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Table of Contents

Agency/Action/Subject Index iii
Rules Affected Index v
Agency Index (Title numbers assigned) xxxiv
Notices of Rulemaking Intent
Consumer Credit, Department of (Title 160) 2371
Environmental Quality, Department of (Title 252) 2372, 2373, 2374, 2375, 2376, 2377
Cancelled Hearings/Comment Periods
Environmental Quality, Department of (Title 252) 2379, 2380
Gubernatorial Approvals
Conservation Commission, Oklahoma (Title 155) 2383
Emergency Adoptions
Health Care Authority, Oklahoma (Title 317) 2385, 2386, 2387, 2391
Permanent Final Adoptions
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35) 2407, 2409, 2410, 2411, 2420, 2430, 2433, 2441, 2446, 2449
Cerebral Palsy Commission (Title 130) 2455, 2458, 2462, 2467, 2469
Children and Youth, Commission on (Title 135) 2470
Conservation Commission, Oklahoma (Title 155) 2473, 2483
Education, State Department of (Title 210) 2487, 2489
Forensic Review Board (Title 277) 2496
Health, Oklahoma State Department of (Title 310) 2498, 2506, 2507, 2511, 2512, 2515, 2516, 2518, 2520, 2521, 2522, 2524, 2526, 2531, 2533, 2534, 2536, 2541, 2542, 2545, 2548
Law Enforcement Education and Training, Council on (Title 390) 2549, 2550, 2554, 2555, 2558
Mines, Department of (Title 460) 2558
Tourism and Recreation Department, Oklahoma (Title 725) 2584, 2586, 2601
Used Motor Vehicle and Parts Commission, Oklahoma (Title 765) 2606
Executive Orders (Title 1) 2609

Agency/Action/Subject Index

AGRICULTURE, Food, and Forestry, Oklahoma Department of (Title 35)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2407
Fees (Chapter 2) 2409, 2410
Fuel Alcohol (Chapter 13) 2411
Animal Industry (Chapter 15) 2411, 2420, 2430, 2433
Consumer Protection (Chapter 30) 2441, 2446
Agriculture Pollutant Discharge Elimination System (Chapter 44) 2449

CEREBRAL Palsy Commission (Title 130)
Permanent Final Adoptions
Organization (Chapter 1) 2455
Administrative Procedures (Chapter 12) 2458
Center Services (Chapter 13) 2462
Patient Bill of Rights (Chapter 14) 2467
Education [REVOKED] (Chapter 15) 2469

CHILDREN and Youth, Commission on (Title 135)
Permanent Final Adoptions
Programs, Boards, and Councils: Operation and Administration (Chapter 10) 2470

CONSERVATION Commission, Oklahoma (Title 155)
Gubernatorial Approvals
Oklahoma's Abandoned Mine Land Reclamation Program (Chapter 15) 2383
Controlled Burn Indemnity Fund (Chapter 45) 2383
Permanent Final Adoptions
Oklahoma's Abandoned Mine Land Reclamation Program (Chapter 15) 2473
Controlled Burn Indemnity Fund (Chapter 45) 2483

CONSUMER Credit, Department of (Title 160)
Notices of Rulemaking Intent
Fees (Chapter 5) 2371

EDUCATION, State Department of (Title 210)
Permanent Final Adoptions
School Administration and Instructional Services (Chapter 10) 2487
Curriculum and Instruction (Chapter 15) 2489

ENVIRONMENTAL Quality, Department of (Title 252)
Notices of Rulemaking Intent
Rules of Practice and Procedure (Chapter 4) 2372
Air Pollution Control (Chapter 100) 2373
Brownfields [REVOKED] (Chapter 220) 2374, 2375
Brownfields (Chapter 221) 2376, 2377
Cancelled Hearings/Comment Periods
Rules of Practice and Procedure (Chapter 4) 2379
Air Pollution Control (Chapter 100) 2379
Brownfields [REVOKED] (Chapter 220) 2380
Brownfields (Chapter 221) 2380

FORENSIC Review Board (Title 277)
Permanent Final Adoptions
Forensic Review Board (Chapter 1) 2496

GOVERNOR
Executive Orders
Ordering Board of Education to fund certain essential programs by apportioning funds from other appropriations (10-26) 2609
Declaring disaster emergency caused by tornadoes, severe storms, straight line winds and flooding in 59 counties (10-27) 2609
Ordering flags at half-staff to honor Specialist Charles Jirtle (10-28) 2610

GOVERNOR – *continued*
Executive Orders – continued
Granting stay of execution for Jeffrey Matthews (10-29) 2610
Temporarily suspending certain regulatory requirements as they apply to vehicles used for storm relief in Oklahoma (10-30) 2611
Ordering flags at half staff to honor former Secretary of State Hannah Atkins (10-31) 2611
Ordering flags at half-staff to honor Specialist Andrew R. Looney (10-32) 2612

HEALTH, Oklahoma State Department of (Title 310)
Permanent Final Adoptions
Procedures of the State Department of Health (Chapter 2) 2498
Health Care Information (Chapter 9) 2506
Oklahoma Advance Directive Registry (Chapter 96) 2506
Body Piercing and Tattooing (Chapter 233) 2507
Medical Micropigmentation (Chapter 234) 2511
Diagnostic X-Ray Systems (Chapter 281) 2512
Licensed Marital and Family Therapists (Chapter 400) 2515
Licensed Behavioral Practitioners (Chapter 403) 2516
Licensed Professional Counselors (Chapter 405) 2518
Licensed Genetic Counselors (Chapter 406) 2520
Childhood Lead Poisoning Prevention Rules (Chapter 512) 2521
Communicable Disease and Injury Reporting (Chapter 515) 2522
Dental Services (Chapter 526) 2524
Vision Screening (Chapter 531) 2526
Immunization Regulations (Chapter 535) 2531
Advancement in Stem Cell Cures and Therapies Act (Chapter 551) 2533
Ambulatory Surgical ~~Center Regulations~~ Centers (Chapter 615) 2534
Emergency Response Systems Stabilization and Improvement Revolving Fund (Chapter 642) 2536
Continuum of Care and Assisted Living (Chapter 663) 2541
Hospital Standards (Chapter 667) 2542
Trauma Care Assistance Revolving Fund (Chapter 669) 2545
Nursing and Specialized Facilities (Chapter 675) 2545
Residential Care Homes (Chapter 680) 2548

HEALTH Care Authority, Oklahoma (Title 317)
Emergency Adoptions
Soonercare Choice (Chapter 25) 2385
Medical Providers-Fee for Service (Chapter 30) 2386, 2387
Insure Oklahoma~~/Oklahoma Employer and Employee Partnership for Insurance Coverage~~ (Chapter 45) 2391

LAW Enforcement Education and Training, Council on (Title 390)
Permanent Final Adoptions
Peace Officer Certification (Chapter 10) 2549
Basic Peace Officer Certification Training (Chapter 15) 2550
Reserve Peace Officer Certification and Training (Chapter 20) 2554
Regulation of Private Security Industry (Chapter 35) 2555
Penalty Assessment Fees (Chapter 50) 2558

MINES, Department of (Title 460)
Permanent Final Adoptions
The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) 2558
TOURISM and Recreation Department, Oklahoma (Title 725)
Permanent Final Adoptions
Fiscal, Personnel and General Operations (Chapter 15) 2584
TOURISM and Recreation Department, Oklahoma – *continued*
Permanent Final Adoptions – continued
Division of State Parks (Chapter 30) 2586
The Oklahoma Film and Music Office (Chapter 35) 2601
USED Motor Vehicle and Parts Commission, Oklahoma (Title 765)
Permanent Final Adoptions
Manufactured Home Installers (Chapter 37) 2606

Rules Affected Index

[(E) = Emergency action]

Rule		Register Page
5:11-3-1.	[AMENDED]	1687
5:11-3-8.	[AMENDED]	1687
5:11-3-9.	[AMENDED]	1688
5:11-3-10.	[NEW]	1688
5:11-5-3.	[AMENDED]	1688
5:11-7-2.	[NEW]	1689
5:11-7-3.	[NEW]	1689
5:11-7-4.	[NEW]	1689
5:11-13-1.	[NEW]	1689
10:15-1-2.	[AMENDED]	1691
10:15-3-2.	[AMENDED] (E)	6
10:15-3-2.	[AMENDED]	1694
10:15-3-3.	[AMENDED] (E)	6
10:15-3-3.	[AMENDED]	1694
10:15-3-4.	[AMENDED]	1694
10:15-18-1.	[AMENDED] (E)	6
10:15-18-1.	[AMENDED]	1694
10:15-18-4.	[AMENDED] (E)	7
10:15-18-4.	[AMENDED]	1695
10:15-18-7.	[AMENDED]	1695
10:15-18-10.	[AMENDED]	1695
10:15-18-11.	[AMENDED]	1695
10:15-18-12.	[AMENDED]	1696
10:15-18-14.	[AMENDED]	1696
10:15-18-15.	[NEW]	1696
10:15-18-16.	[NEW]	1696
10:15-21-1.	[AMENDED] (E)	7
10:15-21-1.	[AMENDED]	1697
10:15-21-3.	[AMENDED]	1697
10:15-21-5.	[AMENDED]	1697
10:15-22-1.	[REVOKED] (E)	7
10:15-22-1.	[REVOKED]	1697
10:15-23-1.	[AMENDED] (E)	8
10:15-23-1.	[AMENDED]	1698
10:15-23-2.	[AMENDED] (E)	9
10:15-23-2.	[AMENDED]	1698
10:15-23-3.	[NEW]	1699
10:15-25-1.	[AMENDED] (E)	9
10:15-25-1.	[AMENDED]	1699
10:15-25-2.	[AMENDED] (E)	9
10:15-25-2.	[AMENDED]	1699
10:15-25-3.	[AMENDED] (E)	9
10:15-25-3.	[AMENDED]	1699
10:15-25-4.	[AMENDED] (E)	10
10:15-25-4.	[AMENDED]	1700
10:15-25-5.	[AMENDED]	1700
10:15-27-7.1.	[REVOKED] (E)	10
10:15-27-7.1.	[REVOKED]	1700
10:15-27-8.	[AMENDED] (E)	10
10:15-27-8.	[AMENDED]	1701
10:15-27-9.	[AMENDED] (E)	10
10:15-27-9.	[AMENDED]	1701
10:15-27-9.1.	[NEW]	1701
10:15-30-1.	[AMENDED]	1701
10:15-30-5.	[AMENDED] (E)	11
10:15-30-5.	[AMENDED]	1701
10:15-30-6.	[AMENDED]	1702
10:15-30-8.	[AMENDED]	1702
10:15-30-9.	[AMENDED]	1703
10:15-32-1.	[AMENDED]	1703
10:15-32-2.	[AMENDED] (E)	11
10:15-32-2.	[AMENDED]	1705
10:15-32-5.	[AMENDED] (E)	11
10:15-32-5.	[AMENDED]	1705
10:15-32-6.	[AMENDED]	1706
10:15-33-6.	[AMENDED]	1706
10:15-35-1.	[AMENDED]	1706
10:15-35-2.	[AMENDED]	1707
10:15-37-9.	[AMENDED]	1707
10:15-39-1.	[AMENDED]	1707
10:15-39-8.	[REVOKED]	1707
10:15-39-8.1.	[NEW]	1708
10:15-39-8.2.	[NEW]	1708
10:15-43-1.	[AMENDED]	1708
10:15-43-6.	[AMENDED]	1709
10:15-43-8.	[AMENDED]	1709
25:20-1-6.	[REVOKED]	1099
25:20-1-7.	[REVOKED]	1099
25:20-1-8.	[REVOKED]	1100
25:20-1-9.	[REVOKED]	1100
25:20-1-10.	[REVOKED]	1100
33:44-3-4.	[NEW]	2454
35:1-9-3.	[AMENDED]	2407
35:1-10-1.	[NEW]	2407
35:1-10-2.	[NEW]	2408
35:1-10-3.	[NEW]	2408
35:1-10-4.	[NEW]	2408
35:1-10-5.	[NEW]	2408
35:1-11-2.	[AMENDED]	2408
35:1-11-5.	[AMENDED]	2408
35:1-11-7.	[AMENDED]	2409
35:2-3-2.	[AMENDED]	899
35:2-3-2.2.	[AMENDED]	899
35:2-3-2.3.	[AMENDED]	900
35:2-3-2.4.	[AMENDED]	900
35:2-3-2.5.	[AMENDED]	900
35:2-3-2.7.	[AMENDED]	901
35:2-3-11.	[AMENDED]	1101
35:2-3-12.	[AMENDED] (E)	1091
35:2-3-12.	[AMENDED]	2409
35:2-3-23.	[AMENDED]	2410
35:3-1-7.	[NEW]	1102
35:10-1-3.	[AMENDED]	901
35:13-1-1.	[AMENDED]	902
35:13-1-2.	[AMENDED]	902
35:13-1-6.	[NEW]	2411
35:15-1-2.	[AMENDED]	2412
35:15-1-4.	[NEW]	1105
35:15-9-8.	[AMENDED]	2413
35:15-9-9.	[AMENDED]	2413
35:15-9-11.	[REVOKED]	2413
35:15-11-20.	[AMENDED]	2413
35:15-13-1.	[AMENDED]	2413
35:15-13-3.	[AMENDED]	2414
35:15-13-5.	[AMENDED]	2414
35:15-13-6.	[AMENDED]	2415
35:15-13-7.	[AMENDED]	2415
35:15-15-32.	[AMENDED]	1105
35:15-15-33.	[AMENDED]	1105
35:15-15-34.	[AMENDED]	1106
35:15-15-36.	[AMENDED]	1107
35:15-15-37.	[AMENDED]	1107

35:15-15-39. . . . . [AMENDED] 1107
35:15-15-40. . . . . [AMENDED] 1107
35:15-15-41. . . . . [AMENDED] 1107
35:15-15-42. . . . . [AMENDED] 1108
35:15-15-51. . . . . [AMENDED] 2416
35:15-15-71. . . . . [AMENDED] 2416
35:15-15-72. . . . . [AMENDED] 2416
35:15-15-91. . . . . [AMENDED] 2416
35:15-15-111. . . . . [AMENDED] 2416
35:15-16-1. . . . . [AMENDED] 903
35:15-17-1. . . . . [AMENDED] 2421
35:15-17-2. . . . . [AMENDED] 2422
35:15-17-3. . . . . [AMENDED] 2422
35:15-17-4. . . . . [AMENDED] 2422
35:15-17-5. . . . . [REVOKED] 2423
35:15-17-32. . . . . [AMENDED] 2423
35:15-17-33. . . . . [AMENDED] 2423
35:15-17-35. . . . . [AMENDED] 2423
35:15-17-36. . . . . [AMENDED] 2423
35:15-17-37. . . . . [AMENDED] 2424
35:15-17-38. . . . . [AMENDED] 2424
35:15-17-39. . . . . [AMENDED] 2424
35:15-17-40. . . . . [AMENDED] 2424
35:15-17-41. . . . . [AMENDED] 2424
35:15-17-42. . . . . [AMENDED] 2425
35:15-17-43. . . . . [AMENDED] 2425
35:15-17-44. . . . . [AMENDED] 2425
35:15-17-46. . . . . [REVOKED] 2425
35:15-17-47. . . . . [AMENDED] 2425
35:15-17-48. . . . . [AMENDED] 2426
35:15-17-49. . . . . [AMENDED] 2426
35:15-17-50. . . . . [AMENDED] 2426
35:15-17-51. . . . . [AMENDED] 2426
35:15-17-52. . . . . [AMENDED] 2426
35:15-17-53. . . . . [AMENDED] 2426
35:15-17-54. . . . . [AMENDED] 2426
35:15-17-55. . . . . [REVOKED] 2426
35:15-17-56. . . . . [AMENDED] 2426
35:15-17-57. . . . . [REVOKED] 2427
35:15-17-59. . . . . [AMENDED] 2427
35:15-17-60. . . . . [AMENDED] 2427
35:15-17-64. . . . . [AMENDED] 2427
35:15-17-65. . . . . [AMENDED] 2427
35:15-17-66. . . . . [AMENDED] 2428
35:15-17-73. . . . . [AMENDED] 2428
35:15-17-74. . . . . [AMENDED] 2428
35:15-17-75. . . . . [AMENDED] 2429
35:15-17-76. . . . . [AMENDED] 2429
35:15-17-77. . . . . [AMENDED] 2429
35:15-17-78. . . . . [AMENDED] 2429
35:15-17-80. . . . . [AMENDED] 2429
35:15-17-81. . . . . [AMENDED] 2429
35:15-17-83. . . . . [AMENDED] 2430
35:15-17-87. . . . . [AMENDED] 2430
35:15-17-91. . . . . [AMENDED] 2430
35:15-22-2. . . . . [AMENDED] 2417
35:15-22-31. . . . . [AMENDED] 2417
35:15-22-32. . . . . [AMENDED] 2418
35:15-22-71. . . . . [AMENDED] 2418
35:15-22-91. . . . . [AMENDED] 2419
35:15-24-3. . . . . [AMENDED] 2419
35:15-34-3. . . . . [AMENDED] 2420
35:15-36-1. . . . . [AMENDED] 903
35:15-36-2. . . . . [AMENDED] 903
35:15-38-1. . . . . [AMENDED] 2431
35:15-38-2. . . . . [AMENDED] 2431
35:15-38-2.1. . . . . [NEW] 2432
35:15-38-3. . . . . [AMENDED] 2432
35:15-38-4. . . . . [REVOKED] 2432
35:15-40-1. . . . . [AMENDED] 2433
35:15-40-31. . . . . [AMENDED] 2435
35:15-40-32. . . . . [AMENDED] 2435
35:15-40-33. . . . . [AMENDED] 2435
35:15-40-34. . . . . [AMENDED] 2435
35:15-40-35. . . . . [AMENDED] 2436
35:15-40-36. . . . . [AMENDED] 2436
35:15-40-37. . . . . [AMENDED] 2436
35:15-40-38. . . . . [AMENDED] 2436
35:15-40-39. . . . . [AMENDED] 2436
35:15-40-40. . . . . [AMENDED] 2436
35:15-40-41. . . . . [AMENDED] 2436
35:15-40-42. . . . . [AMENDED] 2437
35:15-40-43. . . . . [AMENDED] 2437
35:15-40-45. . . . . [AMENDED] 2437
35:15-40-46. . . . . [AMENDED] 2437
35:15-40-47. . . . . [AMENDED] 2437
35:15-40-48. . . . . [AMENDED] 2438
35:15-40-49. . . . . [AMENDED] 2438
35:15-40-49.1. . . . . [AMENDED] 2438
35:15-40-50. . . . . [AMENDED] 2438
35:15-40-71. . . . . [AMENDED] 2439
35:15-40-72. . . . . [AMENDED] 2439
35:15-40-90. . . . . [AMENDED] 2439
35:15-40-90.1. . . . . [AMENDED] 2440
35:15-40-91. . . . . [AMENDED] 2440
35:15-40-92. . . . . [AMENDED] 2440
35:15-40-93. . . . . [AMENDED] 2441
35:15-44-2. . . . . [AMENDED] 1108
35:15-44-3. . . . . [AMENDED] 1109
35:15-44-4. . . . . [AMENDED] 1109
35:15-44-5. . . . . [AMENDED] 1110
35:15-44-6. . . . . [AMENDED] 1110
35:15-44-7. . . . . [AMENDED] 1110
35:15-44-8. . . . . [AMENDED] 1111
35:15-44-9. . . . . [AMENDED] 1111
35:15-44-10. . . . . [AMENDED] 1111
35:15-44-11. . . . . [AMENDED] 1111
35:15-44-12. . . . . [AMENDED] 1111
35:15-44-13. . . . . [AMENDED] 1111
35:15-44-14. . . . . [AMENDED] 1112
35:15-44-16. . . . . [AMENDED] 1112
35:15-44-17. . . . . [AMENDED] 1112
35:15-44-18. . . . . [AMENDED] 1112
35:15-44-19. . . . . [AMENDED] 1112
35:20-1-1. . . . . [AMENDED] 1113
35:20-3-1. . . . . [AMENDED] 1113
35:20-3-5. . . . . [AMENDED] 1113
35:20-3-6. . . . . [AMENDED] 1114
35:20-3-7. . . . . [REVOKED] 1114
35:20-3-8. . . . . [AMENDED] 1114
35:20-3-9. . . . . [AMENDED] 1114
35:20-3-10. . . . . [AMENDED] 1114
35:20-3-11. . . . . [AMENDED] 1114
35:20-3-17. . . . . [AMENDED] 1115
35:20-3-18. . . . . [AMENDED] 1115
35:20-3-19. . . . . [AMENDED] 1115
35:20-3-20. . . . . [AMENDED] 1115
35:20-3-21. . . . . [AMENDED] 1115
35:20-3-22. . . . . [AMENDED] 1116
35:20-3-23. . . . . [AMENDED] 1116
35:20-3-24. . . . . [AMENDED] 1116
35:20-3-30. . . . . [AMENDED] 1116
35:20-3-31. . . . . [AMENDED] 1116
35:20-3-32. . . . . [AMENDED] 1117

