asbestos-containing building material.

**"ACM"** means asbestos-containing material.

**"Accredited or accreditation"** means, when referring to a person or a laboratory, that such a person or laboratory has met the training, experience, and/or quality control requirements to perform work in accordance with **AHERA.**

**"Aggressive method"** means removal or disturbance of building material by sanding, abrading, grinding or other method that breaks, crumbles, or disintegrates intact ACM.

**"AHERA"** means the Asbestos Hazard Emergency Response Act, 15 U.S.C. Chapter 53, Subchapter II, Sections 2641 et seq., as amended, and 40 CFR Chapter I, Subchapter R, Part 763, Subpart E - Asbestos-Containing Materials in Schools, as amended, including appendices.

**"AHERA abatement project designer"** means a person who develops plans and specifications for the abatement of

asbestos. For the purposes of this Chapter, abatement project designers will be considered to be a category of contractors.

**"AHERA inspector"** means a person trained to do on-site inspections for local education authorities to comply with **AHERA.** For purposes of this Chapter, **AHERA** inspectors will be considered to be a category of asbestos workers.

**"AHERA management planner"** means a person who develops management plans for local education authorities to comply with **AHERA.** For the purposes of this Chapter, management planners will be considered a category of contractors.

**"AIHA"** means the American Industrial Hygiene Association.

**"Amended water"** means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.

**"Asbestos"** means ~~chrysolite~~ chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, ~~and~~ actinolite asbestos, ~~in a fibrous form, and as determined by polarized light microscopy~~ and any of these minerals that has been chemically treated and/or altered. For purposes of this Chapter, "asbestos" includes presumed asbestos containing material (PACM).

**"Asbestos-containing material (ACM)"** ~~means any material that contains asbestos of one percent (1%) or more, by weight, except that dust samples analyzed as an indicator of asbestos contamination may be meaningful if asbestos is detected in any quantity~~ means any material containing more than one percent (1%) asbestos.

**"Asbestos-containing building material (ACBM)"** means any friable ACM that is in or on interior structural members or other parts of a school, or public or commercial ~~building~~ facility.

**"Asbestos fiber"** means any fiber of ~~chrysolite~~ chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite five micrometers or longer, and with an aspect ratio of greater than three-to-one.

**"Asbestos hauler"** means a person who transports asbestos containing materials from abatement projects for hire. For purposes of this Chapter, asbestos haulers will be considered to be asbestos abatement contractors, and their employees to be asbestos abatement workers, and shall be required to be licensed as such.

**"Category I nonfriable asbestos-containing material (ACM)"** means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent (1%) asbestos ~~by weight~~ as determined using the method specified in Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy.

**"Category II nonfriable ACM"** means any material, excluding Category I non-friable **ACM**, containing more than one percent (1%) asbestos ~~by weight~~ as determined using the method specified in Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy that, when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure.

**"Class III asbestos work"** means repair and maintenance operations where ACM, including TSI and surfacing ACM and PACM, is likely to be disturbed. For the purposes of this Chapter, Class III asbestos work shall be considered the same as small scale, short duration (SSSD) and O&M work activities.

**"Clean room"** means an asbestos-free section of a decontamination facility which is intended for workers to change from street clothes to protective clothing prior to asbestos abatement activities.

**"Closely resemble"** means that the major workplace conditions which have contributed to the level of historic asbestos exposure, are no more protective than conditions of the current workplace.

**"Commissioner"**, as used herein, means the Commissioner of Labor, or employees of the Oklahoma State Department of Labor appointed to act on behalf of the Commissioner.

**"Competent person"** means, in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measure to eliminate them, as specified in 29 CFR 1926.32(f). In addition, for Class I and Class II work who is specially trained in a training course which meets the criteria of EPA's Model Accreditation Plan (40 CFR 763) for asbestos supervisor, or its equivalent and, for Class III and Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2).

**"Containment"** means an area which has been isolated from the environment through negative air pressure, physical barriers, and/or other means, and in which asbestos abatement is intended to take place.

**"Critical barrier"** means a temporary closure, usually of polyethylene sheeting or other impervious material, and excluding wall, floor, or ceiling covering, of any opening that would otherwise allow the transfer of asbestos fibers from the containment to the outside environment.

**"Demolition"** means the wrecking or taking out of any load-supporting structural member of a facility and any related razing, removing, or stripping of asbestos products.

**"Dirty room"** means a chamber of a decontamination unit connecting the asbestos abatement area to the shower. The dirty room is for removal of contaminated or potentially contaminated protective clothing prior to entering the shower. The dirty room shall be a minimum of twelve (12) square feet and shall be built large enough to accommodate the decontamination of work equipment.

**"Disturbance"** means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM. Disturbance includes cutting away small amounts of ACM and PACM, no greater than the amount which can be contained in one standard sized glovebag or waste bag in order to access a building component. In no event shall the amount of ACM or PACM so disturbed exceed that which can be contained in one glovebag or waste bag which shall not exceed 60 inches in length and width.

**"DOL"** means the Oklahoma State Department of Labor.

**"DOT"** means the Oklahoma State Department of Transportation.

**"EPA"** means the United States Environmental Protection Agency.

**"Enclosure"** means an airtight, impermeable, permanent barrier around asbestos-containing materials to prevent the release of asbestos fibers into the air.

**"Facility"** means something that is built, installed, or established to serve a particular purpose.

**"Friable asbestos-containing material (ACM)"** means any material containing more than one percent (1%) asbestos which has been applied on ceilings, walls, structural members, piping, duct work, or any other part of a building, which when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

**"GFI"** means electrical ground fault circuit interrupter.

**"Glovebag"** means a commercially prepared device ~~containing sleeves with attached gloves, for the purpose of removing asbestos from within the device,~~ that is not more than a 60 x 60 inch impervious plastic bag-like enclosure affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled and which, when attached and used in a proper manner, will prevent the release of asbestos fibers. For purposes of these Rules, a rigid box with armholes and attached sleeves will be considered to be the same as a glovebag, and the use of such a box in a single location will be considered to be equivalent of the use of one glovebag.

**"Grinding"** means to reduce to powder or small fragments and includes mechanical chipping or drilling.

**"HEPA"** means high-efficiency particulate air.

**"Inspection"** Those activities undertaken to specifically determine the presence or location, or to assess the condition of, friable or non-friable ACM whether by visual or physical examination, or by collecting samples of suspect material.

**"Load-out"** means ~~a chamber~~ two chambers of a containment area which ~~is~~ are used to decontaminate disposal bags, barrels, and equipment prior to removal from containment.

**"Major fiber release episodes"** ~~The disturbance of any amount of friable asbestos material in an area that is occupied, or intended to be occupied~~ means any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable ACBM.

**"Mini-containment"** means a small enclosure intended to isolate a small-scale abatement procedure from the environment through negative air pressure, physical barriers, and/or other means. Mini containments will ordinarily not have an attached decontamination system.

**"Minor fiber release episode"** means any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of 3 square or linear feet or less of friable ACBM.

**"NESHAP"** means the National Emission Standards for Hazardous Air Pollutants, **EPA** regulation 40 CFR part 61, latest edition.

**"NIOSH"** means the National Institute for Occupational Safety and Health.

**"OAP"** means Oklahoma Accreditation Plan.

**"Operation and maintenance"** means ~~limited asbestos abatement activities intended to keep facilities functional~~ a program of work practices to maintain friable ACBM in good condition, ensure clean up of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage. The scope of operations and maintenance activities shall be defined in a program for a specific school facility, and shall be approved by the Commissioner. In no case shall operations and maintenance exceed the amount of ACM or PACM which can be contained in one (1) glovebag or waste bag which shall not exceed 60 inches in length and width. For the purposes of this Chapter, operation and maintenance work shall be considered the same as small-scale short duration (SSSD) asbestos activities and Class III asbestos work.

**"OSHA"** means the Occupational Safety and Health Administration of the United States Department of Labor.

**"PACM"** means presumed asbestos-containing material.

**"PEL"** means permissible exposure level. For the purposes of this Chapter, the PEL is .01 fibers per cubic centimeter (f/cc).

**"Poly"** means polyethylene sheeting.

**"Private contractor"** means an asbestos abatement contractor, **AHERA** asbestos management planner, or **AHERA** project designer who is a proprietorship, partnership, or corporation operating for profit, or employed by and on behalf of a private, non-profit corporation, trust, charity, or religious organization.

**"Proprietary contractor"** means an owner or operator who holds an asbestos abatement contractor's license for use strictly on the owned or operated property.

**"Public and commercial ~~building~~ facility"** means ~~any building, excluding residential apartment buildings less than six family units. Such buildings generally include but are not limited to: offices, government owned buildings, colleges, museums, airports, hospitals, churches, schools, warehouses and all industrial buildings~~ the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than four (4) units or detached single-family homes. The term includes, but is not limited to: industrial and office buildings, residential apartment buildings and condominiums of four (4) or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

**"Public contractor"** means an asbestos abatement contractor, **AHERA** management planner, or **AHERA** project designer working specifically for, and on behalf of, a political subdivision of the State of Oklahoma.

**"RACM"** means regulated asbestos-containing materials.

**"Regulated area"** means a demarcated area where asbestos work or response actions are conducted, any adjoining area where debris and waste from such asbestos work or

response actions accumulate, and a work area within which airborne concentrations of asbestos exceed or there is a reasonable possibility they may exceed the permissible exposure limit.

**"Regulated asbestos-containing materials (RACM)"** means friable asbestos-containing material~~ that contains asbestos of one percent (1%) or more, by weight~~, Category I nonfriable **ACM** that has become friable, Category I nonfriable **ACM** that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable **ACM** that has a high probability of becoming, or has become crumbled, pulverized, or reduced to powder by forces expected to act on the material in the course of demolition, renovation, or abatement operations regulated by the Rules.

**"Reinforced poly"** means polyethylene sheeting reinforced with nylon strands.

**"Response action"** means a method, including removal, encapsulation, enclosure, repair, and operations and maintenance, that protects human health and the environment from friable asbestos-containing materials.

**"School building"** means:

(A) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(B) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) Any other facility used for the instruction or housing of students or for the administration of educational or research programs;

(D) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building" under paragraphs (A), (B), or (C);

(E) Any portico or covered exterior hallway or walkway; or

(F) Any exterior portion of a mechanical system used to condition interior space.

**"Shift"** means a scheduled period of work by a given group of workers, usually, but not limited to, eight (8) hours.

**"Small-scale, short duration ~~operations and maintenance~~ (SSSD) activities"** means tasks such as, but not limited to removal of asbestos-containing insulation material on pipes, removal of small quantities of asbestos-containing insulation on beams or above ceilings, replacement of asbestos-containing gaskets on valves, installation or removal of a small section of drywall, installation of wiring or electrical conduits through or proximate to asbestos-containing materials, ~~or minor repairs to damaged thermal system insulation; provided such activities are required in the performance of other maintenance activities not intended as asbestos abatement, and further provided that the quantities of asbestos material to be removed may be contained in a single glove bag or disposal bag or the activity may be performed in a single mini-enclosure~~ removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement, removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glovebag, minor repairs to damaged thermal system insulation which do not require removal, repairs to a piece of asbestos-containing wallboard, or repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function. For the purposes of this Chapter, SSSD asbestos activities shall be considered the same as Class III asbestos work and O&M work.

**"Supervisor"** means a person or persons at an abatement site with project oversight and worker management responsibilities. For purposes of this Chapter, supervisors will be considered to be a category of abatement worker.

**"Third party air monitor"** means an air monitoring laboratory which shares no partners or owners, if a proprietorship, or officers if a corporation, with the contractor for whom monitoring is being performed.

**"Wetted"** means the application of amended water solution to asbestos-containing materials in sufficient quantities to minimize fiber release. The **ACM** need not be saturated.

**"Worker"** means any employee of a contractor, consultant, or air monitoring company, engaged in the abatement of asbestos, or performing a task within an asbestos abatement containment in which direct contact with asbestos is likely.

## SUBCHAPTER 4. PROJECT DESIGN REQUIREMENTS

**380:50-4-1. General requirements**

(a) No asbestos abatement may begin until a project design for that project, if required, has been approved by **DOL.**

(b) Project designs shall contain at a minimum:

(1) A statement that **DOL** Abatement of Friable Asbestos Materials Rules apply.

(2) Sequencing and phasing of work.

(3) Identification of means of egress, ~~and~~ a fire protection plan and a diagram for emergency escape routes, and fire extinguisher placements.

(4) The quantity, type, percentage with bulk analysis unless presumed and a diagramed location of asbestos materials to be abated.

(5) Abatement methods, and techniques, and numbers of containments, glovebags or mini-containments.

(6) ~~Numbers~~ Details of personal and area air monitoring ~~pumps~~ samples.

(7) Numbers and locations of Clean Test samples and type of analysis to be employed.

(~~7~~ 8) Numbers, capacities, ~~location~~ a diagram to identify the locations, and discharge points, if any, of negative air machines.

(~~8~~ 9) Details of the project containment(s), glovebag or mini-containments, including drawings. Details shall include all applicable subchapters of the Oklahoma Asbestos Control Act, including but not limited to scaffolding requirements and live electric isolation.

(~~9~~ 10) Details of the decontamination system(s).

(~~10~~ 11) The extent to which asbestos-contaminated soils, if any, must be removed, and the sampling methods of determining the efficacy of such removal.

(~~11~~ 12) Special materials or methods required to protect objects in the work area should be detailed, (e.g., plywood over carpeting or hardwood floors to prevent damage from scaffolds and falling material).

(~~12~~ 13) Any variances from the Abatement of Friable Asbestos Materials Rules.

(c) Project designs for enclosure or encapsulation may provide for alternate methods to section 380:50-17-4, with the approval for such alternate methods at the discretion of **DOL.**

(d) Project designs for industrial sites may be generally performance based specifications, subject to approval by **DOL.**

**380:50-4-3. Non-AHERA project design requirements**

Any abatement that takes place in an area not under the **AHERA** regulations other than small-scale short duration (SSSD) activities, shall have been designed by a licensed project designer~~, provided the material to be abated is equal to or greater than 160 square feet or 260 linear feet~~.

## SUBCHAPTER 5. CONTRACTOR, SUPERVISOR, AND WORKER LICENSING AND REQUIREMENTS

**380:50-5-10. Licensing of AHERA asbestos inspectors**

Licensing requirements for **AHERA** asbestos inspectors are as follows:

(1) Inspection for asbestos-containing materials in any facility under the jurisdiction of Title 40, Sections 450 through 456 shall be performed only by persons who are licensed as **AHERA** inspectors by the Oklahoma Department of Labor.

(2) **AHERA** inspectors shall be licensed as a special category of asbestos worker and shall have completed a 24-class-hour course for **AHERA** Inspectors and all subsequent asbestos inspector refresher training which fully meet the requirements of Sections 380:50-6-4 and 380:50-6-9.

(3) Applications shall be submitted on forms prescribed by the Commissioner.

(4) The license fee shall be twenty five dollars ($25.00) per year.

(5) The license shall be issued in the name of the individual applicant ~~and shall be valid only when working for a licensed **AHERA** management planner~~.

(6) The license shall be issued for a period not to exceed one year and shall expire concurrently with the asbestos training and subsequent refresher training. There will be no grace period wherein an inspector will be allowed to work with an expired license.

(7) Any inspector who has not taken the required **AHERA** inspector refresher training course within two years of the previous Inspector training or refresher course, shall repeat the **AHERA** inspector training requirements of Sections 380:50-6-4 and 380:50-6-9.

~~(8) The licenses shall be issued in the name of the individual applicant and shall be valid only when working for a licensed **AHERA** management planner.~~

(~~9~~ 8) License cards shall be available at the job site for inspection by the Department of Labor.

## SUBCHAPTER 6. TRAINING REQUIREMENTS

**380:50-6-3. Initial training for asbestos contractors and supervisors**

(a) In the State of Oklahoma, anyone seeking accreditation of licensure from the Department of Labor, must obtain their training from an EPA or DOL accredited, education institution, labor union, or government agency, or from a private vocational education provider licensed by the state where it operates (pursuant to 70 O.S. _ 21-103 within the state of Oklahoma) and accredited by EPA or an EPA approved governmental agency.

(b) Such institutions, labor unions or government agencies may receive their DOL approval through the Oklahoma Accreditation Plan providing the following criteria are met:

(1) The training for asbestos contractor/supervisor shall be specific to the discipline and shall not be combined with training for any other discipline.

(2) The contractors/supervisor's course shall be no less than five days in length and shall include: lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review and an written examination. Hands on training must permit contractor/supervisors to have actual experience performing tasks associated with asbestos abatement. The **OAP** also recommends the use of audio-visual materials to complement lectures, where appropriate. One day of training equals 8 hours, including breaks and lunch.

(3) Course instruction must be provided by EPA or State approved instructors. **EPA** or State approval shall be based on a review of the instructor's academic credentials and/or field experience in asbestos abatement.

(4) The training course for Contractors/Supervisors shall adequately address the following topics:

(A) Physical characteristics of asbestos. Identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance; review of hazard assessment considerations and a summary of abatement control options.

(B) Potential health effects related to asbestos-exposure. The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of safe exposure levels; the synergistic effect between cigarette smoking and asbestos exposure;

the latency periods for asbestos related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma and cancers of other organs.

(C) Employee personal protective equipment. Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance and storage procedures for respirators; methods for field testing of the face-piece-to-face seal (positive and negative pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair, etc.) the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage and handling of non-disposable clothing; regulations covering personal protective equipment.

(D) State-of-the-art work practices. Proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; lock-out of electrical and ventilation systems; proper work techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; (HEPA)-vacuums; proper clean-up, load-out and disposal procedures; work practices for removal, encapsulation, enclosure, and repair of ACM; emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures and recommended and prohibited work practices.

(E) Personal hygiene. Entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, chewing gum or tobacco, or applying cosmetics in the work area. Potential exposures, such as family exposures, shall also be included.

(F) Additional safety hazards. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat/cold stress, air contaminants other than asbestos, fire and explosion hazards, scaffolds and ladder hazards, slips, trips and falls and confined spaces.

(G) Medical monitoring. OSHA Protection Rule requirements for physical examinations, including a pulmonary function test, chest X-rays, and a medical history for each employee.

(H) Air monitoring. Procedures to determine airborne concentrations of asbestos fibers, including description of aggressive air sampling, sampling equipment and methods, reasons for air monitoring, types of sampling and interpretation of results.

(I) Relevant Federal, State and local regulatory requirements and standards, including: requirements of TSCA Title II; requirements of NESHAP (40 CFR Part 61), Subpart A (General Provisions) and M (National Emission Standard for Asbestos); OSHA standards for permissible exposure levels and respiratory protection; Oklahoma Requirements for permissible exposure levels; OSHA Asbestos Construction Standards.

(J) Respiratory Protection Programs and Medical Monitoring Programs.

(K) Insurance and Liability issues and Contractor issues. ~~Worker's~~ Workers' compensation coverage and exclusions; third party liability and defenses, insurance coverage and exclusions; environmental impairment insurance.

(L) Record keeping for asbestos abatement projects. Records required by Federal, State and Local regulations; records recommended for legal purposes.

(M) Supervisory techniques for asbestos abatement activities. Supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

(N) Contract specifications. Discussions of key elements that are included in contract specifications.

(O) Course review. A review of key aspects of the training course.

(c) In addition to the five day contractor/supervisor's course, anyone seeking licensure from the State of Oklahoma will be required to show current certification of the following additional training:

(1) Cardio-Pulmonary Resuscitation from the American Heart Association, American Red Cross or other DOL approved ~~trainer~~ provider

(2) First Aid from the American Heart Association, American Red Cross or other DOL approved ~~trainer~~ provider

(3) **NIOSH** 582 or equivalent or a two day course in air monitoring practices and procedures

(4) **OSHA** Confined Space Entry

(5) Six months of experience on projects inspected by the **DOL**, including a minimum of six (6) different abatement projects or containments or one year of experience as an asbestos worker and six months as an asbestos ~~abatement~~ supervisor on projects which have not been inspected by the **DOL.**

## SUBCHAPTER 9. CONTRACTOR PROCEDURES

### 380:50-9-1. Contractor notification

~~Contractors shall notify the Commissioner in writing ten (10) days prior to performing any asbestos abatement work. Notification shall include~~:

(a) For projects involving any asbestos abatement or response action other than emergencies, O&M for schools, SSSD or Class III for facilities and public and commercial facilities:

(1) Notifications shall be submitted in accordance with the following schedule:

(A) A notification is required ten (10) days prior to performing asbestos abatement or response actions

for projects involving more than one glovebag and less than 160 square feet or 260 linear feet of asbestos-containing materials.

(B) A notification is required ten (10) days prior to performing asbestos abatement or response actions for projects involving 160 square feet or 260 linear feet or more of asbestos-containing materials.

(C) Projects shall not be divided into small sequential segments for the purpose of avoiding the requirements of this Chapter.

(2) Asbestos contractors shall notify the Commissioner in writing, and on forms prescribed by the Commissioner. Notification shall include:

(~~1~~ A) ~~Contractor's~~ Asbestos contractor's name, address, and phone number.

(~~2~~ B) Owner's name, address, and phone number.

(~~3~~ C) Location of job site.

(~~4~~ D) Projected starting date.

(~~5~~ E) Projected ending date.

(~~6~~ F) Abatement technique.

(~~7~~ G) Amount of asbestos to be abated as linear feet and/or square feet.

(~~8~~ H) Names and addresses of all consultants, industrial hygienists, testing laboratories, or other subcontractors to be utilized during the project.

(~~9~~ I) Name and address of landfill to be used for asbestos disposal.

(~~10~~ J) Plans for decontamination facilities.

(~~11~~ K) Copies of project documents, including:

(~~A~~ i) Bonds and insurance certificates as applied to public projects.

(~~B~~ ii) **NESHAPS** notification.

(~~12~~ L) Written permission from the owners of all vehicles and/or trailers not owned by the contractor that will be used to transport asbestos-containing articles or containers.

(~~13~~ M) Names and addresses of haulers of asbestos for hire, who shall be licensed asbestos abatement contractors.

(~~14~~ N) A certificate of vehicle liability insurance specifically covering any vehicles or trailers used to transport asbestos-containing or contaminated waste, equipment, or materials. The limits of liability shall not be less than one million dollars ($1,000,000).

(O) The project design.

(b) For O&M for schools and Class III for facilities and public and commercial facilities:

(1) Asbestos contractors shall notify the Commissioner in writing by fax or email, and on submittal forms prescribed by the Commissioner, prior to performing any O&M for schools or SSSD or Class III for public and commercial facilities. Notification shall include:

(A) Asbestos contractor's name, address, and phone number.

(B) Owner's name, address, and phone number.

(C) Location of job site.

(D) Projected starting date.

(E) Projected ending date.

(F) Abatement technique.

(G) Amount of asbestos to be abated as linear feet and/or square feet.

(H) Names and addresses of all consultants, industrial hygienists, testing laboratories, or other subcontractors to be utilized during the project.

(I) Name and address of landfill to be used for asbestos disposal.

**380:50-9-2. Emergency notification**

(a) Notification by phone, email or fax is permitted in the case of an emergency involving protection of limb, life and property. Notification shall include the information contained in ~~Section 380:50-9-1(1) through (13),~~Section 380:50-9-1(a)(2) and the date of the contract. The written notification items in ~~Section 380:50-9-1(1) through (13)~~Section 380:50-9-1(a)(2) above shall be submitted to the Commissioner within ~~three (3) days~~ twenty-four (24) hours after the start of abatement.

(b) The Contractor shall immediately notify the Commissioner of any changes in the information provided under ~~Section 380:50-9-1(1) through (14)~~Section 380:50-9-1(a)(2).

(c) In case of an emergency, as determined by the Commissioner, the project design will be waived.

**380:50-9-5. Notifications of hazards**

The contractor or supervisor shall immediately inform and follow up with the owner and the Commissioner by phone, fax or email of health hazards created during abatement. This will include, but is not limited to, such occurrences as breaching the containment area, loss of negative pressure to a negative pressure containment, air monitoring tests indicating airborne asbestos above acceptable levels, ~~accidents~~ recordable injuries, loss of power, etc.

## SUBCHAPTER 11. LABORATORY REQUIREMENTS

**380:50-11-1. Daily air monitoring requirements**

Daily air monitoring requirements shall consist of the following:

(1) Personal monitoring.

(A) One (1) personal air sample for every four workers, but a minimum of two (2) personal air samples collected from within the work area, and a minimum of two (2) personal air samples per abatement crew, by a method to be deter mined by the Commissioner. One (1) of these personal air samples must be from a worker collecting and bagging asbestos, and one must be from a worker in the loadout area, where applicable.

(B) All personal monitoring results shall be reported with the type of respirator worn by the worker and the license number of each worker.

(C) The exposure to airborne fiber concentrations by workers on abatement projects shall be limited to

a maximum value of 0.01 fibers per cubic centimeter within the assigned respirator, as determined by dividing the airborne fiber concentration by the respirator protection factor.

(2) Inside area monitoring.

(A) A minimum of one (1) area sample in the vicinity of each abatement crew.

(B) One (1) sample from the load-out area during load-out activities.

(3) Outside area monitoring.

(A) Minimum of, but not limited to, one (1) air sample from each independent exit area collected directly outside and adjacent to the work area as designated in the project design.

(B) One (1) sample per shift from the exhaust of each negative air machine, or common exhaust duct of multiple machines, which discharges from the containment area. Such discharge shall not be permitted to exceed 0.01 fibers/cc.

(C) One (1) sample immediately outside the clean room. Air monitoring in the clean-room of the decontamination system is not a requirement of these Rules.

(D) Minimum of, not limited to, one (1) additional air sample as designated in the project design.

(4) Calibration shall be accomplished ~~immediately~~ prior to, ~~and immediately following the use of any air~~ and at the conclusion of sampling ~~device~~. The average flow rate shall be utilized for all calculations of airborne concentrations relating to asbestos.

(A) All non-primary type flow measuring devices shall be routinely calibrated by using a primary standard once per month, and shall be accompanied with calibration records and/or charts which shall contain:

(i) Date of calibration.

(ii) Individual accomplishing calibration.

(iii) Identification of referenced primary standard including serial number.

(iv) Number of calibration points with accompanying table reflecting indicated flow versus actual flow.

(B) Floating ball type flow meters shall be non-adjustable, or shall be sealed and the seal must not be broken. A wax ring is an appropriate seal.

(5) No airborne fiber count shall be reported to the Department of Labor or any other entity as a numerical value if the count is less than the minimum level of detectability for the method used for analysis. The value shall be reported as less than the detectable limit, with that limit so stated.

~~(6) A ten fiber minimum quantification limit shall be applied when determining the detection limit of a given sample.~~

**380:50-11-2. Clean-test requirements**

(a) After all abatement and cleanup procedures are concluded, a Clean Test shall be conducted to ensure cleanliness of the abatement area prior to re-occupancy of the abatement area.

(b) Clean Test ~~(re-occupancy)~~ samples shall not be conducted until a visual inspection is performed by Oklahoma Department of Labor personnel.

(c) Clean Test samples shall be by aggressive sampling techniques, the number and method of such tests to be ~~determined by the Commissioner~~ specified by the project design.

~~(1) There shall be a minimum of:~~

~~(A) One test sample for every 1500 square feet, or fraction thereof, or one test sample for every 15,000 cubic feet or fraction thereof, whichever is greater.~~

~~(B) Three test samples per containment, for projects greater than 160 square feet or 260 linear feet.~~

~~(C) One sample per room or discrete area.~~

(1) For all projects, other than O&M, SSSD, or Class III, where less than 160 square feet or 260 linear feet of ACM or PACM has been removed:

(A) A minimum of five (5) samples shall be run in a regulated area located in a public or commercial facility. Samples shall be analyzed by Phase Contrast Microscopy (PCM).

(B) A minimum of five (5) samples shall be run in a regulated area located in a school facility as defined by AHERA. Samples shall be analyzed by Phase Contrast Microscopy (PCM).

(2) For all projects, other than O&M, SSSD, or Class III, where 160 square feet or 260 linear feet or more of ACM or PACM has been removed:

(A) A minimum of five (5) samples shall be run in a regulated area located in a public or commercial facility. Samples shall be analyzed by Phase Contrast Microscopy (PCM).

(B) A minimum of five (5) samples shall be run in a regulated area located in a school facility as defined by AHERA. Samples shall be analyzed by Transmission Electron Microscopy (TEM).

(~~2~~ 3) Sample flow rates shall be limited to ten (10) liters per minute for 25-millimeter~~, or twenty (20) liters per minute for 37 millimeter diameter~~ cassettes.

~~(3) Samples shall be taken over a period of not fewer than six hours. If shorter sampling periods are used, there must be a proportionately greater number of samples taken.~~

(4) The minimum volume of air drawn for each Clean Test sample shall be 1,200 liters for a 25-millimeter cassette.

(d) For the Clean Test to be approved using PCM analysis, the upper confidence limit of the airborne fiber concentration shall be less than 0.01 fibers per cubic centimeter~~ or the airborne fiber concentration outside the containment as determined prior to abatement, whichever is greater, except that for asbestos abatement for any local education authority which involves abatement of more than 160 square feet or 260 linear feet, the Clean Test shall meet the **EPA AHERA** requirements for **TEM.** Projects may not be divided into small, sequential segments for the purpose of avoiding this requirement~~.

(e) For any PCM analysis exceeding the allowed ~~clearance~~ Clean Test level for any cassette on a project not covered under

**AHERA** regulations, the contractor may have such cassettes analyzed by **TEM** utilizing **NIOSH** Method 7402, in which case the asbestos fiber level shall be less than 0.01 fibers/cc for those fibers greater than five (5) micrometers.

(f) For Clean Tests to be approved using **TEM** analysis, the average concentration of the five (5) air samples collected within the regulated area, shall be less than 70 structures per square millimeter.

**380:50-11-3. ~~Laboratory~~ Sampling and monitoring requirements**

(a) Airborne fiber analysis shall be in accordance with the NIOSH Manual of Analytical Methods, No. 7400, "Asbestos and Other Fibers by **PCM**", as amended.

(1) No airborne fiber count shall be reported to DOL or any other entity as a numerical value if the count is less than the minimum level of detectability for the method used for analysis. The value shall be reported as less than the detectable limit, with limit so stated.

(2) Upper and lower confidence limits shall be reported for all air samples.

(3) If the actual number of fibers counted is less than the limit of detection, the limit of detection shall be used to calculate the upper and lower confidence limits.

(b) All asbestos analyses shall be performed by laboratories which have quality control programs approved in advance by, and at the discretion of the Commissioner using a set of published guidelines, or which utilize only laboratory technicians who have successfully completed **DOL**-approved courses in the type analyses performed by the technician, and which:

(1) For bulk asbestos analysis:

(A) Are certified by the National Voluntary Laboratory Accreditation Program, for laboratories providing bulk sample analyses, or

(B) Participate in the **AIHA** Bulk Asbestos Proficiency Testing Program, latest round, and ~~scored seventy five percent (75%) correct~~ be rated proficient for the latest round.

(2) For **NIOSH** Method 7400 fiber counting analysis:

(A) Participate in the **AIHA** Proficiency Analytical Testing (**PAT**) Program, latest round, and are proficient for the round, or

(B) Have all individual analysts participate in the **AIHA** Asbestos Analyst Registry (**AAR**) program and are rated as proficient for each analyst.

(3) The National Voluntary Laboratory Accreditation Program, for laboratories providing fiber counting analyses using **TEM.**

**380:50-11-5. Technician's requirements**

(a) All reports of analyses shall be signed by the technician performing the analysis.

(b) All technicians performing on-site air monitoring shall have:

(1) The **NIOSH** course No. 582 on "Sampling and Analysis of Airborne Asbestos Dust", or equivalent. Such course shall have been provided by a government agency or educational institution except, any person with training recognized by **DOL** prior to the effective date of these rules shall continue to be recognized.

(2) A valid asbestos ~~abatement workers~~ worker, asbestos supervisor, asbestos inspector, asbestos management planner, or asbestos project designer license.

(c) All technicians performing PCM analysis shall have The **NIOSH** course No. 582 on "ASampling and Analysis of Airborne Asbestos Dust", or equivalent. Such course shall have been provided by a government agency or educational institution except, any person with training recognized by **DOL** prior to the effective date of these rules shall continue to be recognized.

(d) All technicians performing bulk analyses must have a four-day course, or equivalent, in the bulk analysis of asbestos-containing materials.

(e) All technicians performing on-site air monitoring must follow the sampling procedures identified in 380:50-11-1, 380:50-11-2, and where applicable, the approved project design.

(f) All technicians performing on-site air monitoring shall maintain an on-site daily activity log. The log shall include:

(1) Time of on-site arrival and departure.

(2) Times of entrance into the regulated area to ensure sample integrity.

(3) Signature of on-site asbestos supervisor.

(4) All cassettes must be properly labeled as they are placed for sample collection.

**380:50-11-7. Third party monitoring requirements for private contractors**

(a) Air monitoring done for private abatement contractors to fulfill the requirements of Section 380:50-11-1-(1) through (6) and Section 380:50-11-2 shall be done by an independent third party, except:

(1) When the quantity of asbestos to be removed is less than 160 square feet or 260 linear feet, or

(2) When the abatement is performed under the terms of an approved **O&M** program.

(b) Contractors will not be issued violations for laboratory deficiencies.

## SUBCHAPTER 13. GLOVEBAG OPERATIONS

**380:50-13-1. General requirements**

(a) Except as noted in this Subchapter, glovebag operations which shall include drop cloths and critical barrier(s) for the purpose of abatement shall be treated the same as other abatement procedures. Therefore,

(1) Air sampling shall be consistent with Subchapter 11 of this Chapter. ~~except worker personal air monitoring may be substituted for inside work area and clearance monitoring provided:~~

~~(A) All workers are monitored.~~

~~(B) All personal monitors have a detection limit below passive background or below 0.01 fibers/cc, whichever is greater.~~

~~(C) All personal monitors have a measured value below background or 0.01 fibers/cc, whichever is greater.~~

(2) **HEPA** vacuum system shall be utilized during all glovebagging operations.

(3) Glovebags shall be maintained under negative air pressure, when feasible, but the use of a negative pressure measuring system shall not be required. The inward bulging of the glove bag due to negative pressure inside the glove bag shall be sufficient indication of adequate pressure drop. In the event it is not feasible to maintain the glovebag under negative air conditions, each such glovebag shall be smoke-tested.

(4) Pipe and/or fixtures from which asbestos has been removed within a glove bag shall be coated with a suitable lockdown encapsulant prior to removal of the glovebag.

(5) A glove bag may not be used for more than one application and may not be modified.

(6) Electrical equipment below the level of the glovebag or within arm's reach of the glovebag must be de-activated. All electrical equipment used by the workers must be provided **GFI** protection.

(7) Personnel involved in glovebag abatement shall be required to:

(A) Wear appropriate personal protective equipment (e.g., proper respiratory protection and full-body protection of Section 380:50-15-2 and Section 380:50-15-6, respectively).

(B) Fully utilize a decontamination shower which has at a minimum:

(i) A location which may be reached by using a clean protective suit over the potentially contaminated work suit.

(ii) The requirements of Section 380:50-15-12(c).

(b) A minimum of two (2) workers shall be used on any glovebag activity.

(c) Glovebags used within a containment, for convenience, shall not be subject to the provisions of this Subchapter.

## SUBCHAPTER 15. WORKER AND WORK AREA PROTECTION

### 380:50-15-2. Respirator requirements

(a) The contractor shall provide workers with respirators in accordance with the approved respirator program, a copy of which shall be available to workers at the job site.

(b) Workers shall wear suitable respiratory protection when working within arm's reach of friable asbestos during construction of the containment, or after a fiber release episode, or if there is visible asbestos debris in the area.

(c) Workers shall wear, at a minimum, a fullface air-purifying respirator (**APR**) when removing asbestos, except when the provisions of Section 380:50-15-5 apply.

(d) The contractor shall provide a sufficient quantity of filters approved for asbestos so workers can change filters during the workday.

(1) Filters shall not be used any longer than one (1) workday, nor after the respirator has entered the decontamination shower, nor after a worker has requested a new cartridge(s) when required, except: respirator cartridges with **NIOSH** approved, factory supplied, waterproof seals which may be taken through the decontamination shower without wetting the cartridge may be reused, provided:

(A) There is an on-site respirator cartridge flow measurement device which can determine the need for changing the filters, and

(B) Workers shall obtain new cartridges when required.

(2) The respirator filters shall be stored at the job site in the clean room and shall be totally protected from exposure to asbestos prior to their use.

(3) Single use, disposable respirators will not be approved.

(4) Protection factors of up to 50 for the full face-piece respirators may be used provided these protection factors have been verified by a quantitative fit test for each worker ~~within the previous six months, and the result made available at the work site~~.

(e) Contractors shall instruct and train workers in proper respirator use and maintenance, and shall abide by their own respirator programs.

### 380:50-15-5. Pressure-demand supplied-air respirators

(a) Pressure-demand supplied-air respirators or Powered Air Purifying Respirators shall be worn for all gross asbestos removal, excluding glovebag operations, if:

(1) Air-monitoring results from the previous work shift are not available at the job site.

(2) Any of the personal or area air samples indicate airborne fiber concentrations are at a level above which respirators with a lower protection factor would not be adequate, (29 CFR 1926.1101 Table 1, with the Permissible Exposure Limit changed to 0.01 fibers per cubic centimeter), provided the initial shift used to justify respirator downgrading shall be a minimum of seven hours of work involving the actual removal of asbestos.

(3) An incident occurs with the potential for raising the airborne fiber concentrations to such a level.

(b) Pressure-demand supplied-air respirators shall consist only of parts related to the **MSHA/NIOSH**-approved number. The contractor shall have on site manufacturer's specifications for supplied-air respirators.

(c) Pressure-demand supplied-air respirators shall be provided by the contractor with a pressure gauge down-stream of the supply regulators to permit Department of Labor inspectors to determine whether pressure requirements are being met.

(d) Pressure-demand supplied-air respirators shall be provided Grade "D" air that has been processed through a filtration apparatus to ensure that the following levels of contaminants are not exceeded:

(1) Carbon monoxide, less than 10 parts per million. The contractor, at all times supplied air is being used, shall daily and at other times requested by **DOL** Inspectors, test the carbon monoxide alarm with 10 parts per million carbon monoxide test gas.

(2) Hydrocarbons less than five milligrams per cubic meter. The supplied air shall be free of tastes, odors, smoke, and the ability to produce an oily film within the respirator face-piece.

(3) Carbon dioxide, less than 1000 parts per million.

(e) Pressure-demand supplied-air respirators ~~may~~ must be provided with automatically engaging **HEPA** filter cartridges for emergency egress in addition to the required reserve air supply.

(f) Pressure-demand supplied-air respirators shall not be required on subsequent containments of a single abatement project, provided:

(1) The asbestos-containing materials are identical to previous containments of the same abatement project.

(2) All of the personal and area air samples indicate airborne fiber concentrations are below levels at which respirators with a lower protection factor would be adequate, (29 CFR 1926.1101 Table 1, with the Permissible Exposure Limit changed to 0.01 fibers per cubic centimeter).

(3) The abatement crews are substantially the same.

~~(4) There is no crocidolite content in the friable asbestos material being abated.~~

(~~5~~4) The number of workers on the crew have not increased by more than fifty (50) percent.

(~~6~~5) The contractor assumes responsibility for downgrading to a lesser protective respirator, and is subject to citation for serious violations if workers are exposed to greater concentrations than are allowed by Section 380:50-15-5(a)(2), based on the lower confidence limits of the personal monitoring results. It is not necessary to notify **DOL** of such downgrading.

**380:50-15-8. Decontamination procedures**

All workers exiting the containment area without exception shall:

(1) Remove the footwear, coveralls, and head covers in the work area before leaving the work area dirty room.

(2) Still wearing their respirators, proceed to the showers~~ and remove and thoroughly wash their respirators, while showering with soap and water~~. After thoroughly washing with soap and water, remove respirators and wash respirator.

(3) Shower thoroughly the skin and hair before entering the clean room to change into street clothes.

**380:50-15-12. Decontamination facility preparation**

(a) ~~The~~ On projects of 10 square feet or 25 linear feet and greater, the contractor shall set up a decontamination facility ~~outside~~ attached to the work area which shall consist of a clean room, shower area, and dirty room. The facility shall be constructed so as to permit use by either sex without embarrassment or harassment. The decontamination facility shall be subject to the approval of the Commissioner.

(b) All shower water waste shall be equipped with 5 micron filters. The shower filter and residue shall be disposed of as contaminated material.

(c) All decontamination shower facilities shall have:

(1) Functioning hot water storage capacity of five gallons per on-site Worker at 130 degrees Fahrenheit, or;

(2) A functioning in-line water heater capable of delivering a continuous supply of water at a temperature of 100 degrees Fahrenheit.

(3) Means of dispensing liquid cleaning agent in a safe, sanitary manner. Use of bar soap will not be permitted. Cleaning agents supplied should be suitable for use on skin and hair.

(4) Ten foot-candles of illumination in all areas of the decontamination unit.

(5) Showers shall be stable, free of sharp edges, and trip or fall hazards.

(6) Shower grates shall be constructed of non-porous materials. If wooden, the shower grate shall be varnished or painted with non-skid, non-porous paint.

(7) Negative pressure created by ~~a **HEPA** filtered suction device~~ an externally vented negative air machine, equipped with HEPA filter, primary filter and secondary filter and a flow of make-up air from the clean room through the shower to the dirty room. In the case of decontamination showers which are not directly between the clean room and the dirty room, a source of make-up air must be provided directly to the shower chamber.

(8) The temperature of the clean room and shower shall be maintained above fifty degrees Fahrenheit (50° F).

(d) Centralized decontamination facilities shall follow the same requirements.

**380:50-15-14. Fire extinguishers**

(a) The work area shall have a dry-charge ammonium phosphate fire extinguisher with an Underwriters Laboratories, Inc. rating of at least 10A:B:C, with a valid inspection tag, and which must be decontaminated upon removal.

(b) A minimum of one 10A:B:C fire extinguisher shall be provided for each 3,000 square feet of the work area, or major fraction thereof. Travel distance from any point of the work area to the nearest fire extinguisher shall not exceed 75 linear feet.

## SUBCHAPTER 17. MINIMUM ABATEMENT STANDARDS

**380:50-17-1. Contractor's scope of work**

(a) The contractor shall meet the following staffing requirements:

(1) An asbestos abatement supervisor shall be on-site at all times abatement work is being performed, except for glovebag **O&M** projects, unless such glovebag projects are for **AHERA** regulated schools. Such supervisors

shall be prepared at any time to enter the containment as required.

(2) A licensed asbestos worker, supervisor, or responsible party shall be stationed outside the containment at all times, except for short term excursions in the containment.

(3) Any person working within the demarcated work area shall hold a current worker, supervisor, or contractor license, except for:

(A) Professional scaffolding erectors,

(B) Licensed electricians, or

(C) Owners or owners representatives, provided their work does not entail contact with **ACM.**

(b) The contractor shall be responsible for all labor, material, services, insurance as required, and equipment necessary to carry out the abatement operation in accordance with regulations and job specifications.

(c) The contractor shall be responsible for obtaining approval for a waste disposal site in compliance with the Oklahoma State Department of Health.

(d) Contractors shall post the **EPA** and **OSHA** regulations (and any applicable state and local government regulations) at the job site, including where applicable:

(1) Minimum or prevailing wage notices.

(2) Emergency numbers.

(e) All air-monitoring results shall be posted at the site as they are obtained by the contractor. If the air monitoring results are being used to justify using other than supplied air respirators, the posted air monitoring results must be from the preceding shift prior to the beginning of the succeeding shift.

(f) Contractors shall have available at the job site, workers' respirator fit test records, for projects subject to scheduled inspections by **DOL.**

(g) Contractors shall have a copy of all Material Safety Data Sheets (MSDS) available and on-site for all material.

**380:50-17-4. Preparation of asbestos abatement work areas**

Preparation of asbestos abatement work areas shall be as follows:

(1) Shut down and lock out electric power to the work area. Provide temporary power and lighting to ensure safe installation (including ground fault interruption) of temporary power sources and equipment by compliance with all applicable electrical code requirements and **OSHA** requirements for temporary electrical systems.

(A) All electrical power entering the containment must be fed from **GFI** protected circuits.

(B) All **GFI** protected circuits shall trip at or below seven (7) milli-amps of electrical current.

(C) There may be some occasions when it is not possible to shut down all electrical power to the asbestos work area. In this case, a request for variance is required along with a written procedure, approved by a licensed electrician or an electrical engineer, outlining steps to be taken to ensure asbestos worker safety which shall include at a minimum:

(i) Identify in advance all electrical power 24 volts and above, which is to be left active.

(ii) Mark the wiring, conduit, panels or equipment in such a way that is readily apparent to the asbestos contractor and to DOL asbestos inspectors.

(iii) Provide details of all steps to be taken by asbestos contractors to protect the wiring, conduit, panels or equipment from intrusion of water and wetting agents used by the asbestos contractor. Rigid steel conduit with collars need not be addressed in the written procedures.

(iv) Provide details of all procedures to be taken by asbestos workers to prevent electrical hazards under abatement conditions.

(v) Sign written procedures and provide license number of electrician or seal of electrical engineer for submittal to the DOL.

(vi) Provide and require all asbestos workers in the work area of activated wiring, conduit, panels or equipment to wear rubber boots, properly rated rubber gloves with current inspection and non-conducting hats.

(2) Shut down and lock out all heating, cooling and air conditioning system (**HVAC**) components that are in, supply, or pass through the work area. Seal all intake and exhaust vents in the work area with tape and 6-mil **poly.** Also seal any seams in system components that pass through the work area.

(3) The Contractor shall provide sanitary facilities for abatement personnel outside the enclosed work area and maintain them in a clean and sanitary condition throughout the project.

(4) Clean all movable objects within the work area using a **HEPA** filtered vacuum and/or wet-cleaning methods as appropriate. After cleaning, these objects shall be removed from the work area and stored in an uncontaminated location. Carpeting, drapes, clothing, upholstered furniture and other fabric items shall be properly decontaminated or disposed of as contaminated waste.

(5) Clean all fixed objects in the work area using **HEPA** filtered vacuums and/or wet-cleaning techniques as appropriate. Careful attention must be paid to machinery behind grills or gratings where access may be difficult but contamination significant. Also pay particular attention to wall, floor, and ceiling penetrations behind fixed items. After cleaning, enclose fixed objects in a minimum of 4-mil poly sheeting and seal securely in place with tape.

(6) Clean all surfaces in the work area using **HEPA** filtered vacuums and/or wet-cleaning methods as appropriate. Do not use any methods that would raise dust such as dry sweeping or vacuuming with equipment not equipped with **HEPA** filters. Do not disturb asbestos-containing materials during the initial cleaning phase.

(7) Floors shall be covered with two layers of 6-mil (minimum) sheeting. Additional layers of sheeting may be utilized as drop cloths to aid in cleanup of bulk materials.

(A) Floor sheeting shall extend at least 12 inches up the sidewalls of the work area.

(B) Sheeting shall be installed in a fashion to prevent slippage between successive layers of material.

(8) Walls shall be covered with a minimum of two layers of 4-mil **poly**, except if fire retardant, nylon reinforced **poly** is used throughout an interior abatement project, the walls shall be covered with a minimum of one layer.

(A) Wall sheeting shall overlap floor sheeting by at least 12 inches beyond the wall/floor joint to provide a better seal against water damage. Wall sheeting shall be securely attached to the floor sheeting.

(B) Wall sheeting shall be secured adequately to prevent it from falling away from the walls. This will require additional support/attachment when negative pressure ventilation systems are utilized.

(9) Strippable, latex-based, sprayed-on wall and floor films may be used in conjunction with, or in lieu of **poly** when appropriate, and when applied in accordance with manufacturer's recommendations.

(10) Any cleaning activities, prior to construction of the containment, which has the potential for contact with **ACM** shall require:

(A) Workers wear protective clothing in accordance with Section 380:50-15-6.

(B) Workers wear, at a minimum, a full-face air purifying respirator.

(C) Air monitoring be performed in accordance with Section 380:50-11-1.

(D) The construction and use of a decontamination facility in accordance with Sections 380:50-15-8 and 380-50:15-12.

(E) The construction and use of a load out facility as defined by Section 380:50-1-2.

(F) Project design must identify this work activity.

(G) Decontamination unit, and demarcation of the job site shall be subject to DOL inspection(s) prior to any cleaning activities.

**380:50-17-5. Asbestos removal procedures**

Asbestos removal procedures are as follows:

(1) Isolate and clean the work area.

(2) Wet all asbestos-containing material with an amended water solution using equipment capable of providing a fine spray mist. Saturate the material to the substrate. However, do not allow excessive water to accumulate in the work area. Keep all removed material wet enough to prevent fiber release until it can be placed in containers for disposal.

(3) Wetted asbestos-containing material shall be removed in manageable sections. If removal procedure uses a mechanical vacuum system, the container the material deposits in shall be in a secured area with hard walls at least eight (8) feet in height and shall be monitored to ensure no exposure to the operator or ambient air. Removed material shall be placed in containers before moving to a new location for continuance of work. Surrounding areas shall be periodically sprayed and maintained in a wet condition until visible material is cleaned up.

(4) Material removed from building structures or components shall not be dropped or thrown to the floor.

(5) Containers (6-mil polyethylene bags or drums) shall be sealed when full. Bags shall not be overfilled. They shall be securely sealed to prevent accidental opening and leakage by tying tops of bags in an overhand knot or by taping in a goose-neck fashion. Do not seal bags with wire or cord. Bagged material may be stored in containment if space allows, or in the first air-lock of the loadout facility. Bags may be placed in drums for staging and transportation to the landfill. Bags shall be decontaminated on exterior surfaces by wet cleaning and **HEPA** vacuuming before being placed in clean drums.

(6) For transport to the landfill and when not exposed to the elements, components removed intact shall be wrapped in a minimum two layers of 6-mil **poly** secured with tape.

(7) Asbestos-containing waste with sharp-edged components (e.g. nails, screws, metal lath, tin sheeting) may tear the polyethylene bags or sheeting and shall be placed into drums, or boxes wrapped in a minimum of two layers of 6-mil **poly**, secured with tape.

(8) After completion of all stripping work, surfaces from which asbestos-containing materials have been removed shall be wet brushed and sponged or cleaned by some equivalent method to remove all visible residue.

(9) Cleanup shall proceed in accordance with Section 380:50-17-8.

**380:50-17-8. Asbestos abatement cleanup procedures**

Asbestos abatement cleanup procedures are as follows:

(1) Remove and place in containers all visible accumulations of asbestos-containing material and asbestos-contaminated debris, utilizing rubber dust pans and rubber squeegees to move material about. Do not use metal shovels to pick up or move accumulated waste. Special care shall be taken to minimize damage to floor sheeting.

(2) Wet clean all surfaces in the work area using rags, mops and sponges as appropriate.

(3) Remove the cleaned outer layer of plastic sheeting from walls and floors prior to receiving the visual inspection. Windows, doors, **HVAC** system vents and all other openings shall remain sealed. The negative air machines shall remain in continuous operation. Decontamination enclosure systems shall remain in place and be utilized.

(4) After cleaning the work area, wait for all surfaces to dry, then **HEPA** vacuum and wet clean all objects and surfaces in the work area again.

(5) Remove all containers of waste from the work area through the load-out airlock, prior to the visual inspection required in Section 380:50-17-10(1).

(6) Decontaminate all tools, equipment, and miscellaneous items and remove at the appropriate time in the cleaning sequence.

(7) Inspect the work area for visible residue. If any accumulation of residue is observed, it will be assumed to be asbestos-containing and the cleaning cycle shall be repeated.

(8) After the work area has been rendered free of visible residue, a ~~thin~~ visible coat of a satisfactory lock-down agent shall be applied to all surfaces in the work area including structural members, building components and plastic sheeting on walls, floors, and covering non-removable items, to seal in non-visible residue. The lock-down agent shall be:

(A) Tinted to ensure full coverage.

(B) Tested as-tinted, and certified by Underwriters Laboratories, to have a fire rating compatible with the area in which it is being used.

**380:50-17-10. Re-establishment of the work area and systems**

Re-establishment of the work area shall occur only after the following sequence of procedures has been performed and documented to the satisfaction of the Commissioner:

(1) After satisfactory completion of the required visual inspection by **DOL**, clearance testing according to Section 380:50-11-2 shall be conducted.

(2) Remaining **poly** shall be removed from walls and floors and disposed of as ACM, maintaining decontamination enclosure systems and critical barriers as required.

(3) The contractor shall notify the Commissioner for an inspection of the work area for any remaining visible residue, if such inspection was not waived by the Inspector at the time of the visual inspection. Evidence of contamination will necessitate additional cleaning requirements in accordance with Section 380:50-17-8.

(4) Additional air monitoring shall be performed if additional cleanup is necessary.

(5) Critical barriers may be removed and disposed of as asbestos-contaminated waste.

(6) Replace all items or equipment removed in accordance with Section 380:50-17-4(4), as appropriate.

**380:50-17-13. Industrial applications of rules**

Subchapter 19 of this Chapter is intended primarily for interior, non-industrial settings and may not be suitable in particular instances of industrial applications. In such cases, an industry or contractor may submit, in advance, an alternate plan of action to accomplish abatement in:

(1) A unique circumstance, or

(2) A plan to cover typical and repetitive circumstances.

(3) Any abatement in containments not totally enclosed, or in glovebags, may take place only when a containment or wind wall at least three (3) feet above the highest removal point has been constructed and measures have been taken by the contractor to keep wind velocities within the containment or glovebag area below fifteen (15) miles per hour, as measured by an anemometer to be available at the job site at all times.

## SUBCHAPTER 19. VARIANCES

**380:50-19-1. Request for variance**

Any request for variance from this Chapter shall be in writing. The basis for the variance must be included in the request, as well as steps to be taken by the asbestos contractor to ensure that the intent of the regulations will be fully complied with. Any variance granted will be on its own merits and may not be used to justify any future similar variance.

## SUBCHAPTER 21. NON-FRIABLE ASBESTOS-CONTAINING MATERIAL PROCEDURES [REVOKED]

**380:50-21-1. Non-regulated, non-friable asbestos procedures [REVOKED]**

~~Recommended procedures for abatement of non-regulated, non-friable asbestos are as follows:~~

~~(1) Asbestos cement that has not deteriorated to the point that it has become friable, or is not considered to be regulated asbestos-containing material (**RACM**), is not regulated under these rules. For the protection of employees and the public, these procedures are recommended:~~

~~(A) Employees should wear **MSHA/NIOSH** approved respiratory protection.~~

~~(B) At a minimum, keep the material wet during removal. A garden hose with a fine spray may be used. A better method would be to use a suitable lock-down encapsulant.~~

~~(C) Remove the material carefully, avoiding breakage. Should breakage occur, immediately spray the broken edges with a penetrating asbestos encapsulant, using a garden sprayer. Load and unload all asbestos-cement material by hand to avoid breakage. Soak loads thoroughly to keep them wet during transport.~~

~~(D) If the material can be kept constantly wet, it may be disposed of in an ordinary landfill.~~

~~(2) These recommended procedures do not apply to cutting or sawing asbestos cement pipe and sheets. Processing these materials constitutes a potentially serious hazard. Use of these materials is vigorously discouraged by the Oklahoma Department of Labor.~~

**380:50-21-2. Regulated, non-friable asbestos procedures [REVOKED]**

~~Asbestos cement that has deteriorated to the point that it has become friable, or is considered to be regulated asbestos-containing material (**RACM**), is regulated under these rules. Abatement of such asbestos materials shall be performed in accordance with an approved project design.~~

## SUBCHAPTER 23. MISCELLANEOUS FRIABLE ASBESTOS MATERIAL ABATEMENT PROCEDURES

**380:50-23-2. Asbestos-containing duct tape abatement requirements**

Because of the low potential hazard of removing asbestos-containing duct tape while wet, removal of this tape may be done using the following procedures:

(1) The tape may be removed only by a licensed asbestos abatement contractor, using only licensed asbestos abatement workers. ~~Operation and Maintenance (**O&M**) contractors may also remove the tape provided their **O&M** programs are approved for such a procedure.~~

(2) Workers shall wear a protective suit, gloves, and at a minimum, a full-face air purifying respirator. Workers may put on a clean disposable suit over the one being worn, and walk to the next area of tape to be removed. The outer suit may be removed during the work, and used repeatedly for walking either to other tape removal areas, or to a convenient shower at the end of the work period.

(3) Tape on air handling equipment or ductwork may be removed only while the air handlers are off.

(4) The tape may be removed only from areas that are unoccupied at the time and have critical barriers established.

(5) The area under the tape is to be covered with a 6-mil **poly** drop cloth.

(6) The tape is to be saturated with a wetting agent. Detergent-based residential type cleaning agents may be used.

(7) The tape is to be peeled away and dropped into a properly labeled asbestos disposal bag.

(8) The surface under the tape is to be cleaned with a cloth soaked in wetting agent, and the cloth then placed in the asbestos disposal bag.

(9) The drop cloth is to be rolled or folded and placed in the asbestos disposal bag.

(10) After drying, the area under the tape is to be sprayed or brushed with paint, varnish, shellac, or other sealant. Care should be taken with flammable sprays.

~~(11) The State Labor Department is to be notified at least three working days in advance of any asbestos-containing tape removal done under the terms of this Section.~~

~~(A) A prep inspection is not required unless ordered by **DOL** after the notification is received.~~

~~(B) Tape removal as a part of an approved **O&M** program or as a part of a standard asbestos abatement project does not require additional notification.~~

(~~12~~ 11) Passive air monitoring in the area after tape removal shall be done. Clearance levels shall be 0.01 fibers per cubic centimeter, or the background level, whichever is higher.

**380:50-23-3. Asbestos-containing ceiling tile abatement procedures**

Removal of friable asbestos-containing ceiling tile may be done using the following procedures. ~~Operation and Maintenance (**O&M**) Contractors may also remove these tiles, provided their **O&M** programs are approved for such a procedure.~~

(1) All required Department of Labor notices and State Department of Environmental Quality **NESHAPS** notices must be filed with those agencies.

(2) Prior to the start of the ceiling tile removal project, the Department of Labor must make an on-site inspection of the area to determine the applicability of these procedures. The inspector will determine at that time if electrical power above the ceiling grid must be de-activated.

(3) All air handler units (heaters, air-conditioners, blowers) must be turned off.

(4) The ceiling tile removal may only be done when the work area is not occupied.

(5) All movable items must be removed from the room.

(6) Decontamination facilities must be established, but need not be contiguous with the tile removal area provided:

(A) Workers can travel to the facilities without endangering the general public or the environment.

(B) Workers are thoroughly **HEPA** vacuumed and wear a clean protective suit over the existing suit.

(7) Critical barriers must be erected.

(8) Workers must wear protective full body coveralls and full-face respirators.

(9) Negative air machines in the tile removal area must be installed, vented internally, and provide a minimum of one air change each 30 minutes. A 6-mil **poly** drop cloth must be used under the work teams, in case a tile falls.

(10) Workers shall work in teams, with one worker removing and bagging tiles, and one worker holding a **HEPA** vacuum near the grid.

(11) Tiles must be placed in 6-mil asbestos-marked bags, sealed with duct tape. This bag must be placed in a second bag for transport.

(12) The tiles must be disposed of in an approved asbestos landfill, and copies of waste shipment records provided to the Department of Labor.

(13) The grid shall be **HEPA** vacuumed and wet wiped.

(14) Air monitoring tests must be run in accordance with Subchapter 11 of these rules.

*[OAR Docket #10-917; filed 5-26-10]*

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## TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #10-920]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
Subchapter 3. Organization of Board
550:1-3-3. Nomination of Board Members
Subchapter 5. Petition Procedures
550:1-5-2. Individual Hearings
Subchapter 7. Collections and Disbursements
550:1-7-1. Refund Vouchers

**AUTHORITY:**
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
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**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
The proposed amendments to OAC 550:1-3-3 eliminate the need of mailing nomination petitions to all eligible members. Member will receive a letter from the Executive Director explaining how a nomination petition can be obtained.
Related statutes/rules:
11 O.S. Section 50-103.1
11 O.S. Section 50-105.2
The proposed amendments to OAC 550:1-5-2 add language for each party to request one continuance.
Related statutes/rules:
11 O.S. Section 50-105.2
11 O.S. Section 50-106
75 O.S. Section 309 et seq
The proposed amendments to OAC 550:1-7-1 set out procedures for members to obtain their refund of contributions after cessation of employment.
Related statutes/rules:
11 O.S. Section 50-105.2
11 O.S. Section 50-111.1
11 O.S. Section 50-134
**CONTACT PERSON:**
Darcie Gordon, Administrative Assistant, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

**550:1-3-3. Nomination of Board members**

(a) **Nomination procedures.** The following procedures shall govern the nomination of Board members:

(1) Each member in the district under election will be sent a letter from the Executive Director ("Director's Letter") briefly describing the reason for the nomination/election, the general procedures to elect a Board member and the responsibilities of a Board member. The Director's Letter will also state how a member can obtain a copy of a nomination petition.