35:20-3-33. [AMENDED] 1117
35:20-3-34. [AMENDED] 1117
35:20-17-1. [AMENDED] 1117
35:20-17-2. [AMENDED] 1117
35:20-17-7. [AMENDED] 1118
35:20-17-8. [AMENDED] 1118
35:20-17-9. [AMENDED] 1118
35:20-17-14. [AMENDED] 1118
35:20-17-15. [AMENDED] 1118
35:20-17-16. [AMENDED] 1119
35:20-17-19. [AMENDED] 1119
35:20-17-21. [AMENDED] 1119
35:20-17-22. [AMENDED] 1119
35:20-17-23. [AMENDED] 1119
35:30-17-1.2. [NEW] 904
35:30-17-3. [AMENDED] 907
35:30-17-3.1. [AMENDED] 908
35:30-17-3.3. [REVOKED] 908
35:30-17-3.4. [NEW] 2442
35:30-17-13. [AMENDED] 909
35:30-17-20. [AMENDED] 2442
35:30-17-27. [REVOKED] 909
35:30-17-55. [AMENDED] 2443
35:30-17-56. [AMENDED] 2443
35:30-17-57. [AMENDED] 2443
35:30-17-58. [AMENDED] 2443
35:30-17-59. [AMENDED] 2443
35:30-17-60. [REVOKED] 2443
35:30-17-61. [REVOKED] 2443
35:30-17-62. [REVOKED] 2443
35:30-17-63. [REVOKED] 2443
35:30-17-64. [REVOKED] 2443
35:30-17-65. [AMENDED] 2443
35:30-17-66. [AMENDED] 2443
35:30-17-67. [AMENDED] 2444
35:30-17-68. [AMENDED] 2444
35:30-17-69. [AMENDED] 2444
35:30-17-69.1. [NEW] 2445
35:30-17-69.2. [NEW] 2445
35:30-17-70. [REVOKED] 2446
35:30-17-89.1. [AMENDED] 909
35:30-17-105. [AMENDED] 2446
35:30-25-15. [NEW] 905
35:30-27-9.1. [NEW] (E) 99
35:30-27-9.1. [NEW] 1120
35:30-27-11. [AMENDED] 905
35:30-29-51. [AMENDED] 905
35:30-31-4. [NEW] 906
35:30-36-1. [NEW] 2447
35:30-36-2. [NEW] 2447
35:30-36-3. [NEW] 2447
35:30-36-4. [NEW] 2448
35:30-36-5. [NEW] 2448
35:30-36-6. [NEW] 2448
35:30-36-7. [NEW] 2448
35:30-36-8. [NEW] 2448
35:30-36-9. [NEW] 2448
35:30-36-10. [NEW] 2449
35:30-36-11. [NEW] 2449
35:30-36-12. [NEW] 2449
35:30-36-13. [NEW] 2449
35:30-36-14. [NEW] 2449
35:30-37-12. [NEW] 906
35:30-38-13. [NEW] 907
35:37-3-1. [AMENDED] 910
35:37-3-3. [AMENDED] 910
35:37-5-1. [AMENDED] 910
35:37-5-2. [AMENDED] 911
35:40-11-1. [NEW] (E) 489
35:40-11-2. [NEW] (E) 489
35:40-11-3. [NEW] (E) 489
35:40-11-4. [NEW] (E) 489
35:40-11-5. [NEW] (E) 490
35:40-11-6. [NEW] (E) 490
35:44-1-1. [NEW] 2450
35:44-1-2. [NEW] 2450
35:44-1-3. [NEW] 2451
35:44-1-20. [NEW] 2451
35:44-1-21. [NEW] 2451
35:44-1-22. [NEW] 2451
35:44-1-23. [NEW] 2452
35:44-1-24. [NEW] 2452
35:44-1-25. [NEW] 2452
35:44-1-26. [NEW] 2452
35:44-1-27. [NEW] 2452
35:44-1-28. [NEW] 2452
35:44-1-29. [NEW] 2452
35:44-1-30. [NEW] 2452
35:44-1-31. [NEW] 2453
35:44-1-32. [NEW] 2453
35:44-1-33. [NEW] 2453
35:44-1-34. [NEW] 2453
35:44-1-35. [NEW] 2453
35:44-1-36. [NEW] 2453
35:44-1-37. [NEW] 2454
35:44-1-38. [NEW] 2454
35:44-1-39. [NEW] 2454
35:44-1-40. [NEW] 2454
35:44-1-41. [NEW] 2454
35:44-3-3. [AMENDED] 912
35:44-3-5. [NEW] 2454
35:44-3-6. [NEW] 2454
35:44-3-7. [NEW] 2455
35:44-3-8. [NEW] 2455
35:48-3-1. [NEW] (E) 1359
35:48-3-2. [NEW] (E) 1359
35:48-3-3. [NEW] (E) 1359
35:48-3-4. [NEW] (E) 1360
35:48-3-5. [NEW] (E) 1360
60:10-11-4. [AMENDED] 1121
60:15-1-1. [NEW] 1369
60:15-1-2. [NEW] 1369
60:15-1-3. [NEW] 1370
60:15-1-4. [NEW] 1372
60:15-3-1. [NEW] 1372
60:15-3-2. [NEW] 1372
60:15-3-3. [NEW] 1372
60:15-3-4. [NEW] 1372
60:15-3-5. [NEW] 1372
60:15-3-6. [NEW] 1373
60:15-3-7. [NEW] 1373
60:15-3-8. [NEW] 1373
60:15-3-9. [NEW] 1373
60:15-3-10. [NEW] 1373
60:15-3-11. [NEW] 1373
75:15-1-1. [AMENDED] 1709
75:15-1-1.1. [AMENDED] 1709
75:15-1-2. [AMENDED] 1709
75:15-1-3. [AMENDED] 1712
75:15-2-1. [AMENDED] 1713
75:15-3-16. [NEW] 1730
75:15-4-1. [REVOKED] 1714
75:15-4-2. [REVOKED] 1714
75:15-4-3. [REVOKED] 1715

75:15-4-4. . . . . [REVOKED] 1715
75:15-4-5. . . . . [REVOKED] 1716
75:15-4-7. . . . . [REVOKED] 1717
75:15-4-8. . . . . [REVOKED] 1717
75:15-4-10. . . . . [REVOKED] 1717
75:15-4-11. . . . . [REVOKED] 1717
75:15-4-12. . . . . [REVOKED] 1717
75:15-4-13. . . . . [REVOKED] 1717
75:15-4-14. . . . . [REVOKED] 1717
75:15-4-15. . . . . [REVOKED] 1718
75:15-4-16. . . . . [REVOKED] 1718
75:15-4-17. . . . . [REVOKED] 1718
75:15-4-18. . . . . [REVOKED] 1718
75:15-4-19. . . . . [REVOKED] 1718
75:15-4-20. . . . . [REVOKED] 1719
75:15-4-21. . . . . [REVOKED] 1719
75:15-5-3. . . . . [AMENDED] 1719
75:15-5-3.1. . . . . [AMENDED] 1720
75:15-7-5. . . . . [AMENDED] 1721
75:15-7-9. . . . . [AMENDED] 1721
75:15-9-8. . . . . [AMENDED] 1721
75:15-13-20.1. . . . . [AMENDED] 1721
75:15-13-20.2. . . . . [AMENDED] 1722
75:15-13-25. . . . . [AMENDED] 1722
75:15-13-29. . . . . [AMENDED] 1722
75:15-13-30. . . . . [REVOKED] 1722
75:25-1-1. . . . . [NEW] 1723
75:25-1-2. . . . . [NEW] 1723
75:25-1-3. . . . . [NEW] 1724
75:25-1-4. . . . . [NEW] 1725
75:25-1-5. . . . . [NEW] 1725
75:25-3-1. . . . . [NEW] 1725
75:25-3-2. . . . . [NEW] 1726
75:25-3-3. . . . . [NEW] 1727
75:25-3-4. . . . . [NEW] 1727
75:25-3-5. . . . . [NEW] 1728
75:25-3-6. . . . . [NEW] 1728
75:25-3-7. . . . . [NEW] 1728
75:25-3-8. . . . . [NEW] 1729
75:25-3-9. . . . . [NEW] 1729
75:25-3-10. . . . . [NEW] 1729
75:25-3-11. . . . . [NEW] 1729
75:25-3-12. . . . . [NEW] 1729
75:25-3-13. . . . . [NEW] 1729
75:25-3-14. . . . . [NEW] 1729
75:25-3-15. . . . . [NEW] 1730
75:25-5-1. . . . . [NEW] 1730
75:25-5-2. . . . . [NEW] 1731
75:25-5-3. . . . . [NEW] 1731
75:25-5-4. . . . . [NEW] 1731
75:25-5-5. . . . . [NEW] 1731
75:25-5-6. . . . . [NEW] 1731
75:25-5-7. . . . . [NEW] 1731
75:25-5-12. . . . . [NEW] 1731
75:25-5-13. . . . . [NEW] 1731
75:25-5-14. . . . . [NEW] 1731
75:25-5-19. . . . . [NEW] 1732
75:25-5-20. . . . . [NEW] 1732
75:25-5-21. . . . . [NEW] 1732
75:25-7-1. . . . . [NEW] 1733
87:10-24-1. . . . . [NEW] (E) 490
87:10-24-1. . . . . [NEW] 2077
87:10-24-2. . . . . [NEW] (E) 490
87:10-24-2. . . . . [NEW] 2078
87:10-24-3. . . . . [NEW] (E) 491
87:10-24-3. . . . . [NEW] 2078
87:10-24-4. . . . . [NEW] (E) 491
87:10-24-4. . . . . [NEW] 2078
87:10-24-5. . . . . [NEW] (E) 491
87:10-24-5. . . . . [NEW] 2078
87:10-24-6. . . . . [NEW] (E) 491
87:10-24-6. . . . . [NEW] 2078
87:10-24-7. . . . . [NEW] (E) 491
87:10-24-7. . . . . [NEW] 2078
87:10-24-8. . . . . [NEW] (E) 491
87:10-24-8. . . . . [NEW] 2079
87:10-24-9. . . . . [NEW] (E) 491
87:10-24-9. . . . . [NEW] 2079
87:10-24-10. . . . . [NEW] (E) 492
87:10-24-10. . . . . [NEW] 2079
87:10-24-11. . . . . [NEW] (E) 492
87:10-24-11. . . . . [NEW] 2079
87:10-24-12. . . . . [NEW] (E) 492
87:10-24-12. . . . . [NEW] 2079
87:10-28-1. . . . . [NEW] (E) 43
87:10-28-1. . . . . [NEW] 2080
87:10-28-2. . . . . [NEW] (E) 43
87:10-28-2. . . . . [NEW] 2080
87:10-28-3. . . . . [NEW] (E) 44
87:10-28-3. . . . . [NEW] 2080
87:10-28-4. . . . . [NEW] (E) 44
87:10-28-4. . . . . [NEW] 2080
87:10-28-5. . . . . [NEW] (E) 44
87:10-28-5. . . . . [NEW] 2080
87:10-28-6. . . . . [NEW] (E) 44
87:10-28-6. . . . . [NEW] 2080
87:10-28-7. . . . . [NEW] (E) 44
87:10-28-7. . . . . [NEW] 2080
92:10-1-7. . . . . [AMENDED] (E) 213
120:10-1-3. . . . . [AMENDED] 912
120:10-3-1. . . . . [REVOKED] 912
120:10-3-1.1. . . . . [NEW] 912
120:10-3-2. . . . . [REVOKED] 912
120:10-3-2.1. . . . . [NEW] 912
120:10-3-3. . . . . [REVOKED] 912
120:10-3-3.1. . . . . [NEW] 912
120:10-3-4. . . . . [REVOKED] 912
120:10-3-4.1. . . . . [NEW] 912
120:10-3-5. . . . . [REVOKED] 912
120:10-3-5.1. . . . . [NEW] 912
120:10-3-6. . . . . [REVOKED] 912
120:10-3-6.1. . . . . [NEW] 912
120:10-3-7. . . . . [REVOKED] 912
120:10-3-7.1. . . . . [NEW] 912
120:10-3-8. . . . . [AMENDED] 912
120:10-3-8.1. . . . . [RESERVED] 912
120:10-3-9. . . . . [REVOKED] 912
120:10-3-9.1. . . . . [NEW] 912
120:10-3-10. . . . . [REVOKED] 912
120:10-3-10.1. . . . . [NEW] 912
120:10-3-11. . . . . [REVOKED] 912
120:10-3-11.1. . . . . [NEW] 912
120:10-3-13. . . . . [AMENDED] 1734
120:10-5-1.1. . . . . [REVOKED] 912
120:10-5-1.2. . . . . [NEW] 912
120:10-5-2. . . . . [REVOKED] 912
120:10-5-2.1. . . . . [NEW] 912
120:10-5-3. . . . . [REVOKED] 912
120:10-5-3.1. . . . . [NEW] 912
120:10-5-4. . . . . [REVOKED] 912
120:10-5-4.1. . . . . [NEW] 912
120:10-5-5. . . . . [REVOKED] 912
120:10-5-5.1. . . . . [NEW] 912
120:10-5-6. . . . . [REVOKED] 912