(2) ~~Included with a cover letter will be a nomination petition.~~ The nomination petition for districts 1, 2, 3, and 4 will include a list of participating municipalities whose active members are eligible to be nominated. To be placed on the ballot for districts 1, 2, 3, and 4, nominees must receive signatures from 5% of the ~~eligible~~ active members in their respective district and the petition must include at least one signature from five different participating municipalities. To be placed on the ballot for districts 5 and 6, nominees must receive signatures from 5% of the ~~eligible~~ active members in their respective district. To be placed on the ballot for district 7, nominees must receive signatures from 25 retired members of the district with at least one signature being from retirees of five different municipalities. Members ~~eligible to receive nomination petitions~~ of the district under election; their mailing addresses; and, for districts 1, 2, 3, 4, 5, and 6, the number of signatures required to be placed on the ballot, will be determined at least one week prior to the date the ~~nomination petition~~ Director's Letter is to be mailed.

(3) The ~~cover letter and the nomination petition~~ Director's Letter will be placed in individual envelopes addressed to each active member separately in care of their mailing address on file with the System. The envelopes will be mailed First Class to the member. Mailings to retired members will be made to the address used to mail year-end tax notices (1099R). ~~Nomination petitions~~ The Director's Letter will be mailed at least six weeks prior to the date the election ballot is to be mailed. The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

(4) A copy of the Director's Letter and a copy of the nomination petition will be posted on the agency's website. Upon request, a copy of the nomination petition will be emailed or mailed First Class to members.

(5~~4~~) Nomination petitions must be returned by certified mail with return receipt or delivered in person to the certified public accounting firm supervising the election or to the System. The ~~cover letter~~ Director's Letter ~~mailed with the nomination petition~~ will specify the date by which the nomination petition must be received by the certified public accounting firm or by the System. The nominee must also provide a 25 words or less biographical sketch to be included in the election ballot. The names of the nominees will be posted in the System's office for public view for not less than seven days.

(6~~5~~) Should only one member be nominated for any district, that member will automatically become the Board member for that district.

(7~~6~~) If no nominations are received by the deadline, ~~the nomination petitions will be remailed~~ a second Director's Letter will be sent and handled in accordance with the normal procedures. The time frame for ~~such remailing~~ the mailing of the second Director's Letter and the deadlines established therein shall be set by the Board.

(8~~7~~) The Executive Director or the Executive Director's designee will verify that each nominee is eligible to be elected to the Board.

(b) **Certified public accounting firm procedures.** A certified public accounting firm shall:

(1) Meet with the Executive Director or the Executive Director's designee and determine the timing of the ~~initial nomination~~ mailing of the Director's Letter to each member in the districts electing a board member.

(2) Obtain from the Executive Director or the Executive Director's designee a copy of a list of municipalities included in each district holding an election.

(3) Obtain from the Executive Director or the Executive Director's designee a copy of ~~a cover letter~~ the Director's Letter to be sent ~~with the nomination mailing~~ outlining the duties of a Board member, nomination and election process, critical dates, etc.

(4) Review a mailing list obtained from the Oklahoma Police Pension and Retirement System which contains the name and mailing address of each member in each district conducting an election who ~~is eligible to receive~~ will be mailed a ~~nomination petition~~ the Director's Letter.

(5) Obtain from the Executive Director or the Executive Director's designee a copy of the nomination petition and determine if any changes to the form are required.

(6) ~~Review nomination package before mailing.~~ Judgmatically select members listed on the mailing list and verify that they are to receive ~~a nomination package~~ the Director's Letter. Judgmatically select ~~nomination packages~~ envelopes containing the Director's Letter and verify that members to which the envelopes are being mailed are listed on correct district mailing list.

(7) Accumulate nomination responses and determine that each petition has the proper number of signatures from the appropriate municipalities.

(8) Require the Executive Director or the Executive Director's designee to verify that each nominee is eligible to be elected to the Board.

(c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:

(1) Obtain a mailing list for each district conducting an election. The mailing list should contain the name and mailing address of each member in the district ~~eligible to receive a nomination petition~~.

(2) ~~Obtain~~ Prepare the nomination petition.

~~(3) Photocopy the nomination petition. Make enough copies for each member on district mailing list.~~

~~(4) Assemble the Executive Director's cover letter, nomination petition and list of eligible municipalities into a package, and mail a package to each member on district mailing list.~~

(3) Prepare mailing of the Director's Letter for review by certified public accounting firm.

(4) Post copy of the Director's Letter and copy of nomination petition for each district conducting an election on agency's website.

**550:1-5-2. Individual hearings**

(a) **Application/written request for right to relief.** In each individual proceeding, there shall be filed with the Oklahoma Police Pension and Retirement Board an application/written request stating a brief summary of facts giving rise to the request for relief.

(b) **Notice of receipt.** The Chairman of the Board, or other person designated by the Chairman, shall notify the party requesting the individual hearing of the acceptance of the application/written request for individual hearing by the Oklahoma Police Pension and Retirement Board or a hearing officer and shall specify the date, time, and place for the hearing. The notice shall comply with the requirements of 75 O.S., Section 309 and laws amendatory thereto, and may incorporate by reference material alleged in the application/written request.

(c) **Service of notices.** All notices or other papers requiring service in an individual proceeding shall, unless otherwise provided by statute, be served in one of the following manners:

(1) Personal service by a person appointed by the Board to make such service in the manner authorized by the laws of this state for the service of summons or other process in the state courts; or

(2) By certified mail forwarded by the Board or its designee, at the exact location that the person can be served such notice.

(3) If the personal service or if service by mail cannot be made after the exercise of all due diligence in attempting to learn the whereabouts or mailing address of any person to be served, then by publication in such newspapers as is determined by the Board.

(d) **Completed service of notice.** Service of notice shall be complete upon receipt of certified mail by the addressee or upon the first posting of publication notice.

(e) **Setting of hearing.** The time set for a hearing as specified in the notice shall not be less than ten (10) days after date of mailing of notice, unless otherwise agreed upon by the parties. Motions for extension of time or for a continuance of the hearing shall be made in writing and shall be filed with the Board or a person designated by the Board. Any such motion shall be for a time certain and any such motion for an extension or continuance shall state the reasons for the request and specify the length of time. Each party to a hearing shall be allowed to move for one (1) continuance wherein the ~~The~~ Board or the person designated by the Board shall act upon such motion promptly and grant or deny such request in the exercise of sound discretion. If the motion is denied, the party may renew his or her request at the hearing.

(f) **Subpoenas.** Subpoenas for the attendance of witnesses, for the furnishing of information required by the Board or hearing officer and for the production of evidence shall be issued by the Board or their designee upon written request.

(1) Subpoenas shall be served and a return made in the same manner as provided for in state court proceedings.

(2) If a person fails to obey a subpoena, refuses to be sworn or make an affirmation at a hearing, or refuses to answer a question put to him or her in the course of a hearing, the Board or hearing officer may institute appropriate judicial proceedings to compel compliance with the

subpoena or the giving of testimony. The hearing shall proceed as long as practical despite any such refusal but the Board or hearing officer may, at its discretion, at any time, continue the proceedings for such time as may be necessary to secure a court ruling.

(3) Any person who fails to appear as directed, after receipt of notice as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the notice and/or request for relief. A final order in such a proceeding may be issued by the Chairman.

(g) **Order of procedure.** The order of procedure in all individual proceedings for members of the Police Pension and Retirement System shall generally follow that which applies in civil proceedings at law. Each party shall be afforded an opportunity to make a brief opening statement, to present witnesses, documents, and exhibits on its behalf, to cross examine adverse witnesses, and to rebut and to make closing arguments. The rules of evidence applicable to such hearing shall be those specified by the Administrative Procedures Act. At the discretion of the Board or hearing officer, any party may reopen his or her case in chief even after the adverse party has rested. Parties may enter into stipulations on any lawful matter.

(h) **Objections.** The Board or hearing officer shall rule on the admissibility of evidence and objections to evidence and shall rule on motions or objections raised in the course of such hearings. In the exercise of this function the Board or hearing officer may rely on the advice of counsel present and serving in such advisory capacity. Any party may object to a ruling which the party considers erroneous and an exception to such ruling shall be noted on the record. Failure to timely object to any alleged error or irregularity shall be deemed a waiver of such objection.

(i) **Findings of Fact / Conclusions of Law.** The Board or hearing officer shall hear all evidence and arguments applicable in a case and shall prepare Findings of Fact and Conclusions of Law which shall be submitted to the Chairman of the Board and mailed to parties to the action. The Board or hearing officer may request the parties to submit proposed Findings of Fact and Conclusions of Law before making a ruling on the matter at issue.

(j) **Record of hearing.** A record of the hearing, in the form of a tape recording, will be made of all hearings conducted by the Board or a hearing officer.

(k) **Issuance of Board's order.** At the conclusion of the proceedings, the Board shall issue an order reflecting the Findings of Fact made, and the Conclusions of Law specifying the action taken. The order shall be signed by the Chairman. Parties shall be notified by mail of the issuance of an order and a copy of the order shall be provided to the party or his/her attorney.

(l) **Record on file.** The record of a proceeding and the file containing the pleadings in such a proceeding will be maintained at the Oklahoma Police Pension and Retirement System.

(m) **Petition of rehearing.** Any person may petition for a rehearing, reopening or reconsideration of any decision in an individual proceeding. Such petition must be filed within ten (10) days of the date on which the order was issued and shall state the grounds for requesting such action. The grounds for such action are set forth in 75 O.S., Section 317 and are the only grounds for rehearing, reopening or reconsidering such action. Hearings pursuant to such a request, when granted by the Board, shall be limited to the issues upon which the reconsideration, reopening or rehearing was granted.

**550:1-7-1. Refund vouchers**

(a) **Conditions upon receiving refunds.** The following conditions must be met before contributions are refunded:

(1) All contributions made through the last day of employment must be received by the Oklahoma Police Pension and Retirement System.

(2) Member must have ceased employment with the participating municipality before any application for refund of contributions will be considered by the Oklahoma Police Pension and Retirement Board.

(b) **Payment.** Following Board approval and receipt of executed Notice of Selected Distribution for Refund of Contributions, the ~~The~~ refund of contributions shall be paid and mailed by the Oklahoma Police Pension and Retirement System ~~no earlier than~~ the last business day of the month ~~following Board approval~~.

*[OAR Docket #10-920; filed 5-26-10]*

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## TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
## CHAPTER 15. OKLAHOMA POLICE DEFERRED OPTION PLAN

*[OAR Docket #10-921]*

**RULEMAKING ACTION:**
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**RULES:**
550:15-1-2. Forward Drop [AMENDED]
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Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
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n/a

**ANALYSIS:**

The proposed amendments to OAC 550:15-1-2 requires members to make application to terminate participation in the Oklahoma Police Deferred Option Plan a minimum of ninety (90) days prior to termination of employment with the participating municipality. The Oklahoma Police Pension & Retirement System will have ninety (90) days from the date of receipt of members' application in which to process said application and make payment.

It will allow the Oklahoma Police Pension & Retirement System to ensure that there are sufficient liquid funds available to payout members' Deferred Option Plan account balance without adversely affecting the financial stability of the Oklahoma Police Pension & Retirement System

Related statues/rules:

11 O.S. Section 50-105.2

11 O.S. Section 111.3

11 O.S. Section 50-134

**CONTACT PERSON:**

Darcie Gordon, Administrative Assistant, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

**550:15-1-2. Forward drop**

(a) **Application.**

(1) The applicant must have twenty (20) years or more of credited service with the Oklahoma Police Pension and Retirement System to be eligible.

(2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan. Forms will be provided by the Oklahoma Police Pension and Retirement System.

(3) The effective date of membership will be the first day of the month.

(4) Once the Board has approved a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the Oklahoma Police Deferred Option Plan is irrevocable as long as the member remains employed.

(b) **Contributions.**

(1) The final member contribution made to the Oklahoma Police Pension and Retirement System shall be for the last pay period prior to the first of the month in which the member becomes a participant in the Oklahoma Police Deferred Option Plan.

(2) The employer's contribution will continue to the Oklahoma Police Pension and Retirement System.

(3) The member's option account shall be credited fifty percent (50%) of the employer's contribution received for the member and the Oklahoma Police Pension and Retirement System shall be credited fifty percent (50%). The credit to the member's option account shall be made the next work day after receipt of the employer's contribution.

(4) Only the member's portion of the employer's contribution will be credited to the member's option account. No other contributions will be accepted.

(5) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of five (5) years, contributions will no longer be credited to the member's option account.

(c) **Benefits.**

(1) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.

(2) The member's service retirement benefit is frozen and at no time will he/she be allowed to increase his/her pension benefit due to additional years of service.

(3) The monthly retirement benefit will be credited to the member's option account the last day of the month.

(4) A member who participates in this plan shall be eligible to receive cost of living increases.

(d) **Interest.**

(1) The member's option account shall earn interest at a rate of two percent (2%) below the rate of return of the total investment portfolio of the System, but no less than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.

(2) The Fund's annual rate of return shall be calculated and certified by the Board's financial consultant. The annual rate of return shall be for the fiscal year ending June 30.

(3) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit times the certified annual rate of return, less two percent (2%), divided by 365 days times the number of days the deposit was credited to the member's option account for the fiscal year.

(4) Each member shall receive an itemized statement at least on an annual basis beginning with interest credited at June 30, 1991.

(5) Upon completion of the five year term in the Oklahoma Police Deferred Option Plan or earlier termination of employment by the member, annual interest calculated through the last day of the month employed and certified by the Board's financial consultant will be credited to the member's option account provided the annual rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate then the member's option account will be credited at the assumed interest rate of the last actuarial report.

(6) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of the five (5) years, the member's option account ceases to earn interest.

(7) At the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan, the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such termination has at all times included reemployment of a member by a participating municipality but only in a position not covered under the System or as a police chief. Thus, such a member would receive in-service distributions of such member's accrued monthly retirement benefit from the System.

(e) **Payment.**

(1) The member shall make application to terminate participation in the Oklahoma Police Deferred Option Plan a minimum of ninety (90) days prior to termination of employment with the participating municipality. The Oklahoma Police Pension and Retirement System shall have a minimum of ninety (90) days from the date of receipt of members' application to terminate participation in the Oklahoma Police Deferred Option Plan in which to process said application and make payment.

(~~1~~2) The member should make payment selection a minimum of thirty (30) days prior to termination of employment. The form on which payment selection must be submitted will be provided by the System.

(~~2~~3) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by the Oklahoma Police Deferred Option Plan. This payment will be made after the last contribution has been received and interest applied following termination of employment and after receipt of the completed payment selection form.

(~~3~~4) The member may select a direct rollover of his or her distribution in accordance with OAC 550:1-7-5. If the member does not select an Eligible Retirement Plan as described in OAC 550:1-7-5, or an annuity, the member shall receive a lump-sum payment equal to the member's option account balance.

(~~4~~5) The member may select an annuity to be provided by a third party. The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the annuity provider.

(~~5~~6) The member may select to participate in any other method of payment if approved by the State Board.

(~~6~~7) Once the member's option account has been paid to the member, as a Direct Rollover or to the member's annuity provider, the member shall not have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

(~~7~~8) For a lump sum payment, direct rollover or a combination thereof, an exclusion ratio must be calculated and applied to the distribution amount from the Oklahoma Police Deferred Option Plan to determine the portion that may be excluded from income. This exclusion ratio will equal the member's after-tax contributions to the System divided by the expected return. The expected return is the sum of:

(A) the Oklahoma Police Deferred Option Plan option account balance plus

(B) the amount of value of the monthly pension that the member is expected to receive over time based on single life expectancy factors from Table V issued as part of the income tax regulations under Section 72 of the Internal Revenue Code of 1986.

(f) **Beneficiaries.** If the participant dies during the period of participation in the Oklahoma Police Deferred Option Plan, a beneficiary may elect to receive a lump sum payment equal to the account balance of the participant. A beneficiary who is a surviving spouse of a member may elect a Direct Rollover of the account balance in accordance with OAC 550:1-7-5. If there is no beneficiary or if the beneficiary predeceases the participant a lump sum payment shall be paid to the estate of the participant.

*[OAR Docket #10-921; filed 5-26-10]*

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## TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
## CHAPTER 30. PERIODS OF ABSENCE FOR WHICH A MEMBER IS NOT RECEIVING COMPENSATION

*[OAR Docket #10-922]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
550:30-1-1. Purpose [NEW]
550:30-1-2. Computation [NEW]
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Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
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**ANALYSIS:**
The proposed new rule OAC 550:30-1-1 establishes when credited service is taken into account during any period of absence, furlough, administrative leave or other period of time for which a member is not receiving compensation. Related statues/rules:

11 O.S. Section 50-105.2
11 O.S. Section 50-134

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

**550:30-1-1. Purpose**

The rules of this Chapter establish when credited service is taken into account during any period of absence, furlough, administrative leave or other period of time for which a member is not receiving compensation.

**550:30-1-2. Computation**

(a) Except for purchase of service provisions and as provided below, credited service under Section 50-101(8) of Title 11 shall not be taken into account for any period of absence, furlough, administrative leave or other period of time when the member is not receiving compensation from the participating municipality, and member contributions are not made to the Oklahoma Police Pension and Retirement System.

(b) Under the preceding sentence, credited service shall not be taken into account in determining:

(1) The member's years of credited service in the pension formula multiplier, and

(2) Whether the member is entitled to a vested benefit pursuant to the provisions of Section 50-111.1 of Title 11.

(c) Notwithstanding the above, credited service shall be taken into account pursuant to subsection C of Section 50-122 of Title 11 and Section 50-128 of Title 11 concerning military leaves of absence or credits for military service in the Oklahoma Statutes. Furthermore, solely for purposes of determining whether a member is entitled to a vested benefit under Section 50-111.1 of Title 11, any period of leave under the Family and Medical Leave Act of 1993 shall be taken into account in determining if such member has completed ten (10) years of credited service.

*[OAR Docket #10-922; filed 5-26-10]*

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

*[OAR Docket #10-930]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. General Provisions
580:15-2-1. through 580:15-2-9. [AMENDED]
580:15-2-11. [AMENDED]
580:15-2-12. [NEW]
Subchapter 4. Supplier Provisions
580:15-4-1. [REVOKED]
580:15-4-2. [AMENDED]
580:15-4-4. through 580:15-4-7. [AMENDED]
580:15-4-9. [AMENDED]
580:15-4-11. [AMENDED]
580:15-4-11.1. [NEW]
580:15-4-12. [AMENDED]
580:15-4-13. through 580:15-4-15. [AMENDED]
580:15-4-16. [REVOKED]
580:15-4-18. [AMENDED]
580:15-4-19. [AMENDED]
Subchapter 6. State Agency Provisions
580:15-6-1. [REVOKED]
580:15-6-2. [AMENDED]
580:15-6-3. [AMENDED]
580:15-6-4. [REVOKED]
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]
580:15-6-15. [AMENDED]
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580:15-6-6 [AMENDED]
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580:15-6-6.2 [NEW]
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n/a

**ANALYSIS:**

The purpose of the is to supersede 2009 emergency rules adopted to administer the mandates of House Bill No. 1032 of the First Regular Session

of the 52nd Oklahoma Legislature, which amends the Oklahoma Central Purchasing Act. The rules provide information related to procedures and requirements for state agencies and suppliers to facilitate competitive bidding, open market acquisitions, and contracts for products and services governed by the Act. Revisions address the increase of state agency acquisition limits authorized by HB 1032 and replacement of affidavit requirements with certification language in order to facilitate electronic commerce. Revisions also include clarification and corrections based upon input collected from other state agencies and update of statutory cites.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

## SUBCHAPTER 2. GENERAL PROVISIONS

### 580:15-2-1. Purpose

~~This subchapter provides information to suppliers that desire to sell acquisitions to state agencies, and to state agencies to ensure compliance with provisions of the Oklahoma Central Purchasing Act. These rules of the Purchasing Division of the Department of Central Services conform to requirements of the Oklahoma Central Purchasing Act, 74 O.S., Sections 85.1 et seq. Promulgation of these rules is by the Director of the Department of Central Services and pursuant to 74 O.S., Section 85.5, 74 O.S., Section 85.45s and 62 O.S., Section 41.5t.~~ The purpose of this Chapter is to provide information and procedures for suppliers that desire to sell products and services to state agencies, and for state agencies subject to the Central Purchasing Act, in order to establish fair and consistent purchasing processes that satisfy the needs of the state. All suppliers and state agencies are responsible for knowing the requirements of this Chapter. These rules are administered by the Central Purchasing Division of the Department of Central Services to provide direction and ensure compliance with the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., and other state laws and rules, which may be applicable to state agency acquisitions. These rules have been promulgated by the Director of the Department of Central Services in accordance with the Administrative Procedures Act and pursuant to the authority of 74 O.S. §85.5, 74 O.S. §85.45s and 62 O.S. §34.28.

### 580:15-2-2. Definitions

In addition to terms defined in 74 O.S., §85.2, ~~The~~ the following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

**"Acceptable Electronic Signature Technology"** means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

**"Acquisition authority"** means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

**"Affiliates"** means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

**"Aircraft"** means any device now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

**"All or none bid"** means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

**"All or none solicitation"** means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

**"Alteration"** means a written modification to a contract.

**"Alternate bid"** means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

**"Amendment"** means a written change, addition, alteration, correction, or revision to a solicitation issued by the state agency responsible for making the acquisition. The terms addendum and amendment are synonymous.

**"Authorized signature"** means a manual, electronic or digital signature or other identifier uniquely linked to a person ~~the supplier authorizes~~ authorized to sign documents the supplier submits to the State Purchasing Director.

**"Bid bond", "performance bond"** or **"surety"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

**"Business days"** means Monday through Friday and is exclusive of weekends and state holidays.

**"Central Purchasing Division"** or **"Purchasing Division"** means the Central Purchasing Division of the Department of Central Services.

**"Certified procurement officer** or **CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

**"Clarification"** means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

**"Closing date"** means the date and time a solicitation specifies after which a bid is considered late and the Central Purchasing Division or state agency will not accept a bid.

**"Commodity classification"** means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

**"Commodity list"** means a list of all items and services in a commodity classification.

**"Competitive bidding"** means a process ~~of acquisition~~ for acquiring goods or services wherein bidders submit bids to the Central Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The

competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the ~~requirement~~ requirements of ~~the~~ applicable statutes ~~and/or~~ and rules are met.

**"Days"** means calendar days unless otherwise specified.

**"DCS"** means the Department of Central Services.

**"Debar"** or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the suppliers list, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers.

~~**"Department"** or **"DCS"** means the Department of Central Services.~~

**"Director"** or **"DCS Director"** means the Director of the Department of Central Services.

**"Electronic Record"** means a record created, generated, sent, communicated, received, or stored by electronic means.

**"Electronic Signature"** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

**"Emergency acquisition"** means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life, safety poses imminent danger to significant property or is condition certified by the Governor as a serious environmental situation.

**"Firm bid"** means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

**"Fiscal year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

~~**"Fixed rate"** means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.~~

**"Forms"** means documents the DCS Director prescribes and requires suppliers and state agencies to use to provide information to ~~the Department~~ DCS or the Central Purchasing Division.

**"Indefinite quantity contract"** means a contract the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.

**"Information technology" or "IT"** *means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text.* ~~[62 O.S., Section 41.5t.1]~~[62 O.S. §34.29]

**"Internet"** means the global information network of both federal and nonfederal systems that are linked together by a globally unique address and includes the subnetwork called the World Wide Web.

**"Invitation to bid"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

**"Life Cycle Costing"** means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, usage, resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

**"Material deficiency"** or **"material deviation"** means failure to provide information necessary to evaluate a solicitation.

**"Minor deficiency"** or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

**"Non-collusion certification"** means a certification required of a supplier to be submitted pursuant to the Oklahoma Central Purchasing Act with any competitive bid or contract executed by the state for goods or services.

**"Nonresponsive"** means a bid or proposal that does not conform to essential requirements in a solicitation.

**"Office of State Finance"** or **"OSF"** means the Oklahoma Office of State Finance.

**"Oklahoma Central Purchasing Act"** means ~~74 O.S., Sections 85.1 et seq~~ 74 O.S. §§85.1 et seq.

**"Oklahoma Correctional Industries" or "OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

**"Oklahoma Information Technology Accessibility Standards"** or **"IT Accessibility Standards"** ~~or **"Standards"**~~ means the accessibility standards adopted by the Office of State Finance together with the Department of Central Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220~~)~~, August 7, 1998) to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

**"Online Bidding"** means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

**"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

~~**"Purchasing Division"** or **"Division"** means the Purchasing Division of the Department of Central Services.~~

**"Ratification"** means the act of approving an unauthorized commitment made by a state agency.

**"Reciprocity"** means a preference, which the State Purchasing Director shall apply against the price ~~an out-of-state bidder submits for an acquisition~~ submitted for an acquisition by an out-of-state bidder whose home state applies a similar preference against Oklahoma bidders.

**"Registered supplier"** means a supplier that registers with the Central Purchasing Division pursuant to ~~580:15-4-2~~ 74 O.S. §85.33.

**"Remedy"** means to cure, alter, correct or change.

**"Request for proposal"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

**"Request for quotation"** means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

**"Requisition number"** means an identifier the state agency or Central Purchasing Division assigns to a requisition.

**"Requisitioning unit"** means the unit in a state agency responsible for making acquisitions.

~~**"Responsive offer"** means an offer a supplier submits, which conforms in all material respects to requirements a solicitation states.~~

**"Responsible supplier"** means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but not limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

**"Responsive offer"** means an offer, which conforms in all material respects to requirements a solicitation states.

**"Reverse Auctioning"** means a procurement method wherein bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

**"Scheduled acquisition"** means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

**"Services"** means the ~~furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance~~ *direct engagement of the time and effort of a contractor for the primary purpose of performing an identifiable task rather than for the furnishing of an end item of supply*. [74 O.S. §85.2]

**"Settlement agreement"** means a document that reflects an agreement between the state and an individual or business entity that ratifies an unauthorized commitment.

**"Solicitation"** means *a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or a request for quotation.* ~~[74 O.S., Section 85.2 (34)]~~ [74 O.S. §85.2]

**"State official"** means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

**"State Purchasing Director"** or **"Director of Central Purchasing"** means the director of the Central Purchasing Division of the Department of Central Services appointed by the DCS Director ~~of the Department or the Purchasing Director's designee~~ ; and, *includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority*. [74 O.S. §85.2] Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director as "certified procurement officers" and "certified procurement analysts" to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf.

**"State Use Committee"** means ~~a committee~~ the statutory Committee that certifies severely disabled individuals and sheltered workshops as qualified organizations ~~that~~ to contract with the state to provide products and services ~~made by severely disabled individuals, and establishes~~ , which are designated in the State Use Committee procurement schedule for state agency ~~use~~ acquisitions pursuant to ~~74 O.S., Sections 3001 et seq~~ 74 O.S. §§ 3001 et seq.

**"Statement of Work"** means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.

**"Supplier complaint"** or **"performance evaluation"** means information a state agency or the Central Purchasing Division provides to the State Purchasing Director, in a manner the DCS Director prescribes, that documents supplier performance.

**"Supplier registration"** means a process a supplier uses to register with the Central Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

**"Suppliers list"** means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive ~~desire~~ notification of solicitations for commodities specified ~~commodity lists~~ in their registration application.

**"Suspension"** means an action by the State Purchasing Director to ~~exclude an individual or business entity from the suppliers list~~ suspend a supplier's authority to be included on the Suppliers List, submit bids to state agencies and be awarded a contract by a state agency subject to the Central Purchasing Act.

**580:15-2-3. Statutory citations**

Statutory citations refer to the most recent codification of statute. Some of the rules of this chapter restate or exactly

repeat language from laws. Italic type means the language exactly repeats language from a law or other legal instrument. The specific reference appears in brackets following the language in italics.

**580:15-2-4. Central Purchasing Division**

The Central Purchasing Division is a division of the Department of Central Services.

**580:15-2-5. Purchasing ~~Division~~ forms**

The DCS Director shall prescribe ~~approve~~ forms ~~that the Division uses, requires suppliers to use or requires state agencies to use~~ to be used by the Central Purchasing Division, state agencies and suppliers. The Central Purchasing Division shall provide forms upon request.

**580:15-2-6. Bid ~~submission document~~ documents open for public inspection**

(a) Documents a ~~supplier~~ bidder submits in a ~~bid~~ response to a solicitation are public records and shall be available for review, upon request, only after a supplier is selected and the ~~bid~~ contract is awarded. An electronic quote, bid or proposal submitted through ~~the~~ an online ~~bidding~~ solicitation process is subject to the same public disclosure laws.

(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:

(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;

(2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and

(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.

(c) The State Purchasing Director shall review the information and may or may not designate a bidder's financial information or proprietary information confidential and may or may not reject all requests to disclose the information so designated. ~~[74 O.S., Section 85.10]~~ [Reference 74 O.S. § 85.10]

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

(a) **General.** ~~The State Purchasing Director is an employee of the Department of Central Service.~~ The DCS Director, ~~and~~ the Oklahoma Central Purchasing Act and other laws prescribe the duties, responsibilities and authority of the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

~~(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 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.~~

~~(E) 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.~~

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

~~(G) 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.~~

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

(b) **Official directives.** The State Purchasing Director shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, the Central Purchasing rules and any other matter relating to state agency acquisitions and procurement.

(c) **Resolution of disputes between state agencies and suppliers.** The State Purchasing Director shall seek resolution of disputes between state agencies and suppliers.

(1) **Agency submission of supplier complaint form.** An agency shall submit a supplier complaint form to the State Purchasing Director in the event a supplier:

(A) fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;

(B) does not refund payment for an acquisition that does not meet or exceed contract specifications; or,

(C) fails to resolve any other problem that conflicts with the contract specifications in a timely manner.

(2) **State Purchasing Director dispute resolution action.**

(A) **State Purchasing Director resolves dispute.** If the State Purchasing Director resolves the dispute, the supplier and state agency shall be notified of the dispute resolution terms and conditions.

(i) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.

(B) **State Purchasing Director fails to resolve the dispute.** If the State Purchasing Director fails to resolve the dispute between the state agency and the supplier, the State Purchasing Director shall take an action in this subparagraph.

(i) **Supplier fails to meet terms and conditions.** If the State Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet contract terms and conditions.** If the State Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.

(~~f~~d) **Contract management fee, levy or rebate.** Pursuant to ~~74 O.S., Section 85.33(B)~~ 74 O.S. §85.33A, the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to ~~the Department~~ DCS. 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)~~ 74 O.S. §85.33A.

**580:15-2-8. Legal counsel**

Legal counsel for the Central Purchasing Division is legal counsel for the Department of Central Services.

**580:15-2-9. Exceptions**

The Oklahoma Central Purchasing Act grants some state agencies, departments and acquisitions exceptions from some or all provisions of the Oklahoma Central Purchasing Act. The State Purchasing Director shall adhere to provisions for exceptions for each state agency, department or acquisition pursuant to the Oklahoma Central Purchasing Act. ~~State agencies and departments shall contact the Purchasing Director if the state agency or department requires information regarding exceptions.~~

**580:15-2-11. Waivers**

(a) **Waiver request.** A state agency may request a waiver from ~~competitive bidding~~ requirements ~~or~~ of the rules of this chapter from the Director of the Department of Central Services, if:

(1) the state agency reasonably believes that ~~the state agency~~ it would be unable to perform a necessary function due to the inability to make an acquisition pursuant to rules of this Chapter; or,

(2) a court order directs the state agency to make an acquisition from a specified vendor or provider.

(b) **Approval of waiver request.** After the request is reviewed, the DCS Director shall notify the state agency of the approval, conditional approval or denial of the waiver request.

**580:15-2-12. Retention of state agency acquisition records**

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts as follows:

(1) **Acquisitions independently processed by agency.** Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later; and,

(2) **Acquisition documents submitted to Central Purchasing Division for processing.** Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

(b) **Records retention location.** A state agency shall retain procurement records and documents in a central location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the Department of Central Services Audit staff for audit purposes.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

## SUBCHAPTER 4. SUPPLIER PROVISIONS

### 580:15-4-1. Purpose [REVOKED]

~~This Subchapter provides information for suppliers and procedures that suppliers shall follow to ensure compliance with provisions of the Oklahoma Central Purchasing Act.~~

### 580:15-4-2. Supplier registration

(a) **General.** ~~The Purchasing Division shall place a registered supplier on the suppliers list for each commodity class for which a supplier registers. The Division shall provide the supplier information for each commodity class for which the supplier desires to register. Except in an emergency acquisition declared in accordance with Oklahoma statutes or pursuant to a waiver approved in accordance with 580:15-2-11, the Division shall notify registered suppliers of invitations to bid or requests for proposal for each commodity class for which a supplier registers.~~ A supplier may submit a registration application to the Central Purchasing Division to be placed on the Suppliers List for a one-year period. Registered suppliers shall be notified by the Central Purchasing Division or by state agencies pursuant to applicable laws and rules, of invitations to bid or requests for proposal for each commodity class for which a supplier registers.

(b) **Registration.** ~~Suppliers shall submit~~ A supplier may register online or by submitting supplier registration forms to the Central Purchasing Division and paying a registration fee, set by 74 O.S. 85.33, for each commodity class listed in the registration application. The State Purchasing Director shall not place a supplier on the ~~supplier list~~ Suppliers List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.

(c) **Registration fee.** ~~Suppliers shall pay an annual fee as set by 74 O.S., §85.33 to the Purchasing Division for each commodity class for which the supplier registers.~~ A supplier must renew a registration and pay an annual registration fee to the Central Purchasing Division prior to the expiration date of the supplier's current registration in order to remain on the Suppliers List.

(d) **Voluntary removal from suppliers list.** ~~Suppliers~~ A supplier may request the Central Purchasing Division remove them from the ~~suppliers list~~ Suppliers List for a commodity.

(e) **Registration fee refunds.** The Central Purchasing Division shall not refund supplier registration fees.

### 580:15-4-4. ~~Supplier provisions~~ Procurement ethics - prohibited conduct

~~(a) **Supplier relationship restrictions.** The Oklahoma Central Purchasing Act prohibits some suppliers from supplying acquisitions to a state agency pursuant to 74 O.S., Section 85.3~~

~~(1) **Supplier is an employee of the Purchasing Division.** An employee of the Purchasing Division shall not sell to or otherwise provide an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.~~

~~(2) **Purchasing Division employee is an owner of the supplier.** An employee of the Purchasing Division shall not be an employee, partner, associate, officer or stockholder in or with a business entity that sells to or otherwise provides an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.~~

~~(3) **Purchasing Division employee's spouse or child owns stock in a supplier.** The spouse or child of an employee of the Purchasing Division shall not be a stockholder of any business entity which sells to or otherwise provides an acquisition to a state agency subject to the Oklahoma Central Purchasing Act.~~

~~(4) **Purchasing Division employee's relative is an employee of, or a stockholder of a supplier.** A relative within the third degree, whether by consanguinity or affinity, of an employee of the Purchasing Division shall not sell to or otherwise provide an acquisition to a state agency subject to the Oklahoma Central Purchasing Act or own an interest in any business entity which does so. This prohibition shall not apply if such relative, excluding a spouse or child, owns stock worth Five Thousand Dollars ($5,000.00) or less, or One Percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Purchasing Act.~~

~~(b) **One year limitation for contracts with state officials.** A state agency shall not enter into a sole source contract, a professional service contract or a contract for the services of a state official for one year after the termination date of the state official from the state agency. A state agency may enter into a sole source contract, contract for professional services or a contract for the services of a person at any time with a person that is a qualified interpreter for the deaf. [74:85.42(D)].~~

~~(c) **Supplier gratuities.** A supplier shall not give or donate anything of value to an employee of the Department or a member of the immediate family of an employee of the Department [74 O.S., §85.13].~~

~~(1) The Purchasing Director shall suspend or debar a supplier convicted of a violation pursuant to this provision.~~

~~(2) The Purchasing Director shall reject bids of a supplier convicted of a violation of this provision. The Purchasing Director may terminate a contract with the supplier convicted of a violation of this provision, if the termination shall be in the best interest of the state agency.~~

(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

(b) **Prohibited activities.** The State Purchasing Director and any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, pursuant to 74 O.S. §85.3, shall adhere to the following restrictions:

(1) *shall not sell to or otherwise provide acquisitions to any agency subject to The Oklahoma Central Purchasing Act;*

(2) *shall not be employees, partners, associates, officers, or stockholder in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act;*

(3) *be employed in any of the positions authorized by 74 O.S. §85.3 if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act; or*

(4) *be employed in any of the positions authorized by 74 O.S. §85.3 if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars ($5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to The Oklahoma Central Purchasing Act. own an interest in any business entity which does so.* [74 O.S. §85.3]

(c) **One year limitation for certain contracts.** Unless otherwise provided by law, a state agency is prohibited from entering into a sole source contract, a professional service contract or a contract for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. [Reference 74 O.S. §85.42(A)] An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. [Reference 74 O.S. §85.42(D)].

(d) **Supplier gratuities.**

(1) The State Purchasing Director and any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of their immediate family, under The Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any property covered by The Oklahoma Central Purchasing Act.

(2) A supplier or any prospective supplier shall not give or donate anything of value to the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of the immediate family of the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority.

(3) *This provision shall not apply to exceptions to the definition of "anything of value" in the Rules of the Ethics Commission promulgated pursuant to Article XXIX of the Oklahoma Constitution.* [74 O.S. §85.13]

(e) **State Purchasing Director action upon supplier violation.**

(1) The State Purchasing Director shall suspend or debar a supplier convicted of a violation pursuant to this section.

(2) The State Purchasing Director shall reject bids submitted by any supplier convicted of a violation of provisions of this section. The State Purchasing Director may terminate a contract with any supplier convicted of a violation of provisions of this section, if the termination shall be in the best interest of the state agency.

**580:15-4-5. Bid solicitation**

(a) **General.** The Central Purchasing Division and state agencies shall comply with provisions of the Oklahoma Central Purchasing Act and rules ~~the Department~~ DCS promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may also notify suppliers recommended by a state agency for a solicitation.

(3) **Emergency notification.** For an emergency acquisition authorized by Oklahoma statutes, the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the DCS Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce.

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) **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 filed in the acquisition file.

(~~d~~ e) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

(1) lowest and best; or,

(2) best value.

(~~e~~ f) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(~~f~~ g) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(~~g~~ h) **Non-Collusion certification.** The State Purchasing Director shall include a non-collusion certification statement in a solicitation. The non-collusion certification shall be included with any bid or proposal submitted to the ~~Purchasing Division~~ agency issuing the solicitation.

(~~h~~ i) **Pre-bid conference.** The State Purchasing Director ~~shall~~ may state in a solicitation ~~if the State Purchasing Director shall hold~~ that a supplier pre-bid conference will be held and shall—state whether supplier attendance is mandatory or non-mandatory.

(~~i~~ j) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.

(~~j~~ k) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the DCS Director ~~of Central Services~~ may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(~~k~~ l) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.

(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample ~~to the Purchasing Division~~ prior to the solicitation closing.

(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The ~~supplier~~ bidder shall place the information on the sample container and on the sample shipping container.

(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.

(4) **Sample requirements.** A sample a bidder submits ~~to the Purchasing Division~~ shall represent the quality of the whole.

(5) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.

(6) **Sample tests costs.** If the sample a bidder submits ~~to the Purchasing Division~~ fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the ~~Purchasing Division~~ agency incurs.

(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.

(B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.

(C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the ~~Division~~ agency incurs for sample return.

(8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(9) When ~~The~~ the State Purchasing Director issues a solicitation on behalf of a state agency, the State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.

(~~l~~m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

**580:15-4-6. Bid preparation**

(a) **General.** A bid a supplier submits to the State Purchasing Director shall agree to all terms and conditions the solicitation specifies.

(b) **Forms the State Purchasing Director requires suppliers to submit.** The State Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.

(c) **Additional form requirements.**

(1) **Data the supplier submits.**

(A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(B) Information the supplier submits shall be legibly hand written, typewritten, or printed or electronically conveyed and shall meet all terms and conditions of the solicitation.

(C) Should the supplier alter form or bid information, the supplier shall initial each alteration.

(2) **Authorized signature.** A form a supplier submits with the supplier's bid ~~to the Purchasing Division~~ shall bear an authorized signature. Any form requiring a supplier's signature submitted to the Central Purchasing Division shall have an authorized signature.

(3) **Notary seal.** If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner state laws of the bidder's state specify.

(d) **Contract.** The contract the State Purchasing Director awards pursuant to a solicitation shall consist of the following contract documents: invitation to bid, or request for proposal or request for quotation; ~~Purchasing Division~~ attachments including, but not limited to, amendments, change orders or modifications; the supplier's bid or quotation with attachments, reviewed and approved by the State Purchasing Director; and, the purchase order the State Purchasing Director issues. A contract the State Purchasing Director awards may incorporate by reference all provisions of the Oklahoma Central Purchasing Act and the Central Purchasing rules ~~of the Purchasing Division~~.

(e) **Firm bid for sixty (60) days.** The State Purchasing Director shall consider a supplier's bid a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.

(f) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. ~~The~~ Unless otherwise provided by law, a state agency shall not pay travel expenses the bid price does not include.

(g) **Tax exemptions.** State agency acquisitions are exempt from sales taxes ~~[68 O.S., §1365]~~ and federal excise taxes ~~[Chapter #.32, Internal Revenue Code #73-73-016-3K]~~. Bidders shall not include these taxes in price quotes. ~~The Purchasing Director shall supply tax exemption certificates to bidders if the bidder requests.~~

(h) **Payment terms.** State agencies shall pay suppliers pursuant to ~~62 O.S., Section 41.4a, et seq~~ 62 O.S. §34.71. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

(i) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(1) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashiers check.

(2) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

(3) **Bond or surety return.** When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(j) **Used or new products.** A bid shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(k) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(l) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(m) **All or none bid.**

(1) **Award to more than one bidder.** If the solicitation specifies that the State Purchasing Director may award a contract to more than one bidder, the bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) **Award by item.** If the solicitation indicates that the State Purchasing Director may award the bid to more than one bidder by item, the bidder may indicate that the terms and conditions of the bid are all or none.

(n) **High technology systems.**

(1) **New high technology system.** In accordance with 74 O.S. §85.7c, ~~The~~ the State Purchasing Director shall not evaluate a bid for a high technology system unless the bid includes a statement of work and:

(A) **System upgrade schedule.** Documentation by the bidder of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three-year period following the target purchase date; or,

(B) **No system upgrades.** Documentation that the bidder does not plan any recommended or required

system upgrades or improvements to the high technology system over a projected three-year period following the target purchase date.

(2) **High technology system upgrades.** The State Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid includes a statement of work and:

(A) documentation that the vendor agrees to provide the upgrade or improvement at no charge to the state;

(B) documentation that the vendor previously agreed in a contract to provide the upgrade or improvement at no additional charge to the state;

(C) documentation the state agency obtained from the vendor that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or,

(D) documentation the vendor will no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

(o) **Bidder delivery.** A solicitation shall specify a delivery date or allow the bidder to specify a firm delivery date. If the solicitation does not specify a delivery date, the bidder shall specify the delivery date in the bid.

(p) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director. [Reference OAC 580:15-4-5(k)]

(q) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

**580:15-4-7. Bid submission**

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, ~~bid~~ solicitation number and closing date shall be prominently displayed as stated in the solicitation.

(c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(d) ~~**Purchasing Division bid**~~ **Bid receipt.** Upon receipt, ~~the Purchasing Division~~ a state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(e) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the DCS Director ~~of the Department of Central Services~~ has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

**580:15-4-9. Supplier bid change**

A bidder who desires to change a bid the bidder submitted to the Central Purchasing Division shall withdraw the submitted bid and submit another bid before the closing date.

**580:15-4-11. Bid evaluation**

(a) **Evaluation ~~document~~ documentation.** ~~The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.~~ Prior to distribution of a solicitation, the State Purchasing Director shall establish written evaluation criteria for use in evaluation of the bids. Evaluation of the bids shall be documented and filed in the acquisition file.

(1) **Prohibited disclosure.** Agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, including board meetings, until the State Purchasing Director has issued the award of contract.

(2) **Public inspection.** The evaluation documentation shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall ~~indicate~~ document in the ~~solicitation~~ acquisition file if a bid is nonresponsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (i) of this Section, the State Purchasing Director may reject a bid that is nonresponsive or a bid from a ~~nonresponsible~~ bidder who is not responsible for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **Form entries improper.** If information provided in the solicitation documents is not legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered nonresponsive.

(7) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, the bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond or other surety.** If a bidder fails to include a bid bond or other surety specified as a requirement by a solicitation, the bid shall be considered nonresponsive.

(9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the State Purchasing Director issues to a solicitation, the bid may be considered nonresponsive.

(13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered nonresponsive.

(15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid shall be considered nonresponsive.

(16) **Past performance.** If the State Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.

(17) **Signatures on solicitation documents.** If an authorized signature is omitted from any solicitation document that requires an authorized signature, the bid may be considered nonresponsive.

(18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(d) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(e) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(f) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(g) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(h) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(i) **Other factors in determination of award.**

(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:

(A) failure to have an authorized signature;

(B) failure to obtain a notary signature, stamp or seal;

(C) failure to sign or initial amendments to bid.

(j) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

**580:15-4-11.1. Contract negotiation**

(a) **Negotiation.** The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar threshold and shall follow the rules for negotiation in this section.

(b) **Negotiation team.**

(1) A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.

(2) The State Purchasing Director or designee shall serve as the lead negotiator for a team when negotiations are being conducted for solicitations issued by Central Purchasing.

(c) **Negotiation process.**

(1) The lead negotiator shall notify suppliers of the date and time for negotiations.

(2) 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.

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

(4) 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.

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

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

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

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

(C) A summary created under these rules shall become a part of the contract file retained.

**580:15-4-12. Contract award**

(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The contract award shall be made upon completion of the following:

(1) bid evaluation;

(2) documentation of evaluation on each bid;

(3) determination of the lowest and best or best value bidder;

(4) verification of Oklahoma and Federal debarment status;

(5) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to ~~Title 68, Sections 1203 and 1204~~ 68 O.S. §1203 and §1204, whenever the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater;

(6) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to ~~Title 68, Section 1364~~ 68 O.S. §1364 if such entity is required to do so;

(7) coordination of award with the requisitioning state agency, if necessary; and

(8) completion of any administrative tasks.

(b) **Award by item.** If a solicitation does not specify an all or none bid, the State Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.

(c) **No contract award.** A contract may not be awarded when:

(1) The State Purchasing Director determines no bid meets the requirements of the solicitation.

(2) The State Purchasing Director determines that all bids exceed fair market value for the acquisition.

(3) The state agency determines that bid price exceeds available state agency funds.

(4) The state agency determines that it no longer requires the acquisition in the form or manner the solicitation specifies.

(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

(e) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

**580:15-4-13. Supplier's protest**

A supplier may protest a contract award by a state agency or the Central Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing 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. ~~Written notice of the decision by the State Purchasing Director to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.~~

(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~~ 74 O.S. §§309 et seq.

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

(A) If the ~~protest~~ appeal is assigned to an ~~administrative law judge~~ Administrative Law Judge, the ~~administrative law judge~~ Administrative Law Judge shall review the appeal for legal authority and

jurisdiction. If legal authority and jurisdictional requirements are met, the ~~administrative law judge~~ 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~~ 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 [Reference 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~~ 75 O.S. §§ 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 DCS 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 DCS Director.

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

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

**580:15-4-14. Supplier Contract performance**

(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) **Inspection.** Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(c) **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items.

(e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(f) **Contract changes.** If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section ~~15-6-6(e)(2)~~ 580:15-6-6.2.

(g) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization ~~without written approval of the State Purchasing Director~~ unless otherwise specified in the solicitation.

**580:15-4-15. Supplier invoice submission**

(a) **Supplier invoice submission.** Following transfer of title of an acquisition to a state agency, the supplier shall submit invoices to the state agency.

(b) **Advance payment for acquisitions.** The state agency shall not pay for acquisitions a supplier has yet to deliver, unless otherwise authorized by law.

(c) **Payment and state agency acceptance.** State agency payment to a supplier for an acquisition may not constitute final acceptance of the acquisition by the state agency. If subsequent state agency inspection affirms that the acquisition

does not meet or exceed the specifications of the contract, or that the acquisition has latent defects, the state agency shall notify the supplier. The supplier shall retrieve and replace the acquisition at the supplier's expense, or the state agency shall request a refund from the supplier if the supplier is unable to replace the acquisition.

**580:15-4-16. State agency and supplier disputes [REVOKED]**

~~The Purchasing Director shall seek resolution of disputes between state agencies and suppliers.~~

~~(1) **Supplier does not retrieve and replace defective acquisition.** If a supplier fails timely to retrieve and replace an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.~~

~~(2) **Supplier does not make refund for defective acquisition.** If a supplier does not refund payment for an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.~~

~~(3) **Other supplier problems.** State agencies or the Purchasing Division shall submit a supplier complaint form for a problem that a supplier does not resolve in a timely manner.~~

~~(4) **Purchasing Director dispute resolution.** When a state agency notifies the Purchasing Director of a dispute with a supplier, the Purchasing Director shall seek to resolve the dispute.~~

~~(A) **Purchasing Director resolves dispute.** If the Purchasing Director resolves the dispute between the state agency and the supplier, the Purchasing Director shall notify the supplier and the state agency of resolution terms or conditions.~~

~~(i) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.~~

~~(ii) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.~~

~~(B) **Purchasing Director fails to resolve the dispute.** If the Purchasing Director fails to resolve the dispute between the state agency and the supplier, the Purchasing Director shall take an action in this subparagraph.~~

~~(i) **Supplier fails to meet terms and conditions.** If the Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.~~

~~(ii) **State agency fails to meet contract terms and conditions.** If the Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:15-6-15.~~

**580:15-4-18. Supplier suspension from suppliers list**

(a) **Cause for suspension.** ~~The State Purchasing Director may suspend a supplier from the suppliers list and from submitting bids to the Purchasing Division or any other state agency subject to the Central Purchasing Act for a period of time not to exceed one (1) year for any of the following~~ The State Purchasing Director may suspend a supplier, as defined in 580:15-2-2, in accordance with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority. The suspension shall be for a period of time not to exceed one (1) year for any of the following reasons :

(1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation;

(2) a supplier fails to perform pursuant to the contract;

(3) a supplier provides acquisitions that fail to meet the requirements of the contract;

(4) a supplier fails to deliver an acquisition pursuant to the contract;

(5) a supplier fails timely to replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects;

(6) a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form;

(7) a supplier fails to keep ~~bids firm for sixty (60) days from the solicitation closing date~~ a bid firm for the period specified in the solicitation after the solicitation closing date;

(8) a supplier fails to resolve a dispute with a state agency;

(9) upon ~~a determination~~ the final decision by the appropriate regulatory authority or court of competent jurisdiction that a supplier engaged in discriminatory practices;

(10) a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation;

(11) a supplier colludes with other suppliers to restrain competitive bidding;

(12) a supplier provides a state employee with a kickback;

(13) the State Purchasing Director determines, in his or her sole discretion, that a supplier is no longer responsible or qualified to do business with the State of Oklahoma;

(14) a supplier violates any provision of the Oklahoma Central Purchasing Act;

(15) any other reason the State Purchasing Director determines appropriate.

(b) **Suspension notice.** ~~The State Purchasing Director shall notify a supplier of the supplier's suspension within five (5) business days of the State Purchasing Director's determination.~~ The State Purchasing Director shall send written notice of suspension to a supplier within five (5) business days of the State Purchasing Director's determination. The notice shall include the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the order.

(c) **Supplier's suspension appeal.** A supplier may appeal a suspension in writing to the State Purchasing Director within five (5) business days of receipt of the suspension notice.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal in writing to the supplier.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the suppliers list.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the DCS Director ~~of Central Services~~ pursuant to ~~75 O.S., Section 309~~ 75 O.S. §§ 309 et seq. and the provisions of 580:15-4-13.

(e) **Suspension.** The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.

(f) **Supplier request for reinstatement.** ~~A supplier the State Purchasing Director suspends may request the State Purchasing Director to allow the supplier to register for the suppliers list before the end of the supplier's suspension period.~~ A suspended supplier may request reinstatement from the State Purchasing Director prior to the end of the supplier's suspension period. The State Purchasing Director may consider reinstating the supplier upon submission by the supplier of documents that indicate a change of conditions.

(g) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall ~~authorize the supplier to register for the suppliers list pursuant to 580:15-4-2~~ send written notice of reinstatement to the supplier.

**580:15-4-19. Supplier debarment.**

~~The State Purchasing Director may debar a supplier from the suppliers list and from submitting bids to the Purchasing Division or other state agencies subject to the Central Purchasing Act for a period of no more than three years.~~

(a) **Cause for debarment.** The State Purchasing Director may debar a supplier and revoke the supplier's authority to be included on the Suppliers List, submit bids to state agencies and be awarded a contract by a state agency subject to the Central Purchasing Act. For the purposes of this section, "State Purchasing Director" does not include employees of state agencies to whom the State Purchasing Director has delegated authority. The debarment shall be for a period of no more than three (3) years. Debarment shall be for any of the following reasons:

(1) ~~**Cause for debarment.**~~

~~(A) Fraud, bribery or corruption. The State Purchasing Director may debar a supplier upon~~ conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption~~.~~;

(2~~B~~) ~~**Gift, donation or gratuity.** The State Purchasing Director may debar a supplier upon~~ conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Department of Central Services, ~~or~~ an immediate family member of an official of the Department of Central Services, or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority;~~.~~

(3~~C~~) ~~**Anti-Kickback Act of 1974.** The State Purchasing Director may debar a supplier upon~~ conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974~~.~~; or,

(4) debarment by federal government entities.

~~(2) **Debarment notice.** If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.~~

(b~~3~~) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(1~~A~~) **Disassociation.** ~~The State Purchasing Director may consider the~~ The efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(2~~B~~) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(3~~C~~) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(4~~D~~) **Time period.** ~~The State Purchasing Director may consider the~~ The period of time during which the acts leading to conviction of the individual or business entity occur.

(5~~E~~) **Failure to respond to ~~debarment notice~~ inquiries.** The ~~State Purchasing Director shall consider failure to respond to the debarment notice by the individual or business entity.~~ Failure of the individual or business entity to respond to inquiries by the State Purchasing Director regarding factors that may lead to debarment.

(6~~F~~) **Other factors.** ~~The State Purchasing Director may consider~~ Any other factors regarding the individual or business entity the State Purchasing Director determines appropriate.

(c~~4~~) **State Purchasing Director options.** ~~Upon completion of review of debarment records, the State Purchasing Director shall take an action affecting the individual or business entity.~~ Upon review and consideration of factors relevant to the proposed debarment of an individual or business entity, the State Purchasing Director shall take one of the following actions:

(1~~A~~) **Decline to debar.** ~~The State Purchasing Director may decline~~ Decline to debar an individual or business entity~~.~~;

(2~~B~~) **Suspension.** ~~The State Purchasing Director may suspend~~ Suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate~~.~~;

(3~~C~~) **Debarment.** ~~The State Purchasing Director may debar~~ Debar an individual, a business entity, or both for a period that shall begin three (3) business days from the date of the final order of debarment and expire no later than the end of the period specified in the order. ~~The debarment period shall begin on the day the supplier receives notice of final order of debarment and shall expire no later than the end of the term specified in the order.~~

(d) **Debarment notice.** If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.

(e~~5~~) **Reinstatement after debarment.** A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information the individual or business entity provides to determine if the individual or business entity merits reinstatement ~~to the suppliers list~~. The State Purchasing Director ~~may approve or deny reinstatement of the individual or business entity to the supplier's list and~~ shall provide written notice of the reinstatement approval or denial.

(f~~6~~) **Supplier appeal of State Purchasing ~~Director actions~~ Director's action.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the DCS Director within ten (10) business days of the date of the ~~State Purchasing Director's notice of debarment or denial of reinstatement pursuant to 75 O.S., Section 309~~ final order of debarment or the denial of reinstatement notice pursuant to 75 O.S. §§ 309 et seq and the provisions of 580:15-4-13.

## SUBCHAPTER 6. STATE AGENCY PROVISIONS

### 580:15-6-1. Purpose [REVOKED]

~~The purpose of this subchapter is to provide state agencies and certified procurement officers information to make acquisitions for state agencies. State agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, State Use Committee, other statutory provisions and rules of the Purchasing Division for state agency acquisitions. State agencies may submit questions regarding rules of the Purchasing Division to the State Purchasing Director.~~

### 580:15-6-2. Certified procurement officers (CPO)

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to ~~74 O.S., Section 85.5(D)~~ 74 O.S. §85.5. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A CPO shall provide assistance and oversight to a state agency to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, the Central Purchasing rules ~~of the Purchasing Division~~, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, the Central Purchasing rules ~~of the Purchasing Division~~, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** To maintain certification, a CPO shall attend ~~eighteen (18) hours of~~ continuing education ~~for each calendar year following the year of certification~~ as required by the CPO Procurement Training Program established by the State Purchasing Director. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall ~~determine~~ establish a policy relating to how often courses may be repeated to qualify for continuing education credit.

(1) ~~Prior to December 31 of each calendar year, a CPO shall submit to the State Purchasing Director, documentation verifying continuing education course attendance.~~ A CPO shall submit documentation verifying continuing education course attendance to the State Purchasing Director as required by the CPO Procurement Training Program. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.

(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.

(3) Failure by a CPO to complete the required ~~18 hours of qualifying~~ continuing education within the allowed period will result in suspension of the CPO's purchasing authority.

(4) A suspended CPO must attend the next available CPO certification course approved by the State Purchasing Director in order to be reinstated and restore purchasing authority.

(5) A suspended CPO that ~~has remained~~ remains suspended for a period of more than one year must repeat

the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination in order to be reinstated and restore purchasing authority.

(6) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill ~~the previous year's~~ required continuing education credits. ~~The State Purchasing Director may approve or deny the request. A reinstatement approved to allow an extension of time to fulfill education credits shall not exceed three (3) months.~~ The State Purchasing Director may approve the request for a reinstatement period not to exceed three (3) months to provide time to fulfill education credits.

(g) **Change in status.** A CPO shall immediately notify the State Purchasing Director when they:

(1) are no longer performing as a CPO~~,~~ ;

(2) ~~when they~~ transfer to another state agency~~,~~ ;or,

(3) ~~when they~~ terminate their employment with the state.

**580:15-6-3. State agency purchasing procedures**

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . .*which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations*". Internal purchasing procedures are not effective until approved in accordance with this section.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the Central Purchasing rules ~~of the Purchasing Division~~.

(d) **~~State Purchasing~~ DCS Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the DCS Director~~, or the Director's designee,~~ shall notify the state agency if the procedures comply or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the DCS Director notifies the state agency the procedures comply.

(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

**580:15-6-4. State agency acquisition records retention [REVOKED]**

~~(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts for the duration of the contract term and for a period of three (3) years following completion and/or termination of the acquisition. If an audit, litigation, or other action involving such records is started before the end of the three (3) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the three (3) year retention period, whichever is later.~~

~~(b) **Records retention location.** A state agency shall retain records and documents in a central location unless a written waiver is provided by the State Purchasing Director.~~

~~(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the Department of Central Services Audit staff for audit purposes.~~

~~(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.~~

**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.~~ 74 O.S. §§ 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.~~ 57 O.S. §549.1 and the following:

(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.~~ If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, that OCI is lowest and best, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.

(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 Central 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 DCS 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~~ acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of ~~the Purchasing Division~~ this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures.

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

(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~~ make a sole source or sole brand acquisition within the agency's ~~purchasing~~ acquisition authority ~~limit pursuant to the provisions of the Oklahoma Central Purchasing Act~~. [Reference: 74 O.S. §85.45j]

(B) The chief administrative officer of ~~each~~ any state agency not utilizing the State's financial and information system for acquisitions shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding ~~Two Thousand Five Hundred Dollars ($2,500.00)~~ Five Thousand Dollars ($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~~ acquisition 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.~~ 74 O.S. §§85.1 et seq., other applicable statutory provisions, this Chapter and the agency's approved internal purchasing procedures.