120:10-5-6.1. . . . . [NEW] 912
120:10-5-9. . . . . [REVOKED] 912
120:10-5-9.1. . . . . [NEW] 912
120:10-5-10. . . . . [REVOKED] 912
120:10-5-10.1. . . . . [NEW] 912
120:10-5-11. . . . . [REVOKED] 912
120:10-5-11.1. . . . . [NEW] 912
120:10-5-12. . . . . [REVOKED] 912
120:10-5-12.1. . . . . [NEW] 912
120:10-5-14. . . . . [AMENDED] 912
120:10-5-14. . . . . [AMENDED] 1734
120:10-9-1. . . . . [AMENDED] 912
120:10-9-1.1. . . . . [NEW] 912
120:10-11-1. . . . . [REVOKED] 912
120:10-11-1.1. . . . . [NEW] 912
120:10-11-2. . . . . [REVOKED] 912
120:10-11-2.1. . . . . [NEW] 912
120:10-11-3. . . . . [REVOKED] 912
120:10-11-3.1. . . . . [NEW] 912
120:10-11-4.1. . . . . [RESERVED] 912
120:10-11-5. . . . . [REVOKED] 912
120:10-11-5.1. . . . . [NEW] 912
120:10-11-6. . . . . [REVOKED] 912
120:10-11-6.1. . . . . [NEW] 912
120:10-11-7. . . . . [REVOKED] 912
120:10-11-7.1. . . . . [NEW] 912
120:10-11-8. . . . . [REVOKED] 912
120:10-11-8.1. . . . . [NEW] 912
120:10-11-9. . . . . [REVOKED] 912
120:10-11-9.1. . . . . [NEW] 912
120:10-11-10. . . . . [REVOKED] 912
120:10-11-10.1. . . . . [NEW] 912
120:10-11-11. . . . . [REVOKED] 912
120:10-11-11.1. . . . . [NEW] 912
120:10-13-1. . . . . [REVOKED] 912
120:10-13-1.1. . . . . [NEW] 912
120:10-13-1.1. . . . . [REVOKED] 1735
120:10-13-2. . . . . [AMENDED] 912
120:10-13-2.1. . . . . [NEW] 912
120:10-13-2.1. . . . . [REVOKED] 1736
120:10-13-3. . . . . [REVOKED] 912
120:10-13-3.1. . . . . [NEW] 912
120:10-13-3.1. . . . . [REVOKED] 1736
120:10-13-4. . . . . [REVOKED] 912
120:10-13-4.1. . . . . [NEW] 912
120:10-13-4.1. . . . . [REVOKED] 1736
120:10-13-5. . . . . [REVOKED] 912
120:10-13-5.1. . . . . [NEW] 912
120:10-13-5.1. . . . . [REVOKED] 1736
120:10-13-6. . . . . [REVOKED] 912
120:10-13-6.1. . . . . [NEW] 912
120:10-13-6.1. . . . . [REVOKED] 1737
120:10-13-7. . . . . [REVOKED] 912
120:10-13-7.1. . . . . [NEW] 912
120:10-13-7.1. . . . . [REVOKED] 1737
120:10-13-8. . . . . [REVOKED] 912
120:10-13-8.1. . . . . [NEW] 912
120:10-13-8.1. . . . . [REVOKED] 1737
120:10-13-9. . . . . [REVOKED] 912
120:10-13-9.1. . . . . [NEW] 912
120:10-13-9.1. . . . . [REVOKED] 1738
120:10-13-10. . . . . [REVOKED] 912
120:10-13-10.1. . . . . [NEW] 912
120:10-13-10.1. . . . . [REVOKED] 1738
120:10-13-11. . . . . [REVOKED] 912
120:10-13-11.1. . . . . [NEW] 912
120:10-13-11.1. . . . . [REVOKED] 1738
120:10-13-12. . . . . [REVOKED] 912
120:10-13-12.1. . . . . [NEW] 912
120:10-13-12.1. . . . . [REVOKED] 1738
120:10-13-13. . . . . [NEW] 1738
120:10-13-14. . . . . [NEW] 1738
120:10-13-15. . . . . [NEW] 1739
120:10-13-16. . . . . [NEW] 1739
120:10-13-17. . . . . [NEW] 1739
120:10-13-18. . . . . [NEW] 1739
120:10-13-19. . . . . [NEW] 1740
120:10-13-20. . . . . [NEW] 1740
120:10-13-21. . . . . [NEW] 1740
120:10-13-22. . . . . [NEW] 1741
120:10, App. A. . . . . [REVOKED] 912
120:10, App. B. . . . . [REVOKED] 912
120:10, App. C. . . . . [REVOKED] 912
120:10, App. F. . . . . [NEW] 912
120:10, App. G. . . . . [NEW] 912
120:10, App. A.1. . . . . [NEW] 912
120:10, App. B.1. . . . . [NEW] 912
120:10, App. C.1. . . . . [NEW] 912
130:1-1-2. . . . . [AMENDED] 2455
130:1-1-13. . . . . [AMENDED] 2456
130:1-1-14. . . . . [AMENDED] 2456
130:1, App. A. . . . . [REVOKED] 2457
130:12-3-3. . . . . [AMENDED] 2458
130:12-3-6. . . . . [AMENDED] 2458
130:12-3-20. . . . . [AMENDED] 2459
130:12-3-21. . . . . [AMENDED] 2459
130:12-5-2. . . . . [AMENDED] 2459
130:12-5-3. . . . . [AMENDED] 2459
130:12-5-5. . . . . [AMENDED] 2459
130:12-5-6. . . . . [AMENDED] 2460
130:12-5-7. . . . . [AMENDED] 2460
130:12-5-8. . . . . [AMENDED] 2460
130:12-5-9. . . . . [REVOKED] 2460
130:12-7-1. . . . . [AMENDED] 2461
130:12-7-2. . . . . [REVOKED] 2461
130:12-9-1. . . . . [AMENDED] 2462
130:13-3-1. . . . . [AMENDED] 2463
130:13-3-2. . . . . [AMENDED] 2463
130:13-3-4. . . . . [NEW] 2464
130:13-3-12. . . . . [AMENDED] 2464
130:13-3-21. . . . . [AMENDED] 2464
130:13-3-30. . . . . [AMENDED] 2464
130:13-3-31. . . . . [AMENDED] 2464
130:13-3-32. . . . . [REVOKED] 2465
130:13-3-33. . . . . [AMENDED] 2465
130:13-3-34. . . . . [REVOKED] 2465
130:13-3-36. . . . . [AMENDED] 2465
130:13-5-1. . . . . [AMENDED] 2465
130:13-7-1. . . . . [AMENDED] 2465
130:13-7-2. . . . . [AMENDED] 2466
130:13-9-2. . . . . [AMENDED] 2466
130:13-13-1. . . . . [AMENDED] 2466
130:13-13-2. . . . . [AMENDED] 2466
130:13-15-2. . . . . [AMENDED] 2467
130:14-1-6. . . . . [AMENDED] 2467
130:14-3-1. . . . . [AMENDED] 2468
130:14-3-2. . . . . [AMENDED] 2468
130:14-3-4. . . . . [AMENDED] 2468
130:14-3-12. . . . . [AMENDED] 2469
130:14-5-3. . . . . [AMENDED] 2469
130:15-1-1. . . . . [REVOKED] 2470
130:15-1-2. . . . . [REVOKED] 2470
130:15-1-3. . . . . [REVOKED] 2470
130:15-1-6. . . . . [REVOKED] 2470

130:15-1-7. . . . . [REVOKED] 2470
130:15-1-9. . . . . [REVOKED] 2470
135:10-24-1. . . . . [NEW] (E) 281
135:10-24-1. . . . . [NEW] 2471
135:10-24-2. . . . . [NEW] (E) 281
135:10-24-2. . . . . [NEW] 2471
135:10-24-3. . . . . [NEW] (E) 282
135:10-24-3. . . . . [NEW] 2471
140:10-1-2. . . . . [AMENDED] 1374
140:10-3-1. . . . . [AMENDED] 1375
140:10-3-3. . . . . [AMENDED] 1376
140:10-3-5. . . . . [AMENDED] 1376
140:10-5-1. . . . . [AMENDED] 1376
140:10-8-1. . . . . [AMENDED] 1377
140:15-11-1. . . . . [AMENDED] 1378
140:15-12-1. . . . . [AMENDED] 1378
150:65-11-1. . . . . [NEW] (E) 284
150:65-11-1. . . . . [NEW] 1122
150:65-11-2. . . . . [NEW] (E) 284
150:65-11-2. . . . . [NEW] 1122
150:65-11-3. . . . . [NEW] (E) 284
150:65-11-3. . . . . [NEW] 1122
150:65-11-4. . . . . [NEW] (E) 284
150:65-11-4. . . . . [NEW] 1122
155:15-1-2. . . . . [AMENDED] 2473
155:15-1-4. . . . . [AMENDED] 2474
155:15-1-5. . . . . [AMENDED] 2475
155:15-1-6. . . . . [AMENDED] 2475
155:15-1-6.1. . . . . [NEW] 2476
155:15-1-7. . . . . [AMENDED] 2476
155:15-1-7.1. . . . . [NEW] 2477
155:15-1-8. . . . . [AMENDED] 2478
155:15-1-9. . . . . [AMENDED] 2480
155:15-1-10. . . . . [AMENDED] 2480
155:15-1-11. . . . . [AMENDED] 2481
155:15-1-12. . . . . [AMENDED] 2481
155:15-1-13. . . . . [AMENDED] 2481
155:15-1-14. . . . . [REVOKED] 2482
155:15-1-15. . . . . [AMENDED] 2482
155:15-1-16. . . . . [AMENDED] 2482
155:45-1-1. . . . . [NEW] 2484
155:45-1-2. . . . . [NEW] 2484
155:45-1-3. . . . . [NEW] 2484
155:45-1-4. . . . . [NEW] 2484
155:45-3-1. . . . . [NEW] 2485
155:45-3-2. . . . . [NEW] 2485
155:45-5-1. . . . . [NEW] 2485
155:45-5-2. . . . . [NEW] 2485
155:45-5-3. . . . . [NEW] 2486
155:45-5-4. . . . . [NEW] 2486
155:45-5-5. . . . . [NEW] 2486
155:45-5-6. . . . . [NEW] 2486
155:45-5-7. . . . . [NEW] 2487
158:1-3-9. . . . . [NEW] 2081
158:30-9-1. . . . . [AMENDED] 2082
158:30-9-2. . . . . [AMENDED] 2082
158:30-9-3. . . . . [AMENDED] 2082
158:40-5-1. . . . . [AMENDED] 2083
158:40-5-2. . . . . [AMENDED] 2084
158:40-5-3. . . . . [AMENDED] 2085
158:40-9-3. . . . . [AMENDED] 2086
158:50-1-2. . . . . [AMENDED] 2087
158:50-9-1. . . . . [AMENDED] 2089
158:50-9-2. . . . . [AMENDED] 2089
158:50-9-3. . . . . [AMENDED] 2090
158:50-9-4. . . . . [REVOKED] 2090
158:50-9-7. . . . . [AMENDED] 2090
158:50-13-2. . . . . [AMENDED] 2092
158:60-5-1. . . . . [AMENDED] 2092
158:60-5-2. . . . . [AMENDED] 2093
158:70-1-3. . . . . [AMENDED] 2093
160:5-1-2. . . . . [AMENDED] 1741
160:45-1-1. . . . . [AMENDED] (E) 492
160:45-1-2. . . . . [AMENDED] (E) 12
160:45-1-2. . . . . [AMENDED] (E) 493
160:45-1-3. . . . . [AMENDED] (E) 495
160:45-3-1. . . . . [AMENDED] (E) 214
160:45-3-7. . . . . [AMENDED] (E) 215
160:45-5-1. . . . . [AMENDED] (E) 14
160:45-5-1. . . . . [AMENDED] (E) 495
160:45-5-3. . . . . [AMENDED] (E) 16
160:45-9-2. . . . . [AMENDED] (E) 1663
160:45-9-2. . . . . [AMENDED] 1743
160:45-9-7. . . . . [NEW] (E) 595
160:45-13-1. . . . . [NEW] (E) 497
160:45-13-2. . . . . [NEW] (E) 499
160:45-13-3. . . . . [NEW] (E) 500
160:45, App. H. . . . . [REVOKED] (E) 503
160:45, App. H. . . . . [NEW] (E) 503
160:45, App. H. . . . . [REVOKED] 1746
160:45, App. H. . . . . [NEW] 1746
160:55-1-2. . . . . [AMENDED] 1764
160:55-3-1.1. . . . . [AMENDED] 1764
160:55-3-1.2. . . . . [REVOKED] 1767
160:55-3-1.3. . . . . [REVOKED] 1767
160:55-3-1.4. . . . . [REVOKED] 1767
160:55-3-3. . . . . [REVOKED] 1768
160:55-3-3.1. . . . . [AMENDED] 1768
160:55-3-4. . . . . [AMENDED] 1769
160:55-3-8. . . . . [AMENDED] 1769
160:55-3-9. . . . . [REVOKED] 1770
160:55-3-9.1. . . . . [AMENDED] 1770
160:55-3-10.1. . . . . [REVOKED] 1770
160:55-3-12. . . . . [NEW] 1770
160:55-3-13. . . . . [NEW] 1771
160:55-5-1. . . . . [REVOKED] 1772
160:55-5-2. . . . . [REVOKED] 1772
160:55-5-3. . . . . [REVOKED] 1772
160:55-7-1. . . . . [AMENDED] 1772
160:55-9-10. . . . . [AMENDED] 1772
165:5-1-3. . . . . [AMENDED] 2098
165:5-1-4. . . . . [AMENDED] 2099
165:5-1-4.1. . . . . [AMENDED] 2100
165:5-1-5. . . . . [AMENDED] 2100
165:5-1-10. . . . . [AMENDED] 2100
165:5-3-2. . . . . [AMENDED] 2101
165:5-3-24. . . . . [AMENDED] 2102
165:5-3-32. . . . . [AMENDED] 2102
165:5-5-1. . . . . [AMENDED] 2102
165:5-7-1. . . . . [AMENDED] 2103
165:5-7-6. . . . . [AMENDED] 2104
165:5-7-9. . . . . [AMENDED] 2105
165:5-7-12. . . . . [AMENDED] 2106
165:5-7-25. . . . . [REVOKED] 2107
165:5-7-27. . . . . [AMENDED] 2107
165:5-7-28. . . . . [AMENDED] 2109
165:5-7-30. . . . . [AMENDED] 2109
165:5-7-33. . . . . [AMENDED] 2110
165:5-7-34. . . . . [AMENDED] 2110
165:5-7-35. . . . . [AMENDED] 2111
165:5-7-38. . . . . [AMENDED] 2113
165:5-7-60. . . . . [AMENDED] 2113
165:5-7-61. . . . . [AMENDED] 2113
165:5-7-65. . . . . [AMENDED] 2115

165:5-9-1. [AMENDED] 2115
165:5-9-2. [AMENDED] 2116
165:5-9-3. [AMENDED] 2117
165:5-9-4. [AMENDED] 2117
165:5-9-5. [AMENDED] 2117
165:5-9-6. [AMENDED] 2118
165:5-11-1. [AMENDED] 2118
165:5-11-2. [AMENDED] 2119
165:5-11-2.1. [AMENDED] 2120
165:5-11-3. [AMENDED] 2120
165:5-13-1. [AMENDED] 2121
165:5-13-2. [AMENDED] 2121
165:5-13-2.1. [AMENDED] 2121
165:5-13-3. [AMENDED] 2121
165:5-13-3.1. [AMENDED] 2123
165:5-13-4. [AMENDED] 2123
165:5-13-5. [AMENDED] 2124
165:5-15-1. [AMENDED] 2125
165:5-15-3. [AMENDED] 2125
165:5-15-8. [REVOKED] 2126
165:5-15-9. [REVOKED] 2126
165:5-17-1. [AMENDED] 2126
165:5-17-2. [AMENDED] 2126
165:5-17-5. [AMENDED] 2126
165:5-21-1. [AMENDED] 2127
165:5-23-2. [AMENDED] 2127
165:5-25-2. [AMENDED] 2127
165:10-1-2. [AMENDED] 2127
165:10-1-4. [AMENDED] 2127
165:10-1-7. [AMENDED] 2127
165:10-1-10. [AMENDED] 2127
165:10-3-1. [AMENDED] 2127
165:10-3-3. [AMENDED] 2127
165:10-3-4. [AMENDED] 2127
165:10-3-10. [AMENDED] 2127
165:10-3-16. [AMENDED] 2127
165:10-3-17. [AMENDED] 2127
165:10-3-28. [AMENDED] 2127
165:10-3-31. [AMENDED] 2127
165:10-5-5. [AMENDED] 2127
165:10-5-7. [AMENDED] 2127
165:10-5-13. [AMENDED] 2127
165:10-7-16. [AMENDED] 2127
165:10-7-17. [AMENDED] 2127
165:10-7-19. [AMENDED] 2127
165:10-7-20. [AMENDED] 2127
165:10-7-22. [AMENDED] 2127
165:10-7-26. [AMENDED] 2127
165:10-7-27. [AMENDED] 2127
165:10-7-29. [AMENDED] 2127
165:10-8-5. [AMENDED] 2127
165:10-8-7. [AMENDED] 2127
165:10-8-25. [REVOKED] 2127
165:10-8-26. [REVOKED] 2127
165:10-8-27. [REVOKED] 2127
165:10-8-28. [REVOKED] 2127
165:10-8-29. [REVOKED] 2127
165:10-8-30. [REVOKED] 2127
165:10-8-31. [REVOKED] 2127
165:10-8-32. [REVOKED] 2127
165:10-8-33. [REVOKED] 2127
165:10-8-34. [REVOKED] 2127
165:10-8-35. [REVOKED] 2127
165:10-9-1. [AMENDED] 2127
165:10-9-2. [AMENDED] 2127
165:10-9-3. [AMENDED] 2127
165:10-9-4. [NEW] 2127
165:10-11-6. [AMENDED] 2127
165:10-11-7. [AMENDED] 2127
165:10-17-9. [AMENDED] 2127
165:10-21-21. [AMENDED] 2127
165:10-21-22. [AMENDED] 2127
165:10-21-23. [AMENDED] 2127
165:10-21-24. [AMENDED] 2127
165:10-21-35. [AMENDED] 2127
165:10-21-36. [AMENDED] 2127
165:10-21-37. [AMENDED] 2127
165:10-21-45. [AMENDED] 2127
165:10-21-47. [AMENDED] 2127
165:10-21-47.1. [AMENDED] 2127
165:10-21-55. [AMENDED] 2127
165:10-21-57. [AMENDED] 2127
165:10-21-58. [AMENDED] 2127
165:10-21-66. [AMENDED] 2127
165:10-21-67. [AMENDED] 2127
165:10-21-68. [AMENDED] 2127
165:10-21-69. [AMENDED] 2127
165:10-21-75. [AMENDED] 2127
165:10-21-76. [AMENDED] 2127
165:10-21-77. [AMENDED] 2127
165:10-21-78. [AMENDED] 2127
165:10-21-80. [AMENDED] 2127
165:10-21-82. [AMENDED] 2127
165:10-21-82.2. [AMENDED] 2127
165:10-21-82.3. [AMENDED] 2127
165:10-29-2. [NEW] 2127
165:10, App. C. [REVOKED] 2127
165:10, App. C. [NEW] 2127
165:10, App. F. [REVOKED] 2127
165:10, App. F. [NEW] 2127
165:30-1-1. [AMENDED] 1774
165:30-1-2. [AMENDED] 1774
165:30-3-1. [AMENDED] 1776
165:30-3-3. [AMENDED] 1777
165:30-3-11. [AMENDED] 1778
165:30-3-32. [AMENDED] 1779
165:30-3-34. [AMENDED] 1780
165:30-3-71. [AMENDED] 1780
165:30-7-2. [REVOKED] 1780
165:30-7-5. [AMENDED] 1780
165:30-7-8. [AMENDED] 1781
165:30-7-11. [AMENDED] 1782
165:30-10-9. [NEW] 1782
165:30-10-13. [AMENDED] 1782
165:30-13-2. [AMENDED] 1782
165:30-13-3. [REVOKED] 1784
165:30-13-4. [NEW] 1784
165:30-13-11. [AMENDED] 1784
165:30-13-12. [AMENDED] 1784
165:30-13-13. [REVOKED] 1785
165:30-13-14. [REVOKED] 1785
165:30-13-15. [AMENDED] 1785
165:30-13-16. [AMENDED] 1785
165:30-13-17. [REVOKED] 1785
165:30-13-20. [NEW] 1786
165:30-13-22. [NEW] 1786
165:30-13-24. [NEW] 1786
165:30-13-26. [NEW] 1788
165:30-13-27. [NEW] 1789
165:30-13-28. [NEW] 1789
165:30-13-31. [AMENDED] 1789
165:30-13-32. [REVOKED] 1789
165:30-13-33. [AMENDED] 1790
165:30-13-34. [AMENDED] 1790

165:30-13-35. [REVOKED] 1790
165:30-13-36. [AMENDED] 1790
165:30-13-37. [AMENDED] 1791
165:30-13-51. [AMENDED] 1792
165:30-13-52. [REVOKED] 1792
165:30-13-53. [REVOKED] 1793
165:30-13-71. [AMENDED] 1793
165:30-13-72. [AMENDED] 1793
165:30-13-73. [AMENDED] 1793
165:30-13-74. [AMENDED] 1793
165:30-13-91. [REVOKED] 1793
165:30-13-92. [AMENDED] 1794
165:30-13-93. [AMENDED] 1794
165:30-13-94. [AMENDED] 1794
165:30-15-14. [AMENDED] 1795
165:30-19-19. [AMENDED] 1795
165:30-25-1. [NEW] 1795
165:35-34-3. [AMENDED] 2129
165:35-37-4. [AMENDED] 2131
165:35-37-5. [NEW] 2132
165:35-38-3. [AMENDED] 2132
165:35-38-4. [AMENDED] 2133
165:35-38-5. [AMENDED] 2133
165:65-9-11. [NEW] 914
195:2-1-7. [AMENDED] 1378
195:4-1-1. [NEW] 1379
195:4-1-2. [NEW] 1380
210:10-9-6. [AMENDED] (E) 1665
210:10-13-16. [AMENDED] 2487
210:10-13-21. [NEW] (E) 1666
210:15-3-5.3. [AMENDED] 1382
210:15-3-5.4. [AMENDED] 1383
210:15-3-12. [AMENDED] 1382
210:15-3-13. [AMENDED] 1382
210:15-3-14. [AMENDED] 1382
210:15-3-15. [AMENDED] 1382
210:15-3-16. [AMENDED] 1382
210:15-3-17. [AMENDED] 1382
210:15-3-18. [AMENDED] 1382
210:15-3-19. [AMENDED] 1382
210:15-3-21. [AMENDED] 1382
210:15-3-23. [AMENDED] 1382
210:15-3-100. [AMENDED] (E) 799
210:15-3-100. [AMENDED] 2489
210:15-3-102. [AMENDED] (E) 800
210:15-3-102. [AMENDED] 2490
210:15-3-104. [AMENDED] (E) 804
210:15-3-104. [AMENDED] 2494
210:15-3-196. [AMENDED] 1380
210:15-3-197. [AMENDED] 1380
210:20-9-10.1. [AMENDED] 1385
210:20-9-95. [AMENDED] (E) 596
210:20-9-95. [AMENDED] 1425
210:20-9-103. [NEW] (E) 1668
210:20-9-172. [AMENDED] 1386
210:20-11-3. [AMENDED] 1423
210:40-52-5. [AMENDED] (E) 107
210:40-52-5. [AMENDED] 1426
215:15-3-20. [AMENDED] 1382
215:15-3-22. [AMENDED] 1382
230:10-7-48. [AMENDED] 1123
230:10-7-48.1. [NEW] (E) 597
230:10-7-48.1. [NEW] 1123
230:10-7-59. [AMENDED] (E) 597
230:10-7-59. [AMENDED] 1123
230:10-7-110. [AMENDED] 1124
230:15-9-5. [NEW] 1125
230:15-9-12. [AMENDED] 1125
230:15-9-18. [AMENDED] 1125
230:15-9-18.1. [AMENDED] 1127
230:15-9-19. [AMENDED] 1127
230:15-9-20. [AMENDED] 1128
230:15-9-21. [AMENDED] 1128
230:15-9-22. [AMENDED] 1128
230:15-9-22.1. [AMENDED] 1129
230:15-9-23. [AMENDED] 1130
230:15-9-25. [AMENDED] 1130
230:15-11-2. [AMENDED] 1131
230:15-11-5. [AMENDED] 1131
230:15-11-6. [AMENDED] 1131
230:15-11-6.1. [AMENDED] 1131
230:15-11-8. [AMENDED] 1132
230:15-11-9. [AMENDED] 1132
230:15-11-10. [AMENDED] 1132
230:30-1-2. [AMENDED] (E) 599
230:30-1-2. [AMENDED] 1134
230:30-3-3. [AMENDED] (E) 599
230:30-3-3. [AMENDED] 1134
230:30-5-1.1. [AMENDED] (E) 600
230:30-5-1.1. [AMENDED] 1135
230:30-5-8.1. [AMENDED] (E) 601
230:30-5-8.1. [AMENDED] 1136
230:30-5-8.2. [AMENDED] (E) 601
230:30-5-8.2. [AMENDED] 1136
230:30-5-9. [AMENDED] (E) 601
230:30-5-9. [AMENDED] 1136
230:30-7-6. [AMENDED] (E) 602
230:30-7-6. [AMENDED] 1137
230:30-7-6.1. [AMENDED] (E) 602
230:30-7-6.1. [AMENDED] 1137
230:30-7-8. [AMENDED] (E) 602
230:30-7-8. [AMENDED] 1137
230:30-7-9. [AMENDED] (E) 602
230:30-7-9. [AMENDED] 1137
230:30-7-10. [AMENDED] (E) 603
230:30-7-10. [AMENDED] 1138
230:30-9-1. [AMENDED] 1138
230:30-9-2. [AMENDED] (E) 603
230:30-9-2. [AMENDED] 1139
230:30-9-3. [AMENDED] (E) 604
230:30-9-3. [AMENDED] 1139
230:30-9-5. [AMENDED] (E) 604
230:30-9-5. [AMENDED] 1139
230:30-9-5.1. [AMENDED] (E) 605
230:30-9-5.1. [AMENDED] 1140
230:30-9-5.2. [NEW] (E) 606
230:30-9-5.2. [NEW] 1141
230:30-11-2. [AMENDED] (E) 606
230:30-11-2. [AMENDED] 1141
230:30-11-6. [AMENDED] (E) 607
230:30-11-6. [AMENDED] 1142
230:30-11-6.1. [AMENDED] (E) 607
230:30-11-6.1. [AMENDED] 1142
230:30-13-2. [AMENDED] (E) 608
230:30-13-2. [AMENDED] 1143
230:30-15-2. [AMENDED] (E) 609
230:30-15-2. [AMENDED] 1144
230:30-15-4. [AMENDED] (E) 609
230:30-15-4. [AMENDED] 1144
230:30-15-5. [AMENDED] (E) 609
230:30-15-5. [AMENDED] 1144
230:30-15-6. [AMENDED] (E) 610
230:30-15-6. [AMENDED] 1145
230:30-15-7. [AMENDED] (E) 610

230:30-15-7. . . . . [AMENDED] 1145
230:30-19-6. . . . . [AMENDED] (E) 610
230:30-19-6. . . . . [AMENDED] 1145
230:30-21-4. . . . . [AMENDED] (E) 611
230:30-21-4. . . . . [AMENDED] 1146
230:40-3-30. . . . . [AMENDED] (E) 611
230:40-3-30. . . . . [AMENDED] 1147
230:40-5-85. . . . . [NEW] 1147
230:40-7-91. . . . . [AMENDED] 1147
230:40-7-92. . . . . [AMENDED] 1147
230:40-7-97.1. . . . . [NEW] (E) 612
230:40-7-97.1. . . . . [NEW] 1148
230:50-3-31.1. . . . . [AMENDED] 1148
230:50-3-32. . . . . [AMENDED] 1149
230:50-3-33. . . . . [AMENDED] 1149
230:50-3-33.1. . . . . [NEW] 1149
230:50-3-34. . . . . [AMENDED] 1149
230:50-3-35. . . . . [AMENDED] 1149
230:50-3-35.2. . . . . [NEW] 1149
230:50-3-37. . . . . [AMENDED] 1149
230:50-3-38. . . . . [AMENDED] 1149
230:50-3-39. . . . . [AMENDED] 1149
230:50-3-39.1. . . . . [NEW] 1149
230:50-3-40. . . . . [AMENDED] 1150
230:50-3-41. . . . . [AMENDED] 1150
230:50-3-41.1. . . . . [AMENDED] 1150
240:10-1-2. . . . . [AMENDED] 821
240:10-1-3. . . . . [AMENDED] 823
240:10-3-10. . . . . [AMENDED] 823
240:10-3-12. . . . . [AMENDED] 824
240:10-3-23. . . . . [AMENDED] 824
240:10-3-51. . . . . [AMENDED] 824
240:10-5-18. . . . . [NEW] 825
240:10-5-90. . . . . [AMENDED] 825
240:10-5-91. . . . . [AMENDED] 826
240:10-11-5. . . . . [AMENDED] 826
240:10-11-22. . . . . [AMENDED] 826
240:10-11-24. . . . . [AMENDED] 826
240:10-11-25. . . . . [AMENDED] 826
240:10-13-37. . . . . [AMENDED] 827
240:10-13-40. . . . . [AMENDED] 827
240:10-13-42. . . . . [AMENDED] 827
240:12-1-2. . . . . [AMENDED] 828
240:21-1-1. . . . . [AMENDED] 829
240:21-1-2. . . . . [AMENDED] 829
240:21-5-1. . . . . [REVOKED] 829
240:21-5-2. . . . . [REVOKED] 829
240:21-5-3. . . . . [REVOKED] 829
240:21-5-4. . . . . [REVOKED] 830
240:21-5-5. . . . . [REVOKED] 830
240:21-7-1. . . . . [AMENDED] 830
240:21-7-2. . . . . [AMENDED] 830
240:21-7-3. . . . . [AMENDED] 830
240:21-7-4. . . . . [AMENDED] 830
240:21-7-5. . . . . [AMENDED] 831
240:21-7-6. . . . . [AMENDED] 831
245:15-1-3. . . . . [AMENDED] 1151
245:15-3-7. . . . . [AMENDED] 1152
245:15-3-8. . . . . [AMENDED] 1154
245:15-7-1. . . . . [AMENDED] 1156
245:15-7-5. . . . . [AMENDED] 1157
245:15-11-3. . . . . [AMENDED] 1157
245:15-11-11. . . . . [AMENDED] 1157
245:15-13-2. . . . . [AMENDED] 1157
245:15-17-1. . . . . [AMENDED] 1160
245:15-17-2. . . . . [AMENDED] 1160
245:15-19-8. . . . . [AMENDED] 1162
245:15-19-9. . . . . [NEW] 1162
245:15-23-1. . . . . [AMENDED] 1162
245:15-23-2. . . . . [AMENDED] 1163
245:15-23-8. . . . . [REVOKED] 1163
245:15-23-9. . . . . [AMENDED] 1164
245:15-23-11. . . . . [REVOKED] 1164
245:15-23-12. . . . . [REVOKED] 1164
245:15-23-13. . . . . [REVOKED] 1165
245:15-23-14. . . . . [REVOKED] 1165
245:15-23-15. . . . . [AMENDED] 1165
252:20-1-3. . . . . [AMENDED] 1166
252:100-15-1. . . . . [REVOKED] 1167
252:100-15-2. . . . . [REVOKED] 1167
252:100-15-3. . . . . [REVOKED] 1167
252:100-15-4. . . . . [REVOKED] 1167
252:100-15-5. . . . . [REVOKED] 1167
252:100-15-6. . . . . [REVOKED] 1167
252:100-17-1. . . . . [AMENDED] 2134
252:100-17-1.1. . . . . [AMENDED] 2134
252:100-17-1.2. . . . . [REVOKED] 2134
252:100-17-1.3. . . . . [NEW] 2135
252:100-17-2. . . . . [AMENDED] 2135
252:100-17-2.1. . . . . [AMENDED] 2135
252:100-17-2.2. . . . . [AMENDED] 2135
252:100-17-4. . . . . [AMENDED] 2135
252:100-17-5. . . . . [AMENDED] 2135
252:100-17-5.1. . . . . [AMENDED] 2135
252:100-17-7. . . . . [AMENDED] 2135
252:100, App. A. . . . . [REVOKED] 2136
252:100, App. A. . . . . [NEW] 2136
252:100, App. B. . . . . [REVOKED] 2137
252:100, App. E. . . . . [REVOKED] 1168
252:100, App. E. . . . . [NEW] 1168
252:100, App. F. . . . . [REVOKED] 1169
252:100, App. F. . . . . [NEW] 1169
252:100, App. Q. . . . . [REVOKED] 2139
252:100, App. Q. . . . . [NEW] 2139
252:205-3-1. . . . . [AMENDED] 1170
252:515-1-2. . . . . [AMENDED] 2150
252:515-1-8. . . . . [AMENDED] 2154
252:515-3-42. . . . . [NEW] 2155
252:515-15-1. . . . . [AMENDED] 2155
252:515-19-31. . . . . [AMENDED] 2155
252:515-29-1. . . . . [AMENDED] 2155
252:515-39-1. . . . . [NEW] 2156
252:515-39-2. . . . . [NEW] 2156
252:515-39-3. . . . . [NEW] 2156
252:515-39-4. . . . . [NEW] 2156
252:515-39-5. . . . . [NEW] 2157
252:606-1-4. . . . . [AMENDED] 2158
252:611-1-3. . . . . [AMENDED] 1171
252:623-1-7. . . . . [AMENDED] 1171
252:631-1-3. . . . . [AMENDED] 1172
252:645-1-1. . . . . [AMENDED] 2159
252:645-1-2. . . . . [AMENDED] 2159
252:645-1-2.1. . . . . [NEW] 2159
252:645-1-3. . . . . [AMENDED] 2160
252:645-1-4. . . . . [AMENDED] 2160
252:645-1-6. . . . . [AMENDED] 2160
252:645-1-7. . . . . [AMENDED] 2161
252:645-1-7.1. . . . . [AMENDED AND RENUMBERED TO 252:645-5-1] 2161
252:645-1-8. . . . . [AMENDED AND RENUMBERED TO 252:645-5-2] 2161
252:645-1-9. . . . . [AMENDED AND RENUMBERED TO 252:645-9-1] 2162
252:645-3-1. . . . . [NEW] 2162

252:645-3-2. . . . . [NEW] 2163
252:645-3-3. . . . . [NEW] 2163
252:645-5-1. . . . . [NEW] 2164
252:645-5-2. . . . . [NEW] 2164
252:645-7-1. . . . . [NEW] 2165
252:645-7-2. . . . . [NEW] 2165
252:645-9-1. . . . . [NEW] 2166
252:645-9-2. . . . . [NEW] 2166
252:690-1-3. . . . . [AMENDED] 2168
252:690-1-4. . . . . [AMENDED] 2170
265:25-1-3. . . . . [AMENDED] 832
265:40-1-1. . . . . [NEW] 834
265:40-1-2. . . . . [NEW] 834
265:40-1-3. . . . . [NEW] 835
265:40-1-4. . . . . [NEW] 835
265:40-1-5. . . . . [NEW] 836
265:40-1-6. . . . . [NEW] 836
265:40-1-7. . . . . [NEW] 836
265:40-1-8. . . . . [NEW] 836
265:40-1-9. . . . . [NEW] 836
265:40-1-10. . . . . [NEW] 837
265:40-1-11. . . . . [NEW] 837
277:1-1-1. . . . . [NEW] (E) 695
277:1-1-1. . . . . [NEW] 2497
277:1-1-2. . . . . [NEW] (E) 695
277:1-1-2. . . . . [NEW] 2497
277:1-1-3. . . . . [NEW] (E) 696
277:1-1-3. . . . . [NEW] 2497
300:10-1-2. . . . . [AMENDED] 916
300:20-1-1. . . . . [AMENDED] 1796
300:20-1-2. . . . . [AMENDED] 1797
300:20-1-3. . . . . [AMENDED] 1798
300:20-1-4. . . . . [AMENDED] 1798
300:20-1-5. . . . . [AMENDED] 1798
300:20-1-6. . . . . [AMENDED] 1799
300:20-1-7. . . . . [AMENDED] 1799
300:20-1-8. . . . . [AMENDED] 1799
300:20-1-9. . . . . [AMENDED] 1799
300:20-1-10. . . . . [AMENDED] 1799
300:20-1-11. . . . . [AMENDED] 1799
300:20-1-12. . . . . [AMENDED] 1800
300:20-1-13. . . . . [AMENDED] 1801
300:20-1-14. . . . . [AMENDED] 1801
300:20-1-16. . . . . [AMENDED] 1801
300:35-1-1. . . . . [AMENDED] 1802
300:35-1-5. . . . . [AMENDED] 1802
300:35-1-6. . . . . [AMENDED] 1803
300:35-3-5. . . . . [AMENDED] 1803
300:35-3-6. . . . . [REVOKED] 1803
300:35-3-12. . . . . [AMENDED] 1803
300:35-3-14. . . . . [NEW] 1803
300:35-3-15. . . . . [NEW] 1804
300:35-5-1. . . . . [AMENDED] 1804
300:35-5-3. . . . . [AMENDED] 1804
300:35-5-4. . . . . [AMENDED] 1804
300:35-5-7. . . . . [AMENDED] 1804
300:35-7-1. . . . . [AMENDED] 1804
300:35-7-2. . . . . [AMENDED] 1804
300:35-7-4. . . . . [AMENDED] 1804
300:35-7-5. . . . . [AMENDED] 1804
300:35-7-8. . . . . [AMENDED] 1804
300:35-7-12. . . . . [AMENDED] 1805
300:35-9-2. . . . . [AMENDED] 1805
300:35-11-1. . . . . [AMENDED] 1805
300:35-11-2. . . . . [AMENDED] 1805
300:35-11-4. . . . . [AMENDED] 1805
300:35-11-5. . . . . [AMENDED] 1806
300:35-11-6. . . . . [AMENDED] 1806
300:35-11-7. . . . . [AMENDED] 1806
300:35-11-8. . . . . [AMENDED] 1806
300:35-11-11. . . . . [AMENDED] 1807
300:35-11-12. . . . . [AMENDED] 1807
300:35-13-1. . . . . [AMENDED] 1807
300:35-13-2. . . . . [AMENDED] 1807
300:35-13-3. . . . . [AMENDED] 1808
300:35-13-4. . . . . [AMENDED] 1808
300:35-13-5. . . . . [REVOKED] 1809
300:35-13-6. . . . . [AMENDED] 1809
300:35-15-1. . . . . [AMENDED] 1809
300:35-15-2. . . . . [AMENDED] 1809
300:35-15-3. . . . . [REVOKED] 1809
300:35-15-4. . . . . [AMENDED] 1809
300:35-15-5. . . . . [REVOKED] 1810
300:35-15-6. . . . . [AMENDED] 1810
300:35-15-7. . . . . [REVOKED] 1810
300:35-17-1. . . . . [AMENDED] 1810
300:35-17-2. . . . . [AMENDED] 1810
300:35-21-3. . . . . [AMENDED] 1810
300:35-21-4. . . . . [AMENDED] 1811
300:35-21-7. . . . . [AMENDED] 1811
300:35-27-3. . . . . [AMENDED] 1811
310:2-21-6. . . . . [AMENDED] 2499
310:2-21-10. . . . . [AMENDED] 2499
310:2-21-16. . . . . [AMENDED] 2500
310:2-21-17. . . . . [AMENDED] 2500
310:2-21-25. . . . . [NEW] 2501
310:2-21-26. . . . . [NEW] 2501
310:2-21-27. . . . . [NEW] 2501
310:2-21-28. . . . . [NEW] 2502
310:2-21-29. . . . . [NEW] 2502
310:2-21-30. . . . . [NEW] 2503
310:2-21-31. . . . . [NEW] 2503
310:2-23-1. . . . . [NEW] 2503
310:2-23-2. . . . . [NEW] 2504
310:2-23-3. . . . . [NEW] 2504
310:2-23-4. . . . . [NEW] 2504
310:2-25-1. . . . . [AMENDED] 2504
310:2-25-3. . . . . [AMENDED] 2504
310:2-25-4. . . . . [AMENDED] 2504
310:2-25-5. . . . . [AMENDED] 2505
310:2-25-6. . . . . [NEW] 2505
310:2-25-7. . . . . [NEW] 2505
310:9-1-3. . . . . [AMENDED] 2506
310:96-1-1. . . . . [NEW] 2507
310:96-1-2. . . . . [NEW] 2507
310:96-1-3. . . . . [RESERVED] 2507
310:96-3-1. . . . . [NEW] 2507
310:96-3-2. . . . . [NEW] 2507
310:96-5-1. . . . . [NEW] 2507
310:233-3-2. . . . . [AMENDED] 2508
310:233-3-3. . . . . [AMENDED] 2508
310:233-7-2. . . . . [AMENDED] 2509
310:233-9-1. . . . . [AMENDED] 2509
310:233-9-2. . . . . [AMENDED] 2509
310:233-9-4. . . . . [REVOKED] 2511
310:234-9-2. . . . . [AMENDED] 2512
310:281-11-13. . . . . [AMENDED] 2512
310:400-7-2. . . . . [AMENDED] 2516
310:400-13-4. . . . . [AMENDED] 2516
310:403-5-2. . . . . [AMENDED] 2517
310:403-17-2. . . . . [AMENDED] 2518
310:405-7-2. . . . . [AMENDED] 2519
310:405-13-4. . . . . [AMENDED] 2520
310:406-7-2. . . . . [AMENDED] 2520