(b) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(~~b~~ c) **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~~ d) **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~~ Suppliers List in the appropriate commodity classification compiled by the Central 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~~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, 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]~~ [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. ~~[Reference 74 O.S. Section 85.4]~~ [Reference 74 O.S. § 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]~~ [Reference 74 O.S. §85.42]

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

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

(~~d~~e) **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 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 74 O.S. §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~~

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~~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. When a selection has been made, the state agency shall notify the supplier of the award.

(~~6~~5) ~~**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]~~ [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. ~~[Reference 74 O.S. Section 85.4]~~ [Reference 74 O.S. §85.41]

(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. § 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.~~

(f) **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 evaluation criteria for the acquisition.

(2) **Supplier selection.** The state agency shall solicit all suppliers in the appropriate commodity classification from the Suppliers List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director 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) **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.

(5) **Verification and documentation.**

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the State Purchasing Director 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) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the State Purchasing Director must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204.

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

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall provide a sworn statement certifying 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. §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.

(5) **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.

(6) **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.

(g) **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:

(1) make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including subsection (f) of this Section;

(2) award all contracts based on lowest and best or best value criteria; and,

(3) solicit all suppliers in the appropriate commodity classification from the Suppliers List along with any other suppliers identified by the state agency using solicitation forms prescribed by the DCS Director.

**580:15-6-6.1. Acquisition limitation exception**

(a) A state agency making an acquisition pursuant to 74 O.S. §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 section, a state agency shall submit in writing to the DCS Director, a statement of the agency's intent to make an acquisition pursuant to 74 O.S. §85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the DCS Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.

(c) Agencies making an acquisition pursuant to this section shall comply 74 O.S. §85.7, any other applicable state laws and rules, including (f) of 580:15-6-6.

(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 [Reference 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. For the purposes of (1) and (2) of this subsection, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(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 Central 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 and uniform rate contract.** If a state agency desires to enter into a fixed and uniform rate contract, the agency shall request approval of the DCS Director prior to award of the contract pursuant to 74 O.S. §85.7.

(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.§581 or 74 O.S. §1001 through §1008. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, Central Purchasing rules 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) **Authorized signature.**

(1) 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, sole source affidavits, change

order requests, and surplus property transactions that may be submitted to the State Purchasing Director. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(2) State agencies shall also maintain a list of individuals designated by the appointing authority to sign and approve requisitions, sole source affidavits, change order requests, and purchase orders for acquisitions within the agency's approved acquisition authority. The list shall include the name, title, and signature of each individual, the effective date of their signature authorization and ending date of the authorization, when applicable. The agency shall maintain a file of the signature authority lists in the location of the agency's centralized procurement records, and shall be available to the State Purchasing Director, upon request.

(h) **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 DCS 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 acquisition authority 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 ~~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) DCS 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. [Reference 74 O.S. §85.3] The state agency shall reimburse administrative costs to DCS 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 Central 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.

(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 DCS.

**580:15-6-15. Audits of state agencies**

The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, promulgated rules of the Department of Central Services, provisions of ~~74 O.S., Sections 3001 through 3010~~ 74 O.S. §3001 through §3010, other laws of the State of Oklahoma, and the state agency's approved internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the DCS Director.

(1) **Audit notification.** ~~The Department~~ DCS shall notify the state agency of all scheduled audits.

(2) **State agency responsibilities.**

(A) The state agency shall provide work space for the audit team.

(B) The state agency shall provide records for acquisitions for the audit period.

(C) The state agency shall make the state agency's CPO available to assist the audit team.

(3) **Audit following reduction of state agency ~~purchasing~~ acquisition authority.** If the DCS Director reduces the ~~purchasing~~ acquisition authority of a state agency, the Audit Team shall periodically audit the state agency's acquisitions in order to review the agency's efforts to correct audit findings of noncompliance.

**580:15-6-18. State purchase card program**

Use of state purchase cards authorized by the State Purchasing Director ~~[Reference 74 O.S., Section 85.5L.]~~ [Reference 74 O.S. §85.5(L)] shall be subject to the policies and procedures of a purchase card program established by the State Purchasing Director to ensure compliance with the statewide contract for this service.

**580:15-6-19. Electronic commerce and online bidding**

The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in ~~74 O.S., Section 85.45r~~ 74 O.S. §85.45r. and the Oklahoma Central Purchasing Act and/or the Public Building Construction and Planning Act shall be subject to the policies and procedures of the Online Bidding Standards authorized by the DCS Director ~~of the Department of Central Services~~ and established by the State Purchasing Director.

**580:15-6-20. Procedures for state agency privatization contracts**

(a) **Cost analysis report.** Before any agency contracts to privatize a function, program, service, unit, or division valued at One Hundred Thousand Dollars ($100,000.00) or more, the agency must perform a cost analysis and submit a copy of the written cost analysis report to the Department of Central Services.

(b) **Cost analysis report contents.** The cost analysis report shall include, but not be limited to:

(1) A cost-benefit analysis comparison that shall include the collection and analysis of the direct and indirect costs of the current governmental operation and the private vendor contract. Costs shall be itemized in the report and shall include direct personnel costs, materials and supplies, facility and equipment maintenance and repairs, equipment, rent, utilities, insurance, travel, operations overhead, transition costs associated with shifting the service delivery from the government agency to a private vendor and general administrative overhead associated with privatization of a function.

(2) A feasibility study determining whether another state agency could assume the function, program, service, unit, or division proposed to be privatized.

(3) An analysis of the cost savings and quality enhancements expected to be gained by privatizing.

(4) The availability of multiple qualified and competitive private vendors.

(c) **Cost analysis report review.** The State Purchasing Director shall review the contents of the cost analysis report and determine whether it meets the requirements of the Oklahoma Privatization of State Functions Act ~~[Reference 74 O.S., Section 588 et seq]~~ [Reference 74 O.S. §§ 588 et seq] and this section. The State Purchasing Director shall send written notice to the agency of the results of the review. If the contents of the report are found deficient, the notice shall contain instructions to correct the deficiencies and the cost analysis report shall be returned to the agency along with the notice.

(d) **Privatization request for proposal.** An agency shall include the following requirements with any request for proposal for a privatization contract:

(1) Financial stability of the vendor, past and present litigation and references related to past government contract performance information; and

(2) Detail of how the vendor will perform the contract, including staffing and equipment information.

(e) **Agency certification statement.** An agency shall submit to the State Purchasing Director for approval, a privatization contract together with a written statement, signed by the agency director, certifying that:

(1) The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with;

(2) The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees; and

(3) The proposed privatization contract is in the best interest of the public. ~~[74 O.S., Section 589.1]~~ [Reference 74 O.S. §589.1]

**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~~ 62 O.S. §34.29, 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.~~ 62 O.S. §34.29, 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. Instead, an agency should identify commercial, off-the-shelf products that best meet the general, technical and functional requirements as defined by the agency. Once those products have been identified, the agency should purchase the product that is the most accessibility compliant.

(b) **Contract clauses.**

(1) All solicitations and contracts for information technology shall include a clause, prescribed by the DCS Director pursuant to ~~Title 74, Section 85.7d~~ 74 O.S. §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~~ document 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.~~ Whenever an agency determines that an acquisition exceeding $5,000.00 meets the criteria of a general exception or undue burden, the agency shall document the explanation of why, and to what extent, compliance with applicable standards 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~~ 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.

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

(2) The documentation shall be retained in the acquisition file to support the procurement.

(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.

*[OAR Docket #10-930; filed 5-26-10]*

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

*[OAR Docket #10-929A]*

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PERMANENT final adoption
**RULES:**
Subchapter 5. Casualty or Liability Claims Management, Payment and Reports
580:25-5-1. [AMENDED]
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**Superseded rules:**
Subchapter 5. Casualty or Liability Claims Management, Payment and Reports
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N/A
**ANALYSIS:**
These rules supersede emergency rules adopted in 2009 to add requirements related to claims management in order to ensure Risk Management can collect all information from a claimant required to be reported to the federal government in order to comply with the Federal Medicare, Medicaid and SCHIP Extension Act (MMSEA). In addition, clarification is provided related to a claim that may be declared invalid for failure to provide the requested information.

Information has been added to clarify that Risk Management cannot accept responsibility for any programs the Division has not been made aware or administer directly because a state agency has purchased liability insurance without the knowledge of Risk Management [74 O.S. § 85.58A (E)]
**CONTACT PERSON:**
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

### SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

**580:25-5-1. Claims management**

(a) **Settlement and payment of claims.**

(1) **General.** While the Risk Management Division will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Division has approved the acquisition of a policy or

contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.

(iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A under any State or Federal law.

(~~B~~D) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment".** Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding $25,000.00.** A claim settlement in which a payment not exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding $25,000.00.** A claims settlement in which a payment exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or ~~an~~ any other covered entity, and no self-insurance coverage shall be provided or paid.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 85.9A.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S., Section 85.9A.

*[OAR Docket #10-929A; filed 5-26-10]*

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

*[OAR Docket #10-929]*

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PERMANENT final adoption
**RULES:**
580:35-1-1 [AMENDED]
580:35-1-7 [AMENDED]
580:35-1-8 [AMENDED]
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N/A
**ANALYSIS:**
Rule revisions define "in writing" or "written" to facilitate use of both paper documents and information technology applications; add fuel requirements for alternative fuel vehicles; provisions for use of a wrecker service in the event of an emergency after work hours, on weekends or holidays or outside of OKC area; and clarify that the State Fleet Administrator may make exceptions to the state vehicle maintenance schedule requirements upon request by a state agency, which provides flexibility for vehicles that might require an alternative maintenance schedule based upon industry standards.
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

### 580:35-1-1. General Provisions

(a) **Purpose.** This Chapter provides information and establishes procedures and standards to administer the operations to provide fleet management services to state agencies and oversight to agencies that own, operate and utilize motor vehicles. The Director of Central Services promulgated these rules pursuant to 74 O.S., Section 78 and the Administrative Procedures Act to ensure an adequate fleet of safe, reliable motor vehicles is available to meet the needs of the state.

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

(1) **"Chief administrative officer"** means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency.

(2) **"Class"** means compact car, medium size car, full size car, medium size station wagon, full size station wagon, police car, pickup, truck, SUV, van, bus, aircraft or motorcycle.

(3) **"Department"** means the Department of Central Services.

(4) **"Director"** means the Director of the Department of Central Services.

(5) **"Division"** means the Fleet Management Division within the Department of Central Services.

(6) **"Fleet Manager"** means the administrative head of the Fleet Management Division appointed by the Director.

(7) **"State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, and the Office of the Governor.

(8) **"VIN"** means vehicle identification number.

(9) **"Written"** or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(c) **Forms.** The Director shall approve forms and instructions for use by state agencies to facilitate requirements of this chapter. The Department shall provide forms upon request.

(d) **Agency authorized signatures.** A chief administrative officer shall designate in writing to the Division, the name of any person authorized to sign on behalf of the agency for the purposes of this chapter.

(e) **Waivers.** The Director may waive any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for waivers shall be in writing and must include justification for the waiver request.

(2) The Department shall respond in writing as to the approval, conditional approval, or denial of a waiver request within fifteen (15) working days of receipt of the request.

### 580:35-1-7. Gasoline and oil purchases

(a) **Fuel card purchases.** Gasoline and oil for Division vehicles shall be purchased from authorized fueling locations with the state issued fuel card furnished with each vehicle.

(1) The current vendor of the state fuel card is determined by award of SW Contract 101 "Automated Fuel Management System".

(2) A list of fuel card provider locations by city is provided inside each vehicle.

(b) **Purchases from the Department of Transportation.** Gasoline and oil may also be purchased from Department of Transportation facilities.

(c) **Required fuel for Division vehicles.** ~~Use only regular unleaded fuel in Division vehicles.~~ Unless otherwise specified in this subsection, use only regular unleaded fuel in Division vehicles. Regular unleaded fuel may be blended to contain ethanol at levels approved by the federal Environmental Protection Agency (EPA). Division vehicles identified by marking or decal as:

(1) "Flex-fuel" may use blended fuel up to and including eighty-five percent ethanol;

(2) "CNG" may use compressed natural gas (CNG).

(3) "LPG" may use liquefied petroleum gas;

(4) "LNG" may use liquefied natural gas;

(5) "Biodiesel" may use fuel that contains a blend of diesel fuel and biological products at a level approved by the EPA.

(6) "Plug-in hybrid (PHEV)", "electric vehicle (EV)", "neighborhood electric vehicle (NEV)", or "low-speed vehicle (LSV)" may use electricity.

(7) "Dual-fuel" or "bi-fuel" may use a combination of the fuel types specified in this subsection.

**580:35-1-8. Wrecker service, on-the-road breakdown and repairs**

(a) **Division wrecker service.** An agency shall contact the Division whenever towing or a service call is required in or near the Oklahoma City metro area and between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

(b) **Private wrecker service.** An agency shall contact a wrecker service listed on the Roadside Assistance (RA) card provided by the Division ~~in the Fuel/Maintenance locator guide~~ whenever towing or a service call is required outside the Oklahoma City metro area, ~~and/or~~ after 4:30 p.m. on Monday through Friday, on weekends or holidays.

(1) In the absence of the Roadside Assistance (RA) card, an agency shall contact a wrecker service listed in the Fuel/Maintenance locator guide.

(~~1~~2) If the locator guide does not list a wrecker service in the area, a local wrecker service may be contacted and expenses charged to the Division in accordance with 580:35-1-9.

(~~2~~3) An agency shall notify the Division of the use of a private wrecker service on the following workday.

(~~3~~4) The driver shall be reimbursed for towing expenses if a private wrecker service refuses to invoice the Division.

(c) **Driver negligence.** The Division shall not be responsible for towing and/or service calls required because of driver negligence and related expenses shall not be reimbursed. (See also 580:35-1-5(f).]

(d) **Vehicle breakdown.** In the event of an on-the-road breakdown, contact the Division immediately. If it is impossible to contact the Division, proceed as follows:

(1) If the vehicle is operable, drive it to the nearest maintenance location listed in the locator guide provided with the vehicle

(2) If the vehicle is inoperable, contact a wrecker service following the procedure in subsection (b) of this section and have the vehicle towed to a garage or dealership listed in the locator guide. If there are no locations available, call a local dealership or garage to have the vehicle towed in.

(e) **Authorization of repairs.** Contact the Division as soon as possible to report the status and location of the vehicle. All repairs to a vehicle require prior authorization from the Division. An agency shall be responsible for payment of any unauthorized repairs.

**580:35-1-10. Care and maintenance of vehicles**

(a) **Vehicle maintenance schedule.** A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any state-owned vehicle in its possession, according to the following maintenance schedule:

(1) 5,000 vehicle miles: "A" maintenance service due;

(2) 10,000 vehicle miles: "A" maintenance service due;

(3) 15,000 vehicle miles: "A" maintenance service due;

(4) 20,000 vehicle miles: "B" maintenance service due;

(5) 25,000 vehicle miles: "A" maintenance service due;

(6) 30,000 vehicle miles: "A" maintenance service due;

(7) 35,000 vehicle miles: "A" maintenance service due;

(8) 40,000 vehicle miles: "B" maintenance service due;

(9) 45,000 vehicle miles: "A" maintenance service due;

(10) 50,000 vehicle miles: "C" maintenance service due;

(11) 55,000 vehicle miles: "A" maintenance service due;

(12) 60,000 vehicle miles: "B" maintenance service due;

(13) 65,000 vehicle miles: "A" maintenance service due;

(14) 70,000 vehicle miles: "A" maintenance service due;

(15) 75,000 vehicle miles: "A" maintenance service due;

(16) 80,000 vehicle miles: "B" maintenance service due;

(17) 85,000 vehicle miles: "A" maintenance service due;

(18) 90,000 vehicle miles: "A" maintenance service due;
(19) 95,000 vehicle miles: "A" maintenance service due;
(20) 100,000 vehicle miles: "C" maintenance service due.

(b) If the vehicle is stationed in or near the Oklahoma City metro area, service shall be performed by the Division. The Division may approve exceptions to the requirements of this section upon written request by a state agency.

(c) If the vehicle is stationed outside the Oklahoma City metro area, all "A" and "B" maintenance shall be obtained from a local vendor as follows:
(1) Check the Fuel/Maintenance locator guide for a location willing to accept the current state fuel card provided with the vehicle. If such a facility is unavailable, contact a local dealership or garage.
(2) Obtain a garage estimate for the service to be performed prior to commencement of work.
(3) Authorization by the Division shall be obtained prior to commencement of the work.
(4) All invoices shall be mailed to the Division.

(d) **"A" maintenance requirements.** "A" maintenance includes the following:
(1) Change oil and filter;
(2) Chassis lubrication;
(3) Check all fluid levels, which include:
(A) Power steering;
(B) Master cylinder;
(C) Transmission fluid;
(D) Windshield washer;
(E) Battery; and
(F) Radiator coolant.
(4) Check tire condition and pressure;
(A) Rotate and balance (if necessary); and,
(B) Check spare.
(5) Check for proper operation of the following:
(A) Windshield wiper and washer;
(B) All lights and reflectors;
(C) Horn;
(D) Heater and air conditioner;
(E) Emergency brake;
(F) Radio; and
(6) Check for fluid leaks.

(e) **"B" maintenance requirements.** "B" maintenance includes the items listed in "A" maintenance plus the following:
(1) Air and fuel filters, check and replace, if necessary;
(A) Replace p.c.v. valve; and,
(B) Clean and protect battery terminal ends.
(2) Clean engine;
(3) Check brakes;
(4) Check shocks;
(5) Check front wheel bearing on rear drive vehicles; and,
(6) Check drive axle boots on front drive vehicles.

(f) **"C" maintenance requirements.** "C" maintenance includes all of the items listed in "A" maintenance plus the following:
(1) Complete detail clean; and
(2) Replace all belts and hoses (do not replace hoses if vehicle has extended life coolant);
(3) Service transmission.

*[OAR Docket #10-929; filed 5-26-10]*

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## TITLE 580. DEPARTMENT OF CENTRAL SERVICES
## CHAPTER 55. COMMITTEE OF ALTERNATIVE FUELS TECHNICIAN EXAMINERS

*[OAR Docket #10-928]*

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**ANALYSIS:**
Rule revisions define "in writing" or "written" to facilitate use of both paper documents and information technology applications; clarify information related to tests and testing of alternative fuels technicians; and clarify how an applicant may appeal a test score to the Committee.
**CONTACT PERSON:**
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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

**580:55-1-2. Definitions**

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

**"Administrator"** means the program administrator of the committee.

**"Agency"** means the Oklahoma Department of Central Services.

**"Alternative fuels"** means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.

**"Alternative fuels technician"** means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels and includes OEM vehicles either dedicated to operate on an alternative fuel or manufactured bi-fueled, i.e., capable of operating on gasoline or an alternative fuel.

**"Alternative Fuels Technician Certification Act"** means O.S.Title 74, Section 130.11 through 130.24.

**"Board"** means the Alternative Fuels Technician Hearing Board.

**"Capable of operating on an alternative fuel"** means any motor vehicle converted or designed to operate on an alternative fuel.

**"Charge station"** means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Power Research Institute, and the Society of Automotive Engineers.

**"CNG"** means compressed natural gas.

**"Committee"** means the Committee of Alternative Fuels Technician Examiners.

**"Electric vehicle technician"** means any person who installs, modifies, repairs, performs maintenance on, motors, controllers, on-board power sources, or the drive systems of vehicles powered by electricity. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles.

**"Engine"** means the propulsion system of a motor vehicle. Nothing in this definition is meant to cover any stationary engine.

**"Fill station"** means the property which is directly related to the delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas otherwise known as propane, into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where the fuel is delivered. Compressed Natural Gas and Liquefied Petroleum Gas are subject to the National Fire Protection Association code 52 and 58 respectively.

**"Glider"** means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.

**"LNG"** means liquefied natural gas.

**"LPG"** means liquefied petroleum gas otherwise known as propane.

**"Motor vehicle"** means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.

**"NFPA"** means the National Fire Protection Association.

**"OEM"** means original equipment manufacturers.

**"Person"** means individuals, corporations, partnerships, cooperatives, associations and governmental subdivisions.

**"Work"** means any procedure involved in the physical installation or servicing of all components used in the conversion of motor vehicles to operate on alternative fuels and the servicing of original equipment manufacturers vehicles that operate on alternative fuels, including:

(A) LPG and CNG under hood components;
- (i) tubing;
- (ii) fittings;
- (iii) valves;
- (iv) gauges;
- (v) brackets;
- (vi) fuel lines;
- (vii) cylinders;
- (viii) tanks; and
- (ix) electronic or electrical devices.

(B) Electric vehicle under hood components;
- (i) traction battery packs or modules;
- (ii) motor controllers;
- (iii) subsystem controllers;
- (iv) inverters;
- (v) drive motors;
- (vi) auxiliary components powered by high voltage; and
- (vii) any high voltage circuits.

**"Written"** or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**580:55-1-7. Processing and handling of applications and examinations**

(a) Upon receipt of an application for a certificate, the committee or administrator shall schedule the applicant for an examination.

(b) Examinations shall be administered in the following manner:

(1) Questions for an examination shall be selected from appropriate sources deemed applicable by the committee.

(2) ~~Questions shall be multiple choice.~~ The format of examination questions shall be varied and include multiple choice and true/false.

(3) Prior to being put into the reservoir, the questions shall be reviewed by the committee.

(4) For each examination, a total of 75 questions shall be drawn from the reservoir.

(5) ~~All applicants sitting at one time shall receive identical examinations, unless an individual is retesting, at~~

~~which time such individual shall receive a different examination.~~ Applicants testing during a scheduled examination session will not be given identical versions of the examination.

(6) The examination shall be administered in a manner that the identity of the applicant shall be unknown during any manual grading process.

(7) Examinations for certification as alternative fuels technician shall be uniform and practical in nature as determined by the committee for alternative fuels technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certification.

(8) An oral examination may be administered by prior arrangement.

(9) The committee shall conduct examinations twice a year and at such times as it deems necessary.

(10) A score of eighty percent (80%) correct shall be a passing grade for all examinations.

(11) Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of ninety (90) days.

(12) All applicants can petition the committee if they feel the committee's grade was incorrect. ~~In such cases, the applicant must notify the administrator prior to the monthly committee meeting in order for the applicant's petition to be placed on the meeting agenda.~~ An applicant may petition the committee if the applicant disagrees with his or her examination grade issued by the committee. The applicant must notify the administrator of the petition prior to the next scheduled committee meeting in order for the petition to be placed on the meeting agenda.

(13) All decisions of the committee are final.

(14) Applicants that pass the examination and are notified by the committee of such must make arrangements for certification within ninety (90) days of such notification.

(15) After the ninety (90) days, and such applicant has not been certified (i.e., paid the fee and provided proof of insurance), the applicant must retest prior to their certification.

(16) The agency shall enforce the provisions of this section.

*[OAR Docket #10-928; filed 5-26-10]*

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## TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
## CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

*[OAR Docket #10-841]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
Subchapter 1. General Provisions
605:10-1-2. Definitions [AMENDED]
Subchapter 3. Education and Examination Requirements
605:10-3-2. Application for license [AMENDED]
605:10-3-6. Continuing education requirements [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1. Approval of prelicense course offerings [AMENDED]
605:10-5-1.1. Approval of postlicense course [AMENDED]
605:10-5-2. Approval of continuing education offerings [AMENDED]
605:10-5-3. Standards for Commission approved real estate courses [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-1.1. Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. [AMENDED]
605:10-7-4. Request for activation or re-issuance of license [AMENDED]
605:10-7-9. Nonresident licensing [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-1. Place of business and broker requirements [AMENDED]
605:10-9-4. Advertising [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2. Associates License [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. Duty to account; broker [AMENDED]
605:10-13-2. Duty to account; associate [AMENDED]
Subchapter 17. Causes for Investigations, Hearing Process, Prohibited Acts; Discipline
605:10-17-4. Prohibited dealings [AMENDED]
605:10-17-5. Substantial misrepresentation [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]

**AUTHORITY:**
Oklahoma Real Estate Commission; 59 O.S., § 858-208

**DATES:**
**Comment period:**
January 15, 2010 to March 2, 2010
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**SUPERSEDED EMERGENCY ACTIONS:**
N/A

**INCORPORATIONS BY REFERENCE:**
N/A

**ANALYSIS:**
**605:10-1-2. Definitions** Adding the word entity and its definition.

**605:10-3-2. Application for license** Removing from the application information pertaining to residential and employment history. Adding language pertaining to convictions of felonies.

**605:10-3-6. Continuing education requirements** Allowing additional course options to count for required continuing education for any licensee. Requiring that a licensee who maintains the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of a license term shall be required to successfully complete the Broker in Charge course, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection. This is also required for reinstating brokers.

**605:10-5-1. Approval of prelicense course offering** Amend qualifications to include sales associates. Modify language pertaining to retention of records to state seven (7) years.

**605:10-5-1.1. Approval of postlicense course** Correction of state statute, amend grammar and change the word teach to instruct.

**605:10-5-2. Approval of continuing education offerings** Modifying language and clarifying the use of a curriculum. Inserting new language advising instructors to electronically notify the Commission of courses completed by students. Amend grammar and change the word teach to instruct.

**605:10-5-3. Standards for Commission approved real estate courses** Modifying language regarding transfer students. Clarifying that notices that are posted by real estate school entities must advise real estate applicants of the following notice: "If you have been convicted of any crime, or if charges are pending, or if you have delinquent unpaid child support or student loans, please check with the Real Estate Commission before enrolling in this class. The Commission will allow you to seek preapproval prior to enrolling in a prelicense course." Inserting language requiring all materials distributed to students be current and up to date the License Code and Rules and state or federal laws.

**605:10-7-1.1. Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996** Amend language to include failure to comply.

**605:10-7-4. Request for activation or re-issuance of license** Include language pertaining to rule 605:10-3-6.

**605:10-7-9. Nonresident licensing** Amend language allowing continuing education met in another jurisdiction to be used for the licensee's Oklahoma continuing education requirement unless no continuing education requirement is needed then require the non resident licensee to obtain Oklahoma's continuing education requirement to fulfill the renewal requirement.

**605:10-9-1. Broker Requirements** Amend subchapter title and remove language regarding office located in home. Clarify the responsibility brokers have pertaining to their associates. Amend the word office to be replaced with place of business.

**605:10-9-4. Advertising** Include language regarding yard signs and information explaining promotional items.

**605:10-11-2. Associates license** Amend grammar.

**605:10-13-1. Duty to account; broker** Amending language requiring broker's to return all documents, items or monies to a party.

**605:10-13-2. Duty to account; associate** Include language regarding items to be turned over to the broker and adding language that the associate shall not be authorized to maintain a trust or escrow account.

**605:10-17-4. Prohibited dealings** Include new rules pertaining to investigations, use of license number's and broker responsibilities.

**605:10-17-5. Substantial misrepresentation** Include language regarding false documents and/or misleading or true and actual sale prices to a representing lender, guaranteeing agency or interested party.

**Appendix A. Residential Property Condition Disclosure Statement** Amending questions 14, 20, and 39 and adding a question "Are you aware of problems pertaining to sewer, septic, lateral lines or aerobic system?"

**CONTACT PERSON:**

Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 2401 N.W. 23rd Street, Suite 18, Oklahoma City Oklahoma 73107, 405-521-3387

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 605:10-1-2. Definitions

When used in this Chapter, masculine words shall include the feminine and neuter, and the singular includes the plural. The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Advertising"** means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

**"Bona fide offer"** means an offer in writing.

**"Branch office broker"** means a person who qualified for a broker license and who is designated by a broker to direct and supervise a branch office on behalf of the broker in conformance with Section 858-310 of the Code. A branch office broker is considered an associate of the broker and a managing broker of the branch office.

**"Broker"** means a sole proprietor, corporation, managing corporate broker of a corporation, association, managing broker member or manager of an association, partnership, or managing partners of a partnership and shall be one and the same as defined as a broker in Section 858-102 of the Code and whom the Commission shall hold responsible for all actions of associates who are assigned to said broker.

**"Code"** when used in the rules of this Chapter, means Title 59, Section 858-101 et seq, Oklahoma Statutes as adopted 1974 and amended.

**"Entity"** means association, corporation and partnership.

**"Filed"** means the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

**"Firm"** means a sole proprietor, corporation, association or partnership.

**"Inactive status"** means a period in which a licensee is prohibited from performing activities which require an active license.

**"Nonresident"** means a person who is licensed to practice in this state, however, does not maintain a place of business in this state but maintains a place of business in another state and who periodically comes to this state to operate and perform real estate activities.

**"Previously licensed applicant"** means a person who has been licensed in another state and is desiring to obtain a resident license in this state.

**"Provisional sales associate"** shall be synonymous in meaning with sales associate except where it is specifically addressed in Subchapters 3, 5 and 7 of this Chapter.

**"Resident"** means a person who is licensed in this state and operates from a place of business in this state.

**"Sole proprietor"** means a broker who is the sole owner of a real estate business.

**"Trade name"** means the name a firm is to be known as and which is used in advertising by the firm to promote and generate publicity for the firm. A firm may or may not do business in the name under which their license is issued but must register with the Commission all trade names used by the firm.

## SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

**605:10-3-2. Application for license**

(a) **Requirements for completing application.**

(1) Any person seeking a real estate license shall make application for such license on a form provided by the Commission. The form shall contain, but not be limited to, the following:

(A) Legal name to include first, middle and last name.

(B) Routine biographical information.

(C) License history in Oklahoma and other states.

(D) Criminal and/or civil charges or convictions, including bankruptcy and judgments.

(E) ~~All residential addresses and employment data for past five (5) years.~~ Compliance with Title 59 O.S. 858.301.1 regarding felony convictions.

(F) Recent photograph.

(G) Birth date.

(H) Evidence of successful completion of course requirement as specified in the "Code".

(I) A sworn statement as to accuracy of the application information.

(J) Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(K) Social security number, pursuant to Title 56, Oklahoma Statutes, Section 240.21A.

(L) Submit to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. A fee amount, not to exceed sixty dollars ($60.00), shall be sent to the Commission to begin the process of the national criminal history check.

(i) A completed national criminal history record check, completed for the Commission, shall be valid for six (6) months from the date of issuance from the issuing authority.

(ii) In the event an applicant is not physically able to submit to finger printing, other applicant identifiers shall be utilized, i.e., name, birth date and social security number.

(2) An applicant indicating a bankruptcy or judgment, criminal and/or civil charges or convictions on the application, must submit with the application official documents to the Commission which pertain to the disposition of the matter. If official documents are unable to be obtained, a detailed letter explaining the matter(s) must be attached to the application.

(b) **Applicant shall appear for examination.** Each applicant shall appear for an examination as soon as possible subsequent to the filing of an approved application or the signing of a form as required in 605:10-3-3.

(c) **Applicant must be of good moral character.** The application submitted by an individual seeking a license must indicate that the applicant possesses a reputation for honesty, truthfulness, trustworthiness, good moral character, and that he or she bears a good reputation for fair dealing.

(d) **Determining good moral character.** In determining whether or not an applicant meets the definition of good moral character, the Commission will consider, but not be limited to, the following:

(1) Whether the probation period given in a conviction or deferred sentence has been completed and fully satisfied to include fines, court costs, etc.

(2) Whether the restitution ordered by a court in a criminal conviction or civil judgement has been fully satisfied.

(3) Whether a bankruptcy that is real estate related has been discharged.

(4) Whether an applicant has been denied licensure or a license has been suspended or revoked by this or any other state or jurisdiction to practice or conduct any regulated profession, business or vocation because of any conduct or practices which would have warranted a like result under the Oklahoma "Code".

(5) Whether an applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revocation or suspension under the current Oklahoma "Code" had the applicant been licensed.

(e) **Subsequent good conduct.** If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission that the interest of the public will not likely be in danger by the granting of such license, the Commission may approve the applicant as relates to good moral character.

**605:10-3-6. Continuing education requirements**

(a) **Definition.** Continuing education shall be defined as any real estate oriented education course or equivalent, hereinafter called offering(s) intended:

(1) To improve the knowledge of licensees.

(2) To keep licensees abreast of changing real estate practices and laws.

(3) To help licensees meet the statutory requirements for license renewal.

(b) **Purpose.** The purpose of continuing education is to provide an educational program through which real estate licensees can continually become more competent and remain qualified to engage in real estate activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(c) **Goals.** The goals of continuing education are:

(1) To provide licensees with opportunity for obtaining necessary current information and knowledge which will enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that the licensees are provided with current information regarding new and/or changing laws and regulations which affect the real estate business.

(3) To ensure that the consumers interest is protected from unknowledgeable licensees.

(d) **Objectives.** The objectives of continued education are as follows:

(1) For licensees to expand and enhance their knowledge and expertise so as to be continually effective, competent, and ethical as they practice real estate.

(2) For licensees to review and update their knowledge of federal, state and local laws and regulations which affect real estate practices.

(e) **Entities allowed to seek approval.** The Commission may approve and/or accept any offering provided by an entity which meets the purposes, goals, and objectives of the continuing education requirement. The Commission may accept the following offerings as proof of meeting the continuing education requirement:

(1) Any offering which is approved and presented by those entities enumerated in paragraph B, of 858- 307.2 of the "Code".

(2) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.

(3) Any offering in real estate, or directly related area, not accepted in paragraphs (1) or (2) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.

(4) Completion of an approved ninety (90) hour prelicense broker course or an approved forty-five (45) hour provisional sales associate postlicense course, or its respective equivalent as determined by the Commission shall suffice for 21-hours of continuing education credit for a licensee. An individual segment of an approved prelicense broker course or an approved provisional sales associate postlicense course shall suffice for continuing education credit provided such individual segment has also been separately approved for continuing education credit.

(f) **Ineligible courses.**

(1) The following offerings will not be considered by the Commission to meet continuing education requirements:

(A) General training or education not directly related to real estate or real estate practices.

(B) Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, and personal motivation that is not directly related to real estate.

(C) Sales promotion or other meetings held in conjunction with the general real estate brokerage business.

(D) Meetings which are a normal part of in-house training.

(E) That portion of any offering devoted to breakfast, luncheon, dinner, or other refreshments.

(F) Prelicense general training and education to obtain a provisional sales associate or sales associate license or license examination refresher courses for provisional sales associate/sales associate or broker.

(2) The list in (1) of this subsection does not limit the Commission's authority to disapprove any offering which fails to meet the adopted purposes, goals and objectives.

(g) **List of approved entities.** The Commission shall maintain a list of approved entities.

(h) **Licensee responsible for notification to Commission.** Each licensee shall be ultimately responsible to the Commission to furnish evidence of having successfully completed the continuing education requirements for license renewal, activation, or reinstatement, as set forth elsewhere in this Chapter. Each licensee shall present to the Commission evidence of completion of a minimum of twenty-one (21) clock hours of continuing education offerings acceptable by the Commission. As evidence of having completed the requirement each licensee shall present:

(1) A certificate, and/or documents, statements and forms, as may reasonable be required by the Commission, or

(2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(i) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements.

(j) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

(k) **Course limitations.**

(1) A particular course offering may not be taken for continuing education credit more than once from the same entity and/or instructor during a renewal period.

(2) Educational courses taken for disciplinary reasons shall not count towards the normal continuing education requirements for licensees.

(l) **Required number of continuing education hours.** The required number of continuing education hours for a licensee shall be as follows:

(1) As a condition of a license activation or active reinstatement, each license with an expiration date of June 30, 2005 and thereafter, with the exception of those exempt as set out in Title 59, 858-307.2, shall provide evidence of completion of twenty-one (21) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Such hours shall have been taken in the same license term for which the license is to be issued, with the exception of a licensee whose hours were not used in the preceding license term. In that case, the hours taken in the preceding license term shall count towards an applicable license activation or active reinstatement.

(2) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education twelve (12) clock hours of required subject matter as directed by the Commission

(3) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, and Current Issues

including Code and Rule Updates. The remaining nine (9) clock hours may consist of elective subject matter as approved by the Commission

(4) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(5) Any Broker who holds or has held ~~A licensee who maintains the~~ a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of ~~a~~ their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection.

(6) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation after June 30, 2012 and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the four (4) required subject matter totaling six (6) hours prior to their license being reinstated active or reactivating.

## SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

### 605:10-5-1. Approval of prelicense course offerings

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use the OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Twenty-Five Dollar ($25.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) A bachelor's degree with a major in real estate from an accredited college or university.

(2) A bachelor's degree from an accredited college or university, and at least two (2) years of applicable active experience within the previous ten (10) years as a real estate broker or sales associate.

(3) A real estate broker or sales associate licensed in Oklahoma with a minimum of five (5) years applicable active experience within the previous ten (10) years as a real estate broker or sales associate and proof of high school education or its GED equivalent.

(4) An individual determined by the Commission to possess a combination of education and/or applicable active broker or sales associate experience in real estate or real estate related fields which constitutes an equivalent to one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has paid the appropriate examination fee and successfully completed an applicable ~~Commission-administered course content~~ examination with a passing score of 80% or more. ~~If an instructor applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of the applicable examination fee for each examination to be taken.~~ If an instructor applicant has successfully taken an applicable license examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, ~~such~~ the passing score may be utilized to meet the applicable examination requirement in this section. ~~If, however, the instructor applicant does not obtain approval within 90 days~~

~~of filing an instructor application, due to no fault on the part of the Commission, the instructor will be required to take the applicable examination again.~~

(g) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course every twelve (12) months. Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved prelicense course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours attempted by each student for seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(k) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

**605:10-5-1.1. Approval of postlicense course offerings**

(a) **Course approval.** In accordance with Section ~~858-304~~ 858-302 of the License Code, the Commission shall provide a syllabus outline for the Basic postlicense course of real estate to each person or entity conducting a postlicense course and requesting approval thereof. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, ~~and~~ with the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may be considered for approval as an ~~approved~~ instructor upon receipt of an application and evidence of education and/or experience. Each application ~~for approval~~ must be accompanied by a One Hundred Dollar ($100.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another ~~state~~ jurisdiction authorizing the holder to ~~teach~~ instruct in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience in a ~~related~~ field related to that in which the person is to ~~teach~~ instruct, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this Section.

(f) **Instructor renewal requirements**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course, or its equivalent, every twelve (12) months. An exception to this rule may be given by the Commission if such instructor is licensed or certified through another regulatory body. Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved postlicense course, or any other real estate course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(g) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(h) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(i) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(j) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

**605:10-5-2. Approval of continuing education offerings**

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education offering shall make application for the approval or renewal of each offering. Such approval or renewal shall expire at the end of the twenty-fourth (24) month including the month of issuance.

(b) **Application form.** Each application by a sponsoring entity for approval of an offering or group of offerings not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable Seventy Dollar ($70.00) application fee. Such application shall be made on a form prescribed by the Commission. The application shall include, but not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the offering.

(2) The title(s) of the course offering or offerings.

~~(3) A complete description of or copies of all materials to be distributed to the participants except that if materials provided by the Commission are to be used, a complete description shall not be required.~~

(~~4~~3) The number of hours in each course offering.

(~~5~~4) The tuition/registration fee and cancellation/refund policy.

(~~6~~5) A copy of each offering's curriculum, or revised curriculum with revisions noted, including comprehensive course objectives, a legible detailed outline of the course subject matter and~~, instructor~~ instructor(s) for each segment ~~and teaching technique used in each segment~~.

(~~7~~6) The method of evaluation of the course offering which will be used by the entity.

(~~8~~7) The procedure for monitoring attendance.

(~~9~~8) A personal resume indicating name(s) and qualifications of the instructor(s).

(~~10~~9) The number of years the entity has been offering real estate related education.

(~~11~~10) Any other relevant information useful in determining that the entity is presenting an offering which will meet the definition, purposes, goals and objectives adopted by the Commission.

(~~12~~11) A statement attesting to the fact that in accepting approval as a continuing education offering entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(d) **Course renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollars ($70.00) for a twenty-four (24) month period. Renewal applications shall be subject to the same requirements as original applications~~, but may cross-reference an earlier application regarding previously approved course offerings to the extent that items have not changed since a previous application~~.

(e) **Change of information notice requirement.** Whenever there is any change in an offering, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising an offering as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit."

(g) **Course requirements and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an approved continuing education offering shall, within five (5) days of the completion thereof, ~~submit to the Commission on a form prescribed by the Commission, a list of the names and license numbers of those licensees who successfully completed the said offering~~ successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed said offering. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.

(6) Each offering shall be presented in ~~such facilities and on such~~ a facility ~~premises as shall be~~ necessary to properly present the course as determined by the Commission.

(7) An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved course offering which is delivered to the licensees by way of television, the Commission may require that each delivering entity have a monitor in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any ~~company~~ firm. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate ~~company~~ firm, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements:** An individual determined by the Commission to possess one or more of the following qualifications may be considered for approval as an approved instructor, upon receipt of an application and evidence of education and/or experience. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another ~~state~~ jurisdiction authorizing the holder to ~~teach~~ instruct in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a ~~related~~ field related to that in which the person is to ~~teach~~ instruct, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission ~~shall be~~ is of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after ~~such~~ its decision. Upon written request from ~~such~~ the denied party, filed within thirty (30) days after receipt of ~~such~~ the notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of ~~such~~ the request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and /or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

(l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student for seven (7) years.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who ~~shall instruct~~ is the instructor of an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

(o) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and

lectures shall not consume more than thirty percent (30%) of the total course time.

**605:10-5-3. Standards for Commission approved real estate courses**

(a) **Approved instructor.** Each in-class course offering shall be conducted by a Commission approved instructor. Each entity conducting a distance education course offering shall have available a Commission approved instructor. The instructor shall be available during normal business hours as posted by the instructor to answer questions about the course material and provide assistance as necessary.

(b) **Student must attend entire in-class instruction or complete all modules required for distance education instruction.** In order for an entity to certify a student as passing an approved course the student must either:

(1) attend the required number of hours of in-class instruction; or

(2) complete all instructional modules required for distance education instruction.

(c) **Student must successfully complete a prelicense, postlicense or distance education course offering examination.** In order for an entity to certify a student as passing an approved prelicense, postlicense or distance education course, the student must successfully complete an examination covering the contents of the course material.

(d) **Student transfers.** Except with the prior approval of the Commission, a student transferring from one course to another may not count any portion of the student's attendance or work in the former course toward passing the course. A student who enrolls in an entity which offers a Commission approved course may not transfer credit for a course or courses completed in that series to another entity unless the ~~new~~ receiving entity offers the identical series of courses and the receiving entity agrees to accept and examine said student throughout successful completion.

(e) **Course examinations.** Every approved prelicense and postlicense course offering shall conclude with an end-of-course examination consisting of no less than one hundred and thirty (130) questions administered by the approved entity. Every approved distance continuing education course offering shall conclude with an end-of-course examination consisting of no less than seven (7) questions for each clock hour. End-of-course examination questions may not be the same as any previously used questions covering the respective course content.

(f) **Successful completion.** In order for a student to successfully complete a prelicense, postlicense or distance education course, the entity must require that the student complete all class material and/or modules and achieve a passing score of at least seventy-five percent (75%) on final examination. An entity shall require the student to complete sufficient material or modules to ensure mastery of the course offering, and shall require the student tocomplete the end-of-course examination. An entity may allow any student who fails to achieve a passing score the opportunity to take another examination without repeating instruction.

(g) **Grading standards.** In order for an entity to certify a student as passing an approved course, the student must meet the minimum grading standards established by this Section and the entity. On graded examinations for which this Section sets specific requirements, the entity's policy shall at least equal those requirements as listed in this Section. Other grading standards shall be in accordance with generally accepted educational standards. An entity shall publish grading standards and give them to a student in a written form at the beginning of the course.

(h) **Commission may impose sanction.** The Commission may impose any sanction permitted by law or Rules of the Commission on the approval of any entity, director and/or instructor which fails to provide proper security for their course evaluation or examination and for failing to comply with standards as set out in this Chapter.

(i) **Each entity must post notice.** Each entity must post or provide a notice that is easily observed by any person desiring to enroll in a prelicense course. The notice must at least include the following language: "~~If you have been convicted of any crime, or if charges are pending, or if you have delinquent unpaid child support or student loans, please check with the Real Estate Commission before enrolling in this class. The Commission will allow you to seek preapproval prior to enrolling in a prelicense course.~~" Oklahoma Statutes, Title 59, Section 858.301.1 "Effective November 1, 2009, state law prohibits the issuance of a real estate license to any person who has been convicted, pled guilty or pled nolo contendere to a felony for a pre-determined number of years based on the classification of said felony. For clarification, please contact the Commission and/or review the cited section of law as referenced herein. Additionally, if the applicant has delinquent unpaid child support or student loans, the applicant must check with the Real Estate Commission before enrolling in this class. The Commission will allow the applicant to seek preapproval prior to enrolling in a pre-license course."

(j) **Additional distance education course requirements.**

(1) Each course shall contain suitable learning objectives.

(2) Overview statements must be included for each course providing a quick preview of what is contained in the offering.

(3) A complete set of questions and ~~An~~ an answer key ~~for all examinations~~ must be provided to the Commission with each course application. An answer key ~~for examinations~~ may not be included in any course materials provided to the student.

(4) From the date of enrollment, the course shall have a validity period of six (6) months in which to allow successful completion to be attained.

(5) Entities must include information with the course material that clearly informs the student of the completion time frame, passing and examination requirements, and any other relevant information necessary to complete the course.

(6) Each course must include a statement that the information presented in the course should not be used as a substitute for competent legal advice.

(7) Course offerings must be sufficient in scope and content to justify the hours requested for approval.

(k) Each entity shall promote the Basic Course of Real Estate as Part I of a two part series and the Provisional Postlicense Course of Real Estate as Part II of that series. Applicants are to be advised that Part II of the series is not to begin until after license issuance and shall be completed prior to their first license expiration.

(l) All materials that are distributed to students in any class must be current and up-to-date with the License Code and Rules and state or federal laws.

## SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

### 605:10-7-1.1. Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

**License renewals and reinstatements.** ~~Each licensee who submits a license renewal or reinstatement on or after July 1, 2002, shall be required to provide documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Failure to provide such documentation shall result in disapproval of the application~~. Individuals who submit an application on or after July 1, 2002, shall be required to provide documentation necessary to verify compliance of citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Failure to provide this documentation shall result in disapproval of the application. If an individual fails to provide proof of citizenship within sixty (60) days from the date of reissuance of their license or approval, the individual will be placed inactive until the Commission receives current proof of citizenship or qualified alien status.

### 605:10-7-4. Request for activation or re-issuance of license

(a) **Requirements.** All requests for activation or re-issuance of a license must be accompanied by the appropriate document(s) and fee of Twenty-five Dollars ($25.00) as required by the Commission. Due to the passage of rules which allow an applicant or licensee to originally issue or renew their license at a reduced inactive rate, in the event a licensee requests the Commission to activate a license that was originally issued or renewed inactive on and after August 1, 2001, the licensee shall be required to pay the applicable fee as outlined in 605:10-7-2.

(b) **Multiple change requests on same license.** In the event a licensee's request involves more than one change to the license at the same time, and each individual change requires a separate fee elsewhere in the rules of this Chapter, the Commission shall only require that one fee be charged to reissue the license if the request is done in a timely manner.

(c) **Continuing education required for activation.** A licensee requesting activation of a license must have complied with the continuing education requirement as set forth in Section 858-307.2 of Title 59 of the Oklahoma Statutes and rule 605:10-3-6. Further, upon a licensee's request for activation being completed and processed, the licensee shall then be required to complete the continuing education requirement for the next license term for which the license is to be renewed active or activated.

### 605:10-7-9. Nonresident licensing

(a) **Nonresident licensed in another jurisdiction.** A nonresident applicant may apply to the Commission for a license to operate as a nonresident by submitting all appropriate documents as required by the Commission and furnish evidence that the applicant possesses a current active license in their resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. All nonresidents shall be required to complete the appropriate examination as required by the Commission. If, in the opinion of the Commission, there is question as to the competence of the nonresident applicant, such individual shall be required to successfully complete additional educational courses. No inactive license experience may be credited to qualify under this Section. The Commission, at its discretion, may issue a nonresident license if, in the opinion of the Commission, such nonresident has qualified and maintains a license in another jurisdiction and meets the following qualifications:

(1) A nonresident applicant who has been actively licensed as a sales associate or broker respectively for a minimum of two (2) years out of the previous five (5) years.

(A) A nonresident applicant that applies under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) Certification of licensure from the jurisdiction in which the applicant has held and/or currently holds a license.

(iii) Examination fee and successfully complete the state portion of the examination.

(iv) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

(i) Appropriate license application form(s) along with license and education and recovery fund fees.

(2) A nonresident applicant who has been actively licensed less than two (2) years as a sales associate or broker respectively out of the previous five (5) years must successfully complete the appropriate examination.

(A) A nonresident applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) Certification of licensure from the jurisdiction in which the applicant has held and/or currently holds a license.

(iii) Examination fee and successfully complete the entire appropriate examination.

(iv) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

(i) Appropriate license application form(s) along with license and education and recovery fund fees.

(b) **Nonresident agreement.** The Commission may enter into a nonresident agreement with another jurisdiction and thereby qualify actively licensed nonresident applicants for licensing in this jurisdiction provided the Commission determines that the educational and experience requirements of the other jurisdiction are equivalent or equal to this jurisdiction.

(c) **Nonresident applicant that is inactive or unlicensed in another jurisdiction.** A nonresident applicant that holds an inactive license in another jurisdiction and is unable to meet the requirement under paragraph (a) of this section or an applicant who is unlicensed in another jurisdiction may apply to the Commission for a license to operate as a nonresident provisional sales associate or broker by submitting all appropriate documents and successfully completing all requirements as required by the Commission.

(1) The nonresident applicant must complete and submit the following:

(A) Appropriate application(s).

(B) Qualify as an original applicant by submitting proof of appropriate required education.

(C) Examination fee and successfully complete the entire appropriate examination.

(D) If applicable, certification of licensure from the jurisdiction in which the applicant has held a license.

(E) Consent for service of jurisdiction form.

(2) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

(A) Appropriate license application form(s) along with license and education and recovery fund fees.

(d) **Consent for service of jurisdiction.** Prior to the issuance of a license to a nonresident, such nonresident shall file with the Commission a designation in writing that appoints the Secretary-Treasurer of the Commission to act as his or her licensed agent, upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the Secretary-Treasurer of the Commission, shall be deemed sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original thereof. In such written designation, the licensee shall agree and stipulate that any notice or instrument which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice the Secretary-Treasurer shall forthwith mail a copy of the same, by certified mail, to the last known business address of the licensee.

(e) **License history and application requirements.** Prior to the approval of the application, the nonresident must file with the Commission a certification of licensure from the real estate licensing jurisdiction of the licensee's resident jurisdiction and/or other jurisdictions in which the applicant has held or currently holds a license. The applicant shall pay the Commission the same examination fee and license fee as provided in the "Rules" for the obtaining of a resident sales associate or broker license in this jurisdiction. The certification of licensure shall be valid for sixty (60) days from date of issuance.

(f) **Approved application valid for ninety (90) days.** An approved application shall be valid for ninety (90) days.

(g) **Stipulations.** Nonresident licenses granted under the provisions of this Section shall remain in force, only as long as such nonresident remains licensed in good standing in this jurisdiction, in his or her resident jurisdiction and/or any other jurisdiction in which the nonresident is or has been licensed.

(h) **Co-brokerage arrangements.** A broker of this jurisdiction may participate in a cooperative brokerage arrangement with a broker of another jurisdiction provided that each broker conducts real estate activities only in the jurisdiction in which they are licensed.

(i) **Request for license transfer.** In the event a nonresident Oklahoma licensee desires to transfer the license and obtain a resident Oklahoma license or desires to transfer the license to another jurisdiction, the nonresident licensee shall be required to meet all applicable requirements and pay the appropriate change of address fee and submit all appropriate documents as required by the Commission. In the event a resident Oklahoma licensee desires to transfer the license and obtain a nonresident Oklahoma license, the licensee shall be required to pay the appropriate change of address fee and complete and submit all appropriate documents as required by the Commission.

(j) **Continuing education.** If a nonresident licensee ~~satisfies~~ completes a continuing education requirement in another jurisdiction for license renewal, the Commission will exempt the nonresident licensee from the continuing education requirement in this jurisdiction. ~~In order to qualify for the exemption, the nonresident licensee must file with the license renewal of this jurisdiction a certification from the jurisdiction in which the continuing education was satisfied stating that the nonresident licensee has completed the continuing education requirement for license renewal in that jurisdiction. The certification from the jurisdiction verifying the nonresident's compliance with continuing education in the other jurisdiction must be received by the Commission within sixty (60) days of issuance by the other jurisdiction and must be received in conjunction with license renewal.~~ If a nonresident licensee is exempt from meeting a continuing education requirement in another jurisdiction then the licensee must meet the Oklahoma continuing education requirement as follow:

(1) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education twelve (12) clock hours of required subject matter as directed by the Commission

(2) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, and Current Issues including Code and Rule Updates. The remaining nine (9) clock hours may consist of elective subject matter as approved by the Commission

(3) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(4) Any Broker who holds or has held a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection.

(5) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation after June 30, 2012 and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the four (4) required subject matter totaling six (6) hours prior to their license being reinstated active or reactivating.

## SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

### 605:10-9-1. Place of business and broker requirements

(a) ~~**Requirements**~~ **Place of business.** Each broker shall maintain a specific place of business, and supervise a brokerage practice which is available to the public during reasonable business hours. Each broker shall be available to manage and supervise such brokerage practice and comply with the following:

(1) The broker's license, as well as those of all licensees associated with the broker, must be prominently displayed in such place of business.

(2) The ~~office~~ place of business shall consist of at least one enclosed room or building of stationary construction wherein negotiations and closing of real estate transactions of others may be conducted and carried on with privacy and wherein the broker's books, records and files pertaining to real estate transactions of others are maintained.

(b) **Branch offices.** If a broker maintains one or more ~~branch offices,~~ places of business, the additional places of business shall be referred to as a branch office. ~~each~~ Each associate's license shall be issued to and displayed in the office to which the associate is assigned whether that be the main ~~office~~ place of business or branch office.

(c) **Office located at residence.** The office may be in the residence of the broker~~, if not contrary to local zoning ordinances~~.

(d) **Associates not permitted to have an office.** Associates are not permitted to have ~~an office~~ a place of business, but must be registered with ~~an office~~ a place of business maintained and registered in the name of the broker.

(e) **Licenses issued to place of business.** All licenses will be issued to the street address of the place of business, unless the United States postal service refuses to deliver mail when addressed in such manner.

(f) **Broker may be broker for more than one firm.** A broker may be the broker for more than one firm so long as the firms are at the same location.

(g) **Broker is responsible for acts of unlicensed assistants.** A broker is responsible for all real estate related activities of any unlicensed assistant working within the firm.

### 605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising, must use his or her business trade name or the name under which the broker is licensed. The advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(7) **Social networking.** A licensee who is engaged in licensed activities through social networking mediums must indicate their license status and include their broker's reference as required elsewhere in this rule.

(8) A licensee shall not use a yard sign at the licensee's personal residence as a marketing tool, to make it appear the real property is for sale, lease or rent when such is not the case.

(9) A broker may, or authorize an associate to, promote a seller incentive with the consent of the seller. The publicity must clearly indicate the incentive is being offered by the seller and not by the licensee and that the promotion only applies to a seller's particular property or properties.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a ~~company~~ firm's name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a ~~company~~ firm's name.

(C) An associate's contact information.

(D) A team name approved by the broker, so long as the broker's reference is prominent, conspicuous, and easily identifiable, and which cannot be construed as that of a ~~company~~ firm's name. The broker's reference must be in close proximity to the team name reference.

(E) A slogan which cannot be construed as that of a ~~company~~ firm's name.

(F) A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

(4) ~~A sign rider with the~~ An associate's contact information may be added ~~attached~~ to a yard sign if the yard sign contains the name or trade name and office telephone number of the broker so long as it is approved by the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate ~~company~~ firm, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed. On all purchase or lease contracts the licensee is to include their license number.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for an entity ~~a corporate owner~~ is not required to indicate in the advertising that he or she is licensed.

## SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

### 605:10-11-2. Associate licenses

(a) **License issuance and change request.** Each associate license shall be issued to the associate's broker, who shall retain custody of the license. Upon an associate leaving the association of the broker, the associate's license shall be returned to the Commission, together with a release executed by the broker. Any change of association from one firm to another, or relocation from one office to another within a firm by an associate must be filed in the Commission office within ten (10) days. ~~Filed shall mean the date of the United States postal service postmark or the date personal delivery is made to the Commission office.~~ The associate's new broker shall be required to file a consent agreement to sponsor ~~said~~ the associate on a form ~~as shall be~~ provided by the Commission. An associate requesting an association or office change shall be required to pay a fee of Twenty-five Dollars ($25.00).

(b) **Broker refusal to release associate.** In the event a broker refuses ~~or~~ for any ~~other~~ reason ~~will not~~ to release an associate, the associate shall notify the broker by certified mail of the disassociation and furnish the Commission a sworn statement that the notification has been ~~served on~~ sent to the broker. If a broker, when requested to release an associate or when notified by certified mail of the disassociation by an associate, is of the opinion that the association has not been terminated and prevails in court over ~~such~~ the associate, the broker may file a request with the Commission for a hearing to determine whether or not the associate should be disciplined. In such a filing, the complaining broker must show cause in the form of a copy of the court order ~~directing~~ issuing a verdict in their favor.

(c) **Group change requests.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be reissued. To qualify, ~~such~~ the request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

(d) **Associates transfer.** When an affiliated associate leaves a broker for whom ~~such~~ the associate is acting, the broker shall immediately cause the license of that associate to be forwarded to the Commission along with a release of association form. The broker shall make every attempt to notify the associate of the disassociation.

(e) **Active associate may continually act.** An active associate transferring from one broker to a new broker may continually act if the change is done in a timely manner and in compliance with the ten (10) day notification requirement and other applicable rules of this Chapter.

(f) **Compensation due a disassociated associate.** A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make ~~such~~ the payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker.

(g) **Change of home address.** An associate is required to notify the Commission office of his or her current home address. ~~Such~~ The change shall be filed in the Commission office within ten (10) days of ~~such~~ change. No fee is required to change the licensee's records; however a fee of Twenty-five Dollars ($25.00) will be charged if the change requires a new license to be issued.

## SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

### 605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate account in a financial institution wherein the deposits are insured by an agency of the federal government.

(B) The broker is required to be a signor on the account.

(C) The account must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(D) All escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.

(E) The broker shall maintain such funds in said account until the transaction involved is consummated or terminated and proper accounting made.

(F) The broker shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents, items, or monies furnished to all parties.** A broker shall insure the timely delivery ~~of a copy of all instruments to any party or parties executing the same, where such instrument has been prepared by the broker or his or her associates and relates to the agreement with his or her principal or pertains to the real estate transaction in which he or she or one of the associates has participated~~ or return of all documents, items or monies to a party to a transaction wherein the broker or the broker's associate have provided services.

(j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursal of funds. Records as referenced in this paragraph shall be destroyed in a secure manner.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records on alternative media, e.g. compact disk, optical disk, microfilm, etc.:

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

(7) A broker shall maintain no less than two (2) copies of the alternative media.

(n) **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.

(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursal of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.

(5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursal of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.

(B) The name and address of the authorized broker, entity or legal representative.

(C) A trust account reconciliation sheet indicating ledger balance and financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.

(D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified

of the effective date of transfer, and the name of the responsible person or entity.

**605:10-13-2. Duty to account; associate**

The obligation of an associate to remit monies, valuable documents and other property coming into his or her possession within the meaning of subsection six (6), Section 858-312 of the Code shall be construed to include but shall not be limited to the following:

(1) Shall turn over all documents, files and monies deposited, payments made, or things of value received by the associate to his or her broker promptly; and

(2) Shall deliver a copy of all instruments to any party or parties executing the same when such has been prepared by the associate or pertains to the consummation of a transaction in which he or she participated.

(3) Shall not be authorized to open or maintain a trust or escrow account, or be a signer on a trust or escrow account wherein the associate is providing licensed activities as defined in the License Code and Rules.

## SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

**605:10-17-4. Prohibited dealings**

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c), if such property is listed with the broker or his or her firm, without first making full disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert his or her best efforts in order to later purchase or acquire the property for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c).

(3) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.

(4) Procuring the signature to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, possession date or property description.

(5) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.

(6) Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of his or her license to enable an associate licensed through him or her to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of his or her sponsorship.

(7) Failure to make known in writing to any purchaser any interest the licensee has in the property he or she is selling.

(8) Failure of the licensee to inform the buyer and seller at the time the offer is presented that he or she will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs.

(9) Failure, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.

(10) Failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted.

(11) Failure to submit all bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

(13) Failure to act, in marketing his or her own property, with the same good faith as when acting in the capacity of a real estate licensee.

(14) An associate who does not possess the license of a broker or branch office broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch office broker.

(15) Discouraging a party from obtaining an inspection on a property.

(16) Allowing access to, or control of, real property without the owner's authorization.

(17) Knowingly providing false or misleading information to the Commission during the course of an investigation.

(18) Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.

(19) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.

(20) Failing to act in accordance with the broker relationship established and/or disclosed with a party.

(21) Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.

(22) An associate shall not perform licensed activities outside their broker's supervision.

**605:10-17-5. Substantial misrepresentation**

Substantial misrepresentation within the meaning of paragraph 2 of Section 858-312 of the "Code" includes, but is not limited to:

(1) The recommendation or use by a licensee of a fictitious or false instrument for the purpose of inducing any lender or Government Agency to loan or insure any sum of money.

(2) Failure to disclose to a buyer or other cooperative licensee or ~~company~~ firm a known material defect regarding the condition of a parcel of real estate of which a broker or associate has knowledge.

(3) The use by a real estate broker of the name or trade name of a licensee whose license has been revoked or currently on suspension.

(4) Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sales price of the real property or terms differing from those actually agreed upon by the parties to the transaction.

## APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [REVOKED]

## APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [NEW]

**Notice to Seller:** Oklahoma Law (the "Residential Property Condition Disclosure Act," Title 60, O.S., Sections 831 et.seq., effective July 1, 1995) requires Sellers of 1 and/or 2 residential dwelling units to complete this form. A Seller must complete, sign and date this disclosure form and deliver it or cause it to be delivered to a Purchaser as soon as practicable, but in any event no later than before an offer is accepted by the Seller. If the Seller becomes aware of a defect after delivery of this statement, but before the Seller accepts an offer to purchase, the Seller must deliver or cause to be delivered an amended disclosure statement disclosing the newly discovered defect to the Purchaser. If the disclosure form or amendment is delivered to a Purchaser after an offer to purchase has been made by the Purchaser, the offer to purchase shall be accepted by the Seller only after a Purchaser has acknowledged receipt of this statement and confirmed the offer to purchase in writing.

**Notice to Purchaser:** The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain. The information contained in this disclosure statement is not intended to be a part of any contract between the Purchaser and Seller. The information and statements contained in this disclosure statement are declarations and representations of the Seller and are not the representations of the real estate licensee.

**Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Complete this form yourself. (4) If some items do not apply to your property, circle N/A (not applicable). If you do not know the facts, circle Unk (unknown). (5) The date of completion by you may not be more than 180 days prior to the date this form is received by a purchaser.**

**LOCATION OF SUBJECT PROPERTY:** _____

_____

**SELLER IS ___ IS NOT ___ OCCUPYING THE SUBJECT PROPERTY.**

**Appliances/Systems/Services:** (The items below are in **NORMAL** working order)

| | Circle below | | | |
|---|---|---|---|---|
| Sprinkler System | N/A | Yes | No | Unk |
| Swimming Pool | N/A | Yes | No | Unk |
| Hot Tub/Spa | N/A | Yes | No | Unk |
| Water Heater __Electric __Gas __Solar | N/A | Yes | No | Unk |
| Water Purifier | N/A | Yes | No | Unk |
| Water Softener __Leased __Owned | N/A | Yes | No | Unk |
| Sump Pump | N/A | Yes | No | Unk |
| Plumbing | N/A | Yes | No | Unk |
| Whirlpool Tub | N/A | Yes | No | Unk |
| Sewer System __Public __Septic __Lagoon | N/A | Yes | No | Unk |
| Air Conditioning System __Electric __Gas __Heat Pump | N/A | Yes | No | Unk |
| Window Air Conditioner(s) | N/A | Yes | No | Unk |
| Attic Fan | N/A | Yes | No | Unk |
| Fireplaces | N/A | Yes | No | Unk |
| Heating System __Electric __Gas __Heat Pump | N/A | Yes | No | Unk |

| | Circle below | | | |
|---|---|---|---|---|
| Humidifier | N/A | Yes | No | Unk |
| Gas Supply __Public __Propane __Butane | N/A | Yes | No | Unk |
| Propane Tank __Leased __Owned | N/A | Yes | No | Unk |
| Ceiling Fans | N/A | Yes | No | Unk |
| Electric Air Purifier | N/A | Yes | No | Unk |
| Garage Door Opener/ Control | N/A | Yes | No | Unk |
| Intercom | N/A | Yes | No | Unk |
| Central Vacuum | N/A | Yes | No | Unk |
| Security System __Rent __Own __Monitored | N/A | Yes | No | Unk |
| Smoke Detectors | N/A | Yes | No | Unk |
| Dishwasher | N/A | Yes | No | Unk |
| Electrical Wiring | N/A | Yes | No | Unk |
| Garbage Disposal | N/A | Yes | No | Unk |
| Gas Grill | N/A | Yes | No | Unk |
| Vent Hood | N/A | Yes | No | Unk |
| Microwave Oven | N/A | Yes | No | Unk |
| Built-in Oven/Range | N/A | Yes | No | Unk |
| Kitchen Stove | N/A | Yes | No | Unk |
| Trash Compactor | N/A | Yes | No | Unk |

Seller's Initials_____ Seller's Initials_____

(OREC-7/10)

Buyer's Initials_____ Buyer's Initials _____

**LOCATION OF SUBJECT PROPERTY** _____

_____

| | | | | |
|---|---|---|---|---|
| Source of Household Water | Other Items _____ | Yes | No | Unk |
| | Other _____ | Yes | No | Unk |
| ___Public ___Private ___Well Yes No Unk | Other _____ | Yes | No | Unk |

**IF YOU HAVE ANSWERED NO to any of the above, please explain. Attach additional pages with your signature(s).**

_____

_____

| **Zoning, Flood and Water** | **Circle below** | | |
|---|---|---|---|
| 1. Property is zoned: ***(Check one)*** ___residential ___commercial ___historical ___agricultural ___industrial ___office ___urban conservation ___other ___ unknown | | | |
| 2. What is the flood zone status of the property? _____ | | | Unk |
| 3. Are you aware of any flood insurance requirements concerning the property? | Yes | No | Unk |
| 4. Do you have flood insurance on the property? | Yes | No | Unk |
| 5. Has the property been damaged or affected by flood, storm run-off, sewer backup, drainage or grading problems? | Yes | No | Unk |
| 6. Are you aware of any surface or ground water drainage systems which assist in draining the property, e.g. french drains? | Yes | No | Unk |
| 7. Has there been any occurrence of water in the heating and air conditioning duct system? | Yes | No | Unk |
| 8. Are you aware of water seepage, leakage or other drainage problems in any of the improvements on the property? | Yes | No | Unk |
| **Additions/Alterations/Repairs** | | | |
| 9. Have any additions or alterations been made without required permits? | Yes | No | Unk |
| 10. Are you aware of previous foundation repairs? | Yes | No | Unk |
| 11. Are you aware of any alterations or repairs having been made to correct defects or problems? | Yes | No | Unk |
| 12. Are you aware of any defect or condition affecting the interior or exterior walls, ceilings, slab/foundation, basement/storm cellar, floors, windows, doors, fences or garage? | Yes | No | Unk |
| 13. Has the roof ever been repaired or replaced during your ownership of the property? | Yes | No | Unk |
| 14. Approximate age of roof covering, if known _____ number of layers, if known _____ | | | Unk |
| 15. Do you know of any current problems with the roof? | Yes | No | Unk |
| 16. Are you aware of treatment for termite or wood-destroying organism infestation? | Yes | No | Unk |
| 17. Do you have a termite bait system installed on the property? | Yes | No | Unk |
| 18. If yes, is it monitored by a licensed exterminating company? ***(Check one)*** ___yes ___no Annual cost $_____ | | | |
| 19. Are you aware of any damage caused by termites or wood-destroying organisms? | Yes | No | Unk |
| 20. Are you aware of major fire, tornado, hail, or wind damage? | Yes | No | Unk |
| 21. Are you aware of problems pertaining to sewer, septic, lateral lines or aerobic system? | Yes | No | Unk |
| **Environmental** | | | |
| 22. Are you aware of the presence of asbestos? | Yes | No | Unk |
| 23. Are you aware of the presence of radon gas? | Yes | No | Unk |
| 24. Have you tested for radon gas? | Yes | No | Unk |
| 25. Are you aware of the presence of lead-based paint? | Yes | No | Unk |
| 26. Have you tested for lead-based paint? | Yes | No | Unk |
| 27. Are you aware of any underground storage tanks on the property? | Yes | No | Unk |
| 28. Are you aware of the presence of a landfill on the property? | Yes | No | Unk |
| 29. Are you aware of existence of hazardous or regulated materials and other conditions having an environmental impact? | Yes | No | Unk |
| 30. Are you aware of existence of prior manufacturing of methamphetamine? | Yes | No | Unk |
| 31. Have you had the property inspected for mold? | Yes | No | Unk |
| 32. Have you had any remedial treatment for mold on the property? | Yes | No | Unk |
| 33. Are you aware of any condition on the property that would impair the health or safety of the occupants? | Yes | No | Unk |
| **Property Shared in Common, Easements, Homeowner's Association, Legal** | | | |
| 34. Are you aware of features of the property shared in common with adjoining landowners, such as fences, driveways, and roads whose use or responsibility has an affect on the property? | Yes | No | Unk |
| 35. Other than utility easements serving the property, are you aware of easements or right-of-ways affecting the property? | Yes | No | Unk |

Seller's Initials_____ Seller's Initials_____ Buyer's Initials_____ Buyer's Initials_____

**LOCATION OF SUBJECT PROPERTY** _____

| | | | |
|---|---|---|---|
| 36. Are you aware of encroachments affecting the property? | Yes | No | Unk |
| 37. Are you aware of a mandatory homeowner's association? | Yes | No | Unk |
| Amount of dues $ _____ Special Assessment $ _____ | | | |
| Payable: ***(Check one)*** ___monthly ___quarterly ___annually | | | |
| Are there unpaid dues or assessments for the Property? ***(Check one)*** ___yes ___no | | | |
| If yes, amount $ _____ Manager's Name: _____ | | | |
| Phone No. _____ | | | |
| 38. Are you aware of any zoning, building code or setback requirement violations? | Yes | No | Unk |
| 39. Are you aware of any notices from any government or government-sponsored agencies or any other entities affecting the property? | Yes | No | Unk |
| 40. Are you aware of any filed litigation or lawsuit(s), directly or indirectly, affecting the property, including a foreclosure? | Yes | No | Unk |
| 41. Is the property located in a fire district which requires payment? | Yes | No | Unk |
| Amount of fees $ _____ To Whom Paid _____ | | | |
| Payable ***(Check one)*** __monthly __quarterly __annually | | | |
| 42. Is the property located in a private utility district? | Yes | No | Unk |
| ***(Check applicable)*** water__ garbage__ sewer__ other__ | | | |
| If other, explain: _____ | | | |
| Initial membership fee $_____ annual membership fee $_____ | | | |
| (If more than one (1) utility, attach additional pages.) | | | |
| **Miscellaneous** | | | |
| 43. Are you aware of other defect(s), affecting the property, not disclosed above? | Yes | No | Unk |
| 44. Are you aware of any other fees or dues required on the property that you have not disclosed? | Yes | No | Unk |

**If you answered "YES" to any of the items 1-44 above, list the item number(s) and explain.** ***(If needed, attach additional pages, with your signature(s), date(s) and location of subject property.***

_____

_____

On the date this form is signed, the seller states that based on seller's **CURRENT ACTUAL KNOWLEDGE** of the property, the information contained above is true and accurate.

**Are there any additional pages attached to this disclosure *(circle one)*: Yes No. If yes, how many?** _____

| | | | |
|---|---|---|---|
| Seller's Signature | Date | Seller's Signature | Date |

**A real estate licensee has no duty to the Seller or the Purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclosure statement.**

The Purchaser understands that the disclosures given by the Seller on this statement is not a warranty of condition. The Purchaser is urged to carefully inspect the property and, if desired, to have the property inspected by a licensed expert. For specific uses, restrictions and flood zone status, contact the local planning, zoning and/or engineering department. The Purchaser acknowledges that the Purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase on the property identified. This is to advise that this disclosure statement is not valid after 180 days from the date completed by the Seller.

| | | | |
|---|---|---|---|
| Purchaser's Signature | Date | Purchaser's Signature | Date |

The disclosure and disclaimer statement forms and the Oklahoma Residential Property Condition Disclosure Act information pamphlet are made available at the Oklahoma Real Estate Commission (OREC), Shepherd Mall, 2401 NW 23 St, Suite 18, Oklahoma City, Oklahoma 73107-2431, or visit OREC's Web site www.orec.ok.gov.

*[OAR Docket #10-841; filed 5-13-10]*

# TITLE 690. OKLAHOMA BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY CHAPTER 10. LICENSURE AND FEES

*[OAR Docket #10-838]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Licensure of Speech-Language Pathologist and Audiologist
690:10-3-1. [AMENDED]
690:10-3-3. [AMENDED]
690:10-3-4. [AMENDED]
690:10-3-5. [AMENDED]
690:10-3-6. [AMENDED]
690:10-3-8. [AMENDED]
Subchapter 5. Licensure of Speech-Language Pathology Clinical Experience Interns
690:10-5-1. [AMENDED]
690:10-5-6. [AMENDED]
Subchapter 7. ~~Authorization of Assistants~~ Licensure of Speech-Language Pathology Assistants and Audiology assistants
690:10-7-1. [AMENDED]
690:10-7-3. [AMENDED]
690:10-7-4. [AMENDED]
690:10-7-5. [AMENDED]
690:10-7-6. [AMENDED]
690:10-7-7. [AMENDED]
690:10-7-9. [NEW]
690:10-7-10. [NEW]
690:10-7-11. [NEW]
Subchapter 9. Fees
690:10-9-1. [AMENDED]
690:10-9-2. [AMENDED]
690:10-9-5. [AMENDED]
**AUTHORITY:**
59 O.S., 2001 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.
**DATES:**
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October 1, throughNovember 12, 2009
**Public Hearing:**
December 4, 2009
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March 15, 2010
**Submitted to House:**
March 15, 2010
**Submitted to Senate:**
March 15, 2010
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April 14, 2010
**Legislative Approval:**
Failure of the legislature to disapprove resulted in approval on May 11, 2010
**Final Adoption:**
May 11, 2010
**Effective:**
June 25, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
690: Chapter 10. Licensure and Fees
690:10-3-1,4,5,6,8. These rules deal with amendments to current rules dealing with application for licensure as a Speech-Language Pathologist and Audiologist. These rule changes are to clean outdated language in rules. This will keep rules up to date.
Subchapter 5.
690:10-5-1,6. These rule changes are also to amend and correct outdated information on Speech-Language Pathology Clinical Experience Interns.
Subchapter 7.
690:10-7-1,3,4,5,6,7. These rule changes will change Speech Pathologists Assistants from being *authorized* to practice to *licensed* to practice. These rules set the guidelines for their licensure.
690:10-7-9,10,11. These rules are new and set up academic requirements, supervision requirements and roles and responsibilites of the Speech-Language Pathology Assistant.
Subchapter 9 Fees
690:10-9-1,2,5. These rules will increases the cost of application, renewal of licensure and increase the cost of certificate replacement.
**CONTACT PERSON:**
Jeanie Wall, Executive Secretary at (405) 524-4955 or Stephen Painton, Ph.D., Board Chair of the Oklahoma Board of Examiners for Speech-Language Pathology and Audiology, (405)-271-4214.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

## SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

### 690:10-3-1. Application for licensure as a speech-language pathologist and/or audiologist

Application for licensure as a speech-language pathologist and/or audiologist should be made only after completion of the requirements for license as defined in 59 O.S., Section 1605. as amended, and in this Chapter. Persons desiring licensure may obtain the official application form for such purpose from the Executive Secretary. The application and all necessary papers must be filed with the Executive Secretary at the official office of the Board. The application must be accompanied by ~~seventy-five dollars ($75.00)~~ eighty-five dollars ($85.00) in the form of ~~a~~ an electronic payment, check, cashier's check or money order. If, after evaluation, the applicant is not found eligible for licensure, or for licensure without examination, the ~~seventy-five dollar ($75.00)~~ eighty-five dollars ($85.00) fee shall be forfeited. A minimum of three (3) and a maximum of five (5) references from speech-language pathologists or audiologists who themselves are licensed or licensable shall be required in support of each applicant. Such references must be from individuals licensable in the same professional area (speech-language pathology or audiology) in which the applicant seeks a license. Board members shall not serve as reference for applicants. A national criminal background check will be completed on each applicant. Each applicant must complete the citizenship affidavit that is included in the application packet.

### 690:10-3-3. Criteria considered for licensure

The Board shall consider on an individual basis the request of each applicant for licensure under Section 1605 of the Speech-Language Pathology and Audiology Licensing Act,

59 O.S. 1605, as amended, using the criteria contained in the following Sections of these rules. Written notification from the chair or program director of an academic institution accredited by the Council ~~for~~ on Academic Accreditation, or equivalent accrediting agency as determined by the Board, verifying that applicant attended the academic institution and completed the academic course work requirement and clinical practicum requirement, shall serve as presumptive proof of completion of the requirements. The Board retains the power to determine whether applicant has completed all requirements.

**690:10-3-4. Academic requirement**

(a) **Degree requirement.**

(1) Each speech-language pathology applicant shall hold not less than a master's degree, or its equivalent, with a major emphasis in speech-language pathology or audiology from an accredited academic institution offering a graduate program in speech-language pathology;.

(2) ~~Each audiology applicant, until December 31, 2006, shall hold not less than a master's degree, or its equivalent, with a major emphasis in audiology from an accredited academic institution offering a graduate program in audiology. After December 31, 2006, each~~ Each audiology applicant shall hold not less than a post-baccalaureate residential professional doctor of audiology degree (Au.D) from a regionally accredited academic institution, a post-masters distance education professional doctor of audiology degree (Au.D.) from a regionally accredited academic institution, a Doctor of Philosophy degree (Ph.D.) with emphasis in audiology from a regionally accredited academic institution, or its equivalent as determined by the Board.

(b) **Academic transcripts.**

(1) Each speech-language pathology applicant seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form - Verification for Licensure Application) completion of at least 75 semester credit hours from one or more accredited colleges or universities that reflect a well-integrated program of study dealing with (a) the biological/physical sciences and mathematics, (b) the behavioral and/or social sciences, including normal aspects of human behavior and communication, and the nature, prevention, evaluation, and treatment of speech, language, hearing, and related disorders. Some course work must address issues pertaining to normal and abnormal human development and behavior across the life span and to culturally diverse populations. At least twenty-seven (27) of the 75 semester credit hours must be in Basic Science Course Work. At least thirty-six (36) of the 75 semester credit hours must be in Professional Course Work~~.~~ at the Graduate Level.

(A) Basic Science Course Work. Applicants must earn at least twenty-seven (27) credit hours in the basic sciences. At least six (6) semester credit hours must be in the biological/physical sciences and mathematics. At least six (6) semester hours must be in the behavioral and/social sciences. At least fifteen (15) semester credit hours must be in the basic human communication processes, to include course work in each of the following three areas of speech, language, and hearing: the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic, psycholinguistic and cultural aspects.

(B) Professional Course Work. Applicants must earn at least thirty-six (36) semester credit hours in graduate or professional courses that concern the nature, prevention, evaluation, and treatment of speech, language and hearing disorders. Those thirty-six (36) semester credit hours must encompass courses in speech, language, and hearing that concern disorders primarily affecting children as well as disorders primarily affecting adults.

(2) Specific knowledge must be demonstrated in the following areas:

(A) articulation

(B) fluency

(C) voice and resonance, including respiration and phonation

(D) receptive and expressive language (phonology, morphology, syntax, semantics, and pragmatics) in speaking, listening, reading, writing, and manual modalities

(E) hearing, including the impact on speech and language

(F) swallowing (oral, pharyngeal, esophageal, and related functions, including oral functions for feeding; orofacial myofunction)

(G) cognitive aspects of communication (attention, memory, sequencing, problem-solving, executive functioning)

(H) social aspects of communication (including challenging behavior, ineffective social skills, lack of communication opportunities);

(I) communication modalities (including oral, manual, augmentative, and alternative communication techniques and assistive technologies)

(3) Waiver of transcript. The Board shall waive the transcript requirement and grant a license to any applicant for licensure as a speech-language pathologist who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(4) ~~Each audiology applicant, until December 31, 2006, seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form - Verification for Licensure Application) completion of at least thirty-six (36) semester credit hours from one or more accredited~~

~~colleges or universities that reflect a well-integrated program of study dealing with (a) the biological/physical sciences and mathematics, (b) the behavioral and/or social sciences, including normal aspects of human behavior and communication, and the nature, prevention, evaluation, and treatment of speech, language, hearing, and related disorders. Some course work must address issues pertaining to normal and abnormal human development and behavior across the life span and to culturally diverse populations. After December 31, 2006 each~~ Each audiology applicant seeking licensure shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form -Verification for Licensure Application) completion of at least 75 semester credit hours in graduate or professional courses from one or more accredited colleges or universities that reflect a well-integrated program of study dealing with the practice of audiology. Specific knowledge must be demonstrated in the following areas:

(A) identification, diagnosis, assessment, measurement, testing, appraisal and evaluation related to hearing, vestibular function, equilibrium, balance and fall prevention~~,~~; ~~and associated neural systems;~~

(B) prevention, treatment, intervention, management and counseling related to hearing, vestibular function, equilibrium, balance and fall prevention, and associated neural systems;

(C) identification, evaluation and treatment of any abnormal condition related to auditory sensitivity, acuity, tinnitus, function or processing, speech, language or other aberrant behavior resulting from hearing loss;

(D) designing, and implementing aural habilitation and rehabilitation or other related programs for the amelioration of disorders of hearing, vestibular function, equilibrium, balance, and fall prevention and associated neural systems~~.~~;

(E) measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring of central nervous system, spinal cord and cranial nerve function.

(5) Waiver of transcript. The Board shall waive the transcript requirement and grant a license to any applicant for licensure as an audiologist who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association or its current equivalent. All fees associated with obtaining such evidence shall be borne by the applicant.

**690:10-3-5. Supervised clinical practicum requirement**

~~(a) Until December 31, 2004 each speech-language pathology applicant seeking licensure shall submit evidence (Academic Preparation and Practicum Form - Verification for Licensure Application) of satisfactory completion of three hundred seventy-five (375) clock hours of supervised clinical observation and clinical practicum that are provided by the educational institution or by one of its cooperating programs.~~

~~(1) Clinical Observation. Applicants must complete at least twenty-five clock hours of supervised observation prior to beginning the initial clinical practicum. Those twenty-five (25) clock hours must concern the evaluation and treatment of children and adults with disorders of speech, language, or hearing.~~

~~(2) Clinical Practicum. Until December 31, 2004, applicants must complete at least three hundred fifty (350) clock hours of supervised clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, and hearing. No more than twenty-five (25) of the clock hours may be obtained from participation in staffings in which evaluation, treatment, and/or recommendations are discussed or formulated with or without the client present. At least two hundred fifty (250) of the three hundred fifty (350) clock hours must be completed in the professional area for which licensure is sought while the applicant is engaged in graduate study. At least fifty (50) supervised clock hours must be completed in each of three (3) types of clinical settings. The applicant must have experience in the evaluation and treatment of children and adults and with a variety of types and severities of disorders of speech, language, and hearing.~~

~~(A) Speech-language pathology applicants must complete at least two hundred fifty (250) of the three hundred fifty (350) supervised clock hours in speech-language pathology.~~

~~(i) At least twenty (20) of those two hundred fifty (250) clock hours must be completed in each of the eight categories listed below:~~

~~(I) Evaluation: Speech disorders in children~~

~~(II) Evaluation: Speech disorders in adults~~

~~(III) Evaluation: Language disorders in children~~

~~(IV) Evaluation: Language disorders in adults~~

~~(V) Treatment: Speech disorders in children~~

~~(VI) Treatment: Speech disorders in adults~~

~~(VII) Treatment: Language disorders in children~~

~~(VIII) Treatment: Language disorders in adults~~

~~(ii) Up to twenty (20) clock hours in the major professional area may be in related disorders.~~

~~(iii) At least twenty (20) of the three hundred fifty (350) clock hours must be in audiology.~~

~~(iv) A portion of the twenty (20) clock hours must involve the evaluation or screening of individuals with hearing disorders, a portion must involve habilitation/rehabilitation of individuals who have hearing impairment.~~

(~~b~~a) ~~After December 31, 2004, speech~~ Speech language pathology applicants must submit evidence of satisfactory completion of four hundred (400) clock hours of supervised clinical practicum, of which at least ~~must~~ 375 must be in direct client/patient contact and 25 in clinical observation that are provided by the educational institution or by one of its cooperating programs. At least 325 of the 400 clock hours must be completed while the applicant is engaged in graduate study in a program accredited in speech language pathology by the Council ~~of~~ on Academic Accreditation in Audiology and Speech-Language Pathology. Each Speech-Language Pathology applicant seeking licensure from a non-accredited program shall submit a bona fide official academic transcript(s) and verification of (Academic Preparation and Practicum Form-Verification dealing with the practice of Speech-Language Pathology.

~~(c) Until December 31, 2006, audiology applicants must complete at least two hundred fifty (250) of the three hundred fifty (350) supervised clock hours in audiology.~~

~~(A) At least forty (40) of those two hundred fifty (250) clock hours must be completed in each of the first two (2) categories listed below.~~

~~(B) At least eighty (80) supervised clock hours must be completed in categories III and IV with a minimum of ten (10) hours in each of these categories.~~

~~(C) At least twenty (20) of those two hundred fifty (25) clock hours must be completed in category five V.~~

~~(i) Evaluation: Hearing in children~~

~~(ii) Evaluation: Hearing in adults~~

~~(iii) Selection and use: Amplification and assistive devices for children~~

~~(iv) Selection and use: Amplification and assistive devices for adults~~

~~(v) Treatment: Hearing disorders in children and adults~~

~~(D) Up to twenty (20) clock hours in the major professional area may be in related disorders.~~

~~(E) At least twenty (20) of the three hundred fifty (350) clock hours must be in speech-language pathology.~~

~~(F) A portion of those twenty (20) clock hours must involve the evaluation or screening of individuals with speech and language disorders unrelated to hearing impairment, and a portion must involve the treatment of individuals with speech and language disorders unrelated to hearing impairment~~.

(~~d~~b) ~~After December 31, 2006, with~~ With the exception of post-masters professional degree (Au.D) applicants and applicants with a Ph.D. with a major emphasis in audiology, audiology applicants must demonstrate completion of a minimum of (1820) supervised clinical ~~practicum~~ hours in audiology through clinical practicum, clinical rotations, or externships during their professional or graduate doctoral degree program. Audiology applicants with a post-masters distance education professional degree (Au.D.) and applicants with a Ph.D. with a major emphasis in audiology must provide evidence of a minimum of (350) supervised clinical ~~practicum~~ hours obtained in audiology through ~~clinical practicum,~~ clinical rotations, or externships during their masters or Ph.D. degree program. In addition, audiology applicants with a post-masters distance education professional degree (Au.D.) or a Ph.D. with a major emphasis in audiology must provide evidence of a completed Clinical Experience of no less than nine (9) months of successful full-time, paid clinical experience in audiology, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as an audiologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months. All clinical practicum, clinical rotations or externships adduced to satisfy this requirement must have been obtained under the supervision of an individual eligible for licensure as a speech-language pathologist or audiologist under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended, and this Chapter. The supervisor of clinical practicum, clinical rotations or externships must be eligible for licensure in the professional area (speech-language pathology or audiology) in which the supervision is provided.

**690:10-3-6. Clinical experience requirement**

(a) **Clinical experience form.**

(1) Each speech-language pathology applicant shall submit evidence (Clinical Experience Form) of no less than nine (9) months of successful, full time, paid, clinical experience in the area for which a license is required, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601. et. seq., as amended, or of one or more persons whose

education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as a speech-language pathologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months.

~~(2) Each audiology applicant, until December 31, 2006, may submit evidence (Clinical Experience Form) of no less than nine (9) months of successful, full-time, paid, clinical experience in the area for which a license is required, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended, or of one or more persons whose education and experience are the equivalent of an independent practitioner. The supervisor of clinical experience must be eligible for licensure as an audiologist. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit him to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and his supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base his total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week which must be completed within a period of thirty-six (36) consecutive months. Before December 31, 2006, audiology applicants possessing a residential, four year Au.D. degree or its equivalent will be required to present to the Board only a copy of the Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement. After December 31, 2006, with~~

(2) With the exception of audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology, each audiology applicant will be required to present to the Board a copy of an Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement. ~~After December 31, 2006, audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology must provide evidence of a completed Clinical Experience of no less than nine (9) months of successful full-time, paid clinical experience in audiology, obtained under the supervision of one or more independent practitioners licensed under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended or of one or more persons whose education and experience are the equivalent of an independent practitioner in order to demonstrate completion of the clinical rotation or externship requirement.~~

(b) **Waiver of clinical experience requirement.** The Board shall waive the clinical experience requirement and grant a license to any applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

**690:10-3-8. Continuing education for speech-language pathologists and audiologists**

(a) **Purpose.** The purpose of continuing education requirements for speech-language pathologists and audiologists is to assure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all speech-language pathologists and audiologists are encouraged to fulfill a portion of their continuing education requirements in the area of ethics, professional conduct, and related legal issues.

(b) **Clock hours required for license renewal.** A minimum of twenty (20) clock hours of acceptable continuing education will be required for renewal of a license to practice speech-language pathology or audiology in a two year period. The continuing education period begins in January of every

odd-numbered year. A speech-language pathologist or audiologist obtaining initial licensure during a two year period shall have his or her continuing education requirement prorated to 2.5 clock hours per full quarter remaining in that period.

(c) **Approval of continuing education activities required.** Continuing education hours may be granted for acceptable educational activities which are approved by the Board, or by a committee appointed by the Board. No hours will be granted for any activities or categories of activities that have not been approved. A provider of educational activities may apply to the Board for pre-approval of an activity. The provider shall be responsible for compliance with the standards for approval of the activity, verification of participation, and for the provision of the necessary verification of attendance forms to all participants. This verification of attendance form shall include: The participant's name, the presenter's name and credentials, the presentation topic, the program sponsor or agency, the location of the presentation, the dates of presentation, and the total number of clock hours attended.

(d) **Exceptions to the requirements.** Exceptions to the pre-approval requirement may be granted at the discretion of the Board for programs presented by recognized sponsors whose programs have been pre-approved by the Board. The university academic semester hour is equivalent to fifteen (15) clock hours, and shall be verified by the presentation of an official academic transcript showing course or audit credits. The licensee is ultimately responsible for providing all information necessary for the Board to make a final determination concerning the acceptability of any requested continuing education hours.

(e) **Fee for approval.** Providers of continuing education programs may be charged a fee for approval of their program. This fee shall be set by the Board.

(f) **Kinds of educational activities for which credit may be received.** Continuing education hours may be earned through formal organized learning experiences, scientific publications, attendance at regularly scheduled meetings of international, national, regional, or state professional associations, or through presentations to appropriate groups not related to the speech-language pathologist's or audiologist's regular employment.

(g) **Hours allowed.** Continuing education activities, whether received or presented by the speech-language pathologist or audiologist, must be targeted toward a professional audience. In those instances when the speech-language pathologist or audiologist is teaching in programs such as institutes, seminars, workshops, and conferences which have been granted approval by the Board, three (3) clock hours will be given for each one (1) hour that is taught, provided that such teaching is not part of the speech-language pathologists or audiologists regular employment. Publication in a professionally-related format approved by the Board shall be equal to up to twenty (20) clock hours. Completion of select job-required activities such as CPR training, etc. can be counted once in the two-year period for a maximum of 20% of the total required hours. Other activities may be credited as authorized and disseminated separately by the Board.

(h) **Petition for extension.** A speech-language pathologist or audiologist who fails to comply with the required twenty (20) hours of continuing education in the two year continuing education period ending December 31 may, by submitting an individual review fee, of fifty ($50.00), petition the Board for an extension of continuing education year to March 31 of the following year. The petition for extension shall be filed prior to the expiration of the continuing education period.

(i) **Petition for hardship relief.** A speech-language pathologist or audiologist may petition the Board for partial or complete relief of the continuing education requirements upon the showing of incapacitation or serious illness of licensee or licensee's immediate family member, or licensee's absence from the United States for a period of at least eighteen (18) months during the continuing education period. The petition for hardship relief should be filed prior to the expiration of the continuing education period, and will be accepted no later than February 1st of the year following the audit period.

(j) **Audits of continuing education.** The Board will conduct ~~bi-annual~~ audits every two years (every even year) of licensee compliance with continuing education requirements.

(1) A minimum of 3% of licensees will be audited.

(2) Those audited will be required to submit a listing of all continuing education activities completed within the audited period, including the title of the activity, the course description, the number of contact hours and a contact for verification of participation.

(3) Licensees will maintain all original documentation of attendance, course agendas and/or other supporting documentation. The Board may request copies of such documentation as is necessary to determine if an activity will be accepted for continuing education credit. The Board will destroy all such copies following the audit.

(4) If the results of the audit show that a licensee has not completed the required number of continuing education hours, the following schedule will be applied:

(A) By February ~~1st~~ 27th, the licensee should provide evidence of additional continuing education activities sufficient to meet the requirement, or

(B) By April 1st, the licensee shall have completed additional continuing education activities sufficient to meet the requirements and pay a penalty fee equal to half of the licensure renewal fee. This fee is separate from any fees for late license renewal which may apply.

(C) Such additional activities may not be counted toward future continuing education requirements.

(D) If a licensee has not ~~completed~~ provided documentation for the required number of continuing education activities by April 15th, the Board will submit the name of the licensee to the Attorney General's office and pursue action to suspend or revoke the license.

## SUBCHAPTER 5. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY CLINICAL EXPERIENCE INTERNS

**690:10-5-1. License to practice as a speech-language pathology clinical experience intern**

Persons in the process of fulfilling the supervised clinical experience required by paragraph 4 of Subsection A of Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1605, as amended, for licensure as a speech-language pathologist ~~and/or audiologist~~ must practice as a clinical experience intern under the supervision of a licensed speech-language pathologist or audiologist under the conditions of these rules. Once the clinical experience year is complete, the applicant will apply for full licensure and pay the required fees.

**690:10-5-6. Requirements for supervision of clinical experience interns**

(a) ~~Supervisor to be eligible for licensure as a speech-language pathologist and/or audiologist. Authorization to practice as a clinical experience intern shall be granted to applicants who otherwise qualify only if the supervisor of that practice is a speech-language pathologist or audiologist eligible for licensure in the area(s) in which the applicant seeks authorization to practice.~~ Clinical experience interns must be supervised by a speech-language pathologist who has been fully licensed for a minimum of two years.

(b) ~~Maximum of two persons to be supervised.~~ Each supervising speech-language pathologist ~~or audiologist~~ will be expected to accept no more than two persons, as clinical experience interns ~~or assistants~~, under this Chapter. Each supervisor holding licenses in both speech-language pathology and audiology is restricted to no more than two persons to supervise, in the aggregate.

## SUBCHAPTER 7. ~~AUTHORIZATION OF ASSISTANTS~~ LICENSURE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS

**690:10-7-1. Authorization to practice as an assistant**

(a) Any person not eligible for license as an independent practitioner or not eligible for authorization to practice as an intern under supervision under Subsection A or B of Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1605, as amended, who assists in the practice of speech-language pathology and audiology while in the employ of and under the direct full time supervision of a licensed independent practitioner must ~~receive authorization~~ apply for and receive licensure from the Board as a speech-language pathology or audiology assistant. Before granting such ~~authorization,~~ licensure the Board will consider the academic training and clinical experience of the applicant, the specific duties and responsibilities he is assigned, the amount and nature of the supervision that is available to him, and the number of such other persons assigned to the proposed supervisor. ~~Authorization~~ Licensure to practice as speech-language pathology or audiology assistant may be granted under the provisions of Sections 690:10-7-1 through 690:10-7-~~8~~ 10 of these rules. Nothing in this section shall be construed to prevent an independent practitioner from employing any individual in non-clinical capacities.

(b) The Board shall consider on an individual basis the request of each applicant for an Assistant license under Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1605, as amended, using the criteria contained in the following Sections of these rules. After December 31, 2013 applicants for licensure as a speech-language pathology assistant must have written notification from the chair or program director of an academic institution verifying that the applicant attended the academic institution and completed the academic course work requirement and clinical practicum requirement. This written notification shall be on university letterhead and shall serve as presumptive proof of completion of the requirements. The Board retains the power to determine whether an applicant has completed all requirements. Nothing in this section shall be construed to prevent an independent practitioner from employing any individual in non-clinical capacities.

**690:10-7-3. ~~Direct on-site supervision required~~ Supervision required**

~~The assistant must practice in a geographic setting which permits direct, on-site supervision. The assistant shall practice only at those times when the supervisor is available for on-site supervision, instruction, and assistance.~~

(a) The assistant must be supervised by a Speech-Language Pathologist or audiologist who has been fully licensed for two years.

(b) For Speech-Language Pathology Assistants after May 1, 2012, a minimum of 30% direct and indirect supervision should be provided weekly for the first 90 days with a minimum of 20% actual patient/client contact time weekly. After successful completion of the first 90 days a minimum of 10% of direct, onsite supervision is required with 20% indirect supervision. The supervising Speech-Language Pathologist must be available by electronic means at all times when the Speech-Language Pathology Assistant is performing clinical activities. Appropriate documentation must be maintained. The direct supervision will be in such a manner that all clients/patients are directly supervised by the supervisor.

(1) Direct supervision: in-view observation and guidance by a speech-language pathologist while an assigned activity is performed by support personnel.

(2) Indirect supervision is defined as those activities (other than direct observation and guidance) conducted by a speech language pathologist that may include methods such as audio-and/or videotape recordings, telephone communications, conferences, and review of numerical.

**690:10-7-4. ~~Violation of authorization to assist~~Licensure**

The assistant is not authorized to represent himself as an independent practitioner of speech-language pathology or audiology. Preparation or distribution of announcements of practice, independent telephone listings, or other such notices

shall be in violation of the ~~authorization to assist~~ license as a Speech-Language Pathology or Audiology Assistant and will lead to automatic revocation of such ~~authorization~~ license.

**690:10-7-5. Application for License ~~authorization~~ to assist**

Application for ~~authorization~~ licensure as a Speech-Language Pathology or Audiology Assistant ~~to assist~~ shall be made by submitting to the Board the Application ~~To Assist~~ for Licensure as a Speech-Language Pathology or Audiology Assistant as available from the Board and signed by both the applicant and proposed supervisor. Said notarized statement shall explicitly indicate that the supervisor agrees to supervise the assistant's practice and that the supervisor accepts full and complete responsibility for that practice.

**690:10-7-6. ~~Period of authorization to assist~~ Licensure ~~and extension~~**

~~Authorization~~ Licensure as a ~~speech-language pathology~~ Speech-Language Pathology or ~~audiology assistant~~ Audiology Assistant shall be for a period of one (1) calendar year from ~~the date of the Board's authorization~~. January 1 to December 31st of that year. ~~One (1) year extensions of this authorization shall be considered only on written request of the assistant's supervisor and such request must be received prior to the end of the one (1) year period of previous authorization. Failure to apply for extension shall result in automatic revocation of authorization to assist. Such revocation shall not jeopardize later application for authorization to assist.~~

**690:10-7-7. Requirements for supervision of assistants**

(a) ~~Authorization~~ as a ~~speech-language pathology~~ Speech-Language Pathology or ~~audiology assistant~~ Audiology Assistant shall be granted to applicants who otherwise qualify only if the supervisor is a licensed independent practitioner. Each such supervisor shall accept no more than two assistants under this rule. Each independent practitioner licensed in both speech-language pathology and audiology is likewise restricted to two assistants in aggregate. Further, the total number of assistants and interns (licensed under Subchapter 3 of these rules) supervised by a single supervisor shall not exceed two (2).

(b) For Speech-Language Pathology Assistants after May 1, 2012, a minimum of 30% direct and indirect supervision should be provided weekly for the first 90 days with a minimum of 20% actual patient/client contact time weekly. After successful completion of the first 90 days a minimum of 10% of direct, onsite supervision is required with 20% indirect supervision. The supervising Speech-Language Pathologist must be available by electronic means at all times when the Speech-Language Pathology Assistant is performing clinical activities. Appropriate documentation must be maintained.

**690:10-7-9. Academic requirements**

(a) Academic requirements for Speech-Language Pathology Assistants

(1) Until May 1, 2012, each speech Speech-Language Pathology Assistant applicant shall hold not less than a high school degree or its equivalent.

(2) After May 1, 2012, each Speech-Language Pathology Assistant applicant shall hold not less than an associates degree, or its equivalent, with a major emphasis in speech-language pathology from an accredited academic institution.

(3) Each Speech Language Pathology Assistant applicant shall submit a bona fide official transcript(s) and verification of academic preparation and clinical experience reflecting a minimum of 20 semester credit hours in general education, a minimum of 20 semester credit hours in technical content, a minimum of 25 hours of observation which precede a minimum of 100 clock hours of supervised clinical experience.

(A) General Education. Applicants must earn at least twenty (20) semester credit hours in oral and written communication, mathematics, computer applications and social and natural sciences.

(B) Technical Content. Applicants must earn a minimum of twenty (20) semester credit hours in the following areas:

(i) Normal processes of communication.

(ii) Overview of communication disorders.

(iii) Instruction in assistant-level service delivery practices.

(iv) Instruction in work-place behaviors.

(v) Cultural and linguistic factors in communication.

(vi) Observation experiences include direct on-site observation of a fully licensed Speech-Language Pathologist. Additional observation experiences may include on-site, video or digital observation of a fully licensed Speech-Language Pathologist.

(C) Clinical Experience. Applicants must complete 100 clock hours of clinical experience supervised by a Speech Language Pathologist who has been fully licensed for a minimum of two years.

(i) The speech-language pathology student must be supervised a minimum of 50% of the time when engaged in patient/client contact.

(ii) The supervising Speech-Language Pathologist will supervise no more than two students at any one time.

(b) Academic requirements for Audiology Assistants: Each audiology assistant applicant shall hold not less than a high school degree or its equivalent.

**690:10-7-10. Roles and responsibilities of Speech-Language Pathology Assistants**

(a) Allowed activities as delegated by the supervising Speech-Language Pathologist.

(1) Assist the Speech-Language Pathologist with speech-language and hearing screenings.
(2) Assist with informal documentation as directed by the Speech-Language Pathologist.
(3) Follow documented treatment plans or protocols developed by the supervising Speech- Language Pathologist.
(4) Document patient/client performance.
(5) Assist the Speech-Language Pathologist with assessment of patient/clients.
(6) Assist with clerical duties.
(7) Perform checks and maintenance of equipment.
(8) Support the Speech-Language Pathologist in research projects, in service training, and public relations programs.
(9) Collect data for monitoring quality improvement.
(10) Exhibit compliance with regulations, reimbursement requirements and speech language pathology assistant's job responsibilities.

(b) Non-allowed activities.
(1) May not perform diagnostic tests, formal or informal evaluations or interpret test results.
(2) May not evaluate or diagnose patients/clients for feeding/swallowing disorders.
(3) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence or prior approval of the supervising Speech-Language Pathologist.
(4) May not write, develop, or modify a patients/client's individualized treatment plan in any way.
(5) May not assist with patients/clients without following the individualized treatment plan prepared by the Speech-Language Pathologist or without access to supervision.
(6) May not sign any formal documents not drafted and/or approved by the Speech-Language Pathologist prior to dissemination of the document.

**690:10-7-11. Continuing education for speech-language pathology assistants**

The rules regarding continuing education requirements for Speech-Language Pathology and Audiology in section 690 10-3-8 shall also apply to Speech-Language Pathology assistants.

## SUBCHAPTER 9. FEES

**690:10-9-1. License application fee**

The license application fee for speech-language pathologists, clinical experience interns, and assistants, shall be ~~seventy-five dollars ($75.00)~~ eighty-five dollars ($85.00) and shall be submitted with the application for licensure.

**690:10-9-2. License renewal fee**

The license renewal fee shall be ~~seventy-five ($75.00)~~ eighty-five dollars ($85.00) each calendar year to renew licenses in either or both areas of specialization. Said renewal fee is due on December thirty-first of each year. Failure on the part of any licensed person to pay the renewal fee before the first day of January does not deprive him of the right to renew his license, but the fee paid for renewal postmarked or delivered after December 31st shall be increased by 50% for each month or fraction thereof that the payment is delayed, up to a maximum of three times the renewal fee ~~($225.00).~~ ($255.00). Failure to pay the renewal fee by January 1st, however, shall render his license invalid until renewed. Renewal of an invalid license within the first year will result in an automatic audit of that licensee's continuing education activities for the preceding continuing education two-year reporting period. Failure to renew a license within the twelve month period following expiration, without otherwise placing the license(s) in question on inactive status (see 690:10-9-6), will render the license permanently invalid, requiring reapplication for licensure based on meeting all current requirements for licensure in the applicant's area of specialization.

**690:10-9-5. Lost or damaged certificate fee**

A fee of ~~twenty dollars ($20.00)~~ ($25.00) shall be charged to replace a license certificate that is lost, mutilated, or revoked. This fee shall accompany the application for a replacement license certificate.

*[OAR Docket #10-838; filed 5-12-10]*

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# TITLE 723. TOBACCO SETTLEMENT ENDOWMENT TRUST FUND
# CHAPTER 1. ORGANIZATION AND PROCEDURE

*[OAR Docket #10-909]*

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723:1-1-1 through 723:1-1-8 [NEW]
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**ANALYSIS:**
The Tobacco Settlement Endowment Trust Fund is promulgating its initial permanent rules. The new chapter contains the rules required by the Administrative Procedures Act for every agency.
**CONTACT PERSON:**
Dorothy Antwine, Office Manager, Tobacco Settlement Endowment Trust Fund, (405) 525-8738.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

**723:1-1-1. Purpose**

The rules in this chapter provide the organizational and procedural framework for the Tobacco Settlement Endowment Trust Fund and provide the necessary channels through which the public can gain information about the Tobacco Settlement Endowment Trust Fund and its functions.

**723:1-1-2. Definitions**

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

**"Act"** means the Tobacco Settlement Endowment Trust Fund Act beginning at § 2301 of Title 62 of the Oklahoma Statutes.

**"Agency"** means the state office established to manage the daily functions associated with the funding of programs under the Act and which houses the executive director and staff appointed by the directors.

**"Applicant"** means the entity submitting the application.

**"Application"** means the grant request submitted to the agency together with all required information and attachments.

**"Directors"** means the seven-member board responsible for directing the income from the endowment trust to fund programs and administrative expenses as provided by the Act.

**"Entity"** means a private, nonprofit or public body.

**"Interested entity"** means an entity that has contacted the agency and requested to be notified when requests for proposals are open for submission.

**"Endowment Trust"** means the account that contains part of any settlement or judgment monies from tobacco companies.

**"Investors"** means the five-member board responsible for investing endowment trust monies as provided by the Act.

**"TSET"** means the Tobacco Settlement Endowment Trust, and collectively includes the endowment trust, the investors, the directors and the agency.

**723:1-1-3. TSET**

(a) The endowment trust was established through a constitutional amendment approved by Oklahoma voters in November 2000 to assure that tobacco settlement funds were used for programs to improve the health and well-being of Oklahomans.

(b) The agency was established in 2002.

(c) The investors meet at least once per quarter at the State Capitol or other location determined by the investors, and all meetings are open to the public.

(d) The directors meet at least once per quarter at the agency or other location determined by the directors, and all meetings are open to the public.

**723:1-1-4. Requests for information**

(a) Requests for information may be made by e-mail, by telephone, by facsimile, by mail or by personal appearance at the agency.

(b) The Oklahoma Open Records Act beginning at §24A.1 of Title 51 of the Oklahoma Statutes addresses the records that shall be open to any person for inspection, copying or mechanical reproduction. The fee per page for copies and the fee per copied page for a certified copy are amounts established by the directors and are posted at the agency and with the Oklahoma County Clerk.

(c) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service shall be provided upon payment of the appropriate fee, which is a reasonable search fee of the hourly rate of the lowest paid agency employee capable of performing the search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the agency's essential functions.

**723:1-1-5. Applications**

(a) All competitive application types and their accompanying instructions, guidelines and requirements are available at the agency and on TSET's website.

(b) The terms of any competitive application shall remain confidential until the application is open for submission.

(c) Competitive application types include, but are not limited to, requests for proposals, unsolicited proposals and conference/training sponsorships.

(1) **Requests for proposals.** Requests for proposals are applications for specific programs initiated by the directors. Announcements of open requests for proposals shall be posted at the agency and on TSET's website at least thirty (30) days prior to the submission deadline. Announcements may also be posted on the Department of Central Services website, websites of other appropriate state bodies and published in news publications. The agency may notify interested entities through a direct mailing, email or facsimile.

(2) **Unsolicited proposals.** Unsolicited proposals are applications for programs initiated by the applicant according to guidelines established by the directors. Unsolicited proposals are accepted for a specified time annually. The period of acceptance shall be posted at the

agency and on TSET's website at least ninety (90) days prior to the submission deadline. The agency may notify interested entities through a direct mailing, email, or facsimile.

(3) **Conference/training sponsorships.** Conference/training sponsorships are applications initiated by the applicant according to guidelines established by the directors. Conference/training sponsorship applications are accepted at any time.

(4) **Other competitive processes.** Other competitive processes as may be established by the directors.

**723:1-1-6. Petitions for rulemaking**

(a) Any person may submit a petition to the agency requesting the promulgation, amendment or repeal of a rule [75:305]. The petition shall:

(1) be in writing;

(2) refer to the statutory section that authorizes the rulemaking action requested;

(3) refer to the statutory section and the rule involved;

(4) state the exact language requested;

(5) state the purpose of the rule sought;

(6) state a fact situation to which the rule sought will apply; and,

(7) list the name and address of the person requesting the rule.

(b) The directors may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

(c) The petition shall be deemed to have been denied if rulemaking proceedings have not been initiated within thirty (30) calendar days from receipt of a final petition [75:305].

**723:1-1-7. Official decisions**

(a) **Official decisions in writing.** All official decisions of the directors shall be evidenced by written record. Official decisions of the directors shall not be bound or prejudiced by any informal statement or opinion made by the directors or any statement or opinion made by any agency employee.

(b) **Official decisions to be taken only in real issues.** Official decisions shall only be taken on matters formally pending before the directors for determination, and then only if such matter be an actual issue.

(c) **Declaratory rulings.**

(1) Any person may file a petition for a declaratory ruling as to the applicability of any official decision or rule [75:307]. The petition shall:

(A) be in writing;

(B) refer to the official decision or rule involved;

(C) state the nature and purpose of the declaratory ruling sought;

(D) state the fact situation with respect to which the declaratory ruling is sought; and,

(E) list the name and address of the person requesting the ruling.

(2) The directors may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

(3) Declaratory rulings may be made by and at the discretion of the directors as to the applicability of any official decision or rule. Generally, a declaratory ruling will only be given if it is shown that an actual issue is in contemplation on the hypotheses presented and that unreasonable hardship, loss or delay would result if the matter were not determined in advance.

(4) The declaratory ruling requested or refusal to issue such ruling shall be issued within thirty (30) business days from receipt of the final petition, and shall be subject to review in accordance with the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes [75:307].

(d) **Rights not limited.** This section shall not be interpreted as limiting the right of the directors to cause matters to become formally pending and to perform any function or duty prescribed by law or rule.

**723:1-1-8. Severability**

The provisions herein contained are severable and the repeal, amendment or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions of the rules of this chapter.

*[OAR Docket #10-909; filed 5-25-10]*

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## TITLE 723. TOBACCO SETTLEMENT ENDOWMENT TRUST FUND
## CHAPTER 10. GRANTS AND PROGRAMS

*[OAR Docket #10-910]*

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The Tobacco Settlement Endowment Trust Fund is promulgating its initial permanent rules. The new chapter provides regulations relating to the processes for program funding.
**CONTACT PERSON:**
Dorothy Antwine, Office Manager, Tobacco Settlement Endowment Trust Fund, (405) 525-8738.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2010:**

**723:10-1-1. Purpose**

The rules in this chapter provide regulations relating to the processes for program funding.

**723:10-1-2. Definitions**

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

**"Act"** means the Tobacco Settlement Endowment Trust Fund Act beginning at § 2301 of Title 62 of the Oklahoma Statutes.

**"Agency"** means the state office established to manage the daily functions associated with the funding of programs under the Act, which houses the executive director and staff appointed by the directors.

**"Applicant"** means the entity submitting the application.

**"Application"** means the grant request submitted to the agency together with all required information and attachments.

**"Directors"** means the seven-member board responsible for directing the income from the endowment trust to fund programs and administrative expenses as provided by the Act.

**"Entity"** means a private body, nonprofit organization or public body.

**"Endowment Trust"** means the account that contains part of any settlement or judgment monies from tobacco companies.

**"Grantee"** means the entity that is awarded funding for a program by the directors.

**"Investors"** means the five-member board responsible for investing endowment trust monies as provided by the Act.

**"TSET"** means the Tobacco Settlement Endowment Trust, and collectively includes the endowment trust, the investors, the directors and the agency.

**723:10-1-3. Advisory panels**

(a) The directors may establish advisory panels to aid in the development of programs.

(b) Advisory panels may provide recommendations to the directors and agency on program specifications including program structure and activities, submission dates, funding amounts, grant periods, matching funds requirements and other specifications.

(c) Final authority for all program specifications remains with the directors.

**723:10-1-4. Proposal review panels**

(a) The directors may establish proposal review panels to aid in the assessment of applications.

(b) Proposal review panels may provide recommendations to the directors and agency on application assessments including content, objectives, awarding of grants and other standards.

(c) Final authority for all application assessments remains with the directors.

**723:10-1-5. Application process**

(a) Any eligible entity may submit an application to the agency. No fee is required to submit an application.

(b) The application shall be completed by an individual employed by or affiliated with the eligible entity and shall include all information and attachments requested.

(c) If an application is not submitted by the designated date and time, it shall be returned without consideration.

(d) Timely applications are reviewed by the agency to determine completeness.

(e) The directors may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted.

(f) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.

**723:10-1-6. Award process**

(a) Submission of a final application does not guarantee the award of a grant.

(b) The directors may assign preference to a class of applicants for any application.

(c) At the judgment of the directors, applications may be evaluated by agency employees, content experts, proposal review panels or any combination of employees, experts, or review panels. Evaluation results and recommendations shall be provided to the directors for each application reviewed.

(d) Applications submitted to the agency remain confidential until a decision is made by the directors.

(e) The final decision to award shall be made at the sole discretion of the directors.

(f) All applicants will receive written notification of final award status.

(g) The directors may use the contents of applications in conjunction with reporting duties of the directors.

**723:10-1-7. Grants**

(a) The mechanism for funding approved applications may be a professional service contract or cooperative agreement between TSET and the grantees.

(b) Grantees shall abide by the terms and conditions of the professional service contract or cooperative agreement.

**723:10-1-8. Performance evaluations**

(a) Grantees shall be subject to performance evaluations as to their compliance with the terms and conditions of the professional service contract or cooperative agreement and program outcomes.

(1) **Administrative issues.** The agency assesses administrative issues.

(2) **Program content.** The agency may use outside contractors to appraise program content and processes.

(3) **Program outcomes.** At the discretion of the directors, the agency may use outside contractors to measure program outcomes or may allow the grantee to engage an independent, outside contractor to evaluate its performance.

(b) The agency provides performance evaluation results and recommendations to the directors.

**723:10-1-9. Grant cancellations or withholding of monies**

(a) Written notification of cancellation or withholding of monies will be provided to defaulting grantees.

(b) Grantees shall be given an opportunity to cure the default.

(c) The final decision to cancel the grant shall be made at the sole discretion of the directors.

**723:10-1-10. Severability**

The provisions herein contained are severable and the repeal, amendment or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions of the rules of this chapter.

*[OAR Docket #10-910; filed 5-25-10]*

## TITLE 730. DEPARTMENT OF TRANSPORTATION
## CHAPTER 30. HIGHWAY DESIGN

*[OAR Docket #10-846]*

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**RULES:**
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730:30-9-16. [NEW]
Appendix B. Minimum Axles, Axle Spacing and Inner Bridge Dimensions [REVOKED]
Appendix E. Oklahoma Department of Transportation Weight Supplement Sheet for Annual Envelop Permit Not to Exceed 120,000 [NEW]
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**ANALYSIS:**
In 2009, the Legislature adopted HB 2054 and SB 1184, which created annual oversize and overweight permits for certain size vehicles, and further requires the Commissioner of Public Safety to issue these permits. Title 47 § 14-118 requires the Transportation Commission to adopt rules for the movement of oversize and overweight vehicles on the state highway system.

The rule provides for the issuance of a $4,000.00 annual permit to oversize and overweight vehicles and to companies operating these non-divisible vehicles and loads. The vehicles cannot exceed 12 feet wide, 14 feet high, 110 feet long, and 120,000 lb. gross weight. Vehicles carrying wind turbine blades cannot exceed 160 feet in length. These vehicles operating under this permit may operate on the State, but not the Interstate Highway System. The rule requires that the vehicles operate only on designated highways which have previously been determined to be capable of withstanding the loads imposed by these vehicles. A map of these designated highways will be issued with the permit and the most current version will be posted on the Department's website along with the most current version of the bridge clearance map. Vehicles operating under the permit will be required to comply with all other statutes and regulatory requirements. Violation of the terms of the permit will void the permit.
**CONTACT PERSON:**
Mary C. Brewington, ODOT, 200 N.E. 21st Street, Oklahoma City, OK 73102, 405-522-6002 or mbrewington@odot.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 9. PERMITTING OF OVERSIZE, OVERWEIGHT AND SPECIAL COMBINATION VEHICLES

**730:30-9-16. Annual Envelop Vehicle Permit**

(a) The Commissioner of the Department of Public Safety may issue an Annual Envelop Vehicle Permit in accordance with 47 O.S. § 14-103G, to a specific vehicle, for the movement of non-divisible oversize or overweight vehicles or loads as defined in 47 O.S. § 14-107(3). Unless otherwise noted, permits issued under this rule are subject to the conditions described.

(1) Vehicle Permit Dimensions

(A) A vehicle transporting an oversize or overweight non-divisible load operating under an Annual Envelop Vehicle Permit may not exceed any of the following:

(i) 12 feet in width;

(ii) 14 feet in height;

(iii) 110 feet in length;

(iv) 120,000 pounds gross weight.

(B) Except as provided in section (c) of this rule, the Annual Envelop Vehicle Permit will be issued for these dimensions and weights.

(2) A vehicle transporting an oversize or overweight non-divisible load operating under an Annual Envelop Vehicle Permit may not transport a load that has more than 25 feet of front overhang, or more than 30 feet of rear overhang.

(3) The fee for an Annual Envelop Vehicle Permit is $4,000, and is non-refundable.

(4) The Annual Envelop Vehicle Permit shall be valid for a period of one year beginning on the date of issue stated on the permit.

(5) An Annual Envelop Vehicle Permit authorizes operation of the permitted vehicle only on the state highway system.

(6) The permitted vehicle is not permitted travel on any part of the Interstate Highway System. Further, the permitted vehicle may only be operated on routes shown as "green" routes on the current Annual Envelop Vehicle Permit Map. The Commissioner shall provide a copy of this rule and a copy of the Annual Envelop Vehicle Permit Map to the permittee when the permit is issued. The permittee assumes the responsibility for assuring that the Annual Envelop Vehicle Permit Map in its possession is current. The most current edition of the Annual Envelop Vehicle Permit Map may be found on the Oklahoma Department of Transportation's website. The permittee also assumes responsibility for obtaining a bridge height clearance map from the Department of Transportation and assuring the map is correct. The most current edition of the map may be found on the Oklahoma Department of Transportation website. The permittee is also responsible for determining the location of any construction restriction. Construction restrictions may be found on the Department of Public Safety Size and Weight Permit website.

(7) The vehicle or vehicle combination operating under the authority of an Annual Envelop Vehicle Permit must be registered in accordance with 47 O.S. § 1151A(4), for not less than the maximum weight allowed by the Annual Envelop Vehicle Permit.