310:406-15-2. . . . . [AMENDED] 2521
310:406-17-3. . . . . [AMENDED] 2521
310:406-17-4. . . . . [AMENDED] 2521
310:512-3-6. . . . . [NEW] 2521
310:512-3-7. . . . . [NEW] 2521
310:515-1-1.1. . . . . [AMENDED] 2522
310:515-1-2. . . . . [AMENDED] 2523
310:515-1-3. . . . . [AMENDED] 2523
310:515-1-4. . . . . [AMENDED] 2523
310:526-1-3. . . . . [AMENDED] 2524
310:526-3-2. . . . . [AMENDED] 2525
310:526-3-3. . . . . [AMENDED] 2525
310:531-1-1. . . . . [AMENDED] 2527
310:531-1-3. . . . . [AMENDED] 2527
310:531-5-1. . . . . [AMENDED] 2527
310:531-5-2. . . . . [AMENDED] 2527
310:531-5-3. . . . . [AMENDED] 2528
310:531-5-5. . . . . [NEW] 2528
310:531-5-6. . . . . [NEW] 2528
310:531-5-7. . . . . [NEW] 2528
310:531-5-8. . . . . [NEW] 2528
310:531-5-9. . . . . [NEW] 2529
310:531-7-1. . . . . [AMENDED] 2529
310:531-7-2. . . . . [AMENDED] 2529
310:531-7-3. . . . . [AMENDED] 2529
310:531-7-4. . . . . [AMENDED] 2530
310:531-7-5. . . . . [AMENDED] 2530
310:531-7-6. . . . . [AMENDED] 2530
310:531-7-7. . . . . [NEW] 2530
310:531-9-1. . . . . [NEW] 2531
310:531-9-2. . . . . [NEW] 2531
310:535-1-2. . . . . [AMENDED] 2531
310:551-3-2. . . . . [NEW] 2533
310:551-3-3. . . . . [NEW] 2533
310:551-5-1. . . . . [NEW] 2533
310:551-5-2. . . . . [NEW] 2534
310:551-5-3. . . . . [NEW] 2534
310:551-5-4. . . . . [NEW] 2534
310:615-1-2.2. . . . . [NEW] 2535
310:615-1-3.1. . . . . [NEW] 2535
310:615-1-3.2. . . . . [NEW] 2535
310:615-3-8. . . . . [AMENDED] 2536
310:615-5-1. . . . . [AMENDED] 2536
310:642-1-1. . . . . [NEW] (E) 697
310:642-1-1. . . . . [NEW] 2537
310:642-1-2. . . . . [NEW] (E) 698
310:642-1-2. . . . . [NEW] 2537
310:642-1-3. . . . . [NEW] (E) 698
310:642-1-3. . . . . [NEW] 2537
310:642-3-1. . . . . [NEW] (E) 698
310:642-3-1. . . . . [NEW] 2537
310:642-3-2. . . . . [NEW] (E) 699
310:642-3-2. . . . . [NEW] 2539
310:642-5-1. . . . . [NEW] (E) 699
310:642-5-1. . . . . [NEW] 2539
310:642-7-1. . . . . [NEW] (E) 701
310:642-7-1. . . . . [NEW] 2540
310:642-7-2. . . . . [NEW] (E) 701
310:642-7-2. . . . . [NEW] 2540
310:642-9-1. . . . . [NEW] (E) 702
310:642-9-1. . . . . [NEW] 2541
310:663-19-4. . . . . [NEW] 2542
310:667-59-20. . . . . [AMENDED] 2543
310:669-1-3. . . . . [AMENDED] 2545
310:675-9-5.1. . . . . [AMENDED] 2546
310:675-13-5. . . . . [AMENDED] 2547
310:680-3-6. . . . . [AMENDED] 2548
310:680-3-14. . . . . [NEW] 2549
310:680-9-1. . . . . [AMENDED] 2549
317:1-1-8. . . . . [AMENDED] (E) 285
317:1-1-8. . . . . [AMENDED] 917
317:1-1-9. . . . . [AMENDED] (E) 285
317:1-1-9. . . . . [AMENDED] 917
317:1-1-9.1. . . . . [NEW] (E) 285
317:1-1-9.1. . . . . [NEW] 918
317:1-1-10. . . . . [REVOKED] (E) 286
317:1-1-10. . . . . [REVOKED] 918
317:1-1-17. . . . . [AMENDED] (E) 287
317:1-1-17. . . . . [AMENDED] 919
317:1-3-3.1. . . . . [AMENDED] (E) 287
317:1-3-3.1. . . . . [AMENDED] 919
317:1-3-3.2. . . . . [REVOKED] (E) 287
317:1-3-3.2. . . . . [REVOKED] 919
317:1-3-4. . . . . [NEW] (E) 287
317:1-3-4. . . . . [NEW] 920
317:1-5-1. . . . . [REVOKED] (E) 288
317:1-5-1. . . . . [REVOKED] 920
317:1-5-2. . . . . [REVOKED] (E) 288
317:1-5-2. . . . . [REVOKED] 921
317:1-5-3. . . . . [REVOKED] (E) 288
317:1-5-3. . . . . [REVOKED] 921
317:1-5-4. . . . . [REVOKED] (E) 288
317:1-5-4. . . . . [REVOKED] 921
317:1-5-5. . . . . [REVOKED] (E) 289
317:1-5-5. . . . . [REVOKED] 921
317:1-7-1. . . . . [REVOKED] (E) 289
317:1-7-1. . . . . [REVOKED] 921
317:1-7-2. . . . . [REVOKED] (E) 289
317:1-7-2. . . . . [REVOKED] 921
317:1-7-3. . . . . [REVOKED] (E) 290
317:1-7-3. . . . . [REVOKED] 922
317:1-7-4. . . . . [REVOKED] (E) 290
317:1-7-4. . . . . [REVOKED] 923
317:1-7-5. . . . . [REVOKED] (E) 291
317:1-7-5. . . . . [REVOKED] 923
317:1-7-6. . . . . [REVOKED] (E) 291
317:1-7-6. . . . . [REVOKED] 923
317:1-7-6.1. . . . . [REVOKED] (E) 291
317:1-7-6.1. . . . . [REVOKED] 924
317:1-7-7. . . . . [REVOKED] (E) 291
317:1-7-7. . . . . [REVOKED] 924
317:1-7-8. . . . . [REVOKED] (E) 292
317:1-7-8. . . . . [REVOKED] 924
317:1-9-1. . . . . [REVOKED] (E) 292
317:1-9-1. . . . . [REVOKED] 924
317:1-9-2. . . . . [REVOKED] (E) 292
317:1-9-2. . . . . [REVOKED] 924
317:1-9-3. . . . . [REVOKED] (E) 292
317:1-9-3. . . . . [REVOKED] 924
317:1-9-4. . . . . [REVOKED] (E) 292
317:1-9-4. . . . . [REVOKED] 924
317:1-9-5. . . . . [REVOKED] (E) 292
317:1-9-5. . . . . [REVOKED] 924
317:1-9-6. . . . . [REVOKED] (E) 292
317:1-9-6. . . . . [REVOKED] 925
317:1-9-9. . . . . [REVOKED] (E) 292
317:1-9-9. . . . . [REVOKED] 925
317:1-9-10. . . . . [REVOKED] (E) 293
317:1-9-10. . . . . [REVOKED] 925
317:2-1-1. . . . . [AMENDED] 926
317:2-1-2. . . . . [AMENDED] (E) 702
317:2-1-6. . . . . [AMENDED] 926
317:2-1-7. . . . . [AMENDED] 926
317:2-1-8. . . . . [AMENDED] 926

317:2-1-9. . . . . [AMENDED] 927
317:2-1-10. . . . . [AMENDED] 927
317:2-1-11. . . . . [AMENDED] 928
317:2-1-12. . . . . [AMENDED] 928
317:2-1-13. . . . . [AMENDED] 929
317:10-1-1. . . . . [AMENDED] (E) 1669
317:10-1-2. . . . . [AMENDED] (E) 1669
317:10-1-3. . . . . [AMENDED] (E) 1670
317:10-1-4. . . . . [AMENDED] (E) 1670
317:10-1-5. . . . . [REVOKED] (E) 1670
317:10-1-6. . . . . [REVOKED] (E) 1671
317:10-1-7. . . . . [REVOKED] (E) 1671
317:10-1-8. . . . . [REVOKED] (E) 1671
317:10-1-9. . . . . [REVOKED] (E) 1671
317:10-1-10. . . . . [REVOKED] (E) 1671
317:10-1-11. . . . . [REVOKED] (E) 1672
317:10-1-12. . . . . [AMENDED] (E) 1672
317:10-1-15. . . . . [REVOKED] (E) 1673
317:10-1-16. . . . . [AMENDED] (E) 1673
317:10-1-17. . . . . [REVOKED] (E) 1674
317:10-1-18. . . . . [REVOKED] (E) 1674
317:10-1-18.1. . . . . [REVOKED] (E) 1674
317:10-1-18.2. . . . . [REVOKED] (E) 1675
317:10-1-19. . . . . [REVOKED] (E) 1675
317:10-1-20. . . . . [REVOKED] (E) 1676
317:25-9-1. . . . . [NEW] (E) 2385
317:25-9-2. . . . . [NEW] (E) 2385
317:25-9-3. . . . . [NEW] (E) 2386
317:30-3-5. . . . . [AMENDED] (E) 612
317:30-3-5. . . . . [AMENDED] 1427
317:30-3-24. . . . . [AMENDED] (E) 293
317:30-3-24. . . . . [AMENDED] 930
317:30-3-27. . . . . [AMENDED] 932
317:30-3-40. . . . . [AMENDED] 1429
317:30-3-57. . . . . [AMENDED] (E) 614
317:30-3-57. . . . . [AMENDED] 1436
317:30-3-59. . . . . [AMENDED] (E) 295
317:30-3-59. . . . . [AMENDED] 1439
317:30-3-60. . . . . [AMENDED] (E) 296
317:30-3-60. . . . . [AMENDED] 1440
317:30-3-61. . . . . [NEW] (E) 449
317:30-3-61. . . . . [NEW] 935
317:30-3-62. . . . . [NEW] (E) 618
317:30-3-62. . . . . [NEW] (E) 807
317:30-3-62. . . . . [NEW] 1447
317:30-3-63. . . . . [NEW] (E) 807
317:30-3-63. . . . . [NEW] 1448
317:30-3-80. . . . . [REVOKED] 936
317:30-5-1. . . . . [AMENDED] 937
317:30-5-2. . . . . [AMENDED] (E) 297
317:30-5-2. . . . . [AMENDED] 1441
317:30-5-9. . . . . [AMENDED] (E) 301
317:30-5-9. . . . . [AMENDED] 1445
317:30-5-14. . . . . [AMENDED] (E) 619
317:30-5-14. . . . . [AMENDED] 1449
317:30-5-20. . . . . [AMENDED] (E) 302
317:30-5-20. . . . . [AMENDED] (E) 704
317:30-5-20. . . . . [AMENDED] 1450
317:30-5-22. . . . . [AMENDED] (E) 109
317:30-5-22. . . . . [AMENDED] 947
317:30-5-24. . . . . [AMENDED] (E) 620
317:30-5-24. . . . . [AMENDED] 1454
317:30-5-42.1. . . . . [AMENDED] (E) 621
317:30-5-42.1. . . . . [AMENDED] 1455
317:30-5-42.11. . . . . [AMENDED] (E) 110
317:30-5-42.11. . . . . [AMENDED] 948
317:30-5-42.17. . . . . [AMENDED] (E) 302
317:30-5-42.17. . . . . [AMENDED] 1446
317:30-5-65. . . . . [AMENDED] (E) 304
317:30-5-65. . . . . [AMENDED] 1456
317:30-5-72. . . . . [AMENDED] (E) 616
317:30-5-72. . . . . [AMENDED] 1438
317:30-5-72.1. . . . . [AMENDED] (E) 306
317:30-5-72.1. . . . . [AMENDED] 949
317:30-5-95. . . . . [AMENDED] (E) 111
317:30-5-95. . . . . [AMENDED] 964
317:30-5-95.33. . . . . [AMENDED] (E) 816
317:30-5-95.33. . . . . [AMENDED] 1469
317:30-5-95.35. . . . . [AMENDED] (E) 817
317:30-5-96.3. . . . . [AMENDED] (E) 710
317:30-5-96.3. . . . . [AMENDED] 1471
317:30-5-100. . . . . [AMENDED] (E) 705
317:30-5-100. . . . . [AMENDED] 1451
317:30-5-137. . . . . [AMENDED] (E) 451
317:30-5-137. . . . . [AMENDED] 940
317:30-5-137.1. . . . . [NEW] (E) 451
317:30-5-137.1. . . . . [NEW] 940
317:30-5-137.2. . . . . [NEW] (E) 451
317:30-5-137.2. . . . . [NEW] 940
317:30-5-138. . . . . [REVOKED] (E) 452
317:30-5-138. . . . . [REVOKED] 941
317:30-5-139. . . . . [REVOKED] (E) 452
317:30-5-139. . . . . [REVOKED] 942
317:30-5-210.1. . . . . [NEW] (E) 453
317:30-5-210.1. . . . . [NEW] 943
317:30-5-210.2. . . . . [NEW] (E) 453
317:30-5-210.2. . . . . [NEW] 943
317:30-5-211.1. . . . . [AMENDED] (E) 454
317:30-5-211.1. . . . . [AMENDED] 943
317:30-5-211.8. . . . . [REVOKED] (E) 454
317:30-5-211.8. . . . . [REVOKED] 944
317:30-5-211.10. . . . . [AMENDED] (E) 304
317:30-5-211.10. . . . . [AMENDED] (E) 628
317:30-5-211.10. . . . . [AMENDED] 1452
317:30-5-211.12. . . . . [AMENDED] (E) 629
317:30-5-211.12. . . . . [AMENDED] 1452
317:30-5-211.13. . . . . [AMENDED] (E) 454
317:30-5-211.13. . . . . [AMENDED] 944
317:30-5-211.14. . . . . [AMENDED] (E) 455
317:30-5-211.14. . . . . [AMENDED] 944
317:30-5-211.15. . . . . [AMENDED] (E) 629
317:30-5-211.15. . . . . [AMENDED] 1452
317:30-5-211.17. . . . . [NEW] (E) 305
317:30-5-211.17. . . . . [NEW] 1456
317:30-5-211.18. . . . . [NEW] (E) 457
317:30-5-211.18. . . . . [NEW] 946
317:30-5-212. . . . . [REVOKED] (E) 455
317:30-5-212. . . . . [REVOKED] 945
317:30-5-216. . . . . [AMENDED] (E) 456
317:30-5-216. . . . . [AMENDED] 945
317:30-5-218. . . . . [AMENDED] (E) 629
317:30-5-218. . . . . [AMENDED] 1453
317:30-5-241.1. . . . . [AMENDED] (E) 2387
317:30-5-241.3. . . . . [AMENDED] (E) 303
317:30-5-241.3. . . . . [AMENDED] 966
317:30-5-275. . . . . [AMENDED] (E) 1676
317:30-5-276. . . . . [AMENDED] (E) 1677
317:30-5-278. . . . . [AMENDED] (E) 1678
317:30-5-280. . . . . [NEW] (E) 1678
317:30-5-281. . . . . [NEW] (E) 1679
317:30-5-282. . . . . [NEW] (E) 1680
317:30-5-283. . . . . [NEW] (E) 1680
317:30-5-482. . . . . [AMENDED] 1430
317:30-5-547. . . . . [AMENDED] (E) 629