(8) A permit issued under section 14-103G or this rule is non-transferable.

(9) A permit issued under section 14-103G or this rule may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(A) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered; or

(B) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(b) The Commissioner may issue an Annual Envelop Vehicle Permit to a specific motor carrier, for the movement of a vehicle transporting an oversize or overweight non-divisible load as defined in 47 O.S. § 14-107(3). Unless otherwise noted, permits issued under this section are subject to the conditions described in section (a) (1-8) of this rule. A permit issued under section 14-103G or this rule may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(1) that no more than one vehicle per permit is operated at a time; and

(2) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(c) The Commissioner may issue an Annual Envelop Vehicle Permit for vehicles transporting turbine blades used for the purpose of wind power generation. Unless otherwise noted, permits issued under this section are subject to the conditions described in section (a) (1-8). A vehicle operating under this permit may not exceed a cargo length of one hundred sixty (160) feet when transporting the turbine blades. The permit shall be valid only when the vehicle is transporting the blades.

(d) An Annual Envelop Vehicle Permit issued under section (a), (b) or (c) of this rule will be sent to the permittee via registered mail, or at the permittee's request and expense, by overnight delivery service. This permit will be replaced only if:

(1) the permittee did not receive the original permit within seven business days after its date of issuance;

(2) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and

(3) the request for replacement is accompanied by a notarized statement signed by a principle or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated or altered, and that if the original permit is located, the permittee must return either the original or replacement permit to the Department of Public Safety Size and Weights Permit Office.

(e) A request for replacement of a permit issued under section (a), (b) or (c) of this rule will be denied if the Commissioner can verify that the permittee received the original.

(f) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(g) No duplication or alteration of the Annual Envelop Vehicle Permit is authorized. The permit shall be issued on title quality or better paper and shall have a raised gold or similar seal. Any duplication or alteration of the permit by any means voids the permit.

(h) Operation of a vehicle under the authority of an Annual Envelop Vehicle Permit authorized by 47 O.S. § 14-103G or this rule on an Interstate Highway or a route not listed as a

"green" route on the current Annual Envelop Vehicle Permit Map, except as provided in section (n) of this rule, voids the permit.

(i) Operation of a vehicle under the authority of an Annual Envelop Vehicle Permit during the hours of darkness in violation of 47 O.S. § 14-101(D) voids the permit.

(j) Operation of a vehicle under the authority of an Annual Envelop Vehicle Permit in excess of any limit set forth in section (a) (1) or (2) of this rule voids the permit, except as provided herein. If the violation of section (a) (1) does not exceed one thousand (1,000) pounds on any axle, or group of axles or the gross weight of the vehicle, the Annual Envelop Vehicle Permit shall not be valid for that move only and the permit remains valid for additional moves. The one thousand (1,000) pound allowance is cumulative among the axles and groups of axles so that the total allowance in no event shall exceed one thousand (1,000) pounds.

(k) Axle Weight Limitations

(1) No axle on a vehicle operating under the authority of an Annual Envelop Vehicle Permit shall exceed any of the following:

(A) Steer axle 650 lbs. x the nominal inch per tire width x number of tires, not to exceed a maximum of 15,000 lbs.

(B) Single axle 20,000 lbs. per axle.

(C) Tandem (2) axle groups 40,000 lbs. / 20,000 per axle, not less than 4 tires per axle.

(D) Triple (3) axle groups 60,000 lbs. / 20,000 per axle, not less than 4 tires per axle.

(2) Except as provided for in subsection (j), operation of a vehicle under the authority of an Annual Envelop Vehicle Permit in excess of the weights set forth in this section and Appendix E voids the permit.

(l) Annual Envelop Vehicle Permits are valid only on the State highway system. Operation of the equipment on city streets or county roads may require additional authorization from local officials.

(m) Operators of vehicles operating under an Annual Envelop Vehicle Permit shall comply with the holiday restrictions of 47 O.S. § 14-101E.

(n) Operators of vehicle operating under the Annual Envelop Vehicle Permit shall comply with the curfew restrictions in Oklahoma, Tulsa and Cleveland Counties which are set forth in Department of Public Safety rule OAC 595:30-3-4(1). Violation of these curfew restrictions voids the permit.

(o) Operators of vehicles operating under Annual Envelop Vehicle Permit shall comply with the weather restrictions set forth in OAC 595:30-3-4(5).

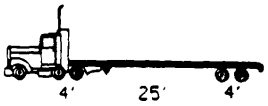
(p) The Annual Envelop Vehicle Permit is not valid for the operation of unitized equipment or special mobilized machinery. Use of the permit for the movement of unitized equipment or special mobilized machines voids the permit.

(q) Operators of vehicles operating under an Annual Envelop Vehicle Permit shall comply with the escort requirements set forth in Department of Public Safety rule OAC 595:30-3-18(b).

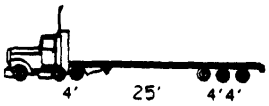
(r) The operator of any vehicle shall, upon request, surrender a void permit to any commissioned law enforcement officer. Upon receipt of a surrendered permit, the officer shall return the permit to the Department of Public Safety Size and Weights Permit Office.

## APPENDIX B. MINIMUM AXLES, AXLE SPACING AND INNER BRIDGE DIMENSIONS [REVOKED]

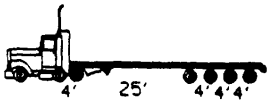
5 Axles




6 Axles




7 Axles

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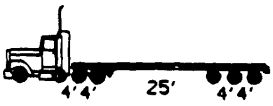
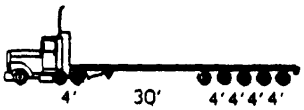
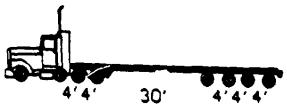


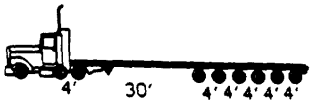

8 Axles




8 Axles




9 Axles

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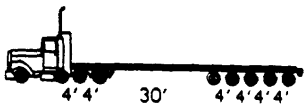
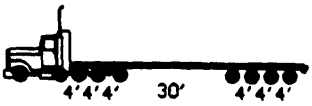
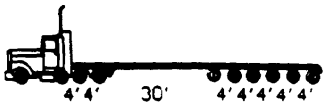


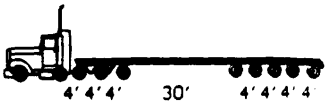

9 Axles




10 Axles




10 Axles



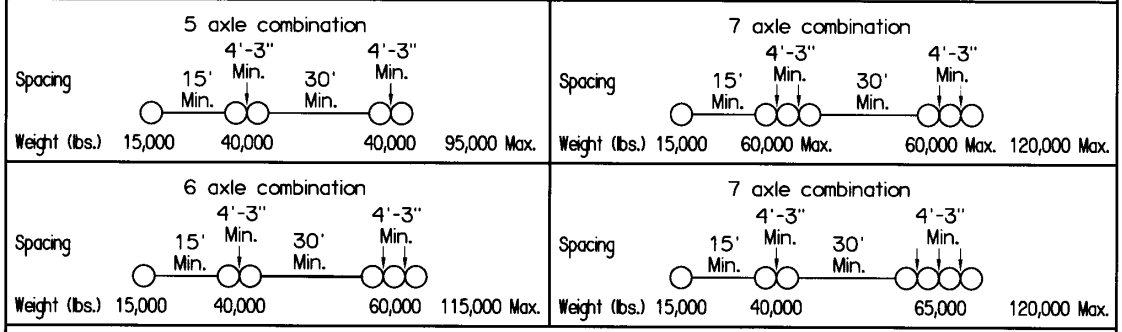
## APPENDIX E. OKLAHOMA DEPARTMENT OF TRANSPORTATION WEIGHT SUPPLEMENT SHEET FOR ANNUAL ENVELOP PERMIT NOT TO EXCEED 120,000 [NEW]

### OKLAHOMA DEPARTMENT OF TRANSPORTATION WEIGHT SUPPLEMENT SHEET FOR ANNUAL ENVELOP VEHICLE PERMIT NOT TO EXCEED 120,000

| Maximum allowable group and axle weights: | |
|---|---|
| Steer axle: | 650 x Per nominal inch of tire width (size of tire) x the number of tires - not to exceed 15,000 lbs.<br>EXAMPLE: 650 x 10.00 inch size tires x 2 = 13,000 lbs. max. |
| Single axle: | 20,000 lbs. maximum per axle |
| Tandem (2) axle: | 40,000 lbs. maximum / 20,000 lbs. per axle maximum |
| Triple (3) axle: | 60,000 lbs. maximum / 20,000 lbs. per axle maximum |

Below are examples of truck/trailer combinations.

**Maximum axle weights**




Vehicles may have axle combinations other than those listed above, however, they may not exceed the maximum weight per axle grouping or 120,000 lbs. gross weight.

- The permitted vehicle may not travel over a load-restricted bridge with weights greater than the posted limits.
- Must use caution when crossing any railroad track or crossing.
- Routing is the sole responsibility of the permittee.

*[OAR Docket #10-846; filed 5-17-10]*

## TITLE 730. DEPARTMENT OF TRANSPORTATION
## CHAPTER 35. MAINTENANCE AND CONTROL OF STATE HIGHWAY SYSTEM

*[OAR Docket #10-844]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 19. Oklahoma Traveler Information Logo Signing Program
730:35-19-1 [AMENDED]
730:35-19-2 [AMENDED]
730:35-19-3 [AMENDED]
730:35-19-6 [AMENDED]
730:35-19-7 [AMENDED]
Appendix A. Urban Interstate Interchange [REVOKED]
Appendix A. Urban Interstate Interchange [NEW]
Appendix B. Rural Interstate Interchange [REVOKED]
Appendix B. Rural Interstate Interchange [NEW]
Appendix C. Rural and Urban Primary Interchanges [REVOKED]
Appendix C. Rural and Urban Primary Interchanges [NEW]
Appendix D. Preferred Guideline Criteria for Signing Traffic Generators on Freeways or Expressways [REVOKED]
Appendix D. Preferred Guideline Criteria for Signing Traffic Generators on Freeways or Expressways [NEW]
Appendix E. Traffic Generators that do not Normally Warrant Signing [REVOKED]
Appendix E. Traffic Generators that do not Normally Warrant Signing [NEW]
Appendix F. Tourist Oriented Directional Signing [REVOKED]
Appendix F. Tourist Oriented Directional Signing (TODS) [NEW]
**AUTHORITY:**
Oklahoma Department of Transportation; 69 O.S. §§ 303, 4021 to 4026
**DATES:**
**Comment period:**
December 2, 2009 through December 31, 2009
**Public Hearing:**
None held or requested.
**Adoption:**
February 1, 2010
**Submitted to Governor:**
February 8, 2010
**Submitted to House:**
February 8, 2010
**Submitted to Senate:**
February 8, 2010
**Gubernatorial approval:**
February 15, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in approval on April 1, 2010.
**Final adoption:**
April 1, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
As directed by statute, rules remove population restrictions for Logo signs in urban areas, allow for the addition of tourism attractions to Logo signs, and allow for an increase of the surcharge paid by the contractor to the state for the use of the highway right-of-way to erect Logo signs.
**CONTACT PERSON:**
Mary C. Brewington, ODOT, 200 N.E. 21st Street, Oklahoma City, OK 73102, 405-522-6002 or mbrewington@odot.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 19. OKLAHOMA TRAVELER INFORMATION LOGO SIGNING PROGRAM

**730:35-19-1. Purpose**

The purpose of this subchapter is to establish guidelines for "logo" signing within highway right~~s~~-of-way along ~~rural~~ interstate and controlled access highways for gas, food, lodging, tourism attractions, and camping services which are readily available at the interchanges. Tourism attractions and camping services are limited to rural areas only. Logo signing is authorized as a public service, and when installed at an interchange, existing general motorist signs will be removed.

**730:35-19-2. Definitions**

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

**"Business Sign"** means a separately attached sign mounted on the rectangular specific information sign panel to show the brand, symbol, logo, trademark, name, or a combination of these, for a motorist service available on a crossroad at or near an interchange.

**"Contractor"** means the firm awarded the contract to place logo signs.

**"Department"** means the Oklahoma Department of Transportation.

**"General Motorist Service Signs"** means signs with applicable words "FOOD," "PHONE," "GAS," "LODGING," "ATTRACTION," and/or "CAMPING" (or the international symbol for these services, and directional information.

**"LOGO"** means a business identification trademark or name for attachment to a specific service sign, ramp sign, or trailblazer sign.

**730:35-19-3. Criteria for logo signing**

(a) **Types of services.** Services eligible for logo signing are limited to gas, food, lodging, tourism attractions, and camping. To qualify, services shall be open to all persons regardless of race, religion, color, sex, or national origin. A business establishment meeting the following criteria for the designated type of business may be considered for placement of a business or logo sign on a specific service sign panel.

(1) "Fuel Facilities" shall provide:

(A) Vehicle services, which shall include fuel, oil, and water.

(B) Restroom facilities and drinking water.

(C) Continuous operation at least 12 hours per day, 6 days a week.

(D) Public telephone.

(2) "Food Facilities" shall provide:

(A) State or local licensing or approval, where required.
(B) Continuous operation to serve three meals a day, 6 days a week.
(C) Public telephone.
(D) Public restroom facilities.

(3) "Lodging Facilities" shall provide:
(A) Adequate sleeping accommodations.
(B) Public telephone.
(C) State or local licensing or approval, where required.

(4) "Camping Facilities" shall provide:
(A) Adequate parking accommodations.
(B) Modern sanitary facilities and drinking water.
(C) Adequate waste disposal.

(5) "Tourism Attractions" shall provide:
(A) Tourist oriented service of cultural, historical, recreational or educational significance.
(B) Federal, state or local licensing or approval pertaining to health, sanitation, accessibility and safety, where required.
(C) Adequate parking accommodations.
(D) Continuous operation at least 8 hours per day, 5 days a week, at the least one of which will be a Saturday or Sunday.
(E) Public telephone.
(F) Attendant on site or have conducted tours available.

(b) **Distance to services and facilities.**

(1) **Rural.** The maximum distance that eligible rural services can be located from the end of the off-ramp to qualify for a business sign shall not exceed three miles in either direction, except where, within the three-mile limit, services of the type being considered are not available, or if available, choose not to participate in the logo program. In such cases, the limit of eligibility may be extended in three-mile increments until one or more services of the type being considered are included. The maximum distance that these eligible services can be located from the end of the off-ramp shall not exceed 15 miles in either direction.

(2) **Urban.** The maximum distance that eligible urban services can be located from the end of the off-ramp to qualify for a business sign shall not exceed one mile in either direction.

(c) **Location of logo signs.** The following locations shall not be approved for the installation of logo signs:

(1) An interchange with another freeway.

(2) Where insufficient space exists to install logo sign panels.

(3) Any location where the Department believes the installation of logo signs is not in the best interest of the traveling public.

(d) **Removal of general motorist service signs.** Where logo signing is erected for an interchange, existing general motorist service signs will be removed. If no business elects to participate in the logo program at an interchange, general motorist service signs will remain.

**730:35-19-6. Logo sign contractor**

(a) The Department of Transportation shall enter into a contract with a firm, group or association in the State of Oklahoma to establish a logo signing program. This program shall provide for logo signing on the right-of-way of controlled access highways. The signing shall contain specific information on gas, food, lodging, attractions, and camping for the benefit of the motoring public.

(b) The contractor shall administer the entire logo signing program, including contacting all eligible businesses, entering into lease agreements with the businesses, collecting fees to be charged, constructing and erecting the signs, and maintaining the signs.

**730:35-19-7. Logo agreement; fees**

(a) **Application.**

(1) **Initial contacts.** When the program to install logo signing is initiated, business establishments in the vicinity of the interchange will be surveyed by the contractor to determine eligibility. The program and the costs involved will be explained by the contractor.

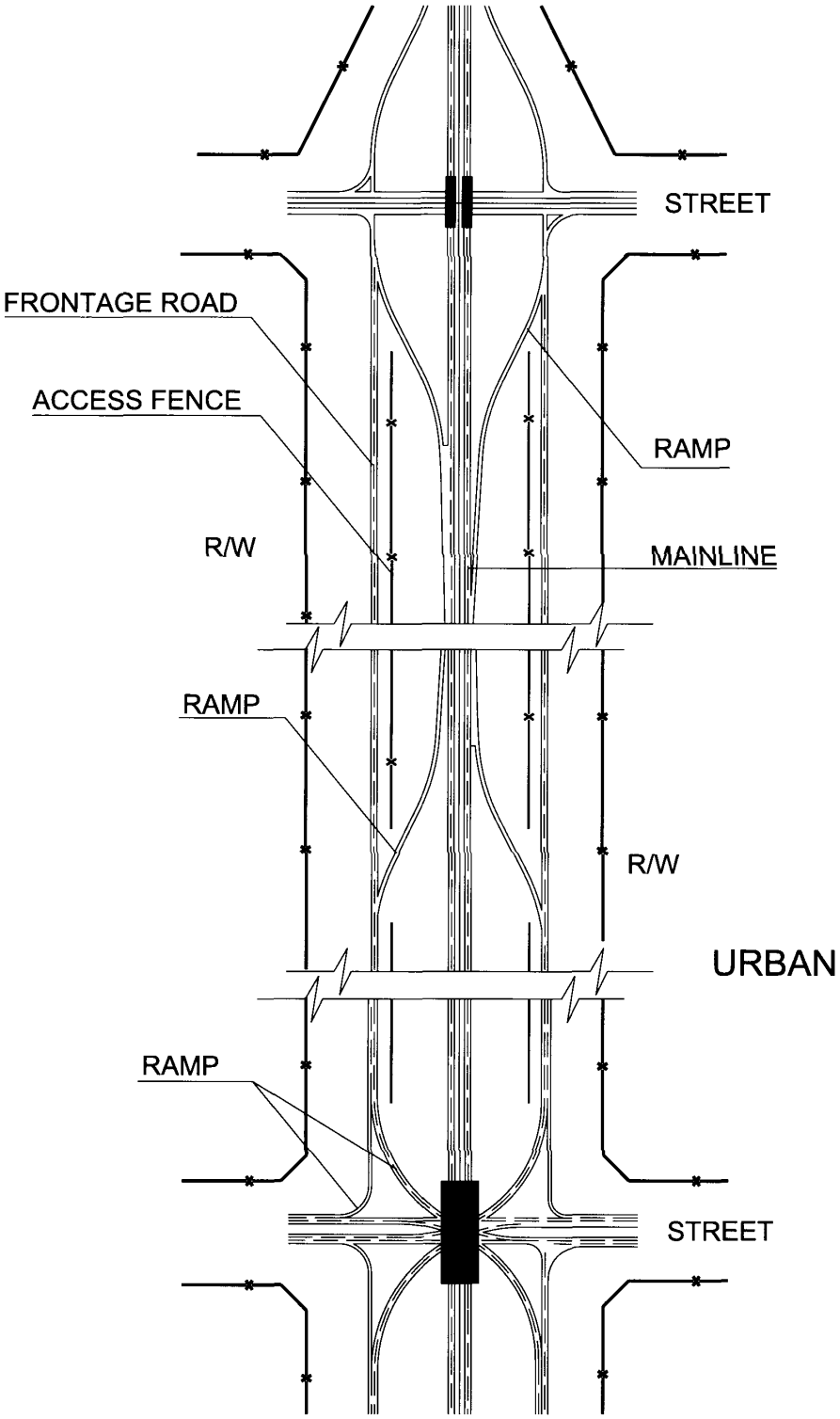
(2) **Logo signing agreement.** Eligible businesses that wish to participate in the logo signing program and which can be accommodated will enter into a "Logo Agreement" with the contractor. The logo agreement form must have been approved in advance by the Department.

(b) **Fees.** A monthly or annual fee will be charged by the Contractor to participating businesses. This fee will be used to pay the total project costs including the cost of making the survey and initial contacts, designing the project, all administration costs, construction, erection, and maintenance of the signs. There will be no expense to the Oklahoma Department of Transportation under this program.

(c) **Surcharge.** The contractor, ~~in accordance with House Bill 1279, amending Title 69 § 4026,~~ shall pay to the Department of Transportation, a negotiated amount which is no less than 10% of the contract price between the contractor and the advertiser. The contractor shall deliver to the Department of Transportation quarterly, a check, draft, or money order in the amount of the ~~mandated 10% fee~~ surcharge collected on all advertising rates during the preceding quarter. These monies will be paid to the Department of Transportation no later than the 15th day of January, April, July, and October of each year.

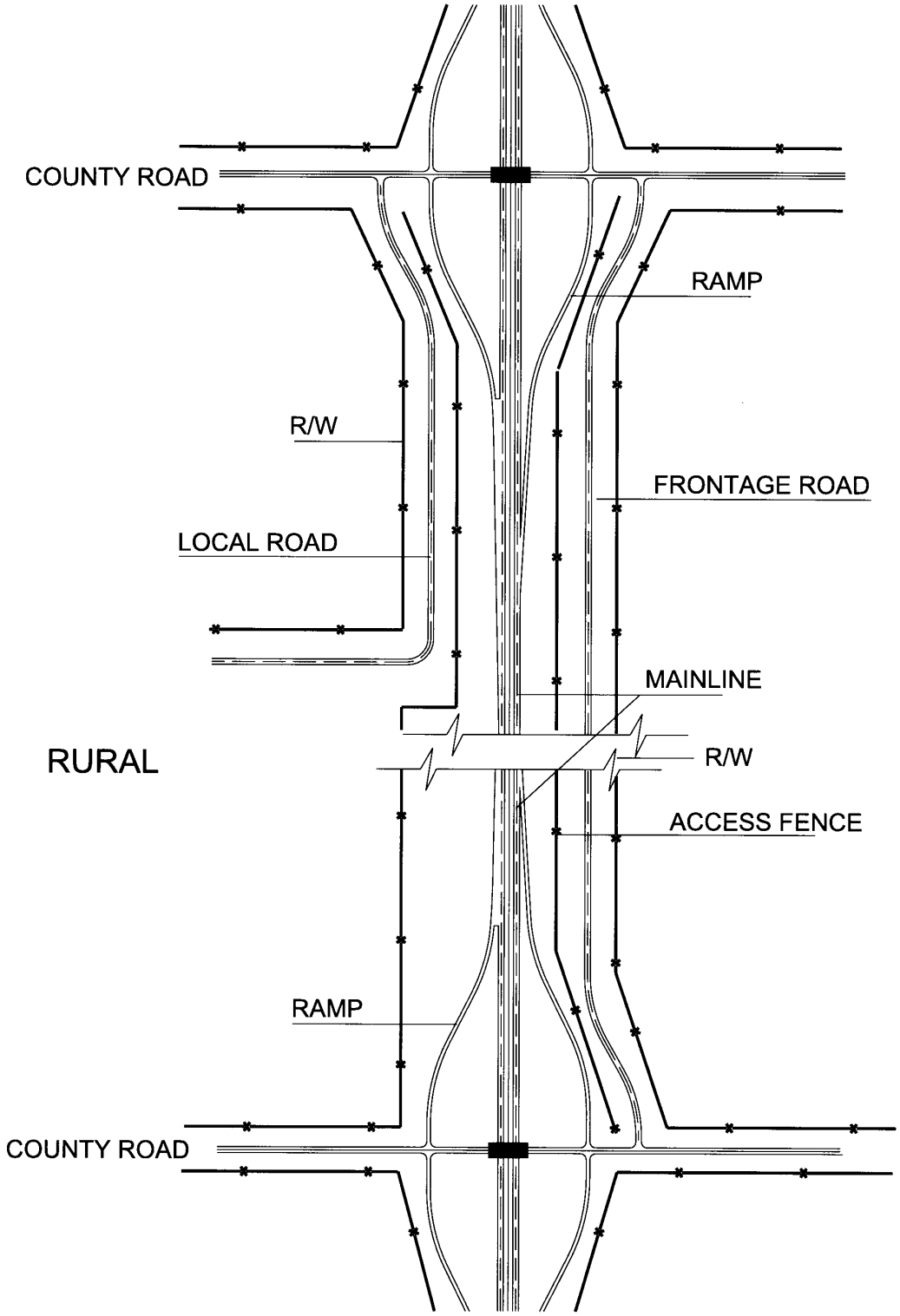
**APPENDIX A. URBAN INTERSTATE INTERCHANGE [REVOKED]**

**APPENDIX A. URBAN INTERSTATE INTERCHANGE [NEW]**



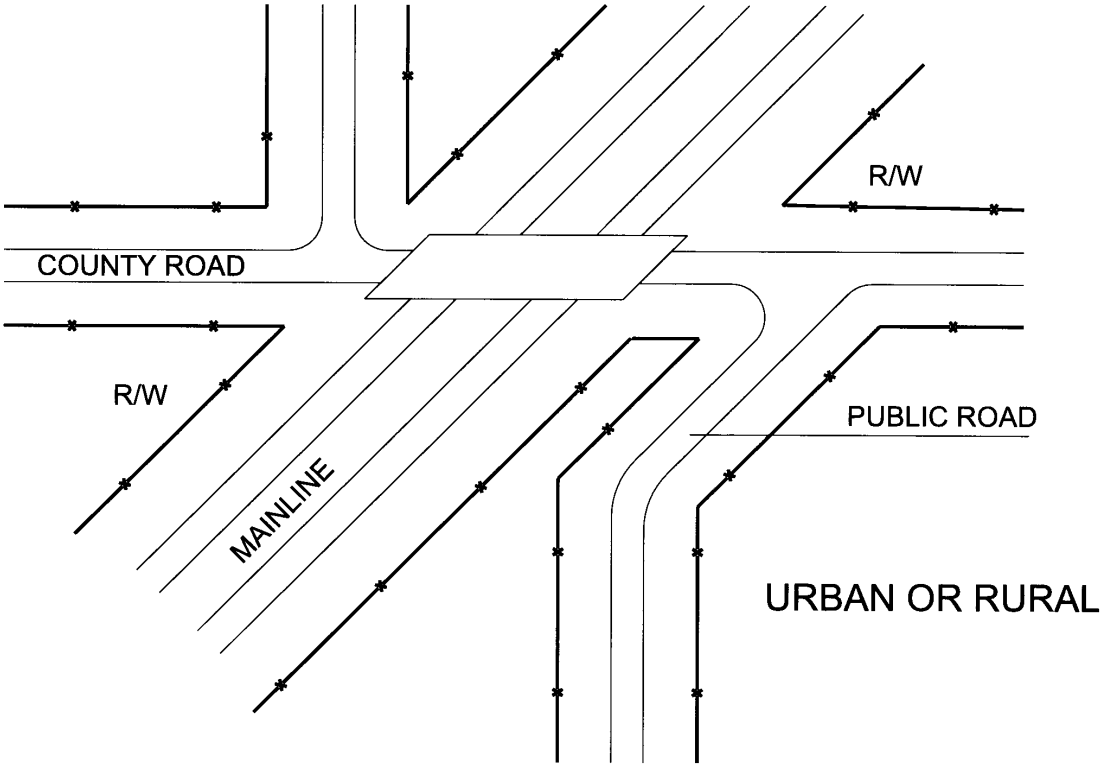
**APPENDIX B. RURAL INTERSTATE INTERCHANGE [REVOKED]**

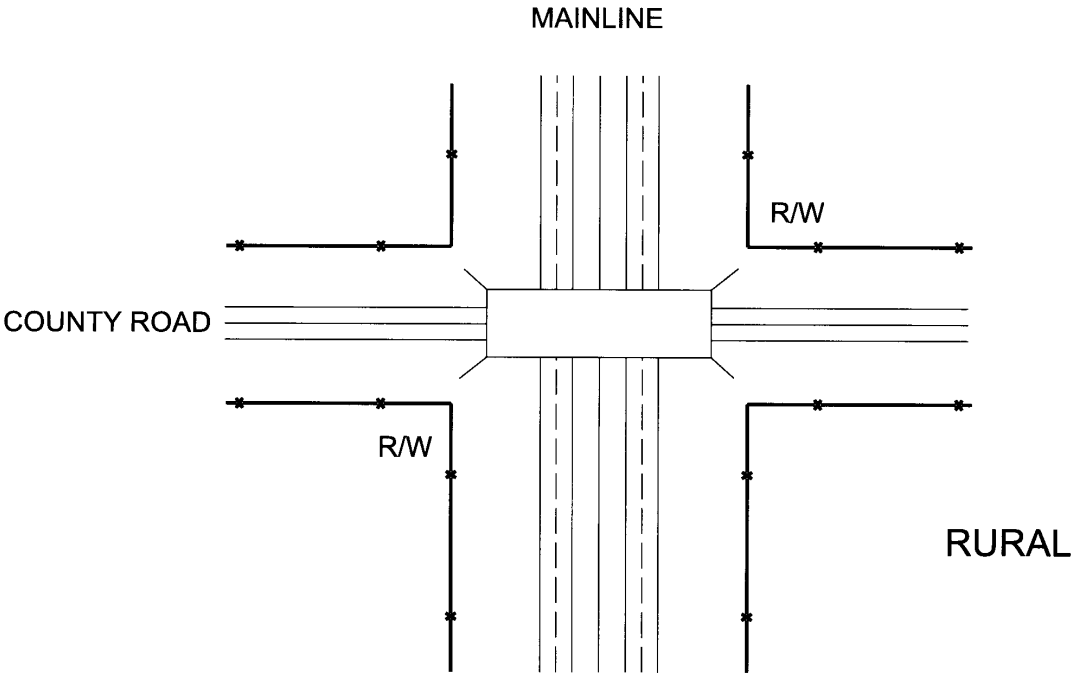
**APPENDIX B. RURAL INTERSTATE INTERCHANGE [NEW]**



**APPENDIX C. RURAL AND URBAN PRIMARY INTERCHANGES [REVOKED]**

**APPENDIX C. RURAL AND URBAN PRIMARY INTERCHANGES [NEW]**



## APPENDIX D. PREFERRED GUIDELINE CRITERIA FOR SIGNING TRAFFIC GENERATORS ON FREEWAYS OR EXPRESSWAYS [REVOKED]

## APPENDIX D. PREFERRED GUIDELINE CRITERIA FOR SIGNING TRAFFIC GENERATORS ON FREEWAYS OR EXPRESSWAYS [NEW]

Trailblazing signing off the state highway system shall be installed prior to the installation of any Tourist Oriented Directional Signing, and shall conform to the Manual on Uniform Traffic Control Devices. Trailblazing signing that is not properly installed or maintained shall be justification for removal of the advance guide signs on the highway system.

a. **Airports.** City or County owned with regularly scheduled airline passenger service.

Distance from Interchange:
Major Metropolitan Area, Urban Area or Rural Area — 15 Miles

Color: — White Legend/Green Background

b. **College and Universities.** Fully accredited by Oklahoma State Regents for Higher Education.

Distance from Interchange:
Major Metropolitan Area, Urban Area, or Rural Area — 5 Miles

Color: — White Legend/Green Background

c. **Vo-Tech Schools/Technology Centers.** Fully accredited by Oklahoma State Department of Vo-Tech Education.

Distance from Interchange: — 5 Miles

Color: — White Legend/Green Background

d. **Military Bases.** Minimum of 5,000 employees and permanently assigned military personnel.

Distance from Interchange: — 5 Miles

Color: — White Legend/Green Background

e. **Amusement Parks, Arenas, Auditoriums, Fairgrounds, Convention Halls, Major Recreational Areas, Museums, Stadiums, State Parks, and Zoos.**

Distance from Interchange: — 5 Miles

Minimum Annual Attendance: — 50,000

Color: — White Legend/Green Background

f. **National Parks or Monuments.**

Distance from Interchange: — 5 Miles

Color: — White Legend/Brown Background

g. **Hospitals.** Shall have a resident physician on duty 24 hours per day; 7 days per week.

Distance from Interchange: — 5 Miles

Color: — White Legend/Blue Background

## APPENDIX E. TRAFFIC GENERATORS THAT DO NOT NORMALLY WARRANT SIGNING [REVOKED]

## APPENDIX E. TRAFFIC GENERATORS THAT DO NOT NORMALLY WARRANT SIGNING [NEW]

**BUSINESS**

TV/Radio Stations
Theaters
Motels/Hotels/Inns*
Trailer Parks*
Industrial Parks & Plants
Shopping Centers

**CEMETERIES**

Local or State
Private/Public
Military

**COMMUNITIES**

Civic Centers
Libraries
Churches
Subdivisions

**GOVERNMENTAL**

Research/Experimental
County & City Facilities
Courthouses
Driver's License Centers
Highway Buildings
Jails/Prisons
Civil Defense Facilities
Maintenance Facilities
Power Plants

**SCHOOLS**

Grade/High
Vocational/Trade
Seminaries
Private

**MEDICAL**

Mental Facilities
Research Facilities
Sanitariums
Infirmaries or Treatment Centers
Veterans Facilities
County, Fraternal, or
Nursing Homes
Retirement Facilities
Humane Facilities
Emergency Medical Services*

**MILITARY**

Sites or Detachment
Armories
Arsenals

**RECREATIONAL/CONSERVATIONAL**

Country Clubs & Golf Courses
Fish Hatcheries, Game Farms,
Preserves and Refuges
Tree Nurseries/Arboretums
Points of Interest
Camps: Scout, Church, 4-H,
Youth & YMCA/YWCA

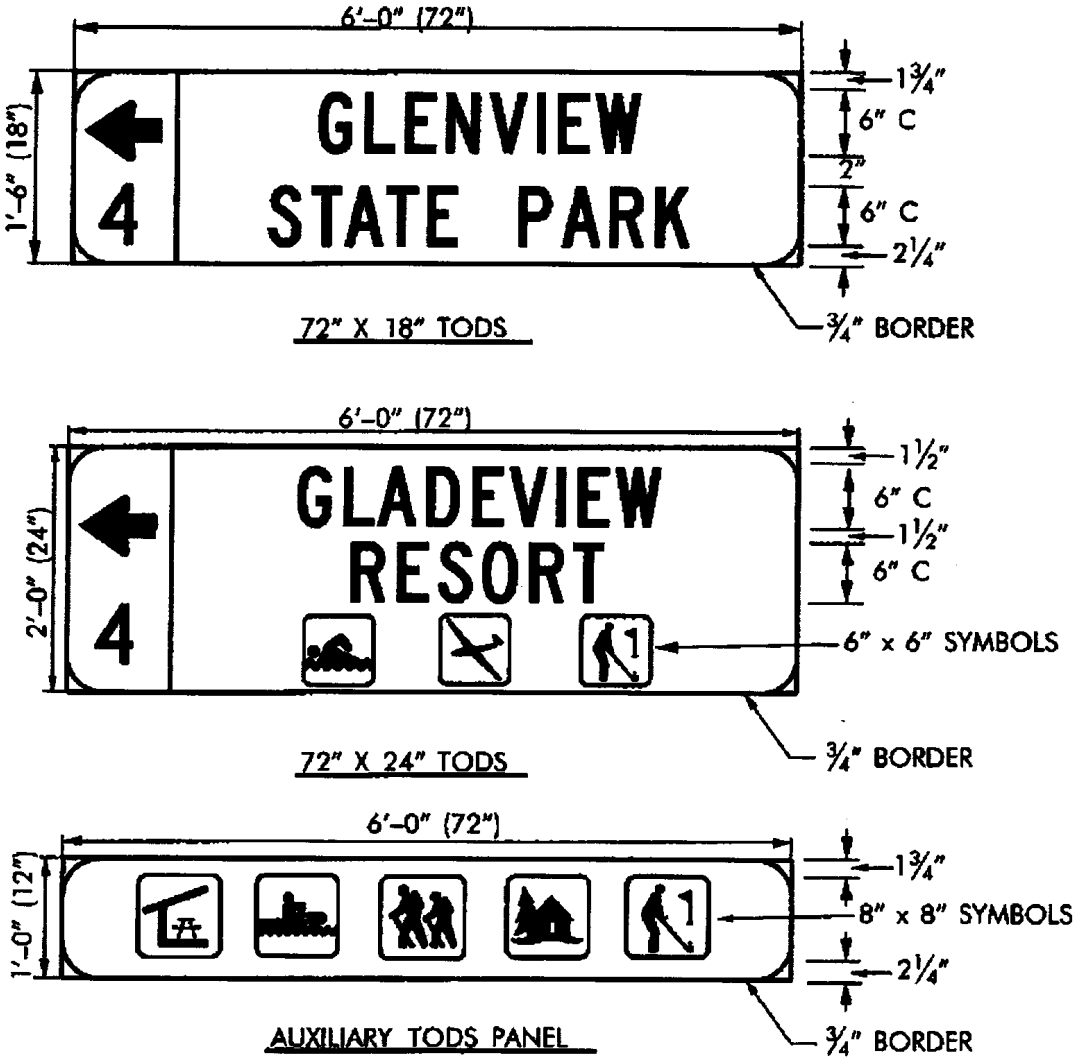
**HISTORICAL**

Homes and Buildings
Privately Owned Facility

*Items may be included on Motorist Service signs
(GAS-FOOD-LODGING-HOSPITAL-CAMPING- TOURISM ATTRACTIONS)

**APPENDIX F. TOURIST ORIENTED DIRECTIONAL SIGNING [REVOKED]**

**APPENDIX F. TOURIST ORIENTED DIRECTIONAL SIGNING (TODS) [NEW]**




SIGN COLOR

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| LEGEND AND BORDER: | WHITE |
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| SYMBOL BACKGROUND: | BLUE OR BROWN |

*[OAR Docket #10-844; filed 5-14-10]*

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

*[OAR Docket #10-937]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions
780:10-1-1 [AMENDED]
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-1 [AMENDED]
780:10-3-2 [AMENDED]
780:10-3-3 [AMENDED]
780:10-3-8 [AMENDED]
Subchapter 5. Finance
780:10-5-4 [AMENDED]
Subchapter 7. Local programs, career majors or instructional positions: application; student accounting; evaluation
780:10-7-3 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2 [AMENDED]
**AUTHORITY:**
State Board of Career and Technology Education 70 O.S. Supp. 2009, Section 14-103; 70 O.S. 2001, Section 14-104, 70 O.S. Supp. 2009, Section 14-108.
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
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n/a
**ANALYSIS:**
The rule amendment assures consistency with the terminology that is being used since implementation of the career cluster instructional framework. It improves clarity and reassigns responsibility since the Associate State Director of Field Services is a position that will not be filled in the near future. The proposed rule amendment specifies the guidelines and timeline for issuing refunds for returned curriculum materials. Proposed rule amendment specifies the criteria to be met prior to designating an account as "uncollectible". It further provides better management of uncollectible accounts by placing them in a special account. The rule amendment clarifies the inventory policy for agency reimbursed instructional equipment for Business and Industry Development Programs.
**CONTACT PERSON:**
Marie Saatkamp, 405-743-5455

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**780:10-1-1. Purpose**

This chapter provides procedures for the establishment and administration of *Career*Tech ~~programs~~ instruction and describes services provided by the Oklahoma Department of Career and Technology Education.

### SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

**780:10-3-1. Technical assistance and supervision**

The Department shall provide technical assistance to all *Career*Tech ~~programs~~ educators to ensure compliance with ~~program~~ standards and state/federal regulations, and to assure the provision of quality *Career*Tech education ~~programs~~.

**780:10-3-2. Career guidance and counseling, career information, disability services, integrated academics, innovation support services, essential skills and career development**

(a) **Career guidance to technology centers.** The Department shall provide coordination and leadership for career guidance and counseling to technology centers and other entities whose primary purpose is the delivery of career guidance and counseling. Technology center districts shall have an identifiable guidance program in place, implemented and administered by an adequate number of credentialed staff and coordinated by staff with experience in delivering or supervising student services that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide career guidance, and provide support for students to help them be successful in their career pathway.

(b) **Career Information.** The Department shall provide technical assistance to schools, institutions, and agencies for career development software and career information materials

(c) **Financial Aid Services.** The Department shall represent the Oklahoma career and technical education system by performing a liaison function with the Student Financial Aid Office (SFA) of the US Department of Education. As such, the Department will determine the in-service needs of technology center financial aid personnel and arrange for knowledgeable individuals, from SFA or other professional organizations, to conduct workshops and training sessions. The purpose of these in-service opportunities is to strengthen financial aid

programs at technology centers ensuring adherence to current state and federal regulations governing the administration of financial aid programs. The Oklahoma Department of Career and Technology Education shall collect relevant statistical data related to financial aid activities at technology centers and report this information where appropriate. The Oklahoma Department of Career and Technology Education shall also administer the Oklahoma GI Bill program that provides tuition assistance to qualified Vietnam-era veterans.

(d) **Innovation Support Services.** The Department shall provide support for the alignment of Oklahoma education innovation and improvement initiatives through the services of the Innovation Support Services Liaisons. The Innovative Support Services Liaisons shall provide technical assistance and services focused on the High Schools That Work ten key practices, guidance and instruction for improved student achievement along with leadership from the Technology Center Services Division to create a culture of high expectations to local education agencies and/or technology centers for school improvement with raised student achievement. The ISS Division/Liaisons shall accomplish its purpose by providing:

(1) Support for education innovation.

(2) Lead and participate in technical assistance visits and provide technical review visits with follow-up.

(3) Assist in locating and using resources and materials.

(4) Provide guidance for implementing career pathways, plans of study, improved instruction, and services supported by the Oklahoma Department of Career and Technology Education.

(5) ISS Liaisons shall serve local education agencies designated by the Oklahoma Department of Career and Technology Education. The local education agency shall request the assistance and shall designate a local administrator, counselor, or instructor to coordinate the services to be delivered.

(e) **Disabilities services.** The Department shall coordinate and provide technical assistance to assure appropriate services and accessibility for individuals with disabilities and other members of special populations enrolled in CareerTech instruction at ~~in~~ technology centers and ~~in *Career*Tech programs in~~ at local education agencies. The Department will also provide guidance and assistance for the field to assist students with transition from high school to a technology center as well as transition from technology centers to postsecondary education and/or work.

(f) **Integrated academics and essential skills.** The Department shall coordinate developmental activities and provide technical assistance to technology centers and skills centers for education enhancement, career assessment, and employability skills development.

**780:10-3-3. Instructional materials development and dissemination**

(a) **Purpose.** The Curriculum and Instructional Materials Center (CIMC) and the Testing Division shall develop, warehouse, and disseminate instructional materials.

(b) **In-state sales.** The Department curriculum and instructional materials shall be made available for purchase in state upon request according to the prices designated in the CIMC catalog or online catalog. All prices are subject to change without notice.

(c) **Out-of-state sales.** The Department will review the Out-of-State Pricing Policy annually and establish a pricing structure for selling the instructional materials developed by the agency.

(d) **Ordering.** Orders for CIMC materials shall be made using the catalog order form, by telephone, fax, or Internet. All orders for Testing Division products will be filled following standard CIMC ordering procedures.

(1) **Mail orders.**

(A) **Inclusion of item number and title in orders.** When using the order form in the CIMC catalog, both the item number and the title shall be included to avoid processing errors.

(B) **Payment.** All school and other institutional orders shall be accompanied by an official purchase order number, credit card number, or personal check.

(2) **Telephone orders.**

(A) **Placing an Order.** Telephone orders may be placed by calling the Curriculum Customer Service Division of the Oklahoma Department of Career and Technology Education.

(B) **Order confirmation.** An authorized purchase order or credit card number shall be available when the order is placed.

(3) **Fax orders.** All fax orders shall contain items to be purchased and a purchase order or credit card number.

(4) **Internet orders.** All orders taken from the CIMC home page Internet catalog should be mailed, e-mailed, or faxed to Curriculum Customer Service.

(e) **Shipping charges.** Shipping charges shall be included in the invoice statement for all materials.

(f) **Payments.**

(1) **Invoices and payments.** All orders with an authorized purchase order number shall be invoiced within five (5) working days after the materials have been shipped. Payment of materials shall be upon receipt of invoice.

(2) **Individual and for-profit company purchases.** Individual and for-profit company purchases shall be shipped upon receipt of a check, credit card, or money order for the amount of purchase plus sales tax (only if Oklahoma customer) plus shipping.

(3) **Acceptable currency.** Checks shall be drawn upon a United States bank and payable in United States currency.

(4) **Credit card purchases.** Any purchase can be shipped upon authorization of the following credit cards: VISA, MasterCard, and Discover.

(5) **International orders.** All orders received from out of the continental United States shall be shipped upon receipt of a valid credit card number or United States money order for the amount of purchase plus 20 percent for shipping.

(6) **Online Curriculum.** Payment for curriculum delivered through the CTLN or other online partners will be in accordance with the published payment policies of CIMC.

(7) **Online testing.** Access to the department's online testing system will be free to in-state CareerTech educators. Access to this system will be available to all other users at established rates upon receipt of an official purchase order number, credit card number, or personal check.

(g) **Authorization to return materials.**

(1) **In-state return.** In-state customers shall request authorization to return materials. Upon approval, the materials shall be returned prepaid, in resalable condition, within 90 days from the invoice statement date.

(2) **Out-of-state return.** Out-of-state customers shall request authorization to return materials. Upon approval the materials shall be returned prepaid, in resalable condition, within 30 days from the invoice statement date.

(3) **Stipulations for full credit.** The following stipulations apply to all in-state and out-of-state returns:

(A) **Authorization.** After authorized returned goods are received, full credit will be issued for current editions of materials that are unmarked and in resalable condition. Items returned to the CIMC that are not in resalable condition, are not within the approved return period, or are not authorized for return will be returned to the purchaser without credit.

(B) **Shipping costs.** Original shipping costs must be paid by purchaser on all returns unless there was an error by CIMC customer service or warehouse.

(C) **Shipping guidelines.** After receiving authorization, the materials should be shipped to Oklahoma Department of Career and Technology Education, Instructional Materials Warehouse, 1201 North Western, Stillwater, Oklahoma 74074.

(D) **Invoice number.** The invoice number on which the materials were billed should be included with the returned materials.

(E) **Restocking fee.** Materials returned outside the stipulations for full credit and authorization will be assessed a 15% restocking fee.

(F) **Refund policy.** Effective immediately, the refund policy for MAVCC and CIMC will be as follows: After 120 days of invoice date, a refund check will be issued unless a backorder is pending. A copy of appropriate backup should be attached to the refund check to document the customer account and amount.

(h) **Damaged materials.**

(1) **Credit.** For credit to be authorized, Curriculum Customer Service shall receive notification of damaged materials within five days of receipt of materials. Credit for goods in defective condition will be 100 percent of invoice price or free replacement.

(2) **Damage incurred in transit.** If materials were damaged in shipment, claims must be filed against the carrier. The CIMC is not responsible for damage incurred in transit.

**780:10-3-8. Planning**

(a) **Development of state plans.** The Department shall be responsible for developing annual and long-range state plans for the direction of career and technology education in the state of Oklahoma.

(b) **Applications.** The Department will be responsible for disseminating and collecting local applications for comprehensive school programs, career majors and/or instructional positions.

(c) **Review of new requests.** The Department shall have the responsibility to review all new programs, career majors and/or instructional position requests for comprehensive schools and career major, instructional position and course requests for technology centers and make recommendations regarding approval or nonapproval of state funding based on statewide and local job demand data and local need.

(d) **Special projects.** The Department shall coordinate and develop special projects as assigned by the State Director.

## SUBCHAPTER 5. FINANCE

**780:10-5-4. Instructional funding**

(a) **Secondary and full-time adult career majors in technology centers.**

(1) **Formula payments.** The State Board will fund a portion of the cost of instruction and services in accordance with an approved technology center funding formula. The Department shall consider enrollment, number of school sites in the district, number of instructors employed on a full-time basis, transportation, availability of funds, provision of appropriate student services for all students and appropriate state and federal laws in developing the annual technology center funding budget.

(2) **Formula adjustment.** The failure of a technology center to meet minimum standards may result in an adjustment of the funding.

(b) **Secondary programs in comprehensive schools.**

(1) **Budgets.** The State Board will assist local districts in providing for excess costs of *Career*Tech programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.

(2) **Program assistance monies.** All approved *Career*Tech programs shall receive the program assistance monies annually. These monies shall be used to support the additional costs of the *Career*Tech program limited to the purchase of equipment, instructional delivery and supplies, and staff development.

(3) **Equipment matching funds.** New *Career*Tech programs will receive equipment matching funds in the first year of operation, if funding is available. If funding is available, matching funds will be provided to existing programs.

(4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.

(5) ***Career*Tech teacher contracts.** *Career*Tech teacher contracts shall be a minimum of 10 months and shall begin on or before August 1 of each year.

(6) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher of a 10-month *Career*Tech program in a comprehensive school.

(7) **Additional salary.** In those programs where the instructor is employed and approved by the State Board beyond 10 calendar months, the additional salary will be calculated on the basis of 1/10 of the base salary as prescribed by the school district for an instructor of like qualifications employed on a 10-month basis. The career and technology instructor's summer pay is to be calculated on the local school base schedule (including increments and any flat raises provided by the legislature over and above the minimum salary and increments) for instructors of like qualifications.

(8) **Part-time programs.** In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding of 50 percent.

(c) **TechConnect and TechConnect Plus.** Reimbursement for approved TechConnect and TechConnect Plus programs shall include incentive assistance and teacher salary supplement in the same manner as with other comprehensive school programs. The program assistance (state) funds are provided to meet the minimum program operation requirements. Federal career and technology (vocational) education funds and/or local funds may be used to meet the program operation recommendations.

(d) **Business and Industry Services.** The Department shall reimburse Business and Industry Services initiatives based on the availability of funds and approved by the Business and Industry Services Division.

(e) **Skills Centers programs.** The Department shall reimburse Skills Centers programs based on the availability of funds and approved by the Skills Centers Division.

(f) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(g) **Apprenticeship.** Local education agencies conducting apprenticeship-related training ~~programs~~ shall qualify for reimbursement at a rate approved by the Department.

(h) **Work-site learning.** Approved work-site learning activities shall meet the standards established by the Department. Reimbursement shall be based on availability of funds and approval by the Department.

(i) **Reduction in instruction and/or student services due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend reduction in instruction and/or student services based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply ~~to a program~~ to instruction being considered for closure based upon changes in funding. The State Board shall make the determination for reduction in instruction and/or student services based on economic factors, need, duplication, school to industry articulation, school to postsecondary articulation, student demand, student placement, student completion/retention, performance measures and/or standards and the decision of the Board shall be final.

## SUBCHAPTER 7. LOCAL PROGRAMS , CAREER MAJORS OR INSTRUCTIONAL POSITIONS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

### 780:10-7-3. Standard; accreditation; review

(a) **Minimum standards.**

(1) **Establishment; funding.** As appropriate, minimum standards shall be established by the State Board for postsecondary and secondary *Career*Tech programs, career majors and/or courses. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality *Career*Tech education. Funding approval is contingent upon meeting minimum standards or making satisfactory progress toward meeting those standards.

(2) **Standards.** Standards shall include the following:

(A) STANDARD I-Instructional Planning and Organization

(B) STANDARD II-Instructional Materials Utilization

(C) STANDARD III-Qualified Instructional Personnel

(D) STANDARD IV-Enrollment and Student-Teacher Ratio

(E) STANDARD V-Equipment and Supplies

(F) STANDARD VI-Instructional Facilities

(G) STANDARD VII-Safety Training and Practices

(H) STANDARD VIII-Advisory Committee and Community Relations

(I) STANDARD IX-Leadership Development

(J) STANDARD X-Coordination Activities (excluded in Technology
Education, TechConnect and most Skills Centers programs)

(K) STANDARD XI-Student Accounting and Reports

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *Career*Tech education. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *Career*Tech personnel throughout the state. Evaluation results will be considered in the processes of planning and funding programs.

(5) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program or career major based on the accountability measures developed as required by P. L. 109-270 which include:

(A) Student attainment of challenging State established academic and technical skill proficiencies.

(B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

(C) Placement in, retention in, and completion of postsecondary education or advanced training, placement in military service, or placement or retention in employment.

(D) Student participation in and completion of career and technology (vocational and technical) education programs or career majors that lead to nontraditional training and employment.

(6) **Monitoring.** Programs, courses or career majors not meeting minimum standards will be monitored on an annual basis. If a technology center, skills center or comprehensive school has programs, career majors, courses and/or services not meeting evaluation standards, an annual status report addressing completed and/or pending corrective actions will be submitted to the Accreditation Division for review no later than the last Friday in March. During the month of April, the Accreditation Division will notify the school in writing whether the status report was approved or disapproved.

(7) **Technical assistance.** The Department staff will provide technical assistance to help *Career*Tech programs, courses and/or career majors meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student financial assistance programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *Career*Tech institutions and programs, courses and career majors that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Approval, Evaluation and Accreditation Procedures for Technology Centers.** This publication shall be made available to interested parties from the Accreditation Division of the Department.

(3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probational Accreditation Status" continues to be in noncompliance of the corrective action plan as approved by the State Board.

(c) **Secondary evaluation.** Substandard secondary *Career*Tech education programs or career majors shall be formally evaluated, utilizing minimum ~~program or career major~~ standards, as adopted by the State Board.

(d) **Review of substandard programs or career majors.**

(1) **Probationary status.** A *Career*Tech program or career major may be placed on a probationary status if:

(A) The program or career major fails to meet standards and the deficiencies are documented in writing as a result of a visit or a team evaluation, and/or

(B) The program or career major does not meet the specifications as outlined in the **Rules for Career and Technology Education.**

(2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for improvement shall be given to the school administration.

(3) **Reevaluation.** A program or a career major on probationary status shall be reevaluated within one year.

(A) **Removal of probation.** If the documented deficiencies have been
corrected upon reevaluation, the probationary status shall be removed.

(B) **Reevaluation failure.** If the program in a comprehensive school has
failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the division's appropriate Associate State Director and the program may be recommended for closure or reduction in funding for the following school year. If the career major in a technology center has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the Associate State Director of Field Services.

(i) **Written notification; appeal.** The division's appropriate Associate State Director will notify, in writing, the superintendent of the comprehensive school in which the program, instructional position or career major is located that the Department is recommending closure or reduction in funding for the program or career major for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement. The ~~Associate State Director of Field Services~~ Manager of the Technology Center Services Division will notify, in writing, the superintendent of the technology center in which the career major is located that the Department is recommending a reduction in funding for the instructional position for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement.

(ii) **Recommended program and/or career major closures.** The division's appropriate Associate State Director will make a presentation of

recommended program closures, if any, in comprehensive schools for State Board approval at the March board meeting. The ~~Associate State Director of Field Services~~ Manager of the Technology Center Services Division will make a presentation of recommended career major closures, if any, in technology centers for State Board approval at the March board meeting.

(e) **Evaluation of recipients receiving federal funds.** Programs or career majors of eligible recipients receiving federal funds under P. L. 109-270 shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

## SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

**780:10-9-2. Equipment**

(a) **State-owned equipment.**

(1) **Donated or purchased equipment.** Equipment donated to or purchased by the 8Department through reimbursement shall be considered the property of the Department.

(2) **Special funding.** Equipment purchased through special funding, which require that the equipment be used in specific programs, shall be placed in those programs and shall be subject to appropriate state and federal laws, rules and regulations.

(3) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(4) **Closing program.** The Program Administrator of the training program shall notify the Department inventory personnel, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased for use by the Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

(c) **Identification.**

(1) **Department Purchased.** All equipment purchased by the Department with a value of $500 or more shall be affixed with an appropriate tag.

(2) **Department Reimbursement.**

(A) All equipment purchased by local education agencies (LEA) and reimbursed by the Department with state funds ~~and having~~ for Business and Industry Development Programs, with a value of ~~$2500~~ $1000 or more shall be affixed with an appropriate Department asset tag. The equipment will be subject to a five day recall by the Business and Industry Development Division.

(B) Equipment purchased by local education agencies (LEA) and reimbursed by the Department for non-Business and Industry Development Programs ~~based on grant awards shall not be required to be tagged as Department assets~~. with state funds and having a value of $2500 or more shall be affixed with an appropriate Department asset tag.

(C) Equipment purchased by local education agencies (LEA) and reimbursed by the Department based on grant awards shall not be required to be tagged as Department assets.

(3) **Inventory records.** The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to the local education agency or to the appropriate Department personnel to be affixed to the equipment.

(d) **Accountability.**

(1) **Tagged equipment.** Equipment to be inventoried annually will be mailed to Superintendent or their designee, by the Department, with a request to update the list and return within 60 days unless a physical inventory is conducted by Department inventory personnel

(2) **Adjustments.** The Department, after review of requests, will make necessary adjustments to the inventory.

(e) **Disposal.** Schools requesting items to be removed due to lost, stolen, salvage, or surplus must submit an inventory adjustment form for approval. Department personnel will inspect and/or make recommendations on the request.

(f) **Transfer of Ownership.** In no case shall an equipment transfer be made without advanced approval from Department inventory personnel. The ownership of state-owned equipment may be transferred upon approval of the Board and the State Purchasing Director to the local education agency (LEA) in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Department inventory personnel will provide requests to accept and notification of transfers.

(g) **Guidelines.** Equipment procedures and guidelines, and the inventory adjustment forms can be found on the Department Website and will be utilized to enforce these rules.

*[OAR Docket #10-937; filed 5-26-10]*

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

*[OAR Docket #10-938]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Technology Centers Education
780:15-3-1 [AMENDED]
780:15-3-2 [AMENDED]
780:15-3-3 [AMENDED]
780:15-3-4 [AMENDED]
780:15-3-6 [AMENDED]
780:15-3-7 [AMENDED]
780:15-3-8 [AMENDED]

**AUTHORITY:**

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**DATES:**
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**Public Hearing:**
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**Legislative Approval:**
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n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
The rule amendment assures consistency with the terminology that is being used since implementation of the career cluster instructional framework. It improves clarity and reassigns responsibility since the Associate State Director of Field Services is a position that will not be filled in the near future. The proposed rule amendment specifies the guidelines and timeline for issuing refunds for returned curriculum materials. Proposed rule amendment specifies the criteria to be met prior to designating an account as "uncollectible". It further provides better management of uncollectible accounts by placing them in a special account. The rule amendment clarifies the inventory policy for agency reimbursed instructional equipment for Business and Industry Development Programs.
**CONTACT PERSON:**
Marie Saatkamp, 405-743-5455

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

### 780:15-3-1. Rationale; corporation status; taxing authority

(a) **Clientele.** The concept of technology centers, embraces career and technology education for all who can benefit. Specifically, the Carl D. Perkins Vocational Education Act of 1984 (PL98-524) and subsequent amendments thereto provide training for high school students; persons who have completed or left high school; persons employed but who need training or retraining to achieve stability or advancement in employment; and for persons who are academically or socioeconomically disadvantaged or who have physical or mental disabilities. ~~Admission to the~~ Enrollment in a technology center or to specific ~~programs~~ career majors shall not be contingent upon any single measure but upon a combination of factors including but not limited to achievement levels, aptitude, interest, work history, and ability to benefit in terms of employment.

(b) **Establishment.** Technology center districts may be established through criteria and procedures established by the State Board and shall be operated in accordance with the rules and regulations of the State Board [70 O.S. 1988, §14-104 and Section 9B, Article X, Oklahoma Constitution].

(c) **Official name-technology centers.** *Its official name shall be designated by the State Board of Career and Technology Education, in which name it may sue and be sued, and be capable of contracting and being contracted with, and holding real and personal estate* [70 O.S. 1988, §14-108(B)]. The State Board shall authorize local area school districts to utilize unofficial names for marketing purposes. The State Board recognizes the term Technology Center. Any exceptions must be approved by the State Board.

(d) **Corporation status.** *A technology center district shall be a body corporate and shall possess the usual powers of a corporation for public purposes* [70 O.S. 1988, §14-108(B)].

(e) **Operational mill levy.** Constitutional authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for operational purposes. If approved by the majority of the voting electors, it needs to be voted only once, unless there is a need to increase or decrease a millage levy currently under five mills. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(f) **Building fund levy.** Authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for building purposes pursuant to the provisions of 70 O.S.Supp.1995, Section 1-118.1. Any millage levy voted is effective for one year. If a building fund levy is needed for multiple years, it shall be voted upon each year.

(g) **Local incentive levy.** Authorization has been granted to vote up to five mills local incentive levy on the dollar valuation of the taxable property in a technology center district. This levy may be used for operational or capital needs purposes. This levy, when approved, shall be made each fiscal year thereafter until repealed by a majority of the electors of the technology center district voting on the question at an election called for that purpose. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(h) **Capital outlay bonds.** Authorization has been granted to vote for capital improvements (such as land, buildings, and equipment) that are financed by the issuance of the technology center district's general obligation bonds. Bonds so voted upon and approved by a majority of the votes cast, once issued, shall not cause the technology center district to become indebted in an amount, including existing indebtedness, in the aggregate exceeding five percent of the valuation of the taxable property in the technology center district.

**780:15-3-2. Establishment/Sustainment of a technology center district; sites and buildings**

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;
(B) Total population;
(C) Assessed valuation;
(D) Current school enrollments;
(E) Estimated secondary school enrollments;
(F) Estimated full-time adult enrollments;
(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,

(B) A majority of the membership of a board of county commissioners, or

(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of a technology center district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology

center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **State Board approval of sites and ~~branch~~ additional campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the campus ~~is able to provide~~ employs a minimum of five full-time instructors who are teaching career majors that have been approved by the Department ~~programs~~, then it may be recognized as an official campus and will be eligible for funding under a formula approved by the State Board. Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus ~~or provide an ongoing occupational program~~ at a site other than the existing pre-approved ~~main~~ campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to the nearest available ~~*Career*Tech programs~~ technology center campus, district valuation, student enumeration, and local industry needs.

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for board district offices of the board shall be residents of the board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Board District 1: One year
(B) Office Number 2, Board District 2: Two years
(C) Office Number 3, Board District 3: Three years
(D) Office Number 4, Board District 4: Four years
(E) Office Number 5, Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy~~; estimate of needs~~.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S 2001, § 14-108, as amended, and the county excise board has approved an "Estimate of Needs" for the district or in compliance with the 1996 School District Budget Act in 70 O.S. Supplement 1996, §5-150, as amended.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy. A second election must be requested by the technology center board and approved by the State Board.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of instruction. The technology center superintendent shall maintain close contact

with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that ~~training~~ career and technology education instruction may be closely coordinated with current needs and anticipated employment opportunities ~~in the employment market~~. He/she shall evaluate instruction continuously and bring about changes and improvements that will ensure that students will obtain the skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator's credential. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a Career Tech teacher, supervisor, or administrator. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Fourth, the technology center superintendent shall have a Technology Center Administrator's Credential.

(3) **Issuance by the Technology Center Services Division.** The Technology Center Services Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center administrator's credential.

(4) **Technology Center Administrator's Credential.** Other school administrators who are responsible for supervision and administration of Department-approved career majors and for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a standard or a provisional Technology Center Administrator's Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers.

(A) **Standard Technology Center Administrator's Credential.** A person who has a superintendent's certificate or a secondary principal's certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator of Department-approved programs and/or career majors and has a valid Oklahoma *Career*Tech teaching certificate shall be issued a standard technology center administrator's credential.

(B) **Provisional technology center administrator's credential.** A person with a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator of Department-approved programs and/or career majors and without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center administrator's credential and be given three years from the date of issuance to complete the eight semester hours specified below to meet the requirements for a standard technology center administrator's credential. A person who has been employed in an administrator, counselor or coordinator position for at least five years at a technology center, who has a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate or valid school counseling certificate shall be issued a provisional technology center administrator's credential and be given five years from the date of issuance to complete the eight semester hours specified below plus the appropriate ODCTE administrator development program(s) identified when the technology center administrator's credential is issued to meet the requirements for a standard technology center administrator's credential. The issuance of the technology center administrator's standard credential shall be based on the completion of a minimum of eight semester hours from three of the following areas:

(i) History and Philosophy of Career and Technology Education;

(ii) Technology Center Finance;

(iii) Curriculum for Career and Technology Education; and,

(iv) Career and Technology Education ~~Program~~ Instruction, Planning Development and Evaluation.

(5) **Requirements for first-year technology center superintendents.** The State Board of Career and Technology Education reaffirms its commitment to provide support and services to new technology center superintendents in Oklahoma. To assist first-year technology center superintendents in the state in providing their respective districts with maximum leadership, effective management, and strong educational programs, the following professional development requirements shall be met by each technology center superintendent employed for the first time in the state of Oklahoma as a technology center superintendent:

(A) Meet qualifications for the Provisional or Standard School Superintendent Certificate.

(B) Meet qualifications for the Provisional or Standard Technology Center Administrator's Credential.

(C) Attend professional development workshops or training seminars equal to eleven days (66 hours) of training:

(i) 1 day: Attend a meeting of the State Board of Career and Technology Education and a board meeting at a technology center where the first-year technology center superintendent is not currently employed.

(ii) 2 days: Attend the Annual CareerTech Summer Conference. (iii) 2 days: Attend the Annual Technology Center Superintendents June Workshop.

(iv) 6 days: Attend professional development workshops or training in the following general areas:

(I) Superintendent/Board of Education Relationships

(II) Legal Issues/School Law/Open Meeting Laws

(III) Staff Relationships/Due Process

(IV) Community and Industry Relationships

(V) Technology Center Finance

(VI) Plant Management/School Facilities

(VII) Setting School District Site Goals/Strategic Planning/ Planning and Implementing Continuous Improvement Strategies for Schools

(VIII) Individuals with Disabilities Act (IDEA)

(v) If a first-year technology center superintendent can provide evidence that within eighteen months prior to being employed as a technology center superintendent, that he/she has completed one of the training requirements listed above in (iv), the Technology Center Services Division will review his/her documentation and determine if credit should be given for training previously completed.

(D) After July 1, 2009, the Technology Center Services Division of the Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for first-year technology center superintendents. If content and method of delivery is approved by the Technology Center Services Division prior to a first-year technology center superintendent participating in training, a first-year technology center superintendent may complete some of the training requirements by IETV, on-line training, webinars, or similar methods of delivery. The Technology Center Services Division will issue a certificate to each new superintendent who has successfully completed the training requirements for first-year technology center superintendents. A copy of this certificate will be provided to the Oklahoma State Department of Education. To maintain certificate validity for second-year technology center superintendents, the Technology Center Services Division will provide to first-year technology center superintendents and the Oklahoma State Department of Education a report showing training completed by first-year technology center superintendents. The Technology Center Services Division will continue to consult with the Oklahoma State Department of Education regarding emerging issues that in the future may need to be integrated into first-year technology center superintendent training.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **Approval of capital improvement projects.** After local board approval, all plans and specifications for technology center buildings, additions, including parking lots and modifications designed for *Career*Tech ~~programs~~ instruction and/or services shall be reviewed by appropriate staff of the Oklahoma Department of Career and Technology Education and shall be approved by the ~~technology center services division~~ Technology Center Services Division of the Oklahoma Department of Career and Technology Education. In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire marshal and the State Department of Education.

~~(n) **State Board approval of capital improvement projects.** The board of education of a technology center district may, without prior approval of the State Board of Career and Technology Education, approve all plans and specifications for technology center school buildings, additions, and major modifications to school buildings that are designed to provide for the offering of *Career*Tech education and services when the cost of the building project is to be paid with local levies or state bond monies or both local levies and state bond monies. (70 O.S. 2001, Section 14-108, as amended.)~~ The State Board must grant prior approval of all plans and specifications for technology center school buildings, additions, and modifications to school buildings that are designed to provide for the offering of *Career*Tech education and services when the cost of the building project is to be paid with state appropriated funds, which includes projects funded with monies from the Educational Lottery Trust Fund, or both local levies and state appropriated funds. (70 O.S. 2001, Section 14-108, as amended.)

(o) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except ~~as provided in 780:10-9-2(d)(2).~~ equipment purchased with equipment grants. When ~~a program~~ instruction can no longer be justified, the State Board may remove the equipment and transfer it to another technology center, skills center, or place it in the ~~equipment pool warehouse~~ Department service center.

(p) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in ~~training programs~~ instruction conducted by the district.

(q) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 2008, §46.3.

(r) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

**780:15-3-3. Elections in existing technology center districts**

(a) **Election of five-year term board member.** A regular election shall be held in each technology center district as may be prescribed by law, at which time the technology center district electors shall elect a member of the board of education to succeed the outgoing member for a term of five years and, if necessary, elect a member of the board to fill any vacancy that occurred since the previous election.

(b) **Board vacancies.** Vacancies for members of the board of education of every technology center district shall be filled by appointment by the board. Persons appointed to fill vacancies in the first half of the term of office for the board position shall serve only until the next succeeding election, at which time the office which they hold shall be placed on the ballot for the balance of the unexpired term. Vacancies filled by appointment following the delivery of the resolution calling for regular elections to the secretary of the county election board shall be filled until the regular elections the following year. Persons elected to fill unexpired terms shall begin those terms at the next regular meeting of the board of education following the election. If the board of education does not fill the vacancy by appointment within sixty (60) days of the date the board declared the seat vacant, the board of education shall call a special election to fill the vacancy for the unexpired term.

(c) **Notification and declaration of candidacy.** Candidates for election as members of the board of education of an existing technology center district shall file a notification and declaration of candidacy with the county election board at the time specified by law.

(d) **Run-off election.** If no candidate receives more than 50 percent of the votes cast in the election, an election between the two candidates with the highest number of votes shall be conducted in accordance with 26 O.S. 2001, §13A-103, as amended.

(e) **County election board.** All technology center elections shall be conducted by the county election board in accordance with 26 O.S. 2001, §13A-101 et seq., as amended.

(f) **Notification of results.** The county election board shall notify the State Board and local school district boards of the results of the initial election of board members. Thereafter, the county election board shall notify the existing area school board of education of the election results.

(g) **Organization of the school board.** The school board of a technology center district shall be organized in accordance with 70 O.S. 2001, §5-119, as amended, and the Rules for Career and Technology Education, Title 780 Oklahoma Administrative Code.

(h) **Responsibilities of the board.** The board of education of a technology center district shall have powers, duties, and obligations in accordance with 70 O.S. 2001, §5-117, as amended. The board will perform all functions necessary for the administration of a technology center district in Oklahoma as specified in the Oklahoma School Code, and in addition thereto, those powers necessarily implied but not delegated by law to any other agency or official.

(i) **Education and training requirements.** Technology Center Board members are required to complete training requirements specified in Sections 5-110 and 5-110.1 of Title 70 of the Oklahoma Statutes. The Department is authorized to provide new, incumbent, and continuing education workshop and training so technology center board members and the State Board of Career and Technology Education members have the opportunity to complete the training that is required by statute. The training may be conducted and/or coordinated by the Department or by an outside entity that has been approved by the Department and has contracted with the Department and/or agreed to provide the training. The Department shall maintain the records that document training completed by technology center board members and State Board of Career and Technology Education members. The Department shall provide each technology center school district board of education member and State Board of Career and Technology Education member with a training status report at least twice a year. If resources are available, the Technology Center Services Division may post training status reports on a web page that is accessible only to appropriate individuals.

(j) **Workshops and training seminars.** The Technology Center Services Division of the Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for technology center board members and State Board of Career and Technology Education Board members. If content and method of delivery is approved by the Technology Center Services Division prior to a board member participating in training, a board member may complete some of the training requirements by participating in IETV, on-line training, webinars or similar methods of delivery.

**780:15-3-4. Financial management procedures for technology centers**

(a) **Annual "Estimate of Needs."** The board of education of a technology center district shall comply with the 1996 School District Budget Act in 70 O.S. Supplement 1996, §5-150, as amended, or file an "Estimate of Needs" annually with the county excise board of the county in which the technology center site of the district is located or is to be located. If the district has, or is to have, more than one technology center site, the "Estimate of Needs" shall be filed with and approved by the county excise board designated by the technology center board of education.

(b) **Preliminary "Estimate of Needs. "** Only when an election is called to increase or decrease the levy shall a preliminary "Estimate of Needs" be published. The date of

publication must be at least ten days before the election. Such elections may be called by the board of education whenever it determines it to be in the best interest of the district to do so.

(c) **Response to levy petition.**

(1) **Operating levy.** It shall be mandatory for the board of education to call an election upon receiving a petition relative to the operating levy millage bearing the signatures of a majority of the qualified technology center electors of the district. The petition shall be filed with the clerk of the board of education. The election shall be held at the next annual election as prescribed by law.

(2) **Incentive levy.** It shall be mandatory for the board of education to call an election to decrease the local incentive levy upon receiving a petition from the electors of the technology center district. Such petition shall be signed by at least fifty (50) percent of the number of technology center district electors who voted in the last school board election in the technology center district. The election shall be held at the next annual election as prescribed by law.

(d) **Preparation of the budget.** The "Estimate of Needs," or budget, shall be prepared, published, and filed at the same times specified for independent school districts, and shall include such financial statements, estimates, and information as may be prescribed by the State Board.

(e) **Duties of county assessor; distribution of tax monies.** After approving the "Estimate of Needs," the county excise board shall certify the required levies to the county assessor of each county having property within the boundaries of the area district. The county assessor shall include the levies on the tax rolls for collection by the county treasurer. The taxes collected by the county treasurer shall be apportioned and remitted to the treasurer of the technology center district in the same manner as that provided by law for tax collections accruing to the benefit of independent school districts.

(f) **Alternate system of accounting.** All technology center districts are authorized to use the alternate system of accounting set forth in 70 O.S. Supp. 1990, §5-135.

(g) **Guidelines.** As a general rule all technology centers will adhere to the **State Board of Education Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance** in the areas that are not covered by the technology center rules and regulations.

(h) **Classification of funds, cash accounts, expenditures and receipts.**

(1) **Coding of revenue.** All technology center districts are required to maintain an ongoing record of income that will ensure a complete and accurate income report as required by the Department. All income will be identified in separate categories for local, state, and federal funds. Effective July 1, 1993, for FY 1994, all technology center districts will be required to use the Oklahoma cost accounting system for coding revenue.

(2) **Coding of expenditures.** All technology center districts will be required to use the Oklahoma cost accounting system for coding expenditures.

(3) **Final expenditure report.** All technology center districts are required to file a completed "Cost Per ~~Program~~ Instruction and Services Report" using guidelines furnished by the Department on or before October 1 of each year.

(i) **Management of and Responsibilities for the Activity Fund (70 O.S. Supp. 1990, §5-129).** All technology center districts shall adhere to the State Board of Education's Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance section entitled "School Activity Fund."

(j) **Factors in determining the allocation formula for technology centers.**

(1) **Formula allocation plan.** The State Board will approve allocation of funds to Technology Centers.

(2) **Finance of operations.** The State Board shall provide state funds to technology centers based on a formula developed by the Oklahoma Department of Career and Technology Education.

(3) **Formula factors.** Factors considered in determining the formula may include enrollment ~~capacity~~, number of Department-approved instructional staff employed by the technology center to teach career majors, local funding resources, incentive for maximum local support and allowable general fund balance.

(4) **Annual approval of Career Majors.** Career Majors to be offered at the technology centers shall be approved each year in order:

(A) That high school credit may be given to the students enrolled~~;~~and

(B) To ensure that accreditation factors are in proper form~~; and,~~.

~~(C) For the State Board to participate in the funding.~~

(5) **Annual approval of Instructional Staff.** Instructional staff employed by the technology centers to teach career majors shall be approved by the Department each year.

(k) **Audit resolution process.**

(1) **Independent audits.** The Department shall be responsible for ensuring that audits are performed by independent auditors in a timely manner and are in accordance with OMB Circular A-133 and the Single Audit Act. The Department will review and categorize any audit exceptions, comments or findings.

(A) **Notification of findings.** The Department shall notify the technology center of the findings and will request a letter of commitment of corrective action for procedural finding(s) and finding(s) involving questioned costs.

(B) **Assurance of settlement.** In the case of a legal requirement, the technology center shall supply written documentation that the issue has been settled.

(C) **Response to letter of commitment.** If the commitment from the technology center is satisfactory as determined by the Department, the school will be notified of the decision.

(D) **Return of funds.** If the commitment is determined to be unsatisfactory, the Department may request the return of funds connected with the questioned cost(s) or the questioned procedure(s).

(E) **Disallowed costs.** If the finding involves disallowed costs, the Department will request the refund of funds for the questioned costs.

(2) ~~**Audits from technology centers.**~~**Agency oversight audits.** ~~Upon receipt of an independent audit from a technology center, the Department will review and categorize any audit exceptions, comments or findings.~~ The Department's Internal Audit staff will perform audits of technology centers. The Department will review and categorize any audit exceptions, comments or findings.

(A) **Notification of findings.** The Department shall notify the technology center of the findings and will request a letter of commitment of corrective action for procedural finding(s) and finding(s) involving questioned costs.

(B) **Assurance of settlement.** In the case of a legal requirement, the technology center shall supply written documentation that the issue has been settled.

(C) **Response to letter of commitment.** If the commitment from the technology center is satisfactory as determined by the Department, the school will be notified of the decision.

(D) **Return of funds.** If the commitment is determined to be unsatisfactory, the Department may request the return of funds connected with the questioned cost(s) or the questioned procedure(s).

(E) **Disallowed costs.** If the finding involves disallowed costs, the Department will request the refund of funds for the questioned costs.

**780:15-3-6. Technology center students**

(a) **Student eligibility.**

(1) **High school students.** For students currently enrolled in high school, the technology center is an extension of the student's high school and shall be subject to the regulations thereof. The student's home high school shall transcript the units of instruction earned by high school students attending the technology center. High school students who successfully complete their career plans of study shall be awarded a competency/completion certificate by the technology center. The technology center is a separate entity in that it also serves adult students.

(2) ~~**Admission criteria and enrollment**~~ **Enrollment procedures.** High school students shall meet the ~~admission~~ enrollment criteria established by the technology center for the specific ~~program~~ career major plan of study in which they wish to enroll, regardless of lawful immigration status. All high school students shall be enrolled through a cooperative effort of the sending comprehensive high school and the technology center, except in cases where the student's parent or guardian has provided sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. 2001, §10-105, as amended.

(3) **Approval to withdraw and withdrawal procedures.** Students from a sending comprehensive school who wish to withdraw from a technology center must have approval of both the technology center and the comprehensive ~~high~~ school. Specific procedures for withdrawal are established cooperatively by the technology center and the ~~respective home high school~~ sending comprehensive school.

(4) **Student discipline.** High school students' discipline and control shall be a cooperative effort between the comprehensive ~~(home) high~~ school and the technology center. Each institution shall enforce rules and regulations in accordance with their board-approved policies. Both institutions shall recognize the students' rights to "due process."

(A) **Qualified Students with Disabilities under IDEA.** Discipline for students with disabilities who have an IEP shall be in accordance with current federal and state legislation and rule of law.

(B) **Qualified Students with Disabilities under Section 504/ADA.** Qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 as amended or the Americans with Disabilities Act of 1990 as amended who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students. However, a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement. Denial of access, and/or a significant change in placement, should not occur when there is a definable relationship between the misconduct and the disability. The student's 504/ADA team should meet and make this determination. There is no requirement in Section 504 or the ADA for the continuation of educational services following the expulsion of a student for behavior unrelated to the student's disability.

(5) **Certified coursework.** Units of coursework earned by a student in ~~an approved~~ a technology center in Oklahoma shall be certified by the technology center to the sending ~~high~~ school in which the student is regularly enrolled. These units of coursework shall be counted toward meeting local and state requirements for graduation. The technology center is considered to be an extension of the sending school curriculum and shall be subject to the regulations thereof.

(6) **Hours of attendance.** High school students may attend a technology center up to one-half day pursuing a high school diploma or GED and up to one-half day completing a *Career*Tech Career Major in the technology center. The students are counted as attending a full day at the ~~home high~~ sending school.

(7) **Secondary Students.** Career Majors in the technology centers may be offered to secondary students. Students who are on an Individualized Education Program may attend a technology center up to four years.

(8) **Postsecondary/adult students.** The technology center functions as a separate postsecondary-level educational institution for adult students who are beyond the age of compulsory school attendance and/or are not enrolled in high school. Postsecondary/adult students may attend courses at the technology center which may be held any time during the day or night on or off campus. Postsecondary/adult students are subject to the policies and procedures established for adult students by the technology center and shall be afforded all benefits and services for which they qualify, regardless of lawful immigration status. Units of coursework completed at a technology center by a postsecondary/adult student are transcripted by the technology center as postsecondary level credit. Postsecondary/adult students who successfully complete their ~~occupational~~ plan of study shall be awarded a competency/completion certification by the technology center. Units of instruction and/or credits earned by postsecondary/adult students may also be applied toward ~~an associate~~ a college degree, in accordance with the cooperative agreements and cooperative alliance agreements developed by each technology center with a higher education institution.

(9) **Residency.** Students that meet the residency requirements of 70 O.S. Supp. ~~1996~~2002, Section 1-113, as amended, shall have the same opportunity to access technology center courses, regardless of lawful immigration status, as any other in-district student. These students may enroll in an appropriate Career Major following the same admission and enrollment procedures as other students.

(10) ~~**Cooperative Alliances.**~~**Cooperative Alliances Between Higher Education Institutions and Technology Centers.** ~~Cooperative Alliances may be formed between technology centers and colleges or universities offering technical Associate of Applied Science (AAS) degrees. The decision to form a Cooperative Alliance by institutions will be voluntary and agreed upon by both partners. Each Alliance will be formally codified in a charter that commits the partner institutions to their respective responsibilities. The State Regents for Higher Education and the State Board of Career and Technology Education will review and approve the charter for each Cooperative Alliance. All courses that are currently approved in a cooperative agreement shall continue and be assumed as part of this Alliance agreement. The partner college will serve as the principal Oklahoma higher education partner with the Center. Other Institutions of higher education may submit a written proposal to offer college level programs at the Center with the joint approval of the college and Technology Center in the Alliance. If the Institution and Center cannot agree, the written proposal may be sent to the Chancellor (OSRHE) and the State Director (ODCTE) to arbitrate. The Alliance will allow transferability of college credit by requiring that qualified high school students and adults be admitted to the partner Institution or another approved Alliance participating Institution, enroll in the college credit courses, obtain the college credit upon course completion, and have an official college transcript. Students enrolled in these courses are encouraged but not required to take them for college credit.~~

~~(A) **Transfer matrix.** The college and technology center will participate in a state-wide transfer equivalency matrix maintained by OSRHE for all courses as required offered through the Alliance. The courses approved for college credit shall have a defined course syllabus, course objectives and industry standards. The courses shall be reviewed for equivalency and approved by the ODCTE staff.~~

~~(B) **High School Students.** High school juniors and seniors enrolled in an accredited high school and receiving high school level instruction at home or from an unaccredited high school may, if s/he meets the minimum requirements established by the Oklahoma State Regents for Higher Education, be admitted as a concurrent student to a college or university in The Oklahoma State System of Higher Education that offers technical AAS and certificate programs to enroll in technical courses only. High school students are also required to have a written statement from the student and parent/guardian indicating an understanding (1) of the eligibility for admission to the Institution and the Center, (2) of the guidelines and policies regarding the transcription of the Institution technical course on the Institution's official student transcript, and (3) of the industry requirements for certificate completion in the Center's program. Credit for the technical course will be granted by the high school for graduation and by the college for credit toward an AAS degree each semester while the student is enrolled in and successfully completing the course.~~

~~(C) **Postsecondary/Adult students.** College admission requirements for regular admissions to the Institutions listed in the Institution's "*Catalog*" shall apply to postsecondary students.~~

(A) **Purpose.** The purpose of Cooperative Alliances is to expand student access to Oklahoma's educational opportunities with resource-sharing partnerships between institutions of the State System and CareerTech technology centers for the benefit of Oklahoma citizens, business, industry, and students. Cooperative Alliances are student-centered partnerships organized to encourage and facilitate progress toward college graduation and designed to ensure that students obtain the technical and academic skills that will allow them to succeed in today's dynamic knowledge-based, technology-driven global economy.

(i) Cooperative Alliances are formed with Oklahoma public colleges or universities that offer the Associate in Applied Science (AAS) as Cooperative Agreement Programs (CAP) with an Oklahoma public technology center. Students enrolled in CAPs are treated as members of the higher education community. These students benefit from

college support services including academic advising and counseling, convenient admission and enrollment processes, financial aid, career advisement and job placement assistance.

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

(i) "Associate in Applied Science (AAS) degree" is typically a credential requiring two years of full-time equivalent college work (at least 60 credit hours) that emphasizes a technical or occupational specialty and is designed to lead the student directly to employment. Unlike the Associate in Arts (AA) or Associate in Science (AS) degrees, the AAS is not designed to transfer all courses to a Bachelor of Arts (BA) or Bachelor of Science (BS); however, the courses may transfer to a technical baccalaureate degree program.

(ii) "Cooperative Agreement Program (CAP)" is a formal, academic program offered by institutions in the Oklahoma State System for Higher Education that includes approved courses taught by a CareerTech technology center and leads to an Associate in Applied Science (AAS) degree or a college-level certificate in a technical or occupational field.

(iii) "Cooperative Alliance" is an agreement between one or more institutions in the Oklahoma State System for Higher Education and one technology center as a joint vision of a collaborative partnership designed to benefit students and enhance the technical workforce in that part of Oklahoma. A Cooperative Alliance is voluntary and agreed upon by all partners and their governing boards. The State Regents for Higher Education and the State Board of Career and Technology Education review and approve the agreement for each Cooperative Alliance. The approved Cooperative Alliance agreement remains in force until the governing boards of the Cooperative Alliance partners dissolve the agreement.

(iv) "Institution" refers to any college or university of the Oklahoma State System of Higher Education listed in the State Regents' Governance policy (1.7) and that offers AAS degrees.

(v) "Partners" are institutions and technology centers that enter into a Cooperative Alliance agreement. The agreement delineates the roles of each partner in providing the academic program and support services to the students enrolled in CAPs.

(vi) "Technology center" refers to a center established by criteria and procedures for the establishment prescribed for governance of technology center school districts by the State Board of Career and Technology Education as provided by Section 9B, Article X, Oklahoma Constitution, and such districts so established shall be operated in accordance with rules of the State Board of Career and Technology Education, except as otherwise provided in this title.

(C) **Principles and Goals.** The driving principle of the Cooperative Alliance is to build a student-centered, rather than institution-centered approach to the us of CAPs. The four goals of the Cooperative Alliance are:

(i) To enroll more high school students in college;

(ii) To encourage more adults to continue their education or begin college;

(iii) To expand access to postsecondary (college and career/technical) education; and

(iv) to efficiently use federal, state and local resources.

(I) The mission of the Cooperative Alliance is to offer AAS degrees and college-level certificates that benefit students, employers, and the public.

(II) By fulfilling the mission, the Cooperative Alliance significantly impacts the economy and quality of life in the areas served by the partners.

(D) **Conceptual Basis.**

(i) The Cooperative Alliance is student-centered, focusing on an integrated learning experience for each student which has as its goal the completion of the AAS degree or college-level certificate program.

(ii) The Cooperative Alliance offers AAS degrees and college-level certificate programs that focus on technical knowledge and skills in addition to general academic knowledge and skills that are useful in the workplace and for a higher quality of life and lifelong learning.

(iii) A higher education institution partner will maintain an official college transcript for each student who enrolls in an approved course taught at the technology center and who chooses to take the course for college credit as part of a CAP.

(iv) All higher education partners and technology centers will participate in a statewide transfer equivalency matrix of technical courses maintained by State Regents for all approved courses in CAPs.

(v) The Cooperative Alliance will focus on student success, including the completion of the AAS degree or college-level certificate program.

(vi) Each student at the technology center admitted to a higher education institution is a member of the collegiate community and receives services including academic advising, admission and enrollment, financial aid, career advisement, and job placement assistance. The provision of these services will be coordinated among partners in the

Cooperative Alliance to insure consistency and to minimize duplication.

(vii) The Cooperative Alliance provides for student assessment consistent with State Regents' Assessment policy (3.19) and accreditation standards.

(viii) The Cooperative Alliance provides for tracking of students in a seamless manner from first-time enrollment through graduation and initial employment, or transfer within the Oklahoma State System for Higher Education.

(E) **Scope.**

(i) The Cooperative Alliance agreement supersedes all CAPs approved under the previous State Regents' Guidelines for Approval of Cooperative Agreements between Technology Centers and Colleges (3.6). All prior approved CAP's will be grandfathered under this agreement.

(ii) Through the Cooperative Alliance, the higher education institutions will offer AAS degrees and college-level certificate programs in disciplines in cooperation with technology centers where effectiveness and efficiency can be enhanced and where a student-centered, competency-based approach can be maintained.

(iii) Consistent with the State Regents' Electronically Delivered and Traditional Off-Campus Courses and Programs policy, CAPs offered at technology centers are meeting the educational needs of the community.

(iv) With the approval of the Cooperative Alliance partners, CAPs may be added to the agreement. If the partners cannot agree, the Chancellor for State System and the State Director for CareerTech will arbitrate.

(v) The Cooperative Alliance partners will jointly plan and implement appropriate faculty and staff development activities to benefit the CAPs.

(vi) The Cooperative Alliance partners will jointly plan and implement a sharing of physical and human resources to support the Alliance, its programs, and related activities.

(F) **Curriculum.** The Cooperative Alliance partners will offer high quality, AAS degree and college-level certificate programs as CAPs, conferred by a higher education institution, that comply with applicable policies of the State Regents, CareerTech, and the local governing boards and that meet the certification and training standards of business and industry.

(i) All CAPs in place when the Cooperative Alliance agreement is approved are included and will be listed.

(ii) All continuing and future CAPs included in the Cooperative Alliance shall be subject to the State Regents' Academic Program Approval and Academic Program Review policies. The Criteria for Evaluation (3.4.6) include centrality to the mission, curriculum, academic standards, faculty, support resources, demand for the program, and complement to existing programs, unnecessary duplication, cost, and review.

(iii) An advisory committee composed of faculty, staff, employers, and practitioners assists in developing curriculum content, in keeping the curriculum current, and in maintaining contact with the occupational community.

(G) **Quality Assurance. Faculty.**

(i) All technology center faculty teaching CAP courses must adhere to established higher education institutional adjunct faculty qualifications appropriate to faculty teaching in occupational and technical fields. Credentials must be a degree at the level at which the faculty member is teaching, e.g., at the Certificate level, the faculty must have a certificate in that field; at the Associate Degree level, the faculty must have an Associate Degree. The appropriate academic dean reviews all faculty credentials, and recommends all faculty for approval. Once approved, technology center faculty in approved CAPs becomes listed as adjunct instructors for the higher education institution. Any exception to the foregoing must be approved by the appropriate designee for Academic Affairs at the higher education institution.

(ii) An annual faculty assessment, including student evaluation of instruction, will be conducted in accordance with established guidelines and procedures of the higher education institution.

(iii) All adjunct faculty must meet established institutional college adjunct faculty minimum employment standards associated with the academic program/division under which the CAP courses will be offered. Faculty credentials must meet these standards and be approved for adjunct status prior to approval of courses for college credit in the CAP.

(H) **Program Quality.**

(i) Assessment criteria are reviewed and approved by the higher education institution faculty on a course-by-course basis when the curriculum is approved. Assessments are reviewed annually.

(ii) An industry recognized certification relevant to the focus of the overall program content can be used as an additional assessment for the student and program relating to quality and rigor.

(iii) A specific full-time or dean-designated faculty liaison with at least a minimal level of content expertise provides annual review and alignment of courses offered for credit in the CAP. Faculty liaisons are members of the program advisory committee.

(iv) All CAPs will be included in the annual institutional program assessment activities.

(v) To maintain quality of courses, the higher education institution will designate an appropriate individual to work as liaison between the technology centers and the higher education institution. The liaison will have a presence at the technology centers, will attend advisory committee meetings, counsel students, work with adjunct faculty, and keep the lines of communication open.

(vi) When the higher education institution does not employ full-time faculty in an Associate in Applied Science degree which is not taught at the institution, but is active at the technology center, the institution will thoroughly assess the need for it to offer such a program, especially if the program is available at another state system institution. If determined to better meet the needs of the institution's service area if offered through the institution, the institution will designate a full-time faculty member with a minimal level of content expertise to oversee the program. If no internal faculty expertise is available, the institution will engage the expertise of faculty at a higher education institution that employs full-time faculty with expertise in the content area to ensure program quality and the designated faculty liaison as referenced in 3.6.4.D.2.c, will oversee the program, utilizing the outside expertise on a regular basis.

(vii) The higher education institution may look to established national accreditations and course specific certifications standards for quality control. For example, programs accredited by CAAHP, FAA or computer industry certifications through CompTIA, Microsoft, ORACLE and CISCO, provide guidelines and competencies to ensure quality content.

(I) **Advisory Committees.**

(i) Advisory committees will be representative of industry appropriate to the program, and ensure relevant curricula for job readiness.

(ii) Full-time institutional faculty will serve on advisory committees, in addition to the technology center faculty.

(iii) Recommendations for additions, changes, and/or deletions to credit offerings for CAPs which are only offered at the technology center will be based upon recommendations from the advisory committee, faculty liaisons, and accreditation or certification changes. These recommendations are reviewed and approved by the higher education institution's internal curriculum review process and then provided to the OSRHE for final approval.

(J) **Continuous Improvement.**

(i) Each Cooperative Alliance program will be reviewed in accordance with the higher education institution's annual internal assessment program.

(ii) The results of the annual internal assessment will be used to ensure the continuous improvement of program/course content.

(K) **Criteria for admissions.**

(i) College admission requirements approved by the State Regents (see State Regents' Institutional Admission and Retention policy) and Academic Procedures Handbook) for admission to the higher education institutions are listed in the institution's catalog and shall apply to recent high school graduates and adults.

(ii) High school juniors and seniors are admissible as concurrent students to an Oklahoma State System of Higher Education college or university that offers AAS degrees and college-level certificate programs and enroll in only technical courses at the technology center as approved by the State Regents.

(iii) High school students also must provide a letter of support from the high school counselor and written permission from a parent or legal guardian.

(iv) High school students concurrently enrolled in college courses, including all courses in the CAP, may continue concurrent enrollment in subsequent semesters if they earn a college cumulative GPA of 2.0 or above on a 4.0 scale (see State Regents' Institutional Admission and Retention policy).

(L) **Student Support Services.**

(i) The higher education institutions and technology centers will provide integrated and comprehensive academic advising and support services to students enrolled as part of the Cooperative Alliance to insure effectiveness without duplication or redundancy of effort.

(ii) Counselors and faculty at the higher education institution and the technology center may use the ACT PLAN score and ACT PLAN sub-scores (and other available test scores, such as the ACT, SAT, TABE, ACT Compass, Accuplacer), the student's previous academic record, recommendations from high school administrators/counselors/teachers, high school Plan of Study, and personal knowledge of the student to advise the student.

(iii) High school students must be advised of the State Regents' Institutional Admission and Retention policy (3.9.6.I.1) regarding the workload requirement of enrolling in a total number of credit hours combining college courses, including all courses in the CAP, and high school courses.

(M) **Financial.** The primary cost of instruction for technical courses in the CAPs taught at the technology center by the center's faculty will be borne by the technology center. The primary cost of instruction for courses offered by the higher education institution in the CAPs, taught at the technology center or the institution by the institution's faculty, shall be borne by the higher education institution.

(N) **Cost to Students.**

(i) High school students, who are admitted to a higher education institution and enrolled in an approved CAP technical or occupational course offered at the technology center, shall not pay college tuition. However, there may be college fees charged that are applicable to all students.

(ii) Adult students, who are admitted to a higher education institution and enrolled in an approved CAP technical or occupational course offered at the technology center, shall pay to the technology center only the program tuition established by the center. Adult students shall not pay college tuition. However, there may be college fees charged that are applicable to all students.

(iii) College courses, such as general education, may be offered at the technology center by a higher education institution. The direct costs of instruction for these courses are borne by the higher education institution and the enrolled student will be charged the applicable college tuition and fees, payable to the institution.

(O) **Marketing and Outreach.**

(i) The marketing goals of the Cooperative Alliance are to create an awareness and to promote the advantages to potential students and to the community, including high school teachers, faculty, staff, administrators, governmental agencies, and employers.

(ii) All publications and advertisements will identify which higher education institution is awarding the credit. Additionally, all publications and advertisements must adhere to the consumer protection requirements listed in the State Regents' Institutional Accreditation policy (3.1.7) that prohibit higher education institutions or technology centers from making misleading, deceptive, and/or inaccurate statements in brochures, Web sites, catalogs, and/or other publications. Failure to comply with this requirement may result in the nullification of the Cooperative Alliance and all CAPs under that Cooperative Alliance.

(P) **Institutional Reporting.** An annual summary report on the performance of the Cooperative Alliance during the previous fiscal year is required, including information on enrollment, retention and graduation, assessment reports, financial arrangements, marketing endeavors, cost, and other notable accomplishments and challenges. This report shall be jointly prepared and submitted to the respective local governing boards.

(Q) **Procedures.** An Oklahoma State System institution seeking approval for a CAP with a technology center upon approval by the governing board shall have the president submit the CAP to the Chancellor for State Regents' consideration. The president will be informed of the recommendation prior to its formal submission.

(R) **Reporting.** The State Regents' staff will provide periodic reports to the State Regents summarizing the status of Cooperative Alliances and CAPs. Such reports shall contain information about effectiveness and efficiency of the Cooperative Alliances individually and as a model for offering academic programs. Reporting to the institutions and technology centers will be conducted during regularly scheduled workshops.

(b) **Tuition.**

(1) **Resident high school students.** High school students who are residents of the technology center district attend on a tuition-free basis, regardless of lawful immigration status.

(2) **Tuition charge.** Technology centers are authorized to charge tuition to postsecondary students. Amounts charged by a technology center district for tuition are subject to the approval of the State Board.

(3) **Out of District Tuition.** Technology center districts shall charge tuition to any secondary student who does not reside in the technology center district. The fee for tuition shall be not less than twice the amount of the local cost of providing ~~the program~~ instruction and services for the student. The State Board may waive this requirement in situations where the technology center district has shown evidence that such requirement will be detrimental to the mission of the local technology center district. Reciprocity agreements to benefit in-district students may be made between technology centers and approved by the Oklahoma Department of Career and Technology Education.

(c) **Transportation.**

(1) **Responsibility.** The technology center is responsible for providing transportation of daytime secondary students to and from in-district, sending schools for those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules shall be determined by an agreement between the comprehensive school and the technology center.

(2) **Operation under Oklahoma school laws.** All technology centers owning or leasing and operating school buses that transport students to and from points being served by the technology center shall operate under the current school laws of Oklahoma.

(3) **Adult transportation.** Upon approval of the technology center board of education, postsecondary students enrolled in a technology center may be transported, as space is available, on established bus routes and related auxiliary activities.

(d) **Student accounting.** Student accounting information shall be submitted to the Information Management Division as outlined in OAC 780:10-7-2.

**780:15-3-7. Special provisions**

(a) **Sex discrimination.** It shall be the responsibility of the board of education of the technology center district to review and conform to all regulations that prohibit sex discrimination.

*No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance* [Public Law 92-318, Title IX, Sec. 901 (A)]. Any reference to discriminatory language or practices relative to race, creed, or national origin should be deleted.

(b) **Basic education.** No technology center district shall be required to provide any training or instruction that is independent of career and/or technology education. However, foundational, academic and contextual academic education should be provided to persons in order to bring them up to a level at which they may successfully complete the course or Career Major in which they are enrolled.

(c) **Education and Services in other districts.** No technology center district shall offer *Career*Tech education and/or services to any entities inside another technology center district without prior approval of that district. If there is a Reciprocity Agreement between technology center districts, the provisions of the Reciprocity Agreement shall be followed. Territory not presently a part of any technology center district may be served by a technology center district in accordance with the policy and procedures approved by the State Board.

(d) ~~**Agreements between technology center and two-year colleges.** Cooperative Agreements negotiated between technology centers and colleges, which would permit post-secondary students to receive college credit for *Career*Tech courses offered at the technology center, shall be approved by the State Board. The merits of each request will be evaluated by the following criteria:~~

~~(1) Increased utilization of existing resources;~~

~~(2) Increased student access to additional educational options;~~

~~(3) Continued credibility of the instruction offered at both institutions;~~

~~(4) Increased student employability; and,~~

~~(5) Consistency with goals and objectives of *Career*Tech education in Oklahoma.~~

(~~e~~d) **Live Work Policy.** The live work policy adopted by the State Board of Career and Technology Education in February 2004 shall be incorporated into all technology center policies and procedures. Live work is work performed by students in a laboratory, classroom, shop, or in a field setting under written contract and under the direction of the instructor. The process by which all live work projects will be approved should be outlined in the live work policy. Live work projects should be chosen on the basis of merit in relation to the instructional objectives as well as the determined value of the project to allow students to achieve a desired level of competency. Superintendents, Deputy Superintendents, Assistant Superintendents and local board members shall be ineligible from utilizing live work services. These projects are not to replace other learning activities, nor to compete with other organizations within the district, but are to complement them. These projects will allow students to experience situations not easily duplicated in a lab or classroom, and at little or no cost to the school. Documentation for each live work project will be maintained by the technology center and will contain pre-numbered live work tickets, authorization signatures, signature of the project owner, estimated amount, amount paid or deposited, scope of the work, estimated completion date, and record of all materials and parts purchased. Live work accounts shall be paid in full upon the completion of the project. The list of live work projects may be reviewed at any time by the ODCTE audit/review staff or others as designated by the State Director of Career and Technology Education. All records of live work projects will be maintained by the technology center for at least three (3) fiscal years following the most recent technology center financial audit. The following policy should be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education.

(e~~f~~) **Technology Center Code of Ethics Guidelines.** Each technology center will ensure that its district policies and procedures comply with the guidelines for the Technology Center Code of Ethics approved by the State Board of Career and Technology Education in April 2004. Technology center district boards may add any other provisions to these guidelines with discretion. Policies and procedures shall be developed by each technology center board for reporting and resolving alleged violations. The policies developed by the technology centers will become items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education. The guidelines for the Technology Center Code of Ethics are:

(A) **Focus on the success of students and clients as the fundamental value upon which all decisions are made.** Provide a safe, supportive environment to include up-to-date facilities, equipment, instructional materials, and methods, as well as other appropriate student services to enhance the educational experience and enable all students to achieve their full potential for success. Ensure that all instructors are appropriately qualified to provide a high level of instruction to enable students to obtain realistic training and education for successful career and workplace readiness.

(B) **Acknowledge that the System is accountable to the taxpayers and patrons of the local district and the State of Oklahoma.** The district will compile and make available an annual report or profile that identifies the standards by which the district measures ~~program~~ success. A copy of this report will also be published on the district website. The annual report or profile may measure standards such as teacher qualifications, revenue, expenditures, cost per student, economic impact of education and services, completion rates, sending school service rate, placement of completers, percentage of completers who attain an industry-recognized state or national licensure or certification, etc.

(C) **Understand that the role of the board of education is to set policy and direction for the school district, and the role of the administration**

**and staff is to implement the policies of the board in a fair and consistent manner.** The district will maintain and enforce an up-to-date manual of Policies and Procedures. The district will utilize a strategic planning process that will include, at a minimum, the following components: core values and beliefs, vision statement, mission statement, and strategic goals. Adoption of policies not in conformity with the administrator's recommendations or beliefs is not just cause for refusal by the administration to support and implement those policies. Administration must be impartial in the execution of the school policies and the enforcement of rules and regulations. It is a breach of ethics to give preferential consideration to any individual or group because of special status or position in the school system or the community.

(D) **Not use position or influence for any personal gain; and will avoid actions that create a conflict of interest and strive to avoid actions that might appear to create a conflict of interest.** The term "conflict of interest" describes any circumstance that could cast doubt on a person's ability to act with total objectivity with regard to the district's interest. Conflicts of interest are prohibited. It is improper for a board member or school administrator to profit financially from interest in any business which publishes, sells, manufactures, or in any way deals in goods or services which are, or may be expected to be, purchased by the school system they serve. It is a breach of public trust for a board member or administrator to use confidential information concerning schools affairs (such as the knowledge of the selection of specific school sites) for personal profit or to divulge such information to others who might profit. Although it is impossible to list all potential conflict of interest situations, the following examples represent situations where a conflict of interest could arise: A direct or indirect financial interest in any business or organization that is a district vendor or competitor, if the employee or board of education member can influence decisions with respect to the district's business. Use of any district asset for the employee's personal business advantage (examples of such assets include not only equipment, tools, and supplies, but also valuable ideas, technical data, and other confidential information). Relationships, including business, financial, personal, and family may give rise to conflicts of interest or the appearance of a conflict. Employees should carefully evaluate relationships as they relate to district business to avoid conflict or the appearance of a conflict.

(E) **Fulfill professional responsibilities with honesty and integrity.** The Board of Education, superintendent, administration, faculty, and staff will fulfill their duties and responsibilities with honesty and integrity and improve their professional effectiveness through continuing professional development. Board members will be diligent and well informed of issues surrounding Board decisions and regularly attend Board meetings.

(F) **Support the Constitutions of the State of Oklahoma and the United States of America and obey all federal, state, and local laws.** Board members will uphold the Oath of Office. Professional development will be held annually for board members, superintendent, administration, faculty, and staff to learn about new laws.

(G) **Encourage effective communication between the Board, the students, the staff, and all elements of the community.** A communication plan will be developed to address internal and external audiences.

(H) **Improve professional effectiveness through continuing professional development.** In addition to meeting the minimum requirements for continuing education mandated by state law, board members, administration and staff have a professional obligation to attend conferences, seminars, and other learning activities that hold promise of contributing to their professional growth and development.

(f~~g~~) **Rules; regulations.** In the absence or omission of specific rules and regulations pertaining to the technology center districts, the state statutes and the rules and regulations governing independent school districts will prevail.

(g~~h~~) **Review of the Rules for Career and Technology Education.** The **Rules for Career and Technology Education** approved by the State Board should be reviewed in connection with developing *Career*Tech courses, Career Majors and services.

(h~~i~~) **Technology Centers That Work.** The Technology Center Services Division will coordinate the Technology Centers That Work initiative to help technology centers embed college- and career-readiness academic standards into instruction and produce graduates who can succeed in postsecondary studies and careers in high-demand, high-skill, high-wage fields. The Technology Center Services Division will coordinate with the Southern Regional Educational Board and other entities to organize professional development sessions on topics such as numeracy, literacy and using data for continuous school improvement.

(i) **Comprehensive Local Education Plan.** As a part of the requirements for receiving accreditation and funding from the Oklahoma Department of Career and Technology Education, each technology center board of education shall adopt a Comprehensive Local Education Plan once every six (6) years as provided in 70 O.S. Supp. 2006 §3-104.2, as amended. The Comprehensive Local Education Plan that is developed once every six (6) years will be submitted to the appropriate Technology Center Services Coordinator at the Department. The six-year Comprehensive Local Education Plan and the annual updates will be available at the technology center for review annually by the State Department of Education Regional Accreditation Officers as provided for in 70 O.S. Supp. 2001 §3-154, as amended. The plan at minimum shall contain the following:

(1) A strategic plan shall include stated goals that clearly delineate education expectations. Input from

teachers and parents will be solicited and one public hearing will be held prior to the technology center board approving the strategic plan as provided for in 70 O.S. Supp. 2002 §5-117.4, as amended. The strategic plan shall be monitored annually and updated as necessary.

(2) A four-year (4) capital improvement plan as provided for in 70 O.S. Supp. 2007 §18 153, as amended. The capital improvement plan shall be monitored annually and updated as necessary.

**780:15-3-8. Calculation of administrative costs**

Administrative Cost for technology centers shall be calculated annually in accordance with the definition of administrative cost provided by the National Center for Educational Statistics. Administrative cost expressed as a percentage of the total ~~program~~ instruction and services expense for each technology center will be used as a measurement to determine if the administrative cost is within acceptable limits. Should administrative cost for a technology center exceed acceptable limits penalties will be assessed by the state agency to the funding formula dollars of the technology center on a dollar for dollar basis.

(1) Acceptable administrative cost is outlined as follows:

(A) If total instruction and services expenditures are less than $3,000,000, the administrative cost limit is 8%.

(B) If total instruction and services expenditures are $3,000,001 to $5,000,000, the administrative cost limit is 6%.

(C) If total instruction and services expenditures are $5,000,001 to $10,000,000, the administrative cost limit is 5%.

(D) If total instruction and services expenditures are more than $10,000,001, the administrative cost limit is 3%.

(2) Changes to the acceptable administrative amounts may be made by the State Agency staff and approved by the director when necessary.

*[OAR Docket #10-938; filed 5-27-10]*

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

*[OAR Docket #10-939]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions
780:20-1-1.1 [NEW]
780:20-1-2 [AMENDED]
Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-2 [AMENDED]
780:20-3-3 [AMENDED]
780:20-3-4 [AMENDED]
780:20-3-5 [AMENDED]

**AUTHORITY:**
State Board of Career and Technology Education 70 O.S. Supp. 2009, Section 14-103; 70 O.S. 2001, Section 14-104, 70 O.S. Supp. 2009, Section 14-108.
**DATES:**
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**SUPERSEDED EMERGENCY ACTIONS:**
n/a
**INCORPORATIONS BY REFERENCE:**
n/a
**ANALYSIS:**
The amended rule replaces outdated language and defines the term instructional program and provides clarity as to the scope of the term; restates secondary and post secondary programs; clarifies the maximum and minimum number of students in a Health Careers Education program; clarifies expectations of a clinical facility. Clarification on educational requirements and health care credentials for faculty in Health Careers Education programs at both technology centers and comprehensive schools. The new rule documents FFA membership requirements. The rule amendment deletes language relating to adult education programs in Family and Consumer Sciences Education which no longer exist and removes outdated language. The rule amendment clarifies the correct division in section (H). The amendment was submitted since STEM (Science, Technology, Engineering & Mathematics) was not represented. The rule describes the Career Major and the teacher requirements as they relate to the number of courses required to teach. The rule reflects the appropriate student organization for the STEM Career Major.
**CONTACT PERSON:**
Marie Saatkamp, 405-743-5455

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**780:20-1-1.1. Instructional Program**

The educational infrastructure ensures that the necessary standards are in place for providing effective instruction and training. These standards include but are not limited to the following: Instructional Planning and Organization; Instructional Materials Utilization; Qualified Instructional Personnel; Enrollment and Student/Teacher Ratio; Equipment and Supplies; Instructional Facilities; Safety Training and Practices; Advisory Committee Relations; Leadership Development; Coordination Activities; Student Accounting and Reports. The

instructional program defines where, how, and when instruction is provided.

**780:20-1-2. Instructional Framework for full time programs**

All full-time instructional offerings will be based on the Career Clusters Model and be in accordance with the ~~new~~ approved Instructional Framework. The state approved Instructional Framework is organized by Cluster, Pathway, Career Major and Course.

## SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT *CAREER*TECH PROGRAMS

**780:20-3-2. Programs: admissions, operations, enrollment, and length**

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school students (grades 8 through 12) and adults. Secondary students must have a supervised agricultural experience project. Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) **Business and Information Technology Education.** Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health Careers Education.**

(A) ***Career*Tech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades 8 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and Mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities in Science, Technology, Engineering and Mathematics and prepares students for post-secondary transition and pathways for careers in STEM .

(~~6~~7) **Technology Engineering /TechConnect.** Technology Engineering programs are designed for students in grades 5 through 10 who desire an opportunity to explore and experience technological occupations. These programs are designed to carry on technological concepts and problem-solving methods learned in the lower grade programs (i.e.: Integrating Concepts and Lessons, Missions curriculum, The Block Academy, Airbase). The programs also tie to Agriculture Education, Business Education, FACS Education, Health Education, Marketing Education, and Trade and Industrial Education in the upper grades at comprehensive high schools and technology centers. These programs give hands-on projects based core curriculum supported through the occupational areas.

(~~7~~8) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools***.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agriculture experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Engineering, TechConnect, Career Transitions Education, and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(F) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one or two related courses, subject to approval of the appropriate cluster administrator. Science and Math courses listed in the STEM Career Major will be counted as a STEM course, not a related course.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the *Career*Tech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business and Information Technology Education.**

(i) **Methods of delivery.** The Business and Information Technology Education programs provide three methods of delivery:

(I) Business and Information Technology Education internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12. Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and Information Technology Education programs in technology centers shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(iv) **Adult programs for Family and Consumer Sciences Education.**

~~(I) **Adult Training and Development.** The Family and Consumer Sciences Education Division staff shall authorize Family and Consumer Sciences Education programs to include instruction for out-of-school and adult groups to be conducted as Adult Training and Development (short-term adult) programs.~~

~~(II) **Local organization of courses.** Adult training and development classes may be organized under the supervision and control of the local board of education and are designed for persons 16 years of age and older who are not enrolled in regular day school classes.~~

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Careers Education.**

(i) ~~**Secondary programs.**~~**Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) ~~**Full-time adult programs.**~~**Technology Centers.** ~~Full-time adult programs vary in length in accordance with accrediting bodies.~~ Programs vary in length and in hours per day according to accrediting bodies and career major requirements.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first- and second-year marketing management students in the same class without written permission from the State Department of Education.

(iii) **Technology/equipment.** Marketing Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment.

(G) **Technology Engineering/TechConnect.**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the Technology Engineering/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. Technology Engineering /TechConnect programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, Technology Engineering/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. Technology Engineering/TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of a Technology Engineering/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Engineering/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. Technology Engineering/TechConnect programs shall consist of occupational instruction for two consecutive periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the Technology Engineering/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *Career*Tech programs as well as other personal development components. Technology Engineering/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. Technology Engineering/TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed tointroduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services, Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** A six period day will require two, two-hour blocks or four one-hour blocks with one hour of related instruction for a full time program. One two-period block or less than four one-hour period

blocks will constitute a half-time program in a six period day. A seven period day will require three two-hour blocks or five one-hour blocks with one hour of related instruction for a full time program. Two two-hour blocks or less than five one-hour blocks will constitute a half-time program in a seven period day.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Engineering/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Engineering /TechConnect classes, which are each one period in length, shall be considered as a full-time *Career*Tech teacher in a six period day. A Technology Engineering/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes in a seven period day.

(V) **Technology Engineering /TechConnect program operation recommendations.** Technology Engineering/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should offer applied academic courses in English, mathematics, and science for Technology Engineering/TechConnect students. Enrollment in applied courses should be consistent with each Technology Engineering/TechConnect student plan of study. Enrollment in the Tech Engineering/TechConnect applied academic courses should not be limited to Technology Engineering /TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Engineering division.

(H) **Technology Engineering.**

(i) **Course duration.** Each technology engineering course shall be taught in a one-period block of time (45-55 minutes).

(ii) **Curriculum.** The curriculum shall emphasize the following technology clusters: Architecture and Construction, Arts, A/V and Communications, Information Technology, Manufacturing, Transportation, Distribution and Logistics, Agriculture, food and natural resources, Health Science and Science, Technology, Engineering & Mathematics. Through these, all sixteen of the nationally recognized Career Clusters will be covered.

(iii) **Four periods per day.** Each program shall implement the technology ~~education~~ engineering curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv) **Equipment.** Technology Engineering programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state program assistance funds to purchase this equipment.

(I) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business and Information Technology Education.**

(i) **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology internship. Other Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers.** Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen ~~Ecology~~, and Life Management-20 Students

(II) Family and Consumer Sciences I and II-20 Students

~~(III) Healthy Life Choices-25 Students~~

(~~IV~~III) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 Students

(~~V~~IV) ~~In depth~~ Non-Laboratory ~~semester~~ 60 hour courses 25 Students

(V) Laboratory 60 hour courses - 21 students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education.

(D) **Health Careers Education.**

(i) ~~**Secondary health careers programs.**~~**Comprehensive Schools.** A minimum of ~~10~~ ten and a maximum of ~~18~~ eighteen students shall be enrolled in each course/section of a ~~secondary~~ comprehensive school health careers education program.

(ii) ~~**Full-time adult health careers programs.**~~**Technology Centers.** ~~A minimum of 8 and a maximum of 12 students per instructor shall be enrolled in a full-time adult Health Careers Education program, or the limit set by national accrediting agencies. Program enrollment may also be limited by clinical site and availability.~~

(I) **Full time high school health careers programs.** A minimum of ten and a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and Entrepreneurship program shall not exceed 25 students per marketing management teacher-coordinator. A maximum of 25 students per class may be enrolled in the marketing internship. Other Marketing Education courses may enroll a maximum of 25 students.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in

the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students."** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) **Technology Engineering and TechConnect.** The maximum enrollment for each period of Technology Engineering shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

**780:20-3-3. Materials and facilities**

(a) **Approved materials.** *Career*Tech teachers in all *Career*Tech programs shall use instructional materials developed by the Department or materials approved by the appropriate program administrator.

(b) **Equipment.**

(1) **Responsibility.** The local education agency is responsible for providing equipment and supplies to support the *Career*Tech program in order to assure quality training. Equipment must meet or exceed all appropriate safety standards.

(2) **Modern equipment.** Equipment shall be indicative of that currently used in business and industry and in conformity with modern technology.

(3) **Maintenance; replacement.** A policy for maintenance and replacement shall be developed by the local education agency.

(4) **Inventory of state-owned equipment.** It is the responsibility of the local education agency to provide appropriate maintenance and repair of state-owned equipment and to maintain an accurate accountability of state-owned equipment tagged in accordance with rule 780:10-9-2(c).

(c) **Facilities.**

(1) ***Career*Tech programs facilities.** The local education agency shall provide *Career*Tech programs with facilities to assure safe and orderly, quality instruction to meet each program's objectives. The guidelines used shall be from the Oklahoma Department of Education "Planning for Education: Space Guidelines for Planning /Educational Facilities" booklet 70 O.S. 3-104. The appropriate program administrator shall be consulted regarding plans for new and remodeled facilities.

(2) **Health Careers Education.** Clinical facilities shall be adequate in number and quality to provide the experiences necessary to meet the requirements of the respective accrediting agency and career major requirements ~~for an effective program and must meet the requirements of the respective accrediting agency.~~ Clinical facilities should have adequate staff to provide safe patient care and student should not be used as paid or unpaid facility staff during clinical hours.

(3) **Marketing Education.** The local education agency shall provide an office with telephone within or accessible to the marketing management classroom.

**780:20-3-4. Instructors**

(a) **Certification on file.** All *Career*Tech secondary teachers shall have (on file in the local education agency) an appropriate teaching certificate issued by the Certification Section of the State Department of Education.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a *Career*Tech teacher applicant meets *Career*Tech certification requirements before placing the applicant under contract. Certification requirements are found in the ***Teacher Education and Certification Handbook*** (Oklahoma State Department of Education).

(1) **Occupational division approval.** All *Career*Tech teachers must have the *Career*Tech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All *Career*Tech teachers must complete the specific occupational division's requirements for *Career*Tech certification renewal and be approved by the appropriate program administrator.

(c) **Health Careers Education.**

(1) **Faculty requirements.** Faculty shall hold current credentials ~~in the appropriate health field~~ as a licensed, certified and/or registered health care professional and must meet the requirements of the local education agency, Health Careers Education Division, and the respective accrediting agency.

(A) **Technology Centers: High School Health Careers Programs.** Faculty holding a baccalaureate degree will be required to have additional coursework specific to Career and Technology teacher education. These requirements will be posted on the Health Careers Education website. Faculty shall have a degree plan on file with the Health Careers Education division and provide documentation in the form of transcripts demonstrating yearly progress toward obtaining required coursework.

(B) **Technology Centers:Adult Only Health Careers Programs.** Faculty shall hold a minimum of an Associates' degree or be on a degree plan making yearly progress toward completion. State and national accreditation standards may indicate additional faculty requirements towards advanced degrees. Faculty hired before 2010 will be exempt from this rule.

~~(2) **Degree seeking faculty.** Faculty with less than a baccalaureate degree shall have a degree plan on file and provide documentation of progress toward obtaining a degree.~~

(~~3~~2) **On-file applications.** Faculty shall have an application on file in the Health Careers Education office, including a Statement of Qualifications form, all current transcripts, a copy of professional credential or credential verification, and, if appropriate, current teaching certificate or application for teaching certificate.

(3) **Clinical experience.** Faculty must have a minimum of two years' work experience in a clinical setting within the last five years prior to their first teaching experience. The Health Careers Education Program Manager must approve any variations.

(d) **Science Technology Engineering and Mathematics (STEM). Faculty requirements.** Faculty teaching technical courses shall hold a science, math, trade industrial, technology engineering or appropriate CTE certification approved by the career major administrator. Teachers teaching math and/or science academic courses must meet the requirements of the Oklahoma State Department of Education for that academic area.

(e) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult *Career*Tech instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

**780:20-3-5. Career and Technology Student Organizations**

(a) **Student organizations as an integral part of the CareerTech program.** The Oklahoma Department of Career and Technology Education is the responsible entity for governance and administration of the career and technology student organizations and therefore has the authority to develop and enforce policy of the student organizations consistent with CareerTech program design and operation. Each secondary CareerTech program shall have an active and appropriate student organization as an integral part of its program.

(b) **Membership in appropriate organization.** Each student who participates in student organization activities shall be a member of the student organization(s) designed for the occupational program in which the student is enrolled.