317:30-5-547. . . . . [AMENDED] 1453
317:30-5-566. . . . . [AMENDED] (E) 705
317:30-5-566. . . . . [AMENDED] 1457
317:30-5-567. . . . . [AMENDED] (E) 706
317:30-5-567. . . . . [AMENDED] 1458
317:30-5-585. . . . . [REVOKED] (E) 808
317:30-5-585. . . . . [REVOKED] 1459
317:30-5-586. . . . . [REVOKED] (E) 810
317:30-5-586. . . . . [REVOKED] 1460
317:30-5-595. . . . . [AMENDED] (E) 811
317:30-5-595. . . . . [AMENDED] 1461
317:30-5-596. . . . . [AMENDED] (E) 812
317:30-5-596. . . . . [AMENDED] 1463
317:30-5-596.1. . . . . [AMENDED] (E) 815
317:30-5-596.1. . . . . [AMENDED] 1465
317:30-5-596.2. . . . . [REVOKED] (E) 815
317:30-5-596.2. . . . . [REVOKED] 1466
317:30-5-605. . . . . [AMENDED] 938
317:30-5-607. . . . . [AMENDED] 938
317:30-5-608. . . . . [REVOKED] 938
317:30-5-609. . . . . [REVOKED] 938
317:30-5-610. . . . . [REVOKED] 938
317:30-5-611. . . . . [AMENDED] 939
317:30-5-612. . . . . [NEW] 939
317:30-5-613. . . . . [NEW] 939
317:30-5-614. . . . . [NEW] 939
317:30-5-615. . . . . [NEW] 939
317:30-5-740. . . . . [AMENDED] (E) 1361
317:30-5-740.1. . . . . [AMENDED] (E) 1362
317:30-5-741. . . . . [AMENDED] (E) 1363
317:30-5-742. . . . . [AMENDED] (E) 1364
317:30-5-742.1. . . . . [AMENDED] (E) 1364
317:30-5-742.2. . . . . [AMENDED] (E) 1365
317:30-5-743. . . . . [REVOKED] (E) 1367
317:30-5-743.1. . . . . [AMENDED] (E) 1367
317:30-5-744. . . . . [AMENDED] (E) 1368
317:30-5-745. . . . . [AMENDED] (E) 1368
317:30-5-761. . . . . [AMENDED] 951
317:30-5-763. . . . . [AMENDED] 952
317:30-5-763.1. . . . . [AMENDED] 963
317:30-5-764. . . . . [AMENDED] (E) 621
317:30-5-764. . . . . [AMENDED] 1467
317:30-5-950. . . . . [AMENDED] (E) 623
317:30-5-950. . . . . [AMENDED] 1468
317:30-5-952. . . . . [AMENDED] 964
317:30-5-972. . . . . [AMENDED] (E) 815
317:30-5-972. . . . . [AMENDED] 1466
317:30-5-992. . . . . [AMENDED] (E) 816
317:30-5-992. . . . . [AMENDED] 1466
317:30-5-1023. . . . . [AMENDED] (E) 707
317:30-5-1023. . . . . [AMENDED] (E) 2388
317:30-5-1027. . . . . [AMENDED] (E) 709
317:30-5-1027. . . . . [AMENDED] (E) 2390
317:30-5-1040. . . . . [AMENDED] (E) 624
317:30-5-1041. . . . . [AMENDED] (E) 624
317:30-5-1042. . . . . [AMENDED] (E) 624
317:30-5-1043. . . . . [AMENDED] (E) 624
317:30-5-1044. . . . . [AMENDED] (E) 627
317:30-5-1046. . . . . [AMENDED] (E) 627
317:30-5-1047. . . . . [AMENDED] (E) 628
317:30-5-1091. . . . . [AMENDED] 934
317:35-1-2. . . . . [AMENDED] (E) 712
317:35-1-2. . . . . [AMENDED] 1472
317:35-5-2. . . . . [AMENDED] 1482
317:35-5-6. . . . . [AMENDED] (E) 714
317:35-5-6. . . . . [AMENDED] 1475
317:35-5-6.1. . . . . [AMENDED] (E) 714
317:35-5-6.1. . . . . [AMENDED] 1475
317:35-5-7. . . . . [AMENDED] 1483
317:35-5-25. . . . . [AMENDED] (E) 630
317:35-5-25. . . . . [AMENDED] 1493
317:35-5-41.2. . . . . [AMENDED] (E) 113
317:35-5-41.2. . . . . [AMENDED] 967
317:35-5-41.9. . . . . [AMENDED] 970
317:35-5-42. . . . . [AMENDED] (E) 115
317:35-5-42. . . . . [AMENDED] 1499
317:35-5-43. . . . . [AMENDED] 1483
317:35-5-44. . . . . [AMENDED] 1484
317:35-6-15. . . . . [AMENDED] (E) 714
317:35-6-15. . . . . [AMENDED] 1475
317:35-6-38. . . . . [AMENDED] (E) 715
317:35-6-38. . . . . [AMENDED] 1476
317:35-6-60. . . . . [AMENDED] (E) 634
317:35-6-60. . . . . [AMENDED] (E) 717
317:35-6-60. . . . . [AMENDED] 1497
317:35-6-61. . . . . [AMENDED] (E) 635
317:35-6-61. . . . . [AMENDED] 1498
317:35-6-62. . . . . [AMENDED] (E) 718
317:35-6-62. . . . . [AMENDED] 1478
317:35-6-63. . . . . [AMENDED] (E) 718
317:35-6-63. . . . . [AMENDED] 1478
317:35-6-64. . . . . [AMENDED] (E) 718
317:35-6-64. . . . . [AMENDED] 1478
317:35-6-64.1. . . . . [AMENDED] (E) 718
317:35-6-64.1. . . . . [AMENDED] 1478
317:35-7-15. . . . . [AMENDED] (E) 720
317:35-7-15. . . . . [AMENDED] 1480
317:35-7-60.1. . . . . [AMENDED] (E) 721
317:35-7-60.1. . . . . [AMENDED] 1481
317:35-7-63. . . . . [AMENDED] (E) 721
317:35-7-63. . . . . [AMENDED] 1481
317:35-7-64. . . . . [AMENDED] (E) 721
317:35-7-64. . . . . [AMENDED] 1481
317:35-7-65. . . . . [AMENDED] (E) 721
317:35-7-65. . . . . [AMENDED] 1481
317:35-9-15. . . . . [AMENDED] (E) 1681
317:35-10-26. . . . . [AMENDED] (E) 120
317:35-10-26. . . . . [AMENDED] (E) 721
317:35-10-26. . . . . [AMENDED] 1485
317:35-13-4. . . . . [AMENDED] (E) 307
317:35-13-4. . . . . [AMENDED] 972
317:35-15-8.1. . . . . [AMENDED] (E) 308
317:35-15-8.1. . . . . [AMENDED] 973
317:35-15-13.2. . . . . [AMENDED] (E) 309
317:35-15-13.2. . . . . [AMENDED] (E) 636
317:35-15-13.2. . . . . [AMENDED] 1505
317:35-17-1. . . . . [AMENDED] 974
317:35-17-3. . . . . [AMENDED] 1490
317:35-17-11. . . . . [AMENDED] 974
317:35-17-12. . . . . [AMENDED] 1508
317:35-17-14. . . . . [AMENDED] (E) 312
317:35-17-14. . . . . [AMENDED] 977
317:35-17-17. . . . . [AMENDED] 1508
317:35-17-18. . . . . [AMENDED] 1508
317:35-17-20. . . . . [REVOKED] 1509
317:35-17-21.1. . . . . [AMENDED] 1509
317:35-17-22. . . . . [AMENDED] (E) 638
317:35-17-22. . . . . [AMENDED] 1507
317:35-19-4. . . . . [AMENDED] (E) 1683
317:35-21-11. . . . . [AMENDED] 1492
317:35-22-9. . . . . [AMENDED] (E) 727
317:35-22-9. . . . . [AMENDED] 1481
317:35-22-11. . . . . [AMENDED] (E) 727
317:35-22-11. . . . . [AMENDED] 1481

317:40-5-3. [AMENDED] 1510
317:40-5-5. [AMENDED] 982
317:40-5-8. [AMENDED] 1512
317:40-5-11. [AMENDED] 1512
317:40-5-64. [AMENDED] 1513
317:40-5-101. [AMENDED] 1514
317:40-5-102. [AMENDED] 1517
317:40-5-104. [AMENDED] 1519
317:40-5-110. [AMENDED] 1520
317:40-5-111. [AMENDED] 1521
317:40-5-113. [AMENDED] 1521
317:40-5-150. [AMENDED] 1522
317:40-5-152. [AMENDED] 1524
317:40-5-153. [AMENDED] 1525
317:40-7-12. [AMENDED] 1526
317:40-7-21. [AMENDED] 1527
317:40-9-1. [NEW] (E) 457
317:40-9-1. [NEW] 984
317:45-1-1. [AMENDED] (E) 2391
317:45-1-2. [AMENDED] (E) 2392
317:45-1-3. [AMENDED] (E) 2392
317:45-1-4. [AMENDED] (E) 2393
317:45-3-1. [AMENDED] (E) 2394
317:45-3-2. [AMENDED] (E) 2394
317:45-5-1. [AMENDED] (E) 2394
317:45-5-2. [AMENDED] (E) 2394
317:45-7-1. [AMENDED] (E) 2395
317:45-7-2. [AMENDED] (E) 2395
317:45-7-3. [AMENDED] (E) 2395
317:45-7-4. [AMENDED] (E) 2395
317:45-7-5. [AMENDED] (E) 2395
317:45-7-6. [AMENDED] (E) 2395
317:45-7-7. [AMENDED] (E) 2395
317:45-7-8. [AMENDED] (E) 2396
317:45-9-1. [AMENDED] (E) 2396
317:45-9-2. [AMENDED] (E) 2396
317:45-9-3. [AMENDED] (E) 2397
317:45-9-4. [AMENDED] (E) 2397
317:45-9-6. [AMENDED] (E) 2397
317:45-9-7. [AMENDED] (E) 2397
317:45-9-8. [AMENDED] (E) 2397
317:45-11-1. [AMENDED] (E) 2397
317:45-11-2. [AMENDED] (E) 2397
317:45-11-10. [AMENDED] (E) 2398
317:45-11-11. [AMENDED] 987
317:45-11-11. [AMENDED] (E) 2399
317:45-11-12. [NEW] (E) 2400
317:45-11-13. [NEW] (E) 2401
317:45-11-20. [AMENDED] (E) 728
317:45-11-20. [AMENDED] 1528
317:45-11-20. [AMENDED] (E) 2401
317:45-11-21. [AMENDED] (E) 2402
317:45-11-21.1. [AMENDED] (E) 2403
317:45-11-22. [AMENDED] (E) 2403
317:45-11-23. [AMENDED] (E) 2403
317:45-11-24. [AMENDED] (E) 2404
317:45-11-25. [AMENDED] (E) 2404
317:45-11-26. [AMENDED] (E) 2404
317:45-11-27. [AMENDED] (E) 728
317:45-11-27. [AMENDED] 1529
317:45-11-27. [AMENDED] (E) 2404
317:45-11-28. [AMENDED] (E) 2405
325:25-1-30. [AMENDED] 2174
325:75-1-12. [AMENDED] 2176
325:75-1-12.1. [AMENDED] 2176
325:75-1-13.1. [AMENDED] 2177
325:75-1-15. [AMENDED] 838
325:75-1-16. [AMENDED] 2177
330:36-1-4. [AMENDED] 1813
330:36-2-7. [AMENDED] 1818
330:36-2-9. [AMENDED] 1818
330:36-2-13.1. [AMENDED] 1818
330:36-2-17. [AMENDED] 1819
330:36-4-2. [AMENDED] 1819
330:36-4-2.1. [AMENDED] 1822
330:36-4-3. [AMENDED] 1823
330:36-10-1. [NEW] 1825
330:36-10-2. [RESERVED] 1825
330:36-10-3. [NEW] 1825
330:36-10-4. [RESERVED] 1825
330:36-10-5. [NEW] 1825
330:36-10-6. [RESERVED] 1825
330:36-10-7. [NEW] 1825
330:36-10-8. [RESERVED] 1825
330:36-10-9. [NEW] 1825
330:36-10-10. [RESERVED] 1825
330:36-10-11. [NEW] 1825
330:36-10-12. [RESERVED] 1826
330:36-10-13. [NEW] 1826
330:36-10-14. [RESERVED] 1826
330:36-10-15. [NEW] 1826
340:1-1-17. [AMENDED] 988
340:2-1-1. [AMENDED] 1826
340:2-1-2. [AMENDED] 1827
340:2-1-6. [AMENDED] 1827
340:2-1-25. [REVOKED] 1827
340:2-1-26. [AMENDED] 1827
340:2-1-27. [AMENDED] 1828
340:2-1-28. [AMENDED] 1829
340:2-1-29. [AMENDED] 1830
340:2-1-56. [AMENDED] 1830
340:2-1-57. [AMENDED] 1831
340:2-1-58. [AMENDED] 990
340:2-1-75. [AMENDED] 1831
340:2-1-76. [AMENDED] 1831
340:2-1-77. [AMENDED] 1832
340:2-1-78. [AMENDED] 1832
340:2-1-79. [AMENDED] 1833
340:2-1-80. [AMENDED] 1833
340:2-1-82. [AMENDED] 1834
340:2-1-83. [AMENDED] 1834
340:2-1-84. [AMENDED] 1834
340:2-1-85. [AMENDED] 1835
340:2-1-86. [REVOKED] 1835
340:2-1-88. [AMENDED] 1835
340:2-1-93. [AMENDED] 1835
340:2-5-91. [AMENDED] 1173
340:2-13-10. [REVOKED] 1836
340:2-13-11. [REVOKED] 1836
340:2-13-12. [REVOKED] 1837
340:2-13-13. [REVOKED] 1837
340:2-13-14. [REVOKED] 1839
340:2-13-14.1. [REVOKED] 1839
340:2-13-14.2. [REVOKED] 1841
340:2-13-14.3. [REVOKED] 1841
340:2-13-14.4. [REVOKED] 1842
340:2-13-14.5. [REVOKED] 1842
340:2-13-14.6. [REVOKED] 1842
340:2-13-14.7. [REVOKED] 1843
340:2-13-14.8. [REVOKED] 1844
340:2-13-14.9. [REVOKED] 1844
340:2-13-14.10. [REVOKED] 1844
340:2-13-14.11. [REVOKED] 1848
340:2-13-14.13. [REVOKED] 1848

340:2-13-14.14. [REVOKED] 1848
340:2-13-14.15. [REVOKED] 1848
340:2-13-14.17. [REVOKED] 1848
340:2-13-14.18. [REVOKED] 1848
340:2-13-47. [REVOKED] 1849
340:2-13-48. [REVOKED] 1849
340:2-13-50. [REVOKED] 1850
340:2-13-53. [REVOKED] 1850
340:2-13-53.1. [REVOKED] 1851
340:2-13-53.2. [REVOKED] 1851
340:2-13-54. [REVOKED] 1851
340:2-13-55. [REVOKED] 1851
340:2-13-56. [REVOKED] 1851
340:2-13-57. [REVOKED] 1852
340:2-13-58. [REVOKED] 1852
340:2-13-59. [REVOKED] 1852
340:2-13-75. [NEW] 1852
340:2-13-76. [NEW] 1852
340:2-13-77. [NEW] 1852
340:2-13-78. [NEW] 1852
340:2-13-79. [NEW] 1852
340:2-13-80. [NEW] 1853
340:2-13-81. [NEW] 1853
340:2-13-82. [NEW] 1853
340:2-13-83. [NEW] 1854
340:2-13-84. [NEW] 1854
340:2-13-85. [NEW] 1854
340:2-13-86. [NEW] 1854
340:2-13-87. [NEW] 1854
340:2-13-88. [NEW] 1854
340:2-13-89. [NEW] 1855
340:2-13-90. [NEW] 1855
340:2-13-91. [NEW] 1855
340:2-13-92. [NEW] 1855
340:2-13-93. [NEW] 1855
340:2-13-94. [NEW] 1855
340:2-13-95. [NEW] 1855
340:2-13-96. [NEW] 1856
340:2-13-97. [NEW] 1856
340:2-13-98. [NEW] 1856
340:2-13-99. [NEW] 1857
340:2-13-100. [NEW] 1857
340:2-13-101. [NEW] 1857
340:2-13-102. [NEW] 1857
340:2-13-103. [NEW] 1857
340:2-13-104. [NEW] 1857
340:2, App. K. [REVOKED] 1858
340:5-1-1. [AMENDED] 991
340:5-1-2. [AMENDED] 991
340:5-1-3. [AMENDED] 991
340:5-1-4. [AMENDED] 991
340:5-1-5. [AMENDED] 992
340:5-1-6. [AMENDED] 992
340:5-1-8. [AMENDED] 994
340:5-3-1. [AMENDED] 995
340:5-3-5. [AMENDED] 995
340:5-3-6. [AMENDED] 996
340:5-5-2. [AMENDED] 996
340:5-5-3. [AMENDED] 996
340:5-5-4. [AMENDED] 999
340:5-5-5. [AMENDED] 1000
340:5-5-6. [AMENDED] 1000
340:5-5-7. [AMENDED] 1004
340:5-5-8. [NEW] 1004
340:10-2-1. [AMENDED] 1174
340:10-2-2. [AMENDED] 1176
340:10-2-3. [AMENDED] (E) 156
340:10-2-3. [AMENDED] 1177
340:10-2-4. [AMENDED] (E) 157
340:10-2-4. [AMENDED] 1178
340:10-2-8. [AMENDED] 1182
340:10-3-5. [AMENDED] 1183
340:10-3-6. [AMENDED] 1186
340:10-3-31. [AMENDED] 1187
340:10-3-33. [AMENDED] (E) 160
340:10-3-33. [AMENDED] 1187
340:10-3-40. [AMENDED] 1860
340:10-3-56. [AMENDED] (E) 18
340:10-3-56. [AMENDED] 1188
340:10-3-58. [AMENDED] 1190
340:10-9-1. [AMENDED] 1191
340:10-10-1. [AMENDED] 1192
340:10-10-3. [AMENDED] 1192
340:10-10-5. [AMENDED] 1862
340:10-10-7. [AMENDED] 1862
340:10-15-1. [AMENDED] (E) 20
340:10-15-1. [AMENDED] 1863
340:10-20-1. [AMENDED] 1193
340:10-22-1. [AMENDED] 1194
340:15-1-4. [AMENDED] 1004
340:20-1-1. [AMENDED] 1195
340:20-1-3. [AMENDED] 1195
340:20-1-10. [AMENDED] 1196
340:20-1-11. [AMENDED] 1197
340:20-1-12. [AMENDED] 1199
340:20-1-17. [AMENDED] 1199
340:20-1-19. [NEW] 1200
340:20-1-20. [NEW] 1200
340:25-1-1.1. [AMENDED] 1202
340:25-1-2. [AMENDED] 1204
340:25-5-66. [AMENDED] 1205
340:25-5-67. [AMENDED] 1205
340:25-5-110.1. [AMENDED] 1206
340:25-5-133. [AMENDED] 1206
340:25-5-140. [AMENDED] 1206
340:25-5-155. [AMENDED] 1207
340:25-5-168. [AMENDED] 1208
340:25-5-169. [AMENDED] 1210
340:25-5-170. [AMENDED] 1210
340:25-5-171. [AMENDED] 1210
340:25-5-176. [AMENDED] 1211
340:25-5-178. [AMENDED] 1212
340:25-5-198.1. [AMENDED] 1213
340:25-5-198.2. [AMENDED] 1215
340:25-5-211.1. [AMENDED] 1216
340:25-5-212. [AMENDED] 1216
340:25-5-305. [AMENDED] 1217
340:25-5-312. [AMENDED] (E) 1685
340:25-5-340. [AMENDED] 1218
340:25-5-340.1. [AMENDED] 1218
340:25-5-351. [AMENDED] (E) 162
340:25-5-351. [AMENDED] 1219
340:40-3-1. [AMENDED] 1221
340:40-7-1. [AMENDED] (E) 21
340:40-7-1. [AMENDED] (E) 164
340:40-7-1. [AMENDED] 1223
340:40-7-6. [AMENDED] 1223
340:40-7-8. [AMENDED] 1224
340:40-7-9. [AMENDED] 1227
340:40-7-11. [AMENDED] (E) 22
340:40-7-11. [AMENDED] 1229
340:40-7-12. [AMENDED] (E) 24
340:40-7-12. [AMENDED] 1231
340:40-7-13. [AMENDED] 1233