(c) **Organizations.** Career and technology student organizations shall include:

(1) DECA/Delta Epsilon Chi (Marketing Education)

(2) BPA (Business and Information Technology Education), Business Professionals of America.

(3) FFA (Agricultural Education)

(4) FCCLA (Family and Consumer Sciences Education), Family, Career and Community Leaders of America

(5) HOSA (Health Careers Education and STEM)

(6) TSA (Technology Engineering and STEM), Technology Students Association

(7) SkillsUSA (Trade and Industrial Education and STEM)

(d) **Accountability; loss of program funding.**

(1) The school and the career and technology student organization chapter will be held accountable for the actions of the student organization members and the advisor participating in any career and technology student organization activity. Failure to comply with the official rules of such activities may, after an opportunity to present reasons why said action should not occur, result in the loss of the state funding for that CareerTech program.

(2) The school and the FFA chapter will be held accountable for the actions of the FFA members and the FFA advisor participating in any FFA activity. Any Agricultural Education program that has a student/FFA member who is the owner of an animal testing positive for illegal or improper drugs or additives, has altered the appearance of the animal(s) surgically (other than normal and customary practice), and/or violates the eligibility rules for ownership of animals shall, after hearing, and after consideration by the State Board, and upon determination that there has been a violation of this policy, lose state funding for that program.

(e) **FFA Membership Eligibility.** Any student in Grades 8-12 must be regularly enrolled in a year long course of study in Agricultural Education at school in order to be eligible to participate in any FFA activity. For the purpose of this section; at school is defined as physically present and supervised in a classroom by a certified agricultural education instructor. Exceptions are granted to students who attend a school with block schedule and who, therefore, may have completed a year-long course of study in Agricultural Education in one semester. Students in the seventh grade are not eligible for the FFA membership in Oklahoma. Annual local, state, and national FFA dues

must also be paid in order to be eligible to participate in any FFA activity.

*[OAR Docket #10-939; filed 5-26-10]*

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

*[OAR Docket #10-911]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. General Provisions
785:45-1-2. Definitions [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 1. General Provisions
785:45-5-3. Beneficial uses: default designations [AMENDED]
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-19. Aesthetics [AMENDED]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [REVOKED]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]
**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
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n/a
**ANALYSIS:**
Oklahoma Administrative Code ("OAC") Title 785, Chapter 45 prescribes water quality standards for Oklahoma promulgated by the Oklahoma Water Resources Board ("OWRB") pursuant to 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S. § 1085.2. A number of rules in OAC 785:45 have been amended as follows:

OAC 785:45-1-2 prescribes definitions for terms used in OAC 785:45. A definition for "CWAC" has been 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.

Subsections (a) and (b) of OAC 785:45-5-3, Beneficial uses: default designations, have been 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 785:45-5-19, Aesthetics, has been 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, has been revoked and reenacted to add site-specific criteria for Ninemile Creek and the unnamed tributary of Ninemile Creek for total dissolved solids, chloride and sulfate. 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 that discharger's particular circumstances. 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 the U.S. Environmental Protection Agency ("EPA") and federal law.

Appendix G, Numerical Criteria to Protect Beneficial Uses, has been revoked and reenacted with several changes. New criteria for acrolien and revised criteria for phenol have been added. 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 EPA guidance documents assisting states in promulgating appropriately protective criteria for acrolien and 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, has been revoked and reenacted with a few changes. The amendments and new language 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 were corrected. The circumstance which created the need for these amendments was a request from the Department of Environmental Quality ("DEQ") to correct the descriptions in question. The intended effect of these amendments is to accurately reflect the legal description in four of the areas of contaminated groundwater. The chemical names in several of the listings were corrected. The circumstance which created the need for these amendments is a request from the DEQ to correct chemical names previously submitted by that agency.
**CONTACT PERSON:**
Dean A. Couch, General Counsel, 405-530-8800.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. GENERAL PROVISIONS

**785:45-1-2. Definitions**

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

**"Abatement"** means reduction of the degree or intensity of pollution.

**"Acute test failure"** means greater than or equal to 50% mortality to appropriate test species at or below the critical effluent dilution after a 48 hour test as provided in OAC 252:690-3-29.

**"Acute toxicity"** means greater than or equal to 50% lethality to appropriate test organisms in a test sample.

**"Alpha particle"** means a positively charged particle emitted by certain radioactive materials. It is the least penetrating of the three common types of radiation (alpha, beta and gamma) and usually is not dangerous to plants, animals or humans.

**"Ambient"** means surrounding, especially of or pertaining to the environment about an entity, but undisturbed and unaffected by it.

**"Aquifer"** means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

**"Assimilative capacity"** means the amount of pollution a waterbody can receive and still maintain the water quality standards designated for that waterbody.

**"Attainable uses"** means the best uses achievable for a particular waterbody given water of adequate quality. The process of use attainability analysis can, and in certain cases must, be used to determine attainable uses for a waterbody.

**"Background"** means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

**"BCF"** means bioconcentration factor.

**"Beneficial uses"** means a classification of the waters of the State, according to their best uses in the interest of the public.

**"Benthic macroinvertebrates"** means invertebrate animals that are large enough to be seen by the unaided eye, can be retained by a U. S. Standard No. 30 sieve, and live at least part of their life cycles within or upon available substrate in a body of water or water transport system.

**"Best Available Technology"** means the best proven technology, treatment techniques or other economically viable means which are commercially available.

**"Best management practices"** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**"Beta particle"** means a negatively charged elementary particle emitted by radioactive decay that may cause skin burns. It is easily stopped by a thin sheet of metal.

**"Bioconcentration factor"** means the relative measure of the ability of a contaminant to be stored in tissues and thus to accumulate through the food chain and is shown as the following formula: BCF = Tissue Concentration divided by Water Concentration.

**"BMPs"** means best management practices.

**"Board"** means Oklahoma Water Resources Board.

**"BOD"** means biochemical oxygen demand.

**"Carcinogenic"** means cancer producing.

**"Chronic test failure"** means the statistically significant difference (at the 95% confidence level) between survival, reproduction or growth of the test organism at or below the chronic critical dilution after completion of a 7 day test as provided in OAC 252:690-3-29, or other test as approved by the permitting authority and the EPA Regional Administrator, and a control.

**"Chronic toxicity"** means a statistically significant difference (at the 95% confidence level) between longer-term survival and/or reproduction or growth of the appropriate test organisms in a test sample and a control. Teratogenicity and mutagenicity are considered to be effects of chronic toxicity.

**"Coliform group organisms"** means all of the aerobic and facultative anaerobic gram-negative, non-spore-forming rod shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

**"Color"** means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color), but also that color due to suspended matter.

**"Conservative element"** means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or chemical degradation or volatilization.

**"Conservation plan"** means, but is not limited to, a written plan which lists activities, management practices and maintenance or operating procedures designed to promote natural resource conservation and is intended for the prevention and reduction of pollution of waters of the state.

**"Critical dilution"** means, for chronic whole effluent toxicity testing, an effluent dilution expressed as a percentage representative of the dilution afforded a wastewater discharge according to the appropriate Q*-dependent chronic mixing zone equation.

**"Critical temperature"** means the higher of the seven-day maximum temperature likely to occur with a 50% probability each year, or 29.4°C (85°F).

**"Criterion"** means a number or narrative statement assigned to protect a designated beneficial use.

"CWAC" means Cool Water Aquatic Community.

**"Degradation"** means any condition caused by the activities of humans which result in the prolonged impairment of any constituent of the aquatic environment.

**"Designated beneficial uses"** means those uses specified for each waterbody or segment whether or not they are being attained.

**"Dissolved oxygen"** means the amount of oxygen dissolved in water at any given time, depending upon the water

temperature, the partial pressure of oxygen in the atmosphere in contact with the water, the concentration of dissolved organic substances in the water, and the physical aeration of the water.

**"DO"** means dissolved oxygen.

**"DRASTIC"** means that standardized system developed by the United States Environmental Protection Agency for evaluating groundwater vulnerability to pollution, based upon consideration of depth to water (D), net recharge (R), aquifer media (A), soil media (S), topography (T), impact of the vadose zone media (I), and hydraulic conductivity (C) of the aquifer.

**"EPA"** means the United States Environmental Protection Agency.

**"Ephemeral stream"** means an entire stream which flows only during or immediately after a rainfall event, and contains no refuge pools capable of sustaining a viable community of aquatic organisms.

**"Epilimnion"** means the uppermost homothermal region of a stratified lake.

**"Eutrophication"** means the process whereby the condition of a waterbody changes from one of low biologic productivity and clear water to one of high productivity and water made turbid by the accelerated growth of algae.

**"Existing beneficial uses"** means those uses listed in Title 40 CFR §131.3 actually attained by a waterbody on or after November 28, 1975. These uses may include public water supplies, fish and wildlife propagation, recreational uses, agriculture, industrial water supplies, navigation, and aesthetics.

**"Existing point source discharge(s)"** means, for purposes of 785:45-5-25, point source discharges other than stormwater which were/are in existence when the ORW, HQW or SWS designation was/is assigned to the water(s) which receive(s) the discharge. The load from a point source discharge which is subject to the no increase limitation shall be based on the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the limitation was assigned. Publicly owned treatment works may use design flow, mass loadings or concentration as appropriate if those flows, loadings or concentrations were approved as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, or SWS limitation.

**"Fecal coliform"** means a group of organisms common to the intestinal tracts of humans and of animals. The presence of fecal coliform bacteria in water is an indicator of pollution and of potentially dangerous bacterial contamination.

**"Fresh groundwater"** means groundwater with naturally-occurring concentrations of total dissolved solids less than 10,000 mg/L, or with levels of total dissolved solids of 10,000 or more mg/L caused by human activities.

**"Geometric mean"** means the nth root of the product of the samples.

**"Groundwater"** *means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.* [82: 1020.1(A)]

**"Groundwater basin"** means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities". [82: 1020.1(C)]

**"HLAC"** means Habitat Limited Aquatic Community.

**"HQW"** means High Quality Water.

**"HUC"** means hydrologic unit code utilized by the United States Geologic Survey and other federal and state agencies as a way of identifying all drainage basins in the United States in a nested arrangement from largest to smallest, consisting of a multi-digit code which identifies each of the levels of classification within two-digit fields.

**"Intolerant climax fish community"** means habitat and water quality adequate to support game fishes or other sensitive species introduced or native to the biotic province or ecological region, which require specific or narrow ranges of high quality environmental conditions.

**"Lake"** means:

(A) An impoundment of waters of the state over 50 acre-feet in volume which is either:

(i) owned or operated by federal, state, county, or local government or

(ii) appears in Oklahoma's Clean Lakes Inventory.

(B) Surface impoundments which are used as a treatment works for the purpose of treating stabilizing or holding wastes are excluded from this definition.

**"LC50"** means lethal concentration and is the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

**"Long-term average flow"** means an arithmetic average stream flow over a representative period of record.

**"MDL"** means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0). MDL is dependent upon the analyte of concern.

**"Mixing zone"** means when a liquid of a different quality than the receiving water is discharged into the receiving water, a mixing zone is formed. Concentration of the liquid within the mixing zone decreases until it is completely mixed with receiving water. A regulatory mixing zone is described in 785:45-5-26.

**"Narrative criteria"** means statements or other qualitative expressions of chemical, physical or biological parameters that are assigned to protect a beneficial use.

**"Natural source"** means source of contamination which is not human induced.

**"NLW Impairment Study"** means a scientific process of surveying the chemical, physical and biological characteristics of a nutrient threatened reservoir to determine whether the reservoir's beneficial uses are being impaired by human-induced eutrophication.

**"Non-conservative element"** means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

**"Nonpoint source"** means a source of pollution without a well defined point of origin.

**"Normal stream flow conditions"** means flow corresponding to low gradient areas in the hydrograph.

**"NTU"** means Nephelometric Turbidity Unit, which is the unit of measure using the method based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension (formazin). The higher the intensity of scattered light, the higher the turbidity.

**"Numerical criteria"** means concentrations or other quantitative measures of chemical, physical or biological parameters that are assigned to protect a beneficial use.

**"Numerical standard"** means the most stringent of the numerical criteria assigned to the beneficial uses for a given stream.

**"Nutrient impaired reservoir"** means a reservoir with a beneficial use or uses determined by an NLW Impairment Study to be impaired by human-induced eutrophication.

**"Nutrient-limited watershed"** means a watershed of a waterbody with a designated beneficial use which is adversely affected by excess nutrients as determined by Carlson's Trophic State Index (using chlorophyll-a) of 62 or greater, or is otherwise listed as "NLW" in Appendix A of this Chapter.

**"Nutrients"** means elements or compounds essential as raw materials for an organism's growth and development; these include carbon, oxygen, nitrogen and phosphorus.

**"ORW"** means Outstanding Resource Water.

**"OWRB"** means Oklahoma Water Resources Board.

**"PCBs"** means polychlorinated biphenyls.

**"Picocurie"** means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

**"Point source"** means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigation agriculture.

**"Pollutant"** means any material, substance or property which may cause pollution.

**"Pollution"** *means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life".* [82: §1084.2(1)]

**"Polychlorinated biphenyls"** means a group of organic compounds (206 possible) which are constructed of two phenyl rings and more than one chlorine atom.

**"PQL"** means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

**"Put and take fishery"** means the introduction of a fish species into a body of water for the express purpose of sport fish harvest where existing conditions preclude a naturally reproducing population.

**"Q*"** means dilution capacity.

**"Salinity"** means the concentration of salt in water.

**"Sample standard"** means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus two standard deviations of the mean.

**"Seasonal base flow"** means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

**"Seasonal seven-day, two-year low flow"** means the 7-day low flow of a stream likely to occur with a 50% probability for a season with the applicable dates in Table 1 of Appendix G of OAC 785:45.

**"Seasonal 7Q2"** means the seasonal seven-day, two-year low flow.

**"Sensitive representative species"** means *Ceriodaphnia dubia, Daphnia magna, Daphnia pulex, Pimphales promelas* (Fathead minnow), *Lepomis macrochirus* (Bluegill sunfish), or other sensitive organisms indigenous to a particular waterbody.

**"SWS"** means Sensitive Public and Private Water Supply.

**"Seven-day, two-year low flow"** means the 7-day low flow of a stream likely to occur with a 50% probability each year.

**"7Q2"** means the seven-day, two-year low flow.

**"Standard deviation"** means a statistical measure of the dispersion around the arithmetic mean of the data.

**"Standard Methods"** means the publication "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation.

**"Standards"**, when capitalized, means this Chapter, which constitutes the Oklahoma Water Quality Standards described in 82 O.S. §1085.30. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

**"Storm water"** means storm water runoff, snow melt runoff, and surface runoff and drainage.

**"Subwatershed"** means a smaller component of the larger watershed.

**"Synergistic effect"** means the presence of cooperative pollutant action such that the total effect is greater than the sum of the effects of each pollutant taken individually.

**"Thermal pollution"** means degradation of water quality by the introduction of heated effluent and is primarily a result of the discharge of the cooling waters from industrial processes, particularly from electrical power generation.

**"Thermal stratification"** means horizontal layers of different densities produced in a lake caused by temperature.

**"Variance"** means a temporary (not to exceed three years) exclusion of a specific numerical criterion for a specific discharge to a specific waterbody.

**"Warm Water Aquatic Community"** means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support intolerant climax fish communities and includes an environment suitable for the full range of warm water benthos.

**"Wastes"** *means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state".* [82 O. S. §1084.2(2)]

**"Waterbody"** means any specified segment or body of waters of the state, including but not limited to an entire stream or lake or a portion thereof.

**"Water quality"** means physical, chemical, and biological characteristics of water which determine diversity, stability, and productivity of the climax biotic community or affect human health.

**"Waters of the state"** *means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof* [82:1084.2(3)].

**"Watershed"** means the drainage area of a waterbody including all direct or indirect tributaries.

**"WWAC"** means Warm Water Aquatic Community.

**"Yearly mean standard"** means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus one standard deviation of the mean. The moving yearly mean standard is an average of the last five years of available data.

**"Zone of passage"** means a three dimensional zone expressed as a volume in the receiving stream through which mobile aquatic organisms may traverse the stream past a discharge without being affected by it. A regulatory zone of passage is described in 785:45-5-26.

## SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

## PART 1. GENERAL PROVISIONS

### 785:45-5-3. Beneficial uses: default designations

(a) **Surface waters excluding lakes.**

(1) For those surface waters of the state not listed in Appendix A of this Chapter, excluding lakes, the following beneficial uses are designated:

(A) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13),

(B) ~~Industrial and Municipal Process and Cooling Water (see 785:45-5-15),~~

~~(C)~~ Aesthetics (see 785:45-5-19),

(~~D~~ C) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c)), and

(~~E~~ D) Primary Body Contact Recreation (see 785:45-5-16).

(2) The beneficial uses described in 785:45-5-10 (Public and Private Water Supplies), 785:45-5-11 (Emergency Public and Private Water Supplies), 785:45-5-12(b) (the Habitat Limited Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation), and 785:45-5-17 (Secondary Body Contact Recreation) shall be designated only following use attainability analyses.

(3) Beneficial use determinations that follow use attainability analyses are subject to administrative rulemaking proceedings including the public hearing process.

(b) **Lakes.**

(1) For lakes, including those listed in Appendix A of this Chapter, the following beneficial uses are designated:

(A) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c));

(B) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13);

(C) ~~Industrial and Municipal Process and Cooling Water (see 785:45-5-15);~~

~~(D)~~ Primary Body Contact Recreation (see 785:45-5-16); and

(~~E~~ D) Aesthetics (see 785:45-5-19).

(2) The beneficial use of Public and Private Water Supplies (see 785:45-5-10) is specifically designated for certain lakes as provided in Appendix A of this Chapter. For all other lakes, the beneficial uses designated in this paragraph take control over the uses designated for stream segments which include descriptions of lakes or portions thereof identified in Appendix A of this Chapter.

## PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES

### 785:45-5-19. Aesthetics

(a) To be aesthetically enjoyable, the surface waters of the state must be free from floating materials and suspended substances that produce objectionable color and turbidity.

(b) The water must also be free from noxious odors and tastes, from materials that settle to form objectionable deposits, and discharges that produce undesirable effects or are a nuisance to aquatic life.

(c) The following criteria apply to protect this use:

(1) **Color.** Surface waters of the state shall be virtually free from all coloring materials which produce an aesthetically unpleasant appearance. ~~Color~~ For permitting purposes, color producing substances, from other than natural sources, shall be limited to concentrations equivalent to 70 Platinum- cobalt true color units.

(2) **Nutrients; numerical criterion applicable to waters designated Scenic Rivers.** The thirty (30) day geometric mean total phosphorus concentration in waters designated "Scenic River" in Appendix A of this Chapter shall not exceed 0.037 mg/L. The criterion stated in this subparagraph applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters. Such criterion became effective July 1, 2002 and shall be implemented as authorized by state law through Water Quality

Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012.

## APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE-SPECIFIC CRITERIA FOR CERTAIN PARAMETERS [REVOKED]

## APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE-SPECIFIC CRITERIA FOR CERTAIN PARAMETERS [NEW]

### A. General Applicability to Metals

Numerical criteria for total recoverable metals to protect aquatic life are referenced in OAC 785:45-5-12(f)(6)(G) and Table 2 of Appendix G of this Chapter. For permitting purposes, such criteria for total recoverable Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Silver, and Zinc may be translated into dissolved metals criteria using the conversion factors referenced in OAC 785:45-5-12(f)(6)(H) and Table 3 of Appendix G. Criteria for parameters other than metals are also located in Table 2 of Appendix G.

An additional alternative which may be utilized for permitting purposes is to determine site-specific criteria from either the total recoverable or the dissolved criteria. However, federal regulations found at 40 CFR 122.45(C) require that NPDES permit limits must express metals concentrations as total recoverable, not dissolved. Therefore, if dissolved criteria for metals are implemented, they must be translated to site-specific total metals criteria to be used in the issuance of permit limits consistent with OAC 785:46.

The permitting authority may issue a total recoverable permit limit if statewide total recoverable criteria are appropriate in the permitting authority's view, and/or satisfactory in the permittee's view. If permit limits obtained using total recoverable criteria are unsatisfactory to the permittee, the permittee may attempt to obtain different permit limits by developing site-specific criteria in accordance with the provisions of this Appendix.

Implementation of site-specific criteria may reduce the margin of safety afforded by implementation of criteria per 785:45-5-12(f)(6)(G) and Table 2 of Appendix G. Therefore, it is important that background concentration (which reduces the assimilation capacity of receiving water) be accounted for when site-specific criteria are implemented. Determination of background concentration requires a minimum of twelve samples collected over twelve months.

In order to develop permissible site-specific criteria, this Appendix must be followed to the satisfaction of the permitting authority and the OWRB. A work plan explaining sampling and analysis procedures and quality assurance/quality control must be approved by the OWRB prior to commencing the site-specific study. Upon completion, results must be submitted to OWRB and the permitting authority. Additional technical guidance is available in OWRB technical report 2001-2, "Guidance for Developing Site Specific Criteria for Metals" and through Appendices J and L of the "Water Quality Standards Handbook", EPA publication no. 823-B-94-005a (August 1995). Permittees are strongly encouraged to evaluate both the discharge and receiving water using clean sampling techniques.

Upon OWRB approval, site-specific criteria shall be promulgated as part of this Appendix following the next subsequent permanent rulemaking to amend OAC 785:45. These site-specific criteria supersede other numeric criteria promulgated elsewhere in this chapter if it is shown to the satisfaction of the Board that properties of the discharge or the circumstances surrounding the

development of the site-specific criteria have not significantly changed since the promulgation of those site-specific criteria. Such criteria and the conditions around which they were derived, including but not limited to local environmental factors and effluent characteristics, shall be re-evaluated by the permit holder with each subsequent discharge permit renewal application or major modification request to determine if any significant changes have affected the propriety of the site-specific criteria.

**B. Site-specific Criteria Applicability for NPDES Permit Activities**

Oklahoma's site-specific criteria, except as otherwise specified, apply where the maximum concentration on the chronic regulatory mixing zone boundary occurs under critical conditions for receiving streams where $Q^*>0.1823$ and on the acute regulatory mixing zone boundary for streams where $Q^*\leq 0.1823$. Critical conditions include regulatory effluent and receiving stream flows. OAC 785:46-5-2(C) requires that effluent flow, $Q_e$, be the highest monthly averaged discharge if sufficient data is available, or the design flow otherwise. When chronic criteria implementation is appropriate, OAC 785:45-5-4 requires that the receiving stream flow, $Q_u$, be the larger of 7Q2 or 1 cfs. One cfs shall be used if the 7Q2 cannot be determined. The discharger shall be required to determine the 7Q2 per OAC 785:46-1-6 prior to the next permit cycle at which time the permit limits may be revised using the newly calculated $Q_u$ (785:46-1-6(d)).

The maximum concentration on the mixing zone boundary may be simulated by mixing effluent and receiving water. Percent effluent in receiving water, PE, depends upon the dilution capacity of the stream and shall not exceed 100%. Dilution capacity, for streams, is represented as $Q^*= Q_e/Q_u$.

The following formulas shall be used to determine PE for receiving streams:
For streams with large dilution capacities ($Q^*$ < or equal to 0.1823), PE equals ($194Q^*$) divided by ($1 + Q^*$). PE for $Q^*$< or equal to 0.1823 shall not be less than 10%.

For streams with intermediate dilution capacities ($0.1823 < Q^* < 0.3333$), PE equals (100) divided by ($6.17 - 15.51Q^*$).

For streams with small dilution capacities ($Q^*$ > or equal to 0.3333), PE equals 100%.

Site-specific criteria in Oklahoma lakes are also based on the maximum concentration on the mixing zone boundary. The following formulas shall be used to determine PE for lakes:

PE equals 4.96D, D > or equal to 3 feet where D is pipe diameter.

PE equals $23.8\sqrt{W}$, W > or equal to 3 feet where W is canal width.

As with streams. PE is always less than or equal to 100% for lakes.

If PE is calculated to be less than 10%, then effluent water effect ratios shall use PE = 10%.

"Waterbody-specific" criteria, such as segment-specific metals, may not have limitations on it's applicability. Rather, it may be used a substitute for other applicable statewide criteria for the entire waterbody.

Site-specific criteria are dependent, in part, on specific properties of the effluent that influence the bioavailability and toxicity of metals. Substantial changes in the quality or quantity of the effluent may affect the resulting site-specific criterion. Therefore, if the existing permit contains requirements for toxicity reduction evaluations (TREs) or pollution prevention efforts, a site-specific criterion should not be developed until after these efforts have been completed. A new site-specific criteria study would likely have to be performed after those requirements are met because the characteristics of the effluent may significantly change (e.g., hardness, pH, TDS). In cases where the quality or quantity of an effluent changes, the burden rests on the permittee to demonstrate that the effluent characteristics are not significantly altered to a degree that would affect the validity of the outcomes of the original site-specific criteria study. A site-specific criterion may need to be re-evaluated periodically to reflect changes in the system that may alter the characteristics of either the receiving water or effluent.

**C. Site-specific Criteria Applicability for Activities Not Related to NPDES Permits**

In certain circumstances, statewide numeric criteria for parameters other than metals may be replaced by segment-specific criteria for specific parameters applicable to just one waterbody. These criteria will be applicable to any point in the waterbody. These criteria must be shown to be protective of native aquatic life through procedures similar to those used in the WER procedures detailed here and in OWRB technical report 2001-2, “Guidance for Developing Site Specific Criteria for Metals”.

Development of segment-specific criteria for minerals should follow the guidance contained in OWRB technical report TRWQ2001-2 (“Guidance For Developing Site-Specific Minerals Criteria“). Certain cases may require additional data or justification, but this document should provide sufficient basic guidance for the development of alternative criteria. Development of site-specific or segment-specific criteria for parameters for other than metals or minerals and lacking specific guidance documents will require extensive coordination with technical staff from OWRB and the permitting authority.

**D. Sampling Procedures**

General guidance for field sampling can be found in Appendix B of OWRB technical guidance document 2001-2, “Guidance for Developing Site Specific Criteria for Metals”. The permittee shall collect both receiving water and effluent, and mix them together to obtain PE. Ambient water collections shall be representative of low stream flow events and collected at a location unaffected by the discharge being permitted. Twenty-four (24) hour composite effluent samples representative of normal operation shall be collected at the outfall such that any periodic toxic discharges are captured and average effluent conditions are represented. Outfalls may be combined proportional to flow if in close proximity. Clean sampling techniques shall be used where possible and samples shall be analyzed by an Oklahoma certified laboratory utilizing generally accepted methods. Dilution water must be made in accordance with EPA's acute biomonitoring manual entitled "Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms", EPA publication no. 600/4-90-027 (1991). The pH, hardness, conductivity and alkalinity must be similar to that of the receiving water.

Site-specific criteria development for lakes should employ sampling procedures detailed in OWRB guidance document for B.U.M.P. Standard Operating Procedures. Deviation from these prescribed

techniques must be justified to OWRB and the permitting authority prior to initiation of the sampling. Excursions from these techniques that occur as a result of on-site conditions must be reported to OWRB and the permitting authority as soon as possible. Implications of these deviations on the data quality and their appropriateness to the outcomes of the study must be reviewed and agreed upon by OWRB and the permitting authority prior to their use in the derivation of any criteria.

For systems lacking NPDES permitted dischargers, sampling procedures for determining background concentration detailed in the OWRB technical guidance 2001-2 shall be sufficient for characterizing local conditions.

**E. Site-Specific Criteria Development Options for Metals**

Prior to the initiation of any work toward development of a site-specific criterion, interested parties must coordinate with OWRB technical staff. Such coordination will require, at a minimum, a workplan addressing project goals, collection and testing methods, quality assurance measures, and output schedules. This workplan will need to be reviewed and approved by OWRB and the permitting authority prior to initiation of any work.

Three options are available if the permittee decides to develop site-specific metals criteria for permitting purposes instead of utilizing the total recoverable criteria referenced in 785:45-5-12(f)(6)(G) and Table 2 of Appendix G.

**1. Option 1: Water Effects Ratio (WER)**

The permittee may obtain a site-specific water effects ratio (WER) to translate a state wide total criterion to a site-specific total criterion if the existing permit does not contain requirements for toxicity reduction evaluations or implementation of pollution prevention efforts. Toxicity tests using both laboratory dilution water and PE water must be performed. PE water is obtained by first determining the amount of water required for the toxicity test (e.g. 1L). Since PE = $100V_e/(V_e + V_r)$, where $V_e$ and $V_r$ are volumes of effluent and receiving water required for the toxicity test, respectively, then $V_e$ = PE/100 (L). If PE = 25%, then $V_e$ = 0.25L. Given that $V_e + V_r$ = 1 (L) in this example, $V_r$ = 1 - PE/100, or 0.75L.

Toxicity tests using two different species are required. Acute 48-hour static renewal definitive toxicity tests shall be performed by the permittee in accordance with the EPA guidance for acute testing identified above. $LC_{50}$ tests shall be used to determine WER's for both acute and chronic criteria. Toxicity tests require adding metal to both PE and dilution water. It shall not be acceptable to estimate metal concentrations by measuring the amount added. Total recoverable concentrations must be used to obtain LC50's for both test species for PE and laboratory water in Option 1.

Multiple WER's must be performed. At a minimum, three tests in three different seasons must be performed for two test species. WER is computed as $LC_{50dilution}/LC_{50PE}$. A geometric mean of the WER's is the final water effect ratio, FWER. A minimum of four WER's must be used in the computation of FWER. An explanation of any WER's obtained but not used in computation of FWER must be provided to the permitting authority and OWRB. The total criterion specified in Table 2 of Appendix G is divided by FWER to obtain a site-specific total criterion. Background concentration must be determined to use with the site-specific criterion to develop permit limits.

**2. Option 2: Dissolved To Total Fraction**

Dissolved and total recoverable concentrations must be obtained to determine a dissolved to total fraction. Samples must be taken from the effluent, receiving water and PE water. The dissolved to total fraction must be successfully computed a minimum of ten times.

The dissolved to total fraction is defined as $f_i = C_{Di}/C_{Ti}$, where $C_{Di}$ is the dissolved concentration in the ith PE sample, and $C_{Ti}$ is the total recoverable concentration. The dissolved fraction for the site shall be determined as the geometric mean for the n samples.

$$\therefore f = \exp\left[ \sum_{i=1}^{n} [\ln(f_i)]/n \right]$$

To develop a site-specific criterion from the dissolved fraction alone, divide the dissolved criterion determined from Table 3 of Appendix G by f. The result is a site-specific total recoverable criterion.

**3. Option 3: Combining f And FWER**

The most definitive method of developing a site-specific criterion is to modify a dissolved criterion to account for both the fraction of the concentration biologically available and the difference between the toxicity of the metal in the laboratory dilution water and in PE water. In order to perform option 3, WER's must be obtained using dissolved concentrations. This accounts for differences between the toxicity of the dissolved metal in laboratory dilution water and dissolved metal in PE water.

A translator, T, is obtained as the product of f and dissolved FWER. T is divided into the dissolved criterion determined from Table 3 of Appendix G to obtain a site-specific total recoverable criterion.

**F. Site-specific Criteria for Metals Which Have Been Developed for Particular Waterbodies**

Subsequent to the initial promulgation of this Appendix, there have been cases in which interested persons have developed site-specific criteria for particular discharges or other circumstances in accordance with this Appendix. Such site-specific criteria are set forth below. These site-specific criteria shall be interpreted according to the following:

$C_{ast}$ = acute statewide total criterion
$C_{cst}$ = chronic statewide total criterion
$C_{asd}$ = acute statewide dissolved criterion
$C_{csd}$ = chronic statewide dissolved criterion
$S_{ast}$ = acute site-specific total criterion
$S_{cst}$ = chronic site-specific total criterion
$FWER_t$ = final total water effects ratio
$FWER_d$ = final dissolved water effect ratio
f = dissolved to total fraction

Acute site-specific criteria are appropriate for large streams and chronic site-specific criteria are appropriate for small and medium size streams.

Options Allowed In Appendix E

Option 1

$S_{ast} = C_{ast}/FWER_t$

$S_{cst} = C_{cst}/FWER_t$

Option 2

$S_{ast} = C_{csd}/f$

$S_{cst} = C_{csd}/f$

Option 3

$S_{ast} = C_{csd}/(fxFWER_d)$

$S_{cst} = C_{csd}/(fxFWER_d)$

**1. City of Blackwell Discharge to Chikaskia River**

A site-specific criteria modification study has been satisfactorily completed for cadmium for the City of Blackwell.

$FWER_t = 0.0989$
$FWER_d = 0.2905$
$f = 0.18$

The results of the study allow any of the four following criteria to be utilized.

| | |
|---|---|
| $C_{cst}$ = 2.2 µg/L | Statewide criterion |
| $S_{cst}$ = 22.24 µg/L | Option 1 |
| $S_{cst}$ = 10.68 µg/L | Option 2 |
| $S_{cst}$ = 36.76 µg/L | Option 3 |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**2. AES Shady Point Discharge to Poteau River**

A site-specific criteria modification study has been satisfactorily completed for copper for AES Shady Point.

$FWER_t = 0.0876$
$FWER_d = 0.1306$
$f = 0.5936$

The results of the study allow any of the four following criteria to be utilized.

| | |
|---|---|
| $C_{cst}$ = 9.50 µg/L | Statewide criterion |
| $S_{cst}$ = 65 µg/L | Option 1 |
| $S_{cst}$ = 15.3 µg/L | Option 2 |
| $S_{cst}$ = 74 µg/L | Option 3 |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**3. City of Idabel Discharge to Mud Creek**

**A. Lead**
A site-specific criteria modification study has been satisfactorily completed for lead for the City of Idabel.

$FWER_t$ = 2.5912
$FWER_d$ = 0.2914
f = 0.7157

The results of the study allow any of the four following criteria to be utilized.

| | |
|---|---|
| $C_{cst}$ = 2.3492 µg/L | Statewide criterion |
| $S_{cst}$ = 0.9066 µg/L | Option 1 |
| $S_{cst}$ = 2.7104 µg/L | Option 2 |
| $S_{cst}$ = 9.3036 µg/L | Option 3 |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**B. Nickel**
A site-specific criteria modification study has been satisfactorily completed for nickel for the City of Idabel.

$FWER_t$ = 1.1244
$FWER_d$ = 0.9735
f = 0.5798

The results of the study allow any of the four following criteria to be utilized.

| | |
|---|---|
| $C_{cst}$ = 128.8834 µg/L | Statewide criterion |
| $S_{cst}$ = 114.6242 µg/L | Option 1 |
| $S_{cst}$ = 221.6226 µg/L | Option 2 |
| $S_{cst}$ = 227.6697 µg/L | Option 3 |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**C. Zinc**
A site-specific criteria modification study has been satisfactorily completed for zinc for the City of Idabel.

$FWER_t$ = 0.6714
$FWER_d$ = 0.7178
f = 0.6213

The results of the study allow any of the four following criteria to be utilized.

| | |
|---|---|
| $C_{cst}$ = 96.6161 µg/L | Statewide criterion |

$S_{cst}$ = 129.0082 µg/L Option 1
$S_{cst}$ = 137.4592 µg/L Option 2
$S_{cst}$ = 191.4874 µg/L Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**4. Oklahoma Gas & Electric Mustang Generating Station Discharge to North Canadian River at NE 1/4 of NE 1/4 of SE 1/4 of Section 36, T 12 N, R 5 WIM, Canadian County, Oklahoma**

A site-specific criteria modification study has been satisfactorily completed for copper for the Oklahoma Gas & Electric Mustang Generating Station discharge to the North Canadian River.

$FWER_t$ = 0.053
$FWER_d$ = 0.224
f = 0.368 (0.37)

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 334 mg/L.

$C_{cst}$ = 35.9 µg/L Statewide criterion
$S_{cst}$ = 677 µg/L Option 1
$S_{cst}$ = 94.0 µg/L Option 2
$S_{cst}$ = 416.0 µg/L Option 3 (Recommended in OG&E study)

$C_{ast}$ = 59.8 µg/L Statewide criterion
$S_{ast}$ = 1128 µg/L Option 1
$S_{ast}$ = 156.0 µg/L Option 2
$S_{ast}$ = 692.0 µg/L Option 3 (Recommended in OG&E study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**5. City of Poteau Discharge to Poteau River at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma**

**A. Copper**
A site-specific criteria modification study has been satisfactorily completed for copper for the City of Poteau discharge to the Poteau River.

$FWER_t$ = 0.1850
$FWER_d$ = 0.1765
f = 0.2969

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{cst}$ = 4.02 µg/L Statewide criterion
$S_{cst}$ = 21.73 µg/L Option 1
$S_{cst}$ = 13.0 µg/L Option 2
$S_{cst}$ = 73.66 µg/L Option 3 (Recommended in Poteau study)

$C_{ast}$ = 5.35 µg/L Statewide criterion
$S_{ast}$ = 28.92 µg/L Option 1
$S_{ast}$ = 17.31 µg/L Option 2
$S_{ast}$ = 98.09 µg/L Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**B. Zinc**
A site-specific criteria modification study has been satisfactorily completed for zinc for the City of Poteau discharge to the Poteau River.

$FWER_t$ = 0.4040
$FWER_d$ = 0.4276

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L. However, option 1 was deemed sufficient to provide relief from a zinc limit in the discharge permit.

$C_{cst}$ = 33.59 µg/L Statewide criterion
$S_{cst}$ = 83.14 µg/L Option 1 (Recommended in Poteau study)

$C_{ast}$ = 37.08 µg/L Statewide criterion
$S_{ast}$ = 91.78 µg/L Option 1 (Recommended in Poteau study)

**C. Cadmium**
A site-specific criteria modification study has been satisfactorily completed for cadmium for the City of Poteau discharge to the Poteau River.

$FWER_t$ = 0.2427
$FWER_d$ = 0.2400

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{cst}$ = 0.39 µg/L Statewide criterion
$S_{cst}$ = 1.61 µg/L Option 1
$S_{cst}$ = 0.38 µg/L Option 2
$S_{cst}$ = 1.58 µg/L Option 3 (Recommended in Poteau study)

$C_{ast}$ = 7.30 µg/L Statewide criterion
$S_{ast}$ = 30.08 µg/L Option 1
$S_{ast}$ = 7.31 µg/L Option 2
$S_{ast}$ = 30.46 µg/L Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**D. Silver**

A site-specific criteria modification study has been satisfactorily completed for silver for the City of Poteau discharge to the Poteau River.

$FWER_t$ = 0.2075
$FWER_d$ = 0.2908

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

Statewide chronic criteria are available for this parameter.

| | |
|---|---|
| $C_{ast}$ = 0.39 µg/L | Statewide criterion |
| $S_{ast}$ = 1.88 µg/L | Option 1 |
| $S_{ast}$ = 0.94 µg/L | Option 2 |
| $S_{ast}$ = 3.24 µg/L | Option 3 (Recommended in Poteau study) |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**E. Lead**
A site-specific criteria modification study has been satisfactorily completed for lead for the City of Poteau discharge to the Poteau River.

$FWER_t$ = 0.1782
$FWER_d$ = 0.1828

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

| | |
|---|---|
| $C_{cst}$ = 0.57 µg/L | Statewide criterion |
| $S_{cst}$ = 3.20 µg/L | Option 1 |
| $S_{cst}$ = 0.59 µg/L | Option 2 |
| $S_{cst}$ = 3.25 µg/L | Option 3 (Recommended in Poteau study) |

| | |
|---|---|
| $C_{ast}$ = 14.52 µg/L | Statewide criterion |
| $S_{ast}$ = 81.48 µg/L | Option 1 |
| $S_{ast}$ = 15.15 µg/L | Option 2 |
| $S_{ast}$ = 82.88 µg/L | Option 3 (Recommended in Poteau study) |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**6. City of Heavener Discharge to Morris Creek at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma: Copper**

A site-specific criteria modification study has been satisfactorily completed for copper for the City of Heavener discharge to Morris Creek.

$FWER_t$ = 0.1294
$FWER_d$ = 0.1216
f = 0.8595

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

| | |
|---|---|
| $C_{cst}$ = 4.02 µg/L | Statewide criterion |
| $S_{cst}$ = 31.07 µg/L | Option 1 |
| $S_{cst}$ = 4.68 µg/L | Option 2 |
| $S_{cst}$ = 38.50 µg/L | Option 3 (Recommended in Morris Ck. study) |

| | |
|---|---|
| $C_{ast}$ = 5.35 µg/L | Statewide criterion |
| $S_{ast}$ = 41.34 µg/L | Option 1 |
| $S_{ast}$ = 6.22 µg/L | Option 2 |
| $S_{ast}$ = 51.19 µg/L | Option 3 (Recommended in Morris Ck. study) |

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

**G. Site-Specific Criteria for Parameters Other Than Metals**

The purpose of site-specific criteria investigations may not necessarily be intended to prevent toxicity as a result of the substance of concern. Various substances may produce various types of adverse impacts in the environment. For example, minerals may produce a toxic response due to ionic imbalance while nutrients may produce various impacts depending upon algal response to various conditions within the system. Examples of such systems include those that where there may be nitrogen, phosphorus or light limitations. Resulting site-specific criteria may involve seasonal, spatial or other limitations as well as specific numeric limitations.

“Waterbody-specific” criteria, such as certain nutrients in Sensitive Water Supplies or segment-specific metals, may not have limitations on its applicability. Rather, it may be used a substitute for other applicable statewide criteria.

Development of site-specific criteria for minerals should follow the guidance contained in OWRB technical report TRWQ2001-2 ("Guidance For Developing Site-Specific Minerals Criteria"). Certain cases may require additional data or justification, but this document should provide sufficient basic guidance for the development of site-specific criteria.

Development of site-specific criteria for parameters other than metals or minerals and lacking specific guidance documents will require extensive coordination with technical staff from OWRB and the permitting authority. Such coordination will require, at a minimum, a workplan addressing project goals, collection and testing methods, quality assurance measures and output schedules. This workplan will need to be reviewed and approved by OWRB and the permitting authority prior to initiation of any work.

Those instances in which site-specific phosphorus or nitrogen criteria may be promulgated pursuant to OAC 785:45-5-10(7) titled "Chlorophyll-a numerical criterion for certain waters" will be limited to those waterbodies that have been shown to be impaired by nutrients and a numeric nutrient criterion has been determined to be the best way to affect reductions in the target nutrient. Such a demonstration will follow procedures outlined in OAC 785:46-15-10. Criteria may be derived from the

result of "Clean Lake Studies" or other site-specific investigations performed by an agency of competent authority or a designee.

In cases where toxicity may be a concern due to the parameter in question, toxicity testing using two different species is required. Such testing should comply with the procedures detailed in OAC 252:690 and guidance found in OWRB technical report TRWQ2002-1 *(Guidance Document for the Development of Site-Specific Water Quality Criteria for Metals*). Exceptions to or deviations from these protocols should be brought to the attention of the OWRB and permitting authority prior to completion of the testing and thoroughly detailed in the final report.

**H. Site-specific Criteria for Nutrients Which Have Been Developed for Particular Waterbodies**
(reserved)

**I. Site-specific Criteria for Other Parameters Which Have Been Developed for Particular Waterbodies**

1. **American Electric Power discharge to a tributary of Nine Mile Creek and Nine Mile Creek upstream of the confluence with East Cache Creek at Section 4, T 1 S, R 11 WIM, Comanche County.**

   A site-specific mineral study has been satisfactorily completed on these waterbodies indicating that the actual agricultural uses of the waterbody are capable of tolerating more mineral input than currently allowed by the default values in Appendix F for segment 311300. The following criteria are allowed for the protection of the actual agricultural usage of the water.

| | Total Dissolved Solids | Sulfate | Chloride |
|---|---|---|---|
| Yearly mean standard (mg/L) | 1680 | 338 | 499 |
| Sample standard (mg/L) | 2100 | 423 | 624 |

## APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [REVOKED]

## APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [NEW]

(a) **Introduction.** This Appendix prescribes numerical limits for certain criteria which are necessary to protect beneficial uses as and wherever designated. Table 1 is a chart that states the numerical limits to protect the beneficial use and subcategories of Fish and Wildlife Propagation for the single parameter of dissolved oxygen as set forth in OAC 785:45-5-12(f)(1). The latter limits vary depending upon several factors including the pertinent subcategory or fishery class, the time of the year, and the seasonal temperature. Table 2 prescribes the numerical limits that cannot be exceeded for certain substances or parameters in order to protect beneficial uses and subcategories as set forth in OAC 785:45-5-10(1), 785:45-5-10(6), 785:45-5-12(f)(6), and 785:45-5-20. The numerical limits may vary from one beneficial use or subcategory to another according to how the criteria are required by OAC 785:45 or OAC 785:46 to be implemented. Table 3 is a chart that sets forth conversion factors that can be used to determine criteria for dissolved metals in order to protect the beneficial use of Fish and Wildlife Propagation and all its subcategories as set forth in OAC 785:45-5-12(f)(6)(H).

(b) **Explanations for abbreviations and certain terms in Tables.**

(1) "CAS #" refers to a parameter's Chemical Abstract Service registry number. Each of these numbers is a unique identifier of a particular compound with a particular structure; the number provides additional and further specificity for the parameter in question than simply identifying it by a systematic, generic, proprietary, or [trivial] name. The CAS number has no particular chemical significance.

(2) Equations are prescribed for those substances the toxicity of which varies with water chemistry.

(3) Metals that are listed in Tables 2 and 3 shall be measured as total metals in the water column.

**Table 1.**

**Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation and All Subcategories Thereof**

| SUBCATEGORY OF FISH AND WILDLIFE PROPAGATION (FISHERY CLASS) | DATES APPLICABLE | D.O. CRITERIA (MINIMUM) (mg/L) | SEASONAL TEMP. (°C) |
|---|---|---|---|
| Habitat Limited Aquatic Community | | | |
| Early Life Stages | 4/1 - 6/15 | 4.0 | 25[3] |
| Other Life Stages | | | |
| Summer Conditions | 6/16 - 10/15 | 3.0 | 32 |
| Winter Conditions | 10/16 - 3/31 | 3.0 | 18 |
| Warm Water Aquatic Community | | | |
| Early Life Stages | 4/1 - 6/15 | 6.0[2] | 25[3] |
| Other Life Stages | | | |
| Summer Conditions | 6/16 - 10/15 | 5.0[2] | 32 |
| Winter Conditions | 10/16 - 3/31 | 5.0 | 18 |
| Cool Water Aquatic Community And Trout | | | |
| Early Life Stages | 3/1 - 5/31 | 7.0[2] | 22 |
| Other Life Stages | | | |
| Summer Conditions | 6/1 - 10/15 | 6.0[2] | 29 |
| Winter Conditions | 10/16 - 2/28 | 6.0 | 18 |

[1] For use in calculation of the allowable load.

[2] Because of natural diurnal dissolved oxygen fluctuation, a 1.0 mg/l dissolved oxygen concentration deficit shall be allowed for not more than eight (8) hours during any twenty-four (24) hour period.

[3] Discharge limits necessary to meet summer conditions will apply from June 1 of each year. However, where discharge limits based on Early Life Stage (spring) conditions are more restrictive, those limits may be extended to July 1.

**TABLE 2.**
**Numerical Criteria to Protect Beneficial Uses and All Subcategories Thereof**

| PARAMETER | CAS # | Fish & Wildlife Propagation | | Public and Private Water Supply (Raw Water) | Fish Consumption and Water | Fish Consumption |
|---|---|---|---|---|---|---|
| | | ACUTE | CHRONIC | | | |
| | | µg/L | µg/L | mg/L | µg/L | µg/L |
| **INORGANICS** | | | | | | |
| Arsenic | 7440382 | 360.0 | 190 | 0.04 | | 205.0 |
| Barium | 7440393 | | | 1.00 | | |
| Cadmium | 7440439 | e(1.128[ln(hardness)] -1.6774) | e(0.7852[ln(hardness)]-3.490) | 0.020 | 14.49 | 84.13 |
| Cadmium for trout streams | | e(1.128[ln(hardness)] - 3.828) | e(0.7852[ln(hardness)]-3.490) | 0.020 | 14.49 | 84.13 |
| Chromium (total) | | | 50 | 0.050 | 166.3 | 3365.0 |
| Copper | 7440508 | e(0.9422[ln(hardness)]- 1.3844) | e(0.8545[ln(hardness)]-1.386) | 1.000 | | |
| Cyanide | 57125 | 45.93 | 10.72 | 0.200 | | |
| Flouride @ 90° F | | | | 4.0 | | |
| Lead | 7439921 | e(1.273[ln(hardness)] - 1.460) | e(1.273[ln(hardness)] - 4.705) | 0.100 | 5.0 | 25.0 |
| Mercury | 7439976 | 2.4 | 1.302 | 0.002 | 0.050 | 0.051 |
| Nickel | 7440020 | e(0.8460[ln(hardness)]+3.3612) | e(0.846[ln(hardness)]+ 1.1645) | | 607.2 | 4583.0 |
| Nitrates (as N) | 14797558 | | | 10.000 | | |
| Selenium | 7782492 | 20.0 | 5 | 0.010 | | |
| Silver | 7440224 | e(1.72[ln(hardness)] - 6.52) | | 0.050 | 104.8 | 64620.0 |
| Thallium | 7440280 | 1400.0 | | | 1.7 | 6.0 |
| Zinc | 7440666 | e(0.8473[ln(hardness)]+0.8604) | e(0.8473[ln(hardness)]+0.7614 | 5.000 | | |
| **ORGANICS** | | | | | | |
| 1-1-1 TCE | 71556 | | | | 3094.0 | 173100.0 |
| 2-4-5-TP Silvex | 93721 | | 10.0 | 0.010 | | |
| 2-4-6-TNT | | 450.0 | | | | |
| 2-4-D | 94757 | | | 0.100 | | |

| PARAMETER | CAS # | Fish & Wildlife Propagation | | Public and Private Water Supply (Raw Water) | Fish Consumption and Water | Fish Consumption |
|---|---|---|---|---|---|---|
| | | ACUTE | CHRONIC | | | |
| | | µg/L | µg/L | mg/L | µg/L | µg/L |
| Acrolein | 107028 | | | | 6.0 | 9.0 |
| Acrylonitrile | 107131 | 7550.0 | | | .59 | 6.7 |
| Aldrin | 309002 | 3.0 | | | 0.001273 | 0.001356 |
| Benzene | 71432 | | 2200.0 | | 11.87 | 714.1 |
| Benzidine | 92875 | | | 0.001 | | |
| Butylbenzyl Phthalate | 85687 | | | 0.150 | | |
| Carbon Tetrachloride | 56235 | | | | 2.538 | 44.18 |
| Chlordane | 57749 | 2.4 | 0.17 | | 0.00575 | 0.00587 |
| Chloroform | 67663 | | | | 56.69 | 4708.0 |
| Chlorpyrifos (Dursban) | 2921882 | 0.083 | 0.041 | | | |
| DDT | | 1.1 | 0.001 | | 0.005876 | 0.0059 |
| Demeton | 8065483 | | 0.1 | | | |
| Detergents (total) | | | | 0.200 | | |
| Diazinon | 333415 | 0.17 | | | | |
| Dichlorobromomethane | 75274 | | | | 1.9 | 157.0 |
| Dieldrin | 60571 | 2.5 | 0.0019 | | 0.001352 | 0.00144 |
| Dioxin | 1746016 | | | | 0.00000013 | 0.000000138 |
| Endosulfan | | 0.22 | 0.056 | | | |
| Endrin | 72208 | 0.18 | 0.0023 | 0.0002 | .7553 | 0.814 |
| Ethylbenzene | 100414 | | | | 3120.0 | 28720.0 |
| Guthion | 86500 | | 0.01 | | | |
| Gamma BHC | 58899 | 2.0 | 0.08 | 0.004 | .1458 | 0.4908 |
| Heptachlor | 76448 | 0.52 | 0.0038 | | 0.00208 | 0.00214 |
| Hexachlorobenzene | 118741 | | | | 0.009026 | 0.009346 |
| Malathion | 121755 | | 0.10 | | | |
| Methoxychlor | 72435 | | 0.03 | 0.100 | | |
| Methylene blue active substances | | | 0.001 | 0.500 | | |

| PARAMETER | CAS # | Fish & Wildlife Propagation | | Public and Private Water Supply (Raw Water) | Fish Consumption and Water | Fish Consumption |
|---|---|---|---|---|---|---|
| | | ACUTE | CHRONIC | | | |
| | | µg/L | µg/L | mg/L | µg/L | µg/L |
| Mirex | 2385855 | | 0.001 | | | |
| Nonylphenol | 25154523 | 28 | 6.6 | | | |
| Parathion | 56382 | 0.065 | 0.013 | | | |
| PCB | | | 0.044 | | 0.00079 | 0.00079 |
| PCE (Tetrachloroethylene) | 127184 | 5280.0 | | | 8.0 | 88.5 |
| Pentachlorophenol | 87865 | e[1.005(pH)-4.830 | e[1.005(pH)-5.290] | | 1014.0 | 29370.0 |
| Perchlorate | 7601-90-3 | 6600 | 1800 | | 9 | |
| Phenol | 108952 | | | | 10,000.0 | 860,000.0 |
| Phthalate esters | | | | 0.003 | | |
| RDX | 121824 | 2591.5 | | | | |
| Toluene | 108883 | | 875.0 | | 10150.0 | 301900.0 |
| Toxaphene | 8001352 | 0.78 | 0.0002 | 0.005 | | |

**Table 3.**
**Conversion Factors for Total to Dissolved Fractions [H=hardness as $CaCO_3$ (mg/L)]**

| METAL | CAS # | ACUTE | CHRONIC |
|---|---|---|---|
| Arsenic | 7440382 | 1.000 | 1.000 |
| Cadmium | 7440439 | 1.136672 - 0.041838lnH | 1.101672-0.041838 lnH |
| Copper | 7440508 | 0.960 | 0.960 |
| Lead | 7439921 | 1.46203 - 0.145712 lnH | 1.46203 - 0.145712 lnH |
| Mercury | 7439976 | 0.85 | N/A |
| Nickel | 7440020 | 0.998 | 0.997 |
| Silver | 7440224 | 0.85 | N/A |
| Zinc | 7440666 | 0.978 | 0.986 |

## APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [REVOKED]

## APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [NEW]

A. Within Oklahoma there are some bodies or areas of groundwater the quality of which is not suitable for the beneficial uses that are designated on a default basis in OAC 785:45-7-3(b). In most cases this unsuitability is caused by natural conditions or irreversible human-induced impacts such as pollution. Consequently, it is necessary to provide for beneficial use designations for these limited areas of groundwater which are more accurate and appropriate than the default designations in 785:45-7-3(b). The absence of an area of a groundwater formation from this Appendix does not necessarily indicate that area is free from contamination or has quality suitable for any particular beneficial use.

B. The groundwater formations or portions thereof that require special designations are identified in the tables that follow in this Appendix. The groundwater formations or units are identified by their name (e.g., "Garber Wellington") and legal description (e.g., "Section 2, T 2 N, R 20 WIM" denoting Section(s), Township and Range). The area identified may be localized and not necessarily inclusive of the entire hydrogeologic basin or groundwater formation. The tables also set forth a general description of the physical location above the groundwater formation or unit for use as a general point of reference. The tables also set forth columns to show the groundwater classifications and beneficial uses which are designated for each identified area of groundwater. A "Depth Zone" also is indicated, to which the beneficial uses and "Remarks" listed in following columns are applicable.

C. Designations of beneficial uses for an identified groundwater formation or portion thereof are reflected in the tables by the presence of a dot ("•") in the columns to the right of the groundwater name and location. An empty space in a column means that column's beneficial use or subcategory thereof is not designated for that groundwater. Groundwater not identified in this Appendix is subject to the default designations detailed in OAC 785:45-7-3.

D. The state environmental agency that requested the groundwater formation or unit to be so identified and designated with certain beneficial uses and/or limitations is shown in the column headed "Agency". A specific division within that agency may also be listed. Questions relating to the quality of the groundwater found in any particular formation or unit, or concerns related to any comment in the "Remarks" column, should be addressed to the agency denoted in the "Agency" column.

E. The presence of any comment in the "Remarks" column denotes special circumstances which are applicable only to the groundwater formation or unit so identified. These comments may refer to certain constituents of the groundwater at that location, special well construction requirements, or other information deemed pertinent by the agency that requested this listing.