340:40-9-1. . . . . [AMENDED] 1234
340:40-13-2. . . . . [AMENDED] 1235
340:40-13-5. . . . . [AMENDED] 1237
340:40-15-1. . . . . [AMENDED] 1240
340:50-3-2. . . . . [AMENDED] 1242
340:50-3-3. . . . . [AMENDED] 1244
340:50-5-2. . . . . [AMENDED] 1246
340:50-5-10.1. . . . . [AMENDED] 1246
340:50-5-30. . . . . [AMENDED] 1246
340:50-5-45. . . . . [AMENDED] 1246
340:50-5-48. . . . . [AMENDED] 1248
340:50-5-64.1. . . . . [AMENDED] 1248
340:50-5-91. . . . . [AMENDED] 1249
340:50-5-92. . . . . [AMENDED] 1249
340:50-5-93. . . . . [AMENDED] 1250
340:50-5-94. . . . . [AMENDED] 1250
340:50-5-96. . . . . [AMENDED] 1251
340:50-7-22. . . . . [AMENDED] 1251
340:50-7-29. . . . . [AMENDED] 1254
340:50-7-30. . . . . [AMENDED] 1255
340:50-7-31. . . . . [AMENDED] 1257
340:50-7-45. . . . . [AMENDED] 1259
340:50-7-46. . . . . [AMENDED] 1260
340:50-9-1. . . . . [AMENDED] 1261
340:50-10-1. . . . . [AMENDED] 1264
340:50-10-9. . . . . [AMENDED] 1264
340:50-10-11. . . . . [AMENDED] 1264
340:50-11-1. . . . . [AMENDED] 1265
340:50-11-20. . . . . [AMENDED] (E) 165
340:50-11-20. . . . . [AMENDED] 1265
340:50-11-21. . . . . [AMENDED] 1265
340:50-11-22. . . . . [AMENDED] 1265
340:50-11-25. . . . . [AMENDED] 1265
340:50-11-27. . . . . [AMENDED] 1265
340:50-11-86. . . . . [AMENDED] 1266
340:50-11-88. . . . . [AMENDED] 1266
340:50-11-105. . . . . [AMENDED] 1266
340:50-11-107. . . . . [AMENDED] 1267
340:50-11-108. . . . . [AMENDED] 1267
340:50-11-111. . . . . [AMENDED] 1267
340:50-13-2. . . . . [AMENDED] 1267
340:50-15-1. . . . . [AMENDED] 1268
340:50-15-3. . . . . [AMENDED] 1269
340:50-15-5. . . . . [AMENDED] 1269
340:50-15-6. . . . . [AMENDED] 1269
340:60-1-3. . . . . [AMENDED] (E) 26
340:60-1-3. . . . . [AMENDED] 1271
340:75-1-9. . . . . [AMENDED] (E) 1092
340:75-1-9. . . . . [AMENDED] 1865
340:75-1-12. . . . . [AMENDED] (E) 1092
340:75-1-12. . . . . [AMENDED] 1865
340:75-1-12.2. . . . . [AMENDED] (E) 1092
340:75-1-12.2. . . . . [AMENDED] 1865
340:75-1-12.6. . . . . [AMENDED] (E) 1092
340:75-1-12.6. . . . . [AMENDED] 1865
340:75-1-14. . . . . [AMENDED] (E) 1092
340:75-1-14. . . . . [AMENDED] 1865
340:75-1-16. . . . . [AMENDED] (E) 1092
340:75-1-16. . . . . [AMENDED] 1865
340:75-1-17. . . . . [AMENDED] (E) 1092
340:75-1-17. . . . . [AMENDED] 1865
340:75-1-18. . . . . [AMENDED] (E) 1092
340:75-1-18. . . . . [AMENDED] 1865
340:75-1-18.1. . . . . [AMENDED] (E) 1092
340:75-1-18.1. . . . . [AMENDED] 1865
340:75-1-18.2. . . . . [REVOKED] (E) 1092
340:75-1-18.2. . . . . [REVOKED] 1865
340:75-1-18.3. . . . . [AMENDED] (E) 1092
340:75-1-18.3. . . . . [AMENDED] 1865
340:75-1-18.4. . . . . [AMENDED] (E) 1092
340:75-1-18.4. . . . . [AMENDED] 1865
340:75-1-20. . . . . [AMENDED] (E) 1092
340:75-1-20. . . . . [AMENDED] 1865
340:75-1-21. . . . . [AMENDED] (E) 1092
340:75-1-21. . . . . [AMENDED] 1865
340:75-1-23. . . . . [AMENDED] (E) 1092
340:75-1-23. . . . . [AMENDED] 1865
340:75-1-23.1. . . . . [NEW] (E) 1092
340:75-1-23.1. . . . . [NEW] 1865
340:75-1-29. . . . . [AMENDED] (E) 1092
340:75-1-29. . . . . [AMENDED] 1865
340:75-1-42. . . . . [AMENDED] (E) 1092
340:75-1-42. . . . . [AMENDED] 1865
340:75-1-44. . . . . [AMENDED] (E) 1092
340:75-1-44. . . . . [AMENDED] 1865
340:75-1-45. . . . . [AMENDED] (E) 1092
340:75-1-45. . . . . [AMENDED] 1865
340:75-1-46. . . . . [AMENDED] (E) 1092
340:75-1-46. . . . . [AMENDED] 1865
340:75-1-151. . . . . [AMENDED] (E) 1092
340:75-1-151. . . . . [AMENDED] 1865
340:75-1-151.1. . . . . [AMENDED] (E) 1092
340:75-1-151.1. . . . . [AMENDED] 1865
340:75-1-151.2. . . . . [AMENDED] (E) 1092
340:75-1-151.2. . . . . [AMENDED] 1865
340:75-1-152. . . . . [AMENDED] (E) 1092
340:75-1-152. . . . . [AMENDED] 1865
340:75-1-152.3. . . . . [AMENDED] (E) 1092
340:75-1-152.3. . . . . [AMENDED] 1865
340:75-1-152.4. . . . . [REVOKED] (E) 1092
340:75-1-152.4. . . . . [REVOKED] 1865
340:75-1-152.5. . . . . [AMENDED] (E) 1092
340:75-1-152.5. . . . . [AMENDED] 1865
340:75-1-152.6. . . . . [AMENDED] (E) 1092
340:75-1-152.6. . . . . [AMENDED] 1865
340:75-1-152.7. . . . . [AMENDED] (E) 1092
340:75-1-152.7. . . . . [AMENDED] 1865
340:75-1-152.8. . . . . [AMENDED] (E) 1092
340:75-1-152.8. . . . . [AMENDED] 1865
340:75-1-154. . . . . [AMENDED] (E) 1092
340:75-1-154. . . . . [AMENDED] 1865
340:75-3-1. . . . . [AMENDED] (E) 1092
340:75-3-1. . . . . [AMENDED] 1865
340:75-3-2. . . . . [AMENDED] (E) 1092
340:75-3-2. . . . . [AMENDED] 1865
340:75-3-4. . . . . [AMENDED] (E) 1092
340:75-3-4. . . . . [AMENDED] 1865
340:75-3-5. . . . . [AMENDED] (E) 1092
340:75-3-5. . . . . [AMENDED] 1865
340:75-3-6. . . . . [AMENDED] (E) 1092
340:75-3-6. . . . . [AMENDED] 1865
340:75-3-6.1. . . . . [AMENDED] (E) 1092
340:75-3-6.1. . . . . [AMENDED] 1865
340:75-3-7. . . . . [AMENDED] (E) 1092
340:75-3-7. . . . . [AMENDED] 1865
340:75-3-7.1. . . . . [AMENDED] (E) 1092
340:75-3-7.1. . . . . [AMENDED] 1865
340:75-3-7.2. . . . . [REVOKED] (E) 1092
340:75-3-7.2. . . . . [REVOKED] 1865
340:75-3-7.3. . . . . [AMENDED] (E) 1092
340:75-3-7.3. . . . . [AMENDED] 1865
340:75-3-7.4. . . . . [NEW] (E) 1092
340:75-3-7.4. . . . . [NEW] 1865
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
340:75-8-10. . . . . [AMENDED] (E) 1092
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
340:75-11-239. . . . . [AMENDED] (E) 1092
340:75-11-239. . . . . [AMENDED] 1865
340:75-11-240. . . . . [AMENDED] (E) 1092
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
340:75-13-65. . . . . [AMENDED] 1865
340:75-15-6. . . . . [AMENDED] (E) 1092
340:75-15-6. . . . . [AMENDED] 1865
340:75-15-8. . . . . [REVOKED] (E) 1092
340:75-15-8. . . . . [REVOKED] 1865
340:75-15-41. . . . . [REVOKED] (E) 1092
340:75-15-41. . . . . [REVOKED] 1865
340:75-15-41.1. . . . . [NEW] (E) 1092
340:75-15-41.1. . . . . [NEW] 1865
340:75-15-43. . . . . [REVOKED] (E) 1092
340:75-15-43. . . . . [REVOKED] 1865
340:75-15-59. . . . . [REVOKED] (E) 1092
340:75-15-59. . . . . [REVOKED] 1865
340:75-15-61. . . . . [REVOKED] (E) 1092
340:75-15-61. . . . . [REVOKED] 1865
340:75-15-62. . . . . [REVOKED] (E) 1092
340:75-15-62. . . . . [REVOKED] 1865
340:75-15-85. . . . . [REVOKED] (E) 1092
340:75-15-85. . . . . [REVOKED] 1865
340:75-15-92. . . . . [REVOKED] (E) 1092
340:75-15-92. . . . . [REVOKED] 1865
340:75-15-103. . . . . [AMENDED] (E) 1092
340:75-15-103. . . . . [AMENDED] 1865
340:75-15-106. . . . . [REVOKED] (E) 1092
340:75-15-106. . . . . [REVOKED] 1865
340:75-15-107. . . . . [REVOKED] (E) 1092
340:75-15-107. . . . . [REVOKED] 1865
340:75-15-108. . . . . [REVOKED] (E) 1092
340:75-15-108. . . . . [REVOKED] 1865
340:75-15-128.1. . . . . [AMENDED] (E) 45
340:75-15-128.1. . . . . [AMENDED] 1865
340:75-15-128.2. . . . . [AMENDED] 1865
340:75-15-128.5. . . . . [AMENDED] 1865
340:75-16-28. . . . . [AMENDED] (E) 1092
340:75-16-28. . . . . [AMENDED] 1865
340:75-16-29. . . . . [AMENDED] (E) 1092
340:75-16-29. . . . . [AMENDED] 1865
340:75-16-30. . . . . [AMENDED] (E) 1092
340:75-16-30. . . . . [AMENDED] 1865
340:75-16-34. . . . . [REVOKED] (E) 1092
340:75-16-34. . . . . [REVOKED] 1865
340:75-16-37. . . . . [AMENDED] (E) 1092
340:75-16-37. . . . . [AMENDED] 1865
340:75-16-38. . . . . [AMENDED] (E) 1092
340:75-16-38. . . . . [AMENDED] 1865
340:100-1-2. . . . . [AMENDED] 839
340:100-3-4. . . . . [AMENDED] 843
340:100-3-29. . . . . [AMENDED] 845
340:100-3-38.5. . . . . [AMENDED] 845
340:100-5-3. . . . . [AMENDED] 847
340:100-5-20. . . . . [NEW] 848
340:100-5-22. . . . . [AMENDED] 848
340:100-5-22.5. . . . . [AMENDED] 849
340:100-5-22.6. . . . . [AMENDED] 851
340:100-5-52. . . . . [AMENDED] 854
340:100-5-53. . . . . [AMENDED] 855
340:100-17-30. . . . . [AMENDED] 855
340:110-1-4.1. . . . . [AMENDED] (E) 49
340:110-1-4.1. . . . . [AMENDED] 1869
340:110-1-6. . . . . [AMENDED] (E) 50
340:110-1-6. . . . . [AMENDED] 1869
340:110-1-8. . . . . [AMENDED] (E) 51
340:110-1-8. . . . . [AMENDED] 1869
340:110-1-8.1. . . . . [AMENDED] (E) 53
340:110-1-8.1. . . . . [AMENDED] 1869
340:110-1-8.3. . . . . [AMENDED] 1869
340:110-1-9. . . . . [AMENDED] (E) 55
340:110-1-9. . . . . [AMENDED] 1869
340:110-1-9.2. . . . . [AMENDED] 1869
340:110-1-9.3. . . . . [AMENDED] 1869
340:110-1-10. . . . . [AMENDED] 1869

340:110-1-10.1. [NEW] 1869
340:110-1-13. [AMENDED] 1869
340:110-1-14. [AMENDED] 1869
340:110-1-15. [AMENDED] 1869
340:110-1-43.1. [AMENDED] (E) 56
340:110-1-43.1. [AMENDED] 1869
340:110-1-45. [AMENDED] (E) 57
340:110-1-45. [AMENDED] 1869
340:110-1-46. [AMENDED] (E) 58
340:110-1-46. [AMENDED] 1869
340:110-1-47. [AMENDED] (E) 59
340:110-1-47. [AMENDED] 1869
340:110-1-47.1. [AMENDED] 1869
340:110-1-51. [AMENDED] (E) 60
340:110-1-51. [AMENDED] 1869
340:110-1-52. [AMENDED] 1869
340:110-1-54. [AMENDED] 1869
340:110-1-54.1. [AMENDED] 1869
340:110-1-55. [AMENDED] 1869
340:110-3-2. [AMENDED] 1869
340:110-3-3. [AMENDED] 1869
340:110-3-5. [AMENDED] (E) 61
340:110-3-5. [AMENDED] 1869
340:110-3-5.1. [AMENDED] (E) 63
340:110-3-5.1. [AMENDED] 1869
340:110-3-6. [AMENDED] (E) 63
340:110-3-6. [AMENDED] 1869
340:110-3-7.1. [AMENDED] (E) 64
340:110-3-7.1. [AMENDED] 1869
340:110-3-36. [AMENDED] 1869
340:110-3-37. [AMENDED] 1869
340:110-3-39. [AMENDED] (E) 68
340:110-3-39. [AMENDED] 1869
340:110-3-40. [AMENDED] (E) 69
340:110-3-40. [AMENDED] 1869
340:110-3-41. [AMENDED] (E) 69
340:110-3-41. [AMENDED] 1869
340:110-3-42. [AMENDED] (E) 70
340:110-3-42. [AMENDED] 1869
340:110-3-81. [AMENDED] 1869
340:110-3-82. [AMENDED] 1869
340:110-3-85. [AMENDED] (E) 72
340:110-3-85. [AMENDED] 1869
340:110-3-88. [AMENDED] (E) 75
340:110-3-88. [AMENDED] 1869
340:110-3-89.1. [AMENDED] (E) 76
340:110-3-89.1. [AMENDED] 1869
340:110-3-146. [AMENDED] 1869
340:110-3-147. [AMENDED] 1869
340:110-3-153. [AMENDED] (E) 76
340:110-3-153. [AMENDED] 1869
340:110-3-153.1. [AMENDED] (E) 77
340:110-3-153.1. [AMENDED] 1869
340:110-3-168. [AMENDED] (E) 80
340:110-3-168. [AMENDED] 1869
340:110-3-221. [AMENDED] 1869
340:110-3-222. [AMENDED] 1869
340:110-3-223. [AMENDED] (E) 82
340:110-3-223. [AMENDED] 1869
340:110-3-224. [AMENDED] (E) 83
340:110-3-224. [AMENDED] 1869
340:110-3-225. [AMENDED] (E) 83
340:110-3-225. [AMENDED] 1869
340:110-3-226. [AMENDED] (E) 84
340:110-3-226. [AMENDED] 1869
340:110-5-3. [AMENDED] 1869
340:110-5-4. [AMENDED] 1869
340:110-5-6. [AMENDED] 1869
340:110-5-7. [AMENDED] (E) 88
340:110-5-7. [AMENDED] 1869
340:110-5-8. [AMENDED] (E) 88
340:110-5-8. [AMENDED] 1869
340:110-5-12. [AMENDED] (E) 90
340:110-5-12. [AMENDED] 1869
365:1-1-4.1. [AMENDED] 1530
365:1-7-9. [AMENDED] 1531
365:1-9-5. [AMENDED] 1531
365:10-1-14. [NEW] 1532
365:10-5-9. [NEW] 1533
365:10-5-45.1. [AMENDED] 1533
365:10-5-55. [AMENDED] 1533
365:10-5-177. [AMENDED] (E) 316
365:10-5-177. [AMENDED] 1534
365:10-15-2. [AMENDED] 1536
365:10-17-4. [AMENDED] (E) 318
365:10-17-4. [AMENDED] 1537
365:10-25-4. [AMENDED] (E) 319
365:10-25-4. [AMENDED] 1538
365:10-25-5. [AMENDED] (E) 319
365:10-25-5. [AMENDED] 1538
365:10, App. CC. [REVOKED] 1540
365:10, App. CC. [NEW] 1540
365:15-1-3. [AMENDED] 1543
365:15-1-18. [AMENDED] 1545
365:15-1-22. [REVOKED] 1545
365:15-7-3. [AMENDED] 1545
365:15-7-16. [AMENDED] 1546
365:15-7-31. [AMENDED] 1547
365:15-7-32. [AMENDED] 1547
365:15-9-3. [AMENDED] 1547
365:15-9-10. [AMENDED] 1547
365:15-9-18. [AMENDED] 1548
365:15-9-22. [NEW] 1549
365:15, App. D. [REVOKED] 1550
365:15, App. D. [NEW] 1550
365:25-3-1.2. [AMENDED] 1552
365:25-3-14. [AMENDED] (E) 166
365:25-3-14. [AMENDED] 1552
365:25-3-15. [AMENDED] 1555
365:25-3-16. [AMENDED] 1555
365:25-3-21. [NEW] 1556
365:25-5-39. [AMENDED] 1556
365:25-5-40. [AMENDED] 1556
365:25-5-44. [NEW] 1557
365:25-5-50. [NEW] (E) 169
365:25-5-50. [NEW] 1557
365:25-5-51. [NEW] (E) 169
365:25-5-51. [NEW] 1557
365:25-5-52. [NEW] (E) 170
365:25-5-52. [NEW] 1557
365:25-5-53. [NEW] (E) 170
365:25-5-53. [NEW] 1557
365:25-5-54. [NEW] (E) 170
365:25-5-54. [NEW] 1557
365:25-5-55. [NEW] (E) 170
365:25-5-55. [NEW] 1557
365:25-5-56. [NEW] (E) 170
365:25-5-56. [NEW] 1557
365:25-5-57. [NEW] (E) 170
365:25-5-57. [NEW] 1557
365:25-5-58. [NEW] (E) 170
365:25-5-58. [NEW] 1558
365:25-9-3. [AMENDED] (E) 170
365:25-9-3. [AMENDED] 1558