F. Definitions

"ACOG" means Association of Central Oklahoma Governments
"Corp Comm" means Oklahoma Corporation Commission
"DEQ" means Oklahoma Department of Environmental Quality
"SEP" means Supplemental Environmental Projects
"RCRA" means Resource Conservation and Recovery Act
"VCP" means Voluntary Compliance Program

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Garber Wellington (Thunderhead Hills) | W 1/2 of W 1/2 of Section 20, T 14 N, R 2 WIM; W 1/2 of NW 1/4 and NW 1/4 of SW 1/4 of Section 29, T 14 N, R 2 WIM | Along and 1/4 mile east of Coltrane from Danforth Rd to Sherrywood Rd, Edmond, Oklahoma County | 85-200 ft deep; 1/4 mile wide by at least 1 3/4 mile long | 2 | | • | | Corp Comm, Oil and Gas Div & ACOG | Brine plume moving south about 80 ft/year. Case/cement new wells through upper affected zone. |
| Garber Wellington (Double Eagle / 4th Street Superfund site) | SE 1/4 of Section 35, T 12 N, R 3 WIM and SW 1/4 of Section 36, T 12 N, R 3 WIM | Oklahoma County | 0-160 ft | 2 | | • | • | DEQ | Brine, chlorinated solvents and hydrocarbons. Special well construction required. |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Boone (Tar Creek Superfund site) | Sections 13, 14, 23, 24, 25, 26, 35, and 36 of T 29 N, R 22 EIM. Sections 13-36 of T 29 N, R 23 EIM. Sections 17-19, W 1/2 of Section 20, W 1/2 of Section 29, and Sections 30-32 of T 29 N, R 24 EIM. Section 1, E 1/2 of Section 2, E 1/2 of Section 11, Section 12, N 1/2 of Section 13, NE 1/4 of Section 14 all in T 28 N, R 22 EIM. Section 1, W 1/2 of Section 5, Section 6, Section 7, W 1/2 of Section 8, NW 1/4 of Section 17, N 1/2 of Section 18 all in T 28 N, R 23 EIM, W 1/2 of Section 5, Section 6 all in T 28 N, R 24 EIM. | Ottawa County | 0-350 ft | 2 | • | • | • | DEQ | Toxic metals, special well construction required |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Quaternary Terrace (Kingfisher Wellhead Protection Area) | Section 33, SW 1/4 of Section 36 in T 18 N, R 7 WIM. SW 1/4 of Section 1, NW 1/4 and S 1/2 of Section 2, N 1/2 of Section 3, N 1/2 of Section 4, NE 1/4 of Section 11, and Section 12 all in T 17 N, R 7 WIM | Kingfisher County | 0-100 ft | 1 | • | • | • | DEQ | Zone 1 Wellhead Protection Area, no pollution sources |
| Southwestern Oklahoma (Altus AFB area) | Sections 34-36 in T 3 N, R 20 WIM. Sections 1-3, Sections 10-15, and Sections 22-24 all in T 2 N, R 20 WIM | North of US 62, eastern edge of City of Altus and entire AFB, Jackson County | 0-60 ft | 3 | | • | • | OWRB | TCE and by-products, remediation activity in-place |
| Ogallala (Dobson Ranch) | One square acre withing NW 1/4 of Section 17, T 11 N, R 26 WIM | State Highway 152, approximately four miles west of Sweetwater, OK, Roger Mills County | 0-20 ft | 2 | • | • | • | DEQ - VCP | Restriction on groundwater use within the 1 square mile recorded on a deed notice due to Benzene contamination. See DEQ or county clerk for location details |
| Quaternary Terrace Deposits - (Cornerstone Shopping Center) | SE 1/4 of Section 16, T 12 N, R 4 WIM, Approx six (6) acres of WEST PARK ADDITION to Oklahoma County, Oklahoma. | 3900 N. MacArthur Avenue, Oklahoma City, Oklahoma County, Oklahoma | 0-22 ft | 2 | • | • | • | DEQ - VCP | Tetrachloroethene - Deed restriction on file. See DEQ or county clerk for location details. |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Alluvium & Terrace Deposits - (OKC Urban Renewal Phase I) | 21.6 acres of the NW 1/4 of Section 3, T 11 N, R 3 WIM | An area bounded to the South of Reno Avenue, East of the BNSF railroad tracks, North of Interstate 40/or its replacement street and west of a line extended from Stiles Avenue to Interstate 40/or its replacement street in Oklahoma City, Oklahoma County, Oklahoma. | 0-30 ft | 2 | • | • | • | DEQ - VCP | Deed restriction on groundwater use. See DEQ or county clerk for location details. |
| Coffeyville Formation (Compass Industries Landfill Superfund site) | SE 1/4 of NE 1/4 and NE 1/4 of SE 1/4 of Section 13, T 19 N, R 11 EIM, and S 1/2 of NW 1/4 and N 1/2 of SW 1/4 of Section 18, T 19 N, R 12 EIM | 7600 W 26th St, Tulsa, Tulsa County, Oklahoma | 0-105 ft | 2 | • | • | • | DEQ-Superfund | Deed restriction on groundwater use for any purpose. See DEQ or county clerk for location details. |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Weatherford Member of the Cloud Chief Formation & Rush Springs Sandstone Formation (Oklahoma Refining Company Superfund site) | S 1/2 of SW 1/4 of Section 18, T 5 N, R 9 WIM and NW 1/4 of Section 19, T 5 N, R 9 WIM, and NW 1/4 of Section 19, T 5 N, R 9 WIM, and SE 1/4 of SE 1/4 of Section 13, T 5 N, R 10 WIM and E 1/2 of NE 1/4 of NE 1/4 of Section 24, T 5 N, R 10 WIM | South Baskett St, Cyril, Caddo County, Oklahoma | 0-145 ft | 2 | • | • | • | DEQ - Superfund | Deed restriction on disturbing landfill caps and on groundwater use for any purpose due to hydrocarbon contamination. See DEQ or county clerk for location details. |
| North Canadian Alluvium (Tenth Street Superfund site) | 2.931 acres in the NW 1/4 of Section 31, T 12 N, R 2 WIM | 3200 NE 10th St Oklahoma City, Oklahoma County, Oklahoma | 0-20 ft | | • | • | • | DEQ - Superfund | Deed restriction on drilling of any type of wells through the landfill cap or into the landfill. See DEQ or county clerk for location details. |
| North Canadian Alluvium and Garber (Mosley Road Landfill Superfund site) | 71.765 acres in NE 1/4 of Section 21, T 12 N, R 2 WIM | Mosely Road Between NE 23rd St. & NE 36 St. Oklahoma City, Oklahoma County, Oklahoma | 0-150 ft | 2 | • | • | • | DEQ - Superfund | Restriction on groundwater use for any purpose. See DEQ or county clerk for location details |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Tallant Formation (Black Star Performance) | SE 1/4 of Section 25, T 20 N, R 8 EIM and NE 1/4 of Section 25, T 20 N, R 8 EIM | East of Highway OK-48, about 4 miles north of Highway OK-51 intersection, in Terlton, Pawnee County, Oklahoma | 0-37 ft, depth of contamination not yet defined. | 2 | • | • | • | DEQ - RCRA | 1,1,1-Trichloroethane and 1,1-Dichloroethene Depth of contamination unknown, private wells to 200 feet are impacted. See DEQ for additional details. |
| N. Canadian Terrace Deposits underlain by Hennessey Group (OKC Solvent Plume) | Approximately 80 acres in NE 1/4 of Section 27, T 12 N, R 4 WIM and NW 1/4 of Section 27, T 12 N, R 4 WIM | Between NW 23rd and NW 19th St. and N Meridian and Ann Arbor, Oklahoma City, Oklahoma County, Oklahoma | 0-30 ft, depth of contamination not yet defined. | 2 | • | • | • | DEQ - SEP | Tetrachloroethylene (max 1200 ppb) and Trichloroethylene (max 35 ppb). Plume not delineated; private wells impacted. See DEQ for details. |
| Garber-Wellington (Eagle Industries) | Approximately 6 acres in SE 1/4 of Section 7, T 11 N, R 1 WIM | North of SE 29th & West of Westminister Road, Midwest City, Oklahoma County, Oklahoma | 0-50 ft, depth of contamination not yet defined. | 2 | • | • | • | DEQ - RCRA | Trichloroethylene (max 2280 ppb). Plume not delineated. See DEQ for details. |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| East Central Oklahoma bedrock | SE 1/4 of SE 1/4 of SE 1/4 of Section 5, T 7 N, R 9 EIM | Hughes County | 200 ft deep, Areal extent unknown | 2 | • | • | • | Corp. Comm. O & G Division | Brine affecting aquifer. Disposal well offsetting old (now plugged) oil well was the most likely conduit. |
| Garber-Wellington Sandstone Formation | NW 1/4 of SE 1/4 of Section 1, T 9 N, R 2 EIM | Pottawatomie County | 160-200 ft deep, 20 Acres | 2 | • | • | • | Corp. Comm. O & G Division | Brine affecting aquifer. Now plugged disposal well was the most likely source. |
| Rush Springs Sandstone, Marlow Formation. (Cyril Plume) | Portions of Sections 1 and 12 in T 5 N, R 10 WIM and Sections 6 and 7 in T 5 N, R 9 WIM and Section 36, T 6 N, R 10 WIM and Section 31, T 6 N, R 9 WIM | 2-3 miles north of Cyril, Caddo County. | Up to 450 ft deep; some saline ground-water discharge into Little Washita River tributaries. ~960 acre plume | 2 | • | • | • | Corp Comm, Oil and Gas Div | ~960 acre plume moving S-SW @ 90'/year; 30 year monitoring program started in 1999. Cyril municipal wells affected were abandoned. |
| Blaine (Drummond Flats) | NE 1/4 of Section 33, T 22 N, R 8 WIM | From NE corner of Drummond, 4 miles north, 1 mile west, 1 mile south and 3/8 mile west. Near Turkey creek. | 20-50 ft in affected wells | 2 | • | • | • | Corp Comm, Oil and Gas Div | Drummond Flats, water has historical contamination. |
| Terrace Deposits (Drummond Flats) | SW 1/4 of Section 12, R 21 N, R 9 WIM | From Ames, 1/2 mile east, 4 miles north, 3 3/4 east, north into site. | About 40 ft deep in affected wells | 2 | • | • | • | Corp Comm, Oil and Gas Div | Drummond Flats, water has historical contamination. |

| Groundwater formation name (site name) | Location | Address | Depth Zone (upper-lower limit) | Class* (1-4) | Water Supply | Ag | M&I | Agency | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| Arkansas River Alluvium (Sand Springs Petrochemical Superfund Site) | W 1/2 of NW 1/4 of Section 13, T 19 N, R 11 EIM and NW 1/4 of Section 14, T 19 N, R 11 EIM | Tulsa County | 0-37 ft | 2 | | • | • | DEQ | Metals, VOC Special Well Construction Required. |

*[OAR Docket #10-911; filed 5-25-10]*

## TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
## CHAPTER 1. OPERATIONS AND PROCEDURES

*[OAR Docket #10-886]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 11. Publications
800:1-11-1. Charges for workshops, publications and other material [AMENDED]
Subchapter 19. Aquatic Education Rules
800:1-19-1. Instructors [AMENDED]
**AUTHORITY:**
Title 29 O.S., Sections 3-103 and 5-401 Article XXVI, Sections 1 and 3 of the constitution of Oklahoma; Department of Wildlife Conservation Commission
**DATES:**
**Comment period:**
December 1, 2009 - January 15, 2010
**Public hearings:**
**Date:** January 11, 2010
**Time:** 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
**Adoption:**
March 1, 2010
**Submitted to Governor:**
March 5, 2010
**Submitted to House:**
March 5, 2010
**Submitted to Senate:**
March 5, 2010
**Gubernatorial approval:**
March 25, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 30, 2010
**Final adoption:**
April 30, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules will establish a price for the new Wildlife management Area Atlas, which will also include a one year subscription to Outdoor Oklahoma magazine. This publication has been out of print for a long time and the maps have been available on-line but due to overwhelming public interest, this atlas is being updated and printed. Additional rule changes in this chapter will streamline the process for certification of aquatic Education instructors.
**CONTACT PERSON:**
Nels Rodefeld, Chief of Information and Education Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3855 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 11. PUBLICATIONS

**800:1-11-1. Charges for workshops, publications and other material**

(a) The following charges, with appropriate postage fees where applicable, will be assessed for the following workshops, publications and other materials:

(1) Basic charges for Information and Education Division publications are as follows:

(A) Department Lakes: $2.00
(B) Oklahoma Furbearers: $2.00
(C) Bobwhite Quail in Oklahoma: $5.00
(D) Turkey or Deer Hunters Handbook: $2.00
(E) Managing Ponds Fisheries in Oklahoma: $5.00
(F) Oklahoma Wildlife Management Areas ~~$15.00~~ Atlas $25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.
(G) Waterfowl Identification in the Central Flyway: $2.00
(H) Outdoor Oklahoma Magazine
(i) Single issue copies: $3.00
(ii) One year subscription: $10.00
(iii) Two year subscription: $18.00
(iv) Three year subscription: $25.00
(I) Oklahoma Fishing Spots: $3.00
(J) Outdoor Oklahoma Journal and Calendar: $15.00
(K) Angler's Guide: $2.00
(L) Caps: $15.00

(2) Basic charges for Administration Division materials are as follows:

(A) Oklahoma Waterfowl Prints: $129.00

(3) Basic charges for Natural Resources Section publications, workshops and materials are as follows:

(A) Attracting Birds: $2.00
(B) Guide to Reptiles and Amphibians of Oklahoma: $25.00
(C) Oklahoma Watchable Wildlife Viewing Guide: $16.00
(D) Birds of North America: $25.00
(E) Bluebird House Plan: $4.00
(F) Dial-A-Bird House: $25.00
(G) Wildlife Posters: $10.00
(H) Bat House Kit: $35.00
(I) Bat House Builder's Handbook $12.00
(J) Wildscape Certification: $15.00
(K) Wildflower Seeds: $3.00
(L) Bat Viewing Workshops: $20.00
(M) Wildlife Diversity Caps: $25.00
(N) Wildlife Diversity Short-Sleeve T-Shirts: $25.00
(O) Cedar Nesting Shelf: $25.00

(P) Landscaping for Wildlife: A Guide to the Southern Great Plains: $50.00

(Q) Oklahoma ConserVacation Outings: $300/person

(R) Pocket Guide to Prairie Birds: $0.75

(S) Butterflies of Kansas, Oklahoma and North Texas: $15.00

(4) Basic Charges for Education workshops and materials are as follows:

(A) Project WILD workshop administrative fee: $10.00

(B) Project WILDs short sleeve T-shirt: $15.00

(C) Deposit for natural resource trunk: $50.00

(D) Hunter safety certification cards: $5.00

(5) Basic charges for miscellaneous publications and materials are as follows:

(A) Fish Division Habitat Maps: $10.00

(B) Reservoir fact sheets: $7.00

(C) Fish rulers: 15¢

(D) Cy Curtis Awards book: $10.00

(b) These fees do not reflect postal or handling charges.

(c) Publications and materials not listed in (a) of this Section shall be cost plus handling until a fee is established. Fees may be waived for education and promotion purposes.

## SUBCHAPTER 19. AQUATIC EDUCATION RULES

**800:1-19-1. Instructors**

(a) Volunteer instructors must be at least 18 years of age, complete the instructor workshop, complete all required forms and undergo a background investigation.

(b) Volunteers shall serve at the discretion of the Department.

(c) All volunteer instructors shall comply with the following requirements:

(1) Complete all Department report forms prior to conducting an Aquatic Resources Education course.

(2) Attend and complete an instructor-training workshop prior to conducting an Aquatic Resources Education course. Instructors may be certified at the discretion of the coordinator without attending a workshop.

(3) Report to the Program Coordinator of the Aquatic Resources Education Program.

(4) Follow the procedures outlined in the Volunteer Instructor Handbook while teaching an Aquatic Resources Education class.

(5) Within a two-year period, help with or conduct two Aquatic Education Clinics.

(A) Volunteers who fail to meet this requirement will be classified as inactive and will be ineligible to conduct Aquatic Education Classes.

(B) Volunteers may be reactivated at the discretion of the Program Coordinator.

(d) The Department may administer a volunteer incentive program. Incentives will be equipment that can be used as teaching aids and will become the property of the volunteer. Points will be accumulated for classes organized and taught, introducing new volunteers to the program and overall activity by the volunteer. The volunteer will accumulate 15 points for each clinic they organize, 5 points for each clinic they assist with, 5 points for each new volunteer they introduce to the program, 5 points for attending a special topic course, 5 points for each year they are active and 20 points for helping with or organizing 10 or more clinics in a year.

(1) Incentive levels are as follows: First clinic = Coffee Cup, 30 points = Fillet Knife, 60 points = Hand Towel, 100 points = Tackle Pack, 150 points =Tackle Pack, 250 points = Multipurpose Pliers, 300 points = Spinnerbait Box with Spinners, 400 points = Digital Scales, 550 points = Fly Rod and Reel Combo, 700 points = Float Tube, 1000 points = Baitcast Reel, 1400 points = Float Tube, 1000 points = Baitcast Reel, 1400 points = Rubber Boots, 1800 points = Rain Gear, 2200 points - Trolling Motor.

(2) The Department reserves the right to replace the incentives with items of a similar value based on availability or other factors, or deny issuance of incentives.

*[OAR Docket #10-886; filed 5-21-10]*

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

*[OAR Docket #10-887]*

**RULEMAKING ACTION:**
PERMANENT final adoption

**RULES:**
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-4. Fish sanctuaries [AMENDED]

**AUTHORITY:**
Title 29 O.S., Sections 3-103, 5-401 AND 6-302 Article XXVI, Sections 1 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

**DATES:**
**Comment period:**
December 1, 2009 - January 15, 2010
**Public hearings:**
**Date:** January 11, 2010
**Time:** 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
**Adoption:**
March 1, 2010
**Submitted to Governor:**
March 5, 2010
**Submitted to House:**
March 5, 2010
**Submitted to Senate:**
March 5, 2010

**Gubernatorial approval:**
March 25, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 30, 2010
**Final adoption:**
April 30, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 1. Harvest and Possession Limits
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Subchapter 5. Area Restriction and Special Fees
800:10-5-4. Fish sanctuaries [AMENDED]
**Gubernatorial approval:**
November 10, 2009
**Register publication:**
27 Ok Regs 534
**Docket number:**
10 - 16
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules will modify black bass length limits on Birch Lake; require paddlefish anglers to release immediately all paddlefish caught on Monday and Friday require paddlefish anglers to immediately record date and time of harvest of all paddlefish on their paddlefish permit; close snagging on the Grand River from the Highway 412 bridge upstream to the Markham Ferry dam from 10 p.m. to 6 a.m. year-round; remove exemption on use of grabhooks for Delaware and Mayes counties and close the Spring River to paddlefish angling by all methods from the Highway 60 bridge upsteam to the Kansas state line.
**CONTACT PERSON:**
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

### 800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from these waters:

(A) **Lakes and Reservoirs** - Adair Recreation Area, Altus-Lugert, Arcadia, Birch, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line, Greenleaf, Hefner (applies to largemouth bass only), Heyburn, Hudson, Hugo, Kaw, Keystone, Lone Chimney, Oologah, Overholser (including tailwaters and downstream to NW 10th St. bridge), Pine Creek, Sardis, Skiatook, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one-half mile above county road bridge number 156, on Holson Creek).

(B) **McClellan-Kerr Arkansas River Navigation System -** All lakes, cutoffs and oxbows from the Oklahoma-Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.

(C) **Department of Wildlife Conservation fishing areas -** Lakes Burtschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Wayne Wallace, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Okmulgee, (excluding the Deep Fork River), Pushmataha, Robbers Cave, Robert S. Kerr, Sandy Sanders, Spavinaw, Stringtown, and all ponds and lakes in the Ouachita National Forest.

(D) Lower Illinois River below Tenkiller Dam, including the old river channel.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes ~~Birch,~~ Chimney Rock (W.R. Holway), Arbuckle, Lone Chimney, Okmulgee, Vanderwork and Hall.

(3) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from Broken Bow Lake (downstream from the slab at the Narrows), Tenkiller Lake (downstream from Horseshoe Bend boat ramp), and from Lake Elmer Thomas.

(4) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(5) All flathead catfish (Pylodictis olivaris) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(6) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(7) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Lake Nanih Waiya, Lake Raymond Gary, Dripping Springs Lake and Crowder Lake (Washita County).

(8) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(9) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(10) All smallmouth bass less than eighteen (18) inches in total length must be returned to the water unharmed immediately after being taken from Lake Hefner.

(11) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(12) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

(13) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

**800:10-1-5. Bag limits on fish**

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except at Lake Hefner where the limit on smallmouth bass is one (1) fish 18 inches or longer, in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs Lake, Lake Raymond Gary and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer at Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate, of which only one (1) smallmouth bass may be twelve (12) inches or longer, in Glover River from the confluence with Little River upstream to the "Forks of the Glover River" where the limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate of which only three (3) may be smallmouth bass,and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately 2 mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Five (5) walleye, sauger and/or saugeye, or five (5) in aggregate.

(7) Fifteen (15) striped bass of which only five (5) may be twenty (20) inches or longer, except in the discharge area of Sooner Reservoir where the daily bag limit is five (5) (no culling).

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.

(9) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.

(10) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Konawa, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.

(11) Five (5) striped bass hybrids of which only two (2) may be 20 inches or longer in Skiatook Lake.

(12) Five (5) striped bass hybrids in Lake Carl Etling.

(13) Five (5) striped bass hybrid and/or white bass in the discharge area of Sooner Reservoir.

(14) Twenty-five (25) white bass in Lake Texoma.

(15) One (1) paddlefish (Polydon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's paddlefish permit number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.

(16) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or its authorized ~~agency~~agent, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.

(17) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(18) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(19) Other fish do not have bag or possession limits.

## SUBCHAPTER 3. METHODS OF TAKING

### 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Black Fork Creek is closed except that portion from the old Heavener Fish Hatchery Dam downstream to the confluence with Poteau River shall be open during the period beginning December 1 and continuing through May 15 of the following year.

(3) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(4) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(5) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(6) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(7) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately 2 mile) is closed throughout the year with the next 2 mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(8) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(9) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(10) The taking of paddlefish by bow and arrow is prohibited from May 16 through March 14 of the following year, statewide.

(11) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(12) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters ~~except, within waters of Delaware and Mayes Counties (excluding reservoir tailwaters which are closed) divers equipped with scuba gear may use a grabhook for taking nongame fish only from June 15 through July 31~~.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and Wister and Hudson (Markham Ferry) which are open from 10 p.m. to 6 a.m.; shall be

closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately 2 mile) is closed throughout the year with the next 2 mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round.

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Black Fork Creek within the boundaries of LeFlore County is closed throughout the year, except during the period from April 15 through May 15 each year when snagging shall be lawful.

(I) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(J) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(K) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish only throughout the year in all:

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downsteam to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Only nets defined as gill nets, trammel nets, hoop nets or haul seines may be used, provided:

(1) Hoop nets shall be no longer than ten (10) feet in length with mesh size no smaller than three (3) inch square, constructed of nonmetallic mesh only, having no more than seven(7) hoops three (3) feet in diameter or smaller.

(2) Mesh size for gill nets and trammel nets, or seines shall be no smaller than four (4) inch square mesh.

(3) All nets must be attended once every twenty-four (24) hours.

(4) Each license holder shall be limited to a maximum of three hundred (300) feet of net or a total of four (4) hoop nets in the water at any time.

(5) Each net shall have the name and address of the owner attached thereto, if the net is to be left unattended.

(6) It shall be unlawful to sell, barter, or trade, ship or transport from the State of Oklahoma any fish taken under the noncommercial netting provisions.

(7) Noncommercial netting is prohibited statewide during April and May annually.

(8) Only nongame fish may be taken in waters that are open for noncommercial netting.

(9) The following lakes and reservoirs are closed to all such netting for game and/or nongame fish except under commercial fishing license:

(A) Canton;
(B) Wister;
(C) Fort Gibson;
(D) Lugert;
(E) Oologah;
(F) Grand Lake;
(G) Wash Hudson;
(H) Eufaula;
(I) Texoma;
(J) Arbuckle;
(K) Carl Blackwell;
(L) Fort Cobb;
(M) Fort Supply;
(N) Foss;
(O) Greenleaf;
(P) Heyburn;
(Q) Hulah;
(R) Keystone;
(S) Murray;
(T) Salt Plains;
(U) Tenkiller;
(V) Thunderbird;
(W) Broken Bow;
(X) Pine Creek;
(Y) Robert S. Kerr;
(Z) Webbers Falls;
(AA) W.D. Mayo;
(BB) Chouteau;
(CC) Kaw;
(DD) Newt Graham;
(EE) Carl Albert;
(FF) Hugo;
(GG) Sooner;
(HH) Konawa;
(II) Ellsworth;
(JJ) Lawtonka;
(KK) Copan;
(LL) Sardis;
(MM) Optima;
(NN) Atoka;
(OO) Clayton State Park Lake;
(PP) Eucha;
(QQ) Spavinaw;
(RR) Arcadia;
(SS) McGee Creek;
(TT) all Department Fishing Areas and all ponds and lakes in the Ouachita National Forest;
(UU) all waters within the boundaries of the Wichita Mountains Wildlife Refuge; and
(VV) all new Federal Reservoirs.
(WW) all "Close To Home" fishing waters are closed.
(XX) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(10) The following rivers and streams are closed to all such netting for game and/or nongame fish except under commercial fishing license:

(A) Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland Co.;
(B) Kiamichi River above Hugo Lake and from Hugo Dam downstream to the Red River;
(C) Caney River;
(D) Little River upstream from Highway 98 Bridge;
(E) Glover River upstream from State Highway 7;
(F) Mountain Fork River upstream from U.S. Highway 70 Bridge;
(G) Washita River upstream to U.S. Highway 77 Bridge, south of Davis;
(H) Red River from the Choctaw/Bryan County line upstream to Interstate 35 Bridge;
(I) Blue River;
(J) Illinois River;
(K) Barren Fork River;
(L) Pennington Creek;
(M) Lukfata Creek;
(N) Black Fork Creek;
(O) Lee Creek;
(P) Deep Fork River upstream from Lake Eufaula to Arcadia Reservoir dam;
(Q) Poteau and Fourche Maline Rivers in LeFlore County;
(R) McGee Creek;
(S) Sans Bois tributary of R.S. Kerr Reservoir;
(T) all cutoffs, oxbows, side channels and tributaries of the streams and rivers named in (A) through (S);
(U) All the old oxbows and cutoffs of theArkansas River in LeFlore and Sequoyah Counties;
(V) Arkansas River;
(W) Cimarron River and its tributaries;
(X) Salt Creek in Osage County;
(Y) Salt Fork River;
(Z) the Canadian River from Eufaula Dam downstream to the confluence with Robert S. Kerr Reservoir;
(AA) the Neosho River from the Kansas border downstream to the confluence with Webbers Falls Reservoir;
(BB) Verdigris River; and
(CC) Spring River.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish

commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eights (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half (2) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half (2) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

## SUBCHAPTER 5. AREA RESTRICTION AND SPECIAL FEES

**800:10-5-4. Fish sanctuaries**

Certain fishing areas have been designated as fish sanctuaries and the following rules shall apply: ~~Currently, the Department does not maintain any designated fish sanctuaries, but reserves the right to implement sanctuaries through the administrative procedures process as deemed necessary.~~The Spring River is closed to paddlefish angling by any and all methods year-round from the Highway 60 bridge upstream to Kansas state line.

*[OAR Docket #10-887; filed 5-21-10]*

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

*[OAR Docket #10-888]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 13. Fishing Guide License [NEW]
800:15-13-1. Purpose [NEW]
800:15-13-2. License and fee requirements [NEW]
**AUTHORITY:**
Title 29 O.S., Sections 3-103, 5-401, 6-302 and 4-113A Article XXVI, Sections 1 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
**DATES:**
**Comment period:**
December 1, 2009 - January 15, 2010
**Public hearings:**
**Date:** January 11, 2010
**Time:** 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
**Adoption:**
March 1, 2010
**Submitted to Governor:**
March 5, 2010
**Submitted to House:**
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**Submitted to Senate:**
March 5, 2010
**Gubernatorial approval:**
March 25, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 30, 2010
**Final adoption:**
April 30, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 13. Fishing Guide License
800:15-13-1. Purpose [NEW]
800:15-13-2. License and fee requirements [NEW]
**Gubernatorial approval:**
July 2, 2009
**Register publication:**
26 Ok Regs 2998
**Docket number:**
09 - 1201
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules require all fishing guides to obtain a guide license unless exempt, and to outline certifications needed by operator prior to obtaining the license.These fishing guide rules which include a fee for the license were established as an emergency on July 2, 2009 pursuant to Senate Bill 277 passed in the 2009 Legislative Session. (Title 29, 4-113A) This bill directs the Oklahoma Department of Wildlife conservation to establish licensing criteria, including an annual fee not to exceed $200, for commercial fishing guides. These permanent rules have been revised from the original emergency rule to reduce the cost and remove certain requirements of the license.
**CONTACT PERSON:**
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 13. FISHING GUIDE LICENSE

**800:15-13-1. Purpose**

The purpose of this subchapter is to describe rules pertaining to procurement of the fishing guide license required pursuant to 29 O.S. Section 413A.

**800:15-13-2. License and fee requirements**

(a) Unless otherwise exempt, beginning July 31, 2010 an annual fishing guide license is required for those persons, resident or non-resident, who assist, accompany, transport, guide or aid persons in the taking of fish for monetary compensation or other consideration.

(b) Those persons exempt from the annual guide license are:

(1) Landowners or agriculture lessees who provide such services on properties they own or lease.

(2) Persons assisting the licensed guide in the same vessel.

(c) The fee for a fishing guide license shall be $90.00 for residents and non-residents of this state who do **not** hold any valid United States Coast Guard mariner credential. The fee for a fishing guide license shall be $20.00 for residents and nonresidents of this state who do hold any valid United States Coast Guard mariner credential.

(d) Nothing herein shall exempt a person procuring a license pursuant to this section from any other fishing licenses as may be required by other applicable laws.

*[OAR Docket #10-888; filed 5-21-10]*

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

*[OAR Docket #10-889]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. Restricted Exotic Fish
800:20-1-2. List of restricted exotic species [AMENDED]
**AUTHORITY:**
Title 29 O.S., Sections 3-103, 5-401 AND 7-503; Article XXVI, Sections 1 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
**DATES:**
**Comment period:**
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**Public hearings:**
**Date:** January 11, 2010
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Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
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**SUPERSEDED EMERGENCY ACTIONS:**
**Superseded rules:**
Subchapter 1. Restricted Exotic Fish
800:20-1-2. List of restricted exotic species [AMENDED]
**Gubernatorial approval:**
November 10, 2009
**Register publication:**
27 Ok Regs 539
**Docket number:**
10-17
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules would permit only triploid grass carp to be stocked in private waters. Diploid grass carp will be allowed for use by licensed aquaculture facilities for specific purposes only.
**CONTACT PERSON:**
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. RESTRICTED EXOTIC FISH

**800:20-1-2. List of restricted exotic species**

(a) Until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful exotic species, the importation into the State and/or the possession of the following exotic fish or their eggs is prohibited:

(1) Walking Catfish: The Walking Catfish, (Clarius batrachus) and other members of the exotic catfish family Claridae, including but not limited to species of the genera Clarias, Heteropneustes, Gymnallables, Channallabes, and Heterobranchus are prohibited. Any live specimens of Walking Catfish or other Claridae species within the boundaries of the State of Oklahoma are contraband and subject to seizure by the Department of Wildlife Conservation.

(2) Grass carp: Release of grass carp (diploid and/or triploid), also known as white amur or Chinese carp (Ctenopharyngodon idella) or their hybrids into public waters is prohibited in accordance with 29 O.S., Section 6-504. Only certified triploid grass carp ~~or their hybrids~~ may be imported, possessed, or introduced for the purpose of stocking private waters. Possession and transportation of diploid grass carp is permitted for the control of vegetation on licensed aquaculture facilities, the export to states allowing use of diploid grass carp and for production for sale to the human food market.

(3) Boney-tongue group: Osteoglossum spp., and Arapaima spp.
(4) Piranha group: Serrasalmus spp., Pygocentrus spp., Rooseveltiella spp., Catoprion spp., Hydrocynus spp., and Salminus spp.
(5) Electric Eel (Electrophorus electricus).
(6) Electric catfish (Malapterus electricus).
(7) Gar-pike topminnow (Belonesox belizanus).
(8) Snakehead groups: Opicephalus spp., and Channa spp.
(9) Pavon or Peacock Bass (Chichla temensis and Chichia ocellaris).
(10) Parasitic South American Catfish group (Candiru), genera & species of the Trichomycteridae family. Vandellia spp., Tridens spp., and Pyqidium spp.
(11) Freshwater Stingray group: Paratrygon spp., Potomotrygon spp., and Disceus spp.
(12) Houri (from South America): Macrodon spp., and Hoplias spp.
(13) Rudd and rudd hybrids (Scardinius spp.).
(14) Bighead carp (Hypophthalmichthys molitrix).
(15) Silver carp (Aristichthys nobilis).
(16) Black carp (Mylopharyngodon piceus).
(17) Alewives (Aloso pseudoharengus).
(18) Rainbow smelt (Osmerus mordax).
(19) Blueback herring (Alosa aestivalis).

(b) Tilapia:
(1) The sale and use of all Tilapia species as bait is prohibited.
(2) The stocking of all Tilapia species in any heated-water reservoir including Sooner, Konawa and Boomer Reservoirs is prohibited.
(3) This shall not interfere with the sale of dead and/or processed Tilapia for human food or the sale or transport of Tilapia species for the purpose of aquatic vegetation control in privately owned ponds.

*[OAR Docket #10-889; filed 5-21-10]*

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

*[OAR Docket #10-890]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-2. Areas open to shotgun with pellets and bow and arrow only [AMENDED]
800:25-3-3. Areas open to archery only [AMENDED]
Subchapter 7. General Hunting Seasons
Part 1. General Provisions
800:25-7-3. General provisions [AMENDED]
Part 5. Upland Game
800:25-7-19. Wild turkey - general provisions [AMENDED]
Part 13. Deer
800:25-7-50. General provisions for deer [AMENDED]
800:25-7-55. Deer-Youth Gun Season [AMENDED]
Part 14. Elk
800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]
Part 15. Furbearers
800:25-7-60. Dates and legal furbearers [AMENDED]
Part 19. Seasons On Areas Owned Or Managed By The Oklahoma Department Of Wildlife Conservation And The U.S. Fish And Wildlife Service
800:25-7-87.1. Candy Creek WMA [NEW]
800:25-7-92. Chickasaw NRA [AMENDED]
800:25-7-94.4. Deep Fork NWR [AMENDED]
800:25-7-105.5. Hackberry Flat WMA [AMENDED]
800:25-7-140. Sandy Sanders WMA [AMENDED]
**AUTHORITY:**
Title 29 O.S., Sections 3-103, 5-401 and 5-405; Article XXVI, Sections 1 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
**DATES:**
**Comment period:**
December 1, 2009 - January 15, 2010
**Public hearings:**
**Date:** January 11, 2010
**Time:** 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
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**Final adoption:**
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July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules will open some additional Corps of Engineers property to hunting and correct acreage; allow hunters to use telephonic and/or internet based check stations, establish a timeline, and require the confirmation number be provided when transferring harvested big game to another individual; require hunters to add date and time to field tags for elk, deer, and turkey; open youth deer gun season for Wildlife Management Areas (WMA) as published in the hunting guide; extend furbearer season; establish seasons on the new Candy WMA; modify hunting seasons on four WMA's; and allow buckshot to be used for feral hog hunting on private lands.
**CONTACT PERSON:**
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

## SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

**800:25-3-2. Areas open to shotgun with pellets and bow and arrow only**

The following Corps of Engineers areas are open to shotgun with pellets and bow and arrow only.

(1) Canton Lake: A 80-acre unit above State Highway 58A in the Sandy Cove Area.

(2) Keystone Lake:

(A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.

(B) A 200-acre unit on the west side of the north end of the U.S. Highway 64 bridge.

(C) A 530-acre unit north of the New Mannford Ramp area.

(D) A 480-acre unit east of the Cimarron Park area.

(E) A 100-acre unit north and south of the Pawnee Cove Access Point.

(F) A 450-acre unit south and east of the town of Prue.

(G) A 200-acre unit in the Old Mannford Ramp area.

(H) A 280-acre unit on the south side of the road ending at Washington Irving North.

(I) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.

(J) A 200-acre unit south of Highway 51 on Bakers Branch.

(3) Hugo Lake: except archery only during all deer seasons.

(A) A 2373-acre unit in the Kiamichi Park Area.

(B) A 418-acre unit in the Salt Creek Area.

(C) A 478-acre unit in the Wilson Point Area.

(D) A 481-acre unit in the Virgil Point Area.

(E) A 280-acre unit in the Sawyer Bluff Area.

(F) A 60-acre unit in the Rattan Landing Area.

(G) A 500-acre unit in the embankment area above Hugo Dam.

(4) Tenkiller Ferry Lake:

(A) A 110-acre unit north of the asphalt road and east of OK Highway 10A.

(B) A 310-acre unit south and east of OK highway 100.

(5) Copan Lake: except archery only during all deer seasons.

(A) A 650-acre unit below the dam.

(B) A 100-acre unit east and southeast of Copan Point Park.

(C) Three islands north of Washington Cove Park.

(6) Fort Gibson Lake:

(A) A 300-acre unit on the north side of North Bay.

(B) A 800-acre unit on the south side of the Chouteau Creek, starting at U.S. highway 69 and running east and south to State Highway 33.

(C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.

(D) A 480-acre unit on the west side of Mallard Bay.

(E) A 432-acre unit lying east of the Junction of Snug Harbor road and Whitehorn Cove road.

(F) A 424-acre unit in Section 13 of the Blue Bill Point housing addition.

(G) A 160-acre unit west of the town of Murphy.

(H) A 650-acre unit on Pryor Creek beginning on the east side of State Highway 69 in sections 29, 30 & 31.

(I) A 190-acre unit in the south $\frac{1}{2}$ of section 12, north of the Blue Bill Recreation Area.

(J) A 120-acre unit west of the town of Hulbert.

(7) Sardis:

(A) A 950-acre unit in the Potato Hills Area.

(B) A 100-acre unit in the Sardis Cove Area.

(8) Webbers Falls Lock and Dam:

(A) A 37-acre unit on the peninsula north of the lock and dam.

(B) A 150-acre unit in the Hopewell Park Area.

(C) A 50-acre unit in the Arrowhead Park Area, only open for hunting December I through February 28.

(D) A 150-acre unit in the Brewer's Bend Area, only open for hunting December 1 through February 28.

(E) A 50-acre unit south of the Spaniard Creek Area.

(F) A 60-acre unit off lock view access road and south of the project office.

(G) A 400-acre unit in the Three Forks Area.

(9) Lake Texoma:

(A) A 355-acre unit in the ~~Bums~~Burns Run Area.

(B) A 457-acre unit below Denison Dam.

(C) A 60-acre unit in the Willow Springs Area.

~~(D) A 150-acre unit in the Kansas Creek Area.~~

(~~E~~D) A 100-acre unit on the north side of Alberta Creek.

(~~F~~E) A 110-acre unit on the Limestone Creek Area.

(~~G~~F) A 250-acre unit on the Treasure Island, North Island Group.

(~~H~~G) A 500-acre unit southwest of McLaughlin Creek.

(~~I~~H) A 110-acre unit in the Washita Point Area.

(~~J~~I) A 1200-acre unit north of Newberry Creek.

(~~K~~J) A 300-acre unit south of the Butcher Pen Area.

(~~L~~K) A 800-acre unit on either side of highway 70 on the east side of the lake.

(~~M~~L) A 1,000-acre unit in the Lakeside area.

(~~N~~M) A ~~208-acre~~ 348-acre unit west of Platter.

(N) A 226-acre unit on the west side of Wilson Creek.

(10) Kaw Lake:

(A) A 280-acre unit in the Traders Bend Area.

(B) A 320-acre unit in the Sarge Creek Cove Area.

(C) A 220-acre unit in the Burbank Landing Area.

(D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.

(E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.

(11) Eufaula Lake: Open for archery 1 October through 28 February, open for shotgun with pellets from 1 November through 28 February.

(A) A 320-acre unit in the Brooken Cove Area.

(B) A 137-acre unit in the highway 31 Landing Area.

(C) A 98-acre unit in Holiday Cove Area.

(D) A 100-acre unit below the dam on the north side of the river.

(E) A 200-acre unit in the Juniper Creek Area.

(F) A 600-acre unit know as Duchess Creek Island, except restricted to shotgun with slugs only during deer gun season.

(G) A 500-acre unit in the Bunny Creek Area.

(H) A 400-acre unit in the Gentry Creek Area.

(I) A 400-acre unit in the Belle Starr North Area.

(12) Chouteau Lock and Dam (L&D 17): A 150-acre unit in the Tullahassee Loop Area.

(13) Hulah Lake:

(A) A 200-acre unit in the Turkey Creek Point Area.

(B) A 60-acre unit below Hulah Dam.

(C) A 375-acre unit in the Caney Bend Area.

(14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.

(15) Oologah Lake:

(A) A 800-acre unit on the east side of Blue Creek Park.

(B) A 180 acre-unit on the south side of Spencer Creek Park.

(C) A 120-acre unit east of Double Creek Park.

(D) A 640-acre island, known as Goose Island, southeast of Sunnyside Ramp.

(16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.

(17) Newt Graham Lock and Dam 18 (L&D 18) All lands presently designated as open to public hunting.

**800:25-3-3. Areas open to archery only**

The following areas are open to archery only:

(1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.

(2) Kaw Lake:

(A) A 400-acre unit in the Washunga Bay Area.

(B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.

(C) A 236-acre unit in the Osage cove Area open from December 1 to December 31.

(D) A 60-acre unit south of Kaw City and west of Pioneer Park.

(3) Fort Gibson:

(A) A 515-acre unit on the south side of Mallard Bay.

(B) A 360-acre unit on the north side of the mouth of North Bay.

(C) A 50-acre unit south of Jackson Bay Area.

(D) A 150-acre area on the northeast end of Ranger Creek.

(E) A 488-acre unit on the south side of Whitehorn Cove Concession~~, open Dec 1 - 31 only~~.

(F) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.

(G) A 320-acre unit South of North Bay and North of Wagoner City Park.

(H) A 140-acre unit North of Long Bay and South of Wagoner City Park.

(I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of State Highway 69.

(J) A 36-acre area in Sec 6, T16N, R20E.

(K) A 77-acre area on the north shore of Ranger Creek.

(L) A 166-acre area west of Taylor Ferry South park in Sec 20 & 21, T17N, R19E.

(4) Copan Lake:

(A) A 50-acre unit north of Copan Point Park.

(B) A 50-acre unit north of the Post Oak area.

(C) A 5-acre unit west of Post Oak Park between the old and new Hwy 10.

(D) A 340-acre unit north of the Washington Cove Park.

(5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.

(6) Skiatook Lake:

(A) A 138-acre unit in the Osage Park Area.

(B) A ~~200-acre~~ 150-acre unit area below Skiatook Dam. ~~extending to the south to Tall Chief Cove Area.~~

(C) A 120-acre unit in Hominy Landing.

(7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.

(8) Eufaula Lake: October 1 - February 28:

(A) A 150-acre unit in Gentry Creek.

(B) A 435-acre unit in the Belle Starr South Recreation Area from December 1 - February 28.

(9) Pine Creek Lake:

(A) A 200-acre unit north of Highway 3 and south of the old highway.

(B) A 120-acre unit west of Little River Park.

(10) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(11) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)

(A) A 500-acre unit $\frac{1}{2}$ mile North of Memorial Road on Midwest Boulevard

(B) 230-acre unit at Douglas and 150th street.

## SUBCHAPTER 7. GENERAL HUNTING SEASONS

## PART 1. GENERAL PROVISIONS

**800:25-7-3. General provisions**

(a) Any person hunting any wildlife in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid deer, elk, bear or antelope license appropriate for that season unless otherwise exempt. Any person hunting feral hogs in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber rimfire, must possess a filled or unfilled deer, elk, bear or antelope license appropriate for that season unless otherwise exempt.

(b) No person while in the field may possess or attempt to harvest any wildlife, except waterfowl and crane, with shotgun utilizing shot larger than conventional BB.

(c) Any person participating in primitive firearms season, deer gun seasons, elk season, antelope season and bear gun season must conspicuously wear both a head covering and an outer garment above the waistline, both totaling 500 square inches or more of clothing, both consisting of daylight fluorescent orange color totaling not less than 400 square inches [Title 29 O.S., Section 5-205, Part A]. All other hunters, except those hunting waterfowl, crow or crane, or while hunting furbearing animals at night must wear either a head covering or upper garment of fluorescent orange clothing during the deer primitive firearms season, deer gun seasons, elk season, antelope season and bear primitive firearms season, or bear gun season in areas where these season are open.

(d) For purposes of pheasant, turkey, deer, elk, bear and antelope regulations, "final destination" shall be the hunter's residence or place of consumption.

(e) No person may possess any game bird, animal or other wildlife, or portions thereof that have been taken by another person unless such game bird, animal or other wildlife, contain information giving the taker's name, address, license number, date taken and the number and kind of game bird, animal or wildlife. In addition, information on deer, elk, antelope, bear and turkey must include where game was checked or electronic check station confirmation number as proof that the animal has been checked. The person's name and address receiving said wildlife must also appear on the written information.

(f) No person shall concentrate, drive, molest, hunt, take, capture or kill; or attempt to take any wildlife by the aid of any fire or smoke whether man-made or natural.

(g) No person may hunt, chase, capture, shoot at, wound or kill any moose or Rocky Mountain bighorn sheep, except as otherwise provided by statute or Commission rule.

(h) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(i) Dogs may be used in taking all game species in these rules except bear, deer, elk, antelope and turkey.

(j) Except as otherwise provided for by law or Commission rule, nothing shall prohibit the year round pursuit of game, which may be lawfully hunted with the use of hunting dogs, for dog training or sport only. However unless otherwise provided, no person in pursuit of game with hunting dogs outside of the regular harvest season shall have in their possession the means to harvest such game.

(k) The pursuit of feral hogs with a shotgun on private property is not restricted by shot size.

## PART 5. UPLAND GAME

**800:25-7-19. Wild turkey - general provisions**

The following general provisions apply to the taking of turkey:

(1) **Tom turkey description.** A tom turkey is any bearded turkey, regardless of sex.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to sunset.

(3) **Baiting.** Turkeys may not be taken within 100 yards of any bait. "Bait" shall mean the placing, exposing, depositing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any area where hunters are attempting to take them. Nothing in this section shall prohibit the taking of wild turkey over standing crops, grain crops, properly shucked on the field where grown or grain found scattered solely as the result of normal agricultural operations.

(4) **Roost shooting.** Roost shooting is prohibited.

(5) **Decoys and recorded calls.** Hunting turkey with artificial decoys is permitted. Live decoys and recorded calls are prohibited.

(6) **Tagging.** The following provisions apply to the tagging and checking of turkey:

(A) Persons taking a turkey shall securely attach their name ~~and license number immediately to the carcass~~, license number, the current date and time of harvest immediately to the carcass.

(B) Evidence of sex (one leg with foot) must remain on the bird until it has reached final destination. Beards on hens must remain intact until the bird has reached final destination.

(C) A separate tag is required for each bird that is hunted. Hunters who possess Oklahoma Department of Wildlife Conservation lifetime hunting or lifetime combination licenses are exempt from the tagging requirements outlined.

(D) Upon harvesting a turkey all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(7) **Reporting.** ~~All hunters taking turkey east of I-35 must check their bird at the nearest check station or with a Department employee.~~All turkeys harvested east of I-35 must be checked in at a hunter check station, or with an authorized Department employee, or online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the turkey will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing

and/or storage at commercial processing or storage facilities.

(8) **Fee.** All persons hunting wild turkeys, unless otherwise exempt, must possess a turkey tag. Fee for turkey tags will be $9.00 plus $1.00 vendor fee.

## PART 13. DEER

### 800:25-7-50. General provisions for deer

The following general hunting provisions apply to the taking of deer:

(1) **Bonus deer.** The bonus deer designation includes all controlled deer hunts on public and private lands. A permit awarded by drawing is required for all bonus deer hunts in addition to a bonus deer tag. Hunters may hunt only in that area specified on their bonus deer permit. The bonus deer tag is valid for only the designated controlled hunt. Deer taken during a bonus hunt do not count against the statewide deer limit.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(3) **Antlered deer.** An antlered deer is any deer, regardless of sex, with at least three inch antler length above the natural hairline on either side.

(4) **Tagging and checking.** The following provisions apply to the tagging and checking of deer:

(A) Persons taking a deer shall securely attach their name ~~and license number immediately to the carcass.~~, license number, current date and time of harvest immediately to the carcass.

(B) ~~Before the deer is transported from the hunt area, all deer must be checked at the nearest hunter check station or with an authorized Department employee where the deer will be tagged with a carcass tag.~~

~~(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Deer tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.~~All deer must be checked in at a hunter check station, or with an authorized Department employee, or online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the deer will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities. Carcass may be checked in quartered with the sex organs still naturally attached and head accompanying the carcass.

(~~D~~C) Upon harvesting a deer all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(5) No more than six (6) deer per individual may be taken statewide by anyone regardless of seasons hunted. This limit may include no more than two (2) antlered deer regardless of seasons hunted.

(6) **Legal Means of Taking:** Telemetric radio tracking devices for archery are legal, however, thermal tracking devices or detecting units are prohibited.

### 800:25-7-55. Deer-Youth Gun Season

(a) **Age Requirements.** All youth under 18 years of age and eligible to purchase an antlerless or antlered youth deer gun permit. All participants, while hunting, are required to be accompanied by an adult, 18 years or older. The adult shall not hunt, except that the adult may archery hunt with valid licenses while accompanying the youth hunter. The adult hunter accompanying the youth hunter shall not possess any rifle, shotgun, or pistol.

(b) **Dates.** The dates for the youth season shall be a Friday, Saturday, and Sunday as published in the current Oklahoma Hunting Guide and Regulations.

(c) **Open Areas.** The season is open statewide. Wildlife Management Areas will be open as published in the current Oklahoma Hunting Guide.

(d) **Bag Limit.** One (1) antlerless deer and one (1) antlered deer. An unfilled antlerless or antlered youth deer gun permit shall be valid during the regular deer gun season in designated zones.

(e) **Legal means of taking.** All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

## PART 14. ELK

### 800:25-7-57. Dates, open areas, bag limit and hunting hours

The following dates, open areas, bag limit and hunting hours apply to elk hunting:

(1) **Dates.** Hunting dates will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting Guide.

(2) **Open areas.** The season is open only on private land in Caddo, Comanche and Kiowa counties in southwest Oklahoma (West Zone) and Adair, Cherokee, Delaware, Mayes, Muskogee and Sequoyah counties in northeast Oklahoma (East Zone).

(3) **Bag limit.** The bag limit, antler restriction and sex restrictions will be established by the Oklahoma Wildlife Conservation Commission. All such restrictions and bag limits will be published in the Oklahoma Hunting Guide.

(4) **Hunting hours.** The hunting hours are the same as those established for the deer gun season.

(5) **Tagging and checking.** The following provisions apply to the tagging and checking of elk:

(A) Persons taking an elk shall securely attach their name ~~and~~, license number, current date and time of harvest immediately to the carcass.

(B) ~~All elk must be checked as described in the Oklahoma Hunting Guide.~~All elk must be checked in at a hunter check station, or with an authorized Department employee, or online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the elk will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities. Carcass may be checked in quartered with sex organs still naturally attached and head accompanying the carcass.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Elk tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

## PART 15. FURBEARERS

**800:25-7-60. Dates and legal furbearers**

The following dates apply to the taking of legal furbearers:

(1) **Dates and legal furbearers.** The dates for the taking of furbearers shall be the first day of December ~~1 - January 31~~ to the last day of February [Title 29 O.S., Section 5-405]~~, except bobcat which season is December 1 - February 28,~~ and those legal furbearers are as follows: Badger, bobcat, gray fox, mink, muskrat, opossum, raccoon, red fox, river otter and weasel.

(2) **Open year-round.** The season for taking beaver, striped skunk, nutria and coyote is open year-round. Taking of mountain lion is allowed when the mountain lion is committing or about to commit depredation or when acting in a manner as to constitute a health or safety hazard or other nuisance. In the event a mountain lion is taken, an ODWC employee must be notified immediately and the intact carcass including the hide must be presented to ODWC within 24 hours for collection of biological information.

## PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

**800:25-7-87.1. Candy Creek WMA**

The following hunting and trapping seasons apply to the Candy Creek WMA:

(1) Quail: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

(2) Pheasant: Closed Season.

(3) Prairie Chicken: Closed Season.

(4) Turkey - Fall

(A) Archery: Same as statewide season dates, either sex.

(B) Gun: Same as statewide season dates; 1 tom limit.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: September 1 - January 15, except closed during the first nine (9) days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during the frist nine (9) days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and Gallinule: Same as statewide season dates.

(11) Common Snipe: Same as statewide season dates, except closed the first nine days of deer gun season.

(12) Woodcock: Same as statewide seasn dates, except closed the first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Controlled hunts only.

(15) Deer-gun: Controlled hunts only.

(16) Trapping: Open to water sets and live box traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

**800:25-7-92. Chickasaw NRA**

The following hunting and trapping seasons apply to the Chickasaw NRA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom limit.

(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates, except open to antlerless only.
(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless only. Additional controlled hunts may be held.
(15) Deer-gun: Same as statewide season dates, except closed the last seven days of the deer gun season. Antlerless only.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

**800:25-7-94.4. Deep Fork NWR**

The following hunting and trapping seasons apply to the Deep Fork NWR:
(1) Quail: Closed season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Closed season.
(B) Gun: Closed season.
(5) Turkey-Spring: Closed season.
(6) Squirrel: Same as statewide season dates except closed from opening day of archery season through November 30. Hunting restricted to the use of federally approved nontoxic shot(shotguns) or ~~.22 caliber~~ rimfire rifles.
(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through November 30. Hunting restricted to the use of federally approved nontoxic shot(shotguns) or ~~.22 caliber~~ rimfire rifles.
(8) Crow: Closed season.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer-archery: Controlled Hunts only.
(14) Deer-primitive firearms: Controlled Hunts only.
(15) Deer-gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Open December 1 - January 31, raccoon only.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Same as statewide dates except ~~open after November 30.~~opens December 1 and open Friday through Monday, closes 1 p.m. daily.

**800:25-7-105.5. Hackberry Flat WMA**

The following hunting and trapping seasons apply to the Hackberry Flat WMA: All shotgun hunting restricted to federally approved nontoxic shot.
(1) Quail: Same as statewide dates, except closed during the first nine days of deer gun season.
(2) Pheasant: Closed season
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Closed season.
(B) Gun: Closed season.
(5) Turkey-Spring: Closed season.
(6) Squirrel: Closed season.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Closed season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: ~~Closed season.~~Same as statewide season dates.
(15) Deer-gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide dates, except closed at 1:00 p.m. daily.

**800:25-7-140. Sandy Sanders WMA**

The following hunting and trapping seasons apply to the Sandy Sanders WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: ~~Closed season.~~Same as statewide season dates, 1 tom limit.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Controlled hunts only.~~Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Open to live box traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/burbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

*[OAR Docket #10-890; filed 5-21-10]*

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

*[OAR Docket #10-891]*

**RULEMAKING ACTION:**
PERMANENT final adoption
**RULES:**
Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts [AMENDED]
**AUTHORITY:**
Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
**DATES:**
**Comment period:**
December 1, 2009 - January 15, 2010
**Public hearings:**
**Date:** January 11, 2010
**Time:** 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Miami - Miami Civic Center, 129 5th Ave NW, Banquet Room (Fisheries Only)
**Date:** January 12, 2010
**Time:** 7:00 p.m.
Pryor - OSU Extension Office, 2200 NE 1st Street (Mayes County Fairgrounds) (Fisheries Only)
**Adoption:**
March 1, 2010
**Submitted to Governor:**
March 5, 2010
**Submitted to House:**
March 5, 2010
**Submitted to Senate:**
March 5, 2010
**Gubernatorial approval:**
March 25, 2010
**Legislative approval:**
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 30, 2010
**Final adoption:**
April 30, 2010
**Effective:**
July 1, 2010
**SUPERSEDED EMERGENCY ACTIONS:**
N/A
**INCORPORATIONS BY REFERENCE:**
N/A
**ANALYSIS:**
These rules will allow camping by hunters and fishermen on Chickasaw NRA and establish rules to prohibit explosive devices and fireworks on all Department lands.
**CONTACT PERSON:**
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:**

### SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

**800:30-1-4. Camping**

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(d) No overnight camping is permitted at the following areas unless otherwise authorized by the Department:

(1) Altus-Lugert WMA.
(2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.
(3) Broken Bow WMA.
(4) Canton WMA (waterfowl refuge portion).
(5) Cherokee (GMA portion).
~~(6) Chickasaw NRA (Arbuckle).~~
(~~7~~6) Dewey County WMA.
(~~8~~7) Drummond Flats WMA.
(~~9~~8) Eufaula WMA
(~~10~~9) Fort Gibson WMA.
(~~11~~10) Gist WMA.
(~~12~~11) Grassy Slough WMA.
(~~13~~12) Hackberry Flat (waterfowl refuge portion).
(~~14~~13) Hugo WMA (waterfowl refuge portion).
(~~15~~14) Major County Lands.
(~~16~~15) McClellan-Kerr WMA (includes waterfowl refuge portion).
(~~17~~16) McCurtain County Wilderness.
(~~18~~17) Okmulgee WMA (GMA portion).
(~~19~~18) Osage WMA (Western Wall Unit).
(~~20~~19) Ozark Plateau WMA.
(~~21~~20) Red Slough WMA.
(~~22~~21) Sparrow Hawk WMA.
(~~23~~22) Tenkiller WMA.
(~~24~~23) Van Osdol WMA.
(~~25~~24) Washita County WMA.
(~~26~~25) Whitegrass Flats WMA.
(~~27~~26) Wister WMA (waterfowl refuge portion).

(e) Hunter and fishermen camping is permitted only in designated camping areas at:

(1) Atoka WMA (includes PHA portion).
(2) Beaver River WMA.
(3) Canton WMA (except waterfowl refuge portion).
(4) Cherokee WMA (PHA portion).
(5) Chickasaw NRA (Arbuckle).
(~~5~~6) Cimarron Bluff WMA.
(~~6~~7) Cimarron Hills WMA

(~~7~~8) Cooper WMA.
(~~8~~9) Copan WMA.
(~~9~~10) Ellis County WMA.
(~~10~~11) Fobb Bottom WMA.
(~~11~~12) Fort Cobb WMA.
(~~12~~13) Fort Supply WMA.
(~~13~~14) Hackberry Flat WMA (except waterfowl refuge portion).
(~~14~~15) Heyburn WMA .
(~~15~~16) Hickory Creek WMA.
(~~16~~17) Hugo WMA (except waterfowl refuge portion).
(~~17~~18) Hulah WMA.
(~~18~~19) James Collins WMA.
(~~19~~20) Kaw WMA.
(~~20~~21) Lexington WMA.
(~~21~~22) Mountain Park WMA.
(~~22~~23) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
(~~23~~24) Oologah WMA
(~~24~~25) Optima WMA
(~~25~~26) Osage WMA (Rock Creek Unit).
(~~26~~27) Pushmataha WMA.
(~~27~~28) Sandy Sanders WMA.
(~~28~~29) Schultz WMA.
(~~29~~30) Skiatook WMA.
(~~30~~31) Texoma-Washita Arm WMA.
(~~31~~32) Tishomingo WM U.
(~~32~~33) Waurika WMA.
(~~33~~34) Yourman WMA.

(f) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:

(1) Cookson Hills WMA, only during open hunting seasons on the area.
(2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
(3) John Dahl WMA, only during hunting seasons.
(4) Packsaddle WMA, only during open hunting seasons.
(5) Robbers Cave WMA, only during open deer and turkey seasons.
(6) Spavinaw Hills WMA, only during open hunting seasons on the area.

(g) Hunter and fishermen camping is permitted only within 50 yards of roads designated as open for public use at:

(1) Deep Fork WMA.
(2) Gary Sherrer WMA, only during open hunting seasons on the area.
(3) Keystone WMA.
(4) Love Valley WMA.
(5) Pine Creek WMA.
(6) Stringtown WMA, only during open hunting seasons on the area.
(7) Wister WMA, (except waterfowl refuge portion).

(h) Camping is permitted in accordance with U.S. Forest Service regulations at:

(1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
(2) Ouachita WMA - McCurtain Unit (Ouachita National Forest).
(3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
(4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.

(i) Camping is permitted in designated camping areas only at McGee Creek WMA.

**800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts**

(a) No person shall use threatening, abusive or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) No person shall possess, consume or use any intoxicating beverage or low-point beer, as defined in Title 37, except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to the Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of Department managed lands or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on Department managed lands or waters may be requested to leave.

(d) The operation or use of any audio or other noise producing device including, but not limited to radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to reasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63, on any land or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(f) No person shall use or possess any explosive devices, including fireworks or firecrackers on Department managed lands.

*[OAR Docket #10-891; filed 5-21-10]*

# Executive Orders

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

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

## TITLE 1. EXECUTIVE ORDERS

**1:2010-22.**

### EXECUTIVE ORDER 2010-22

I, Brad Henry, Governor of the State of Oklahoma, pursuant to Article 6, Section 10 of the Oklahoma Constitution and the laws of the State of Oklahoma, hereby commute the death sentence of Richard Tandy Smith to life imprisonment without the possibility for parole.

On March 25, 2010, the Oklahoma Pardon and Parole Board voted 3-2 to recommend to the Governor that clemency be granted to Richard Tandy Smith. One member recommended his sentence of death be commuted to life and two members recommended his sentence of death be commuted to life without parole.

Since that time, I have thoroughly reviewed the arguments and evidence presented in this case. I have met in person with the defense attorneys for Mr. Smith. I also met with the Oklahoma Attorney General and members of his staff, as well as the original prosecutor in this case. Both sides were given the opportunity to submit information and make arguments both to me personally and to my legal staff.

After listening to the presentations and thoroughly reviewing the record in this matter, as well as the information presented at the clemency hearing, I have determined that clemency should be granted in this case.

Pursuant to Article 6, Section 10 of the Oklahoma Constitution, I hereby place the following condition upon this commutation of sentence:

Richard Tandy Smith shall not be eligible to be considered for parole for the remainder of his life.

This Executive Order shall be forwarded to the Director of the Oklahoma Department of Corrections and the Oklahoma Attorney General who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City this 19th day of May, 2010.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

*[OAR Docket #10-897; filed 5-21-10]*

**1:2010-23.**

### EXECUTIVE ORDER 2010-23

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, May 31, 2010, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of May 2010.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

*[OAR Docket #10-947; filed 5-27-10]*

**1:2010-24.**

## EXECUTIVE ORDER 2010-24

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, May 26, 2010, to honor former State Representative John Duddie Rushing, an Oklahoma resident, who died on Saturday, May 22, 2010 at age 75.

Representative Rushing served in the Oklahoma State House of Representative from 1964 to 1968. Representative Rushing was a dedicated public servant and a faithful representative to his constituents. Throughout his life, Representative Rushing made great contributions to the State of Oklahoma.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 25th day of May, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

*[OAR Docket #10-940; filed 5-26-10]*

**1:2010-25.**

## EXECUTIVE ORDER 2010-25

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Friday, May 28, 2010, to honor former State Representative Mina Hibdon, an Oklahoma resident, who died on Saturday, May 21, 2010, at age 83.

Representative Hibdon served in the Oklahoma State House of Representatives from 1973 to 1976. Representative Hibdon was a dedicated public servant and a faithful representative to her constituents. Throughout her life, Representative Hibdon made great contributions to the State of Oklahoma.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 27th day of May, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

*[OAR Docket #10-952; filed 6-1-10]*

## TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

**PUBLICATION ERROR:**

The June 1, 2010 issue of the *Register* contained a permanent rule document for finally adopted amendments to the Chapter 15, Curriculum and Instruction, of the Department of Education's rules (OAC 210:15) [see 27 Ok Reg 1382; Docket #10-775]. As required by OAC 655:10-7-12, the actual text of the rules was not published due to excessive length, and a statement was published to identify where the full text would be available for public inspection. However, when adding this "DUE TO EXCESSIVE LENGTH" statement to the permanent rule document, the publisher inadvertently cited the Department of Human Services, rather than the Department of Education, as one of the locations where the full text of the rules would be available for public inspection. ***The statement should have read as follows:***

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF EDUCATION, OLIVER HODGE BUILDING, 2500 N. LINCOLN BLVD., OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

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