365:25, App. C. . . . . [NEW] (E) 172
365:25, App. C. . . . . [NEW] 1560
365:25, App. M. . . . . [NEW] (E) 174
365:25, App. M. . . . . [NEW] 1562
365:25, App. X. . . . . [NEW] (E) 175
365:25, App. X. . . . . [NEW] 1563
365:25, App. Y. . . . . [NEW] (E) 176
365:25, App. Y. . . . . [NEW] 1564
365:40-3-14. . . . . [AMENDED] 1565
365:40-5-2. . . . . [NEW] 1565
365:45-1-1. . . . . [NEW] (E) 177
365:45-1-1. . . . . [NEW] 1566
365:45-1-2. . . . . [NEW] (E) 177
365:45-1-2. . . . . [NEW] 1566
365:45-3-1. . . . . [NEW] (E) 177
365:45-3-1. . . . . [NEW] 1566
365:45-5-1. . . . . [NEW] (E) 178
365:45-5-1. . . . . [NEW] 1567
375:30-1-2. . . . . [AMENDED] 1872
375:30-3-1. . . . . [AMENDED] 1873
375:30-3-2. . . . . [AMENDED] 1873
375:30-3-3. . . . . [AMENDED] 1873
375:30-5-2. . . . . [AMENDED] 1873
375:30-5-3. . . . . [AMENDED] 1874
375:30-5-4. . . . . [AMENDED] 1874
375:30-7-1. . . . . [AMENDED] 1874
375:30-7-2. . . . . [AMENDED] 1874
375:30-7-3. . . . . [AMENDED] 1874
375:30-9-2. . . . . [AMENDED] 1875
375:30-11-1. . . . . [AMENDED] 1875
375:30-11-2. . . . . [AMENDED] 1875
375:30-11-3. . . . . [AMENDED] 1875
375:30-11-4. . . . . [AMENDED] 1876
375:30-11-5. . . . . [AMENDED] 1876
375:30-11-7. . . . . [AMENDED] 1876
377:3-1-21. . . . . [AMENDED] 2178
377:3-1-23. . . . . [AMENDED] 2179
377:3-1-25. . . . . [AMENDED] 2180
377:3-1-26. . . . . [AMENDED] 2182
377:3-1-27. . . . . [AMENDED] 2182
377:3-1-28. . . . . [AMENDED] 2183
377:3-1-30. . . . . [AMENDED] 2184
377:3-1-31. . . . . [AMENDED] 2185
377:3-5-12. . . . . [AMENDED] 2185
377:3-13-1. . . . . [AMENDED] 2185
377:3-13-42. . . . . [AMENDED] 2186
377:3-13-43. . . . . [AMENDED] 2187
377:3-13-87. . . . . [AMENDED] 2190
377:3-13-120. . . . . [NEW] (E) 639
377:3-13-120. . . . . [NEW] 2190
377:3-13-121. . . . . [NEW] (E) 639
377:3-13-121. . . . . [NEW] 2190
377:3-13-122. . . . . [NEW] (E) 639
377:3-13-122. . . . . [NEW] 2190
377:3-13-123. . . . . [NEW] (E) 639
377:3-13-123. . . . . [NEW] 2190
377:3-13-124. . . . . [NEW] (E) 639
377:3-13-124. . . . . [NEW] 2191
377:3-13-125. . . . . [NEW] (E) 639
377:3-13-125. . . . . [NEW] 2191
377:3-13-126. . . . . [NEW] (E) 639
377:3-13-126. . . . . [NEW] 2191
377:3-13-127. . . . . [NEW] (E) 640
377:3-13-127. . . . . [NEW] 2191
377:3-13-128. . . . . [NEW] (E) 640
377:3-13-128. . . . . [NEW] 2191
377:3-13-129. . . . . [NEW] (E) 640
377:3-13-129. . . . . [NEW] 2192
377:3-13-130. . . . . [NEW] (E) 640
377:3-13-130. . . . . [NEW] 2192
377:3-13-131. . . . . [NEW] (E) 640
377:3-13-131. . . . . [NEW] 2192
377:3-13-132. . . . . [NEW] (E) 641
377:3-13-132. . . . . [NEW] 2192
377:3-13-133. . . . . [NEW] (E) 641
377:3-13-133. . . . . [NEW] 2192
377:3-13-134. . . . . [NEW] (E) 641
377:3-13-134. . . . . [NEW] 2192
377:3-13-135. . . . . [NEW] (E) 641
377:3-13-135. . . . . [NEW] 2193
377:3-13-136. . . . . [NEW] (E) 641
377:3-13-136. . . . . [NEW] 2193
377:3-13-137. . . . . [NEW] (E) 641
377:3-13-137. . . . . [NEW] 2193
377:3-13-138. . . . . [NEW] (E) 642
377:3-13-138. . . . . [NEW] 2193
377:3-13-139. . . . . [NEW] (E) 642
377:3-13-139. . . . . [NEW] 2194
377:3-13-140. . . . . [NEW] (E) 643
377:3-13-140. . . . . [NEW] 2194
377:3-13-141. . . . . [NEW] (E) 643
377:3-13-141. . . . . [NEW] 2194
377:3-13-142. . . . . [NEW] (E) 643
377:3-13-142. . . . . [NEW] 2194
377:3-13-143. . . . . [NEW] (E) 643
377:3-13-143. . . . . [NEW] 2194
377:3-13-144. . . . . [NEW] (E) 643
377:3-13-144. . . . . [NEW] 2194
377:3-13-145. . . . . [NEW] (E) 645
377:3-13-145. . . . . [NEW] 2197
377:3-13-146. . . . . [NEW] (E) 646
377:3-13-146. . . . . [NEW] 2197
377:3-13-147. . . . . [NEW] (E) 646
377:3-13-147. . . . . [AMENDED] 2197
377:3-13-148. . . . . [NEW] (E) 646
377:3-13-148. . . . . [NEW] 2198
377:3-13-149. . . . . [NEW] (E) 646
377:3-13-149. . . . . [NEW] 2198
377:35-1-2. . . . . [REVOKED] 2198
377:35-3-7. . . . . [REVOKED] 2199
377:35-3-8. . . . . [REVOKED] 2199
380:30-3-4. . . . . [AMENDED] 1878
380:30-3-8. . . . . [AMENDED] 1878
380:45-1-1. . . . . [REVOKED] 1879
380:45-1-2. . . . . [REVOKED] 1879
380:45-1-3. . . . . [REVOKED] 1881
380:45-1-4. . . . . [REVOKED] 1881
380:45-1-5. . . . . [REVOKED] 1882
380:45-1-6. . . . . [REVOKED] 1882
380:45-2-1. . . . . [REVOKED] 1882
380:45-2-2. . . . . [REVOKED] 1882
380:45-3-1. . . . . [REVOKED] 1882
380:45-3-2. . . . . [REVOKED] 1883
380:45-3-3. . . . . [REVOKED] 1883
380:45-3-5. . . . . [REVOKED] 1883
380:45-3-6. . . . . [REVOKED] 1883
380:45-3-7. . . . . [REVOKED] 1884
380:45-3-8. . . . . [REVOKED] 1884
380:45-5-1. . . . . [REVOKED] 1884
380:45-5-2. . . . . [REVOKED] 1885
380:45-5-3. . . . . [REVOKED] 1885
380:45-5-4. . . . . [REVOKED] 1885
380:45-5-5. . . . . [REVOKED] 1885
380:45-5-6. . . . . [REVOKED] 1886

380:45-7-1. [REVOKED] 1886
380:45-7-2. [REVOKED] 1886
380:45-7-3. [REVOKED] 1886
380:45-11-1. [REVOKED] 1886
380:45-13-1. [REVOKED] 1886
380:45-13-2. [REVOKED] 1886
380:45-15-1. [REVOKED] 1886
380:45-15-2. [REVOKED] 1886
380:45-15-3. [REVOKED] 1887
380:45-19-1. [REVOKED] 1887
380:50-1-2. [AMENDED] 1887
380:50-4-1. [AMENDED] 1890
380:50-4-3. [AMENDED] 1891
380:50-5-10. [AMENDED] 1891
380:50-6-3. [AMENDED] 1891
380:50-9-1. [AMENDED] 1892
380:50-9-2. [AMENDED] 1893
380:50-9-5. [AMENDED] 1893
380:50-11-1. [AMENDED] 1893
380:50-11-2. [AMENDED] 1894
380:50-11-3. [AMENDED] 1895
380:50-11-5. [AMENDED] 1895
380:50-11-7. [AMENDED] 1895
380:50-13-1. [AMENDED] 1895
380:50-15-2. [AMENDED] 1896
380:50-15-5. [AMENDED] 1896
380:50-15-8. [AMENDED] 1897
380:50-15-12. [AMENDED] 1897
380:50-15-14. [AMENDED] 1897
380:50-17-1. [AMENDED] 1897
380:50-17-4. [AMENDED] 1898
380:50-17-5. [AMENDED] 1899
380:50-17-8. [AMENDED] 1899
380:50-17-10. [AMENDED] 1900
380:50-17-13. [AMENDED] 1900
380:50-19-1. [AMENDED] 1900
380:50-21-1. [REVOKED] 1900
380:50-21-2. [REVOKED] 1900
380:50-23-2. [AMENDED] 1901
380:50-23-3. [AMENDED] 1901
390:10-1-5. [AMENDED] 2550
390:15-1-2. [AMENDED] 2551
390:15-1-6. [AMENDED] 2551
390:15-1-11. [REVOKED] 2552
390:15-1-12. [REVOKED] 2552
390:15-1-13. [AMENDED] 2552
390:15-1-14. [REVOKED] 2553
390:15-1-15. [REVOKED] 2553
390:15-1-16. [REVOKED] 2553
390:15-1-17. [REVOKED] 2554
390:20-1-3. [AMENDED] 2554
390:20-1-4. [AMENDED] 2555
390:20-1-8. [AMENDED] 2555
390:20-1-11. [AMENDED] 2555
390:20-1-12. [AMENDED] 2555
390:35-5-13. [AMENDED] 2556
390:35-9-4. [AMENDED] 2556
390:35, App. A. [REVOKED] 2557
390:35, App. A. [NEW] 2557
390:50-1-5. [AMENDED] 2558
405:35-1-2. [AMENDED] 1272
435:10-1-4. [AMENDED] 857
435:10-7-4. [AMENDED] 857
435:65-1-3. [RENUMBERED TO 435:65-3-1] 859
435:65-1-3.1. [NEW] 860
435:65-1-4. [RENUMBERED TO 435:65-3-2] 860
435:65-1-5. [RENUMBERED TO 435:65-7-1] 860
435:65-1-8. [REVOKED] 860
435:65-3-1. [NEW] 860
435:65-3-2. [NEW] 861
435:65-3-3. [NEW] 861
435:65-3-5. [NEW] 861
435:65-5-1. [NEW] 861
435:65-5-2. [NEW] 861
435:65-5-3. [NEW] 862
435:65-7-1. [NEW] 862
435:65-7-2. [NEW] 862
450:1-1-1.1. [AMENDED] 2200
450:1-1-4. [AMENDED] 2203
450:1-3-4. [AMENDED] 2203
450:1-3-5. [NEW] 2203
450:1-3-21. [AMENDED] 2203
450:1-7-6. [AMENDED] 2203
450:1-9-3. [AMENDED] 2204
450:1-9-4. [AMENDED] 2205
450:1-9-5. [AMENDED] 2205
450:1-9-5.1. [NEW] 2206
450:1-9-5.2. [NEW] 2207
450:1-9-5.3. [NEW] 2207
450:1-9-6. [AMENDED] 2207
450:1-9-6.1. [NEW] 2208
450:1-9-7. [AMENDED] 2208
450:1-9-7.1. [NEW] 2211
450:1-9-7.2. [NEW] 2212
450:1-9-7.3. [NEW] 2213
450:1-9-7.4. [NEW] 2214
450:1-9-8. [REVOKED] 2214
450:1-9-13. [AMENDED] 2215
450:1-9-14. [AMENDED] 2215
450:1-11-4. [AMENDED] 2215
450:1-11-8. [AMENDED] 2215
450:15-1-1. [AMENDED] 1006
450:15-1-2. [AMENDED] 1006
450:15-3-8. [AMENDED] 1008
450:15-3-45. [AMENDED] 1008
450:15-3-81. [AMENDED] 1009
450:15-7-2. [AMENDED] 1010
450:15-7-3. [AMENDED] 1010
450:15-7-4. [AMENDED] 1010
450:15-7-6. [AMENDED] 1011
450:15-7-7. [AMENDED] 1011
450:15-7-8. [AMENDED] 1011
450:15-7-9. [AMENDED] 1012
450:15-7-10. [AMENDED] 1012
450:15-7-11. [AMENDED] 1012
450:15-7-12. [AMENDED] 1012
450:15-7-14. [AMENDED] 1012
450:15-7-15. [AMENDED] 1013
450:17-1-2. [AMENDED] 2216
450:17-3-2. [AMENDED] 2221
450:17-3-61. [AMENDED] 2221
450:17-3-62. [AMENDED] 2221
450:17-3-101. [AMENDED] 2222
450:17-3-102. [AMENDED] 2222
450:17-3-141. [AMENDED] 2223
450:17-3-144. [AMENDED] 2223
450:17-3-146. [AMENDED] 2224
450:17-3-147. [NEW] 2224
450:17-3-191. [AMENDED] 2224
450:17-3-192. [AMENDED] 2225
450:17-5-22. [REVOKED] 2225
450:17-5-25. [REVOKED] 2225
450:17-5-60. [AMENDED] 2226
450:17-5-66. [AMENDED] 2226

450:17-5-95. [AMENDED] 2226
450:17-5-111. [REVOKED] 2226
450:17-5-112. [REVOKED] 2226
450:17-5-113. [REVOKED] 2227
450:17-5-114. [REVOKED] 2227
450:17-5-115. [REVOKED] 2227
450:17-5-116. [REVOKED] 2228
450:17-5-117. [REVOKED] 2228
450:17-5-118. [REVOKED] 2228
450:17-5-119. [REVOKED] 2229
450:17-5-120. [REVOKED] 2229
450:17-5-121. [REVOKED] 2230
450:17-5-122. [REVOKED] 2230
450:17-5-123. [REVOKED] 2231
450:17-5-124. [REVOKED] 2231
450:17-5-125. [REVOKED] 2231
450:17-5-126. [REVOKED] 2232
450:17-7-3. [AMENDED] 2232
450:17-7-5. [AMENDED] 2232
450:17-7-8. [AMENDED] 2233
450:17-7-9. [AMENDED] 2233
450:17-7-10. [AMENDED] 2234
450:17-7-12. [AMENDED] 2234
450:17-9-1. [REVOKED] 2234
450:17-9-1.1. [AMENDED] 2235
450:17-9-2. [REVOKED] 2236
450:17-13-1. [AMENDED] 2236
450:17-15-1.1. [AMENDED] 2236
450:17-15-5. [AMENDED] 2237
450:17-21-1. [AMENDED] 2237
450:18-1-2. [AMENDED] 2237
450:18-1-4. [AMENDED] 2237
450:18-1-9. [NEW] 2237
450:18-5-1. [AMENDED] 2237
450:18-5-2.1. [AMENDED] 2237
450:18-5-2.2. [AMENDED] 2237
450:18-5-2.3. [AMENDED] 2237
450:18-5-3.1. [AMENDED] 2237
450:18-5-3.2. [AMENDED] 2237
450:18-5-4. [AMENDED] 2237
450:18-5-5. [AMENDED] 2237
450:18-5-6. [AMENDED] 2237
450:18-5-8. [AMENDED] 2237
450:18-5-10. [AMENDED] 2237
450:18-7-1.1. [AMENDED] 2237
450:18-7-2. [AMENDED] 2237
450:18-7-3.1. [AMENDED] 2237
450:18-7-4. [AMENDED] 2237
450:18-7-21. [AMENDED] 2237
450:18-7-22. [AMENDED] 2237
450:18-7-23. [NEW] 2237
450:18-7-24. [NEW] 2237
450:18-7-25. [NEW] 2237
450:18-7-26. [NEW] 2237
450:18-7-27. [NEW] 2237
450:18-7-41. [AMENDED] 2237
450:18-7-42. [AMENDED] 2237
450:18-7-43. [AMENDED] 2237
450:18-7-44. [AMENDED] 2237
450:18-7-61. [AMENDED] 2237
450:18-7-62. [AMENDED] 2237
450:18-7-63. [AMENDED] 2237
450:18-7-65. [AMENDED] 2237
450:18-7-81. [AMENDED] 2237
450:18-7-82. [AMENDED] 2237
450:18-7-83. [REVOKED] 2237
450:18-7-84. [AMENDED] 2237
450:18-7-101. [AMENDED] 2237
450:18-7-121. [AMENDED] 2237
450:18-7-122. [AMENDED] 2237
450:18-7-123. [AMENDED] 2237
450:18-7-124. [REVOKED] 2237
450:18-7-141. [AMENDED] 2237
450:18-7-142. [AMENDED] 2237
450:18-7-143. [AMENDED] 2237
450:18-7-144. [AMENDED] 2237
450:18-9-2. [AMENDED] 2237
450:18-9-3. [AMENDED] 2237
450:18-9-10. [REVOKED] 2237
450:18-11-4. [AMENDED] 2237
450:18-13-1. [AMENDED] 2237
450:18-13-2. [AMENDED] 2237
450:18-13-3. [REVOKED] 2237
450:18-13-21. [AMENDED] 2237
450:18-13-41. [REVOKED] 2237
450:18-13-42. [REVOKED] 2237
450:18-13-43. [REVOKED] 2237
450:18-13-44. [REVOKED] 2237
450:18-13-61. [AMENDED] 2237
450:18-13-62. [AMENDED] 2237
450:18-13-63. [AMENDED] 2237
450:18-13-81. [AMENDED] 2237
450:18-13-82. [AMENDED] 2237
450:18-13-83. [AMENDED] 2237
450:18-13-101. [AMENDED] 2237
450:18-13-102. [AMENDED] 2237
450:18-13-103. [AMENDED] 2237
450:18-13-121. [AMENDED] 2237
450:18-13-122. [AMENDED] 2237
450:18-13-123. [AMENDED] 2237
450:18-13-141. [AMENDED] 2237
450:18-13-142. [AMENDED] 2237
450:18-13-143. [AMENDED] 2237
450:18-13-161. [AMENDED] 2237
450:18-13-162. [AMENDED] 2237
450:18-13-163. [AMENDED] 2237
450:18-13-181. [AMENDED] 2237
450:18-13-182. [AMENDED] 2237
450:18-13-183. [AMENDED] 2237
450:18-13-190. [AMENDED] 2237
450:18-13-191. [AMENDED] 2237
450:18-13-192. [AMENDED] 2237
450:18-13-201. [AMENDED] 2237
450:18-13-202. [AMENDED] 2237
450:18-13-203. [AMENDED] 2237
450:18-13-221. [NEW] 2237
450:18-13-222. [NEW] 2237
450:18-13-223. [NEW] 2237
450:30-9-3.1. [AMENDED] 1015
450:50-1-2. [AMENDED] 2239
450:50-1-3. [AMENDED] 2239
450:50-3-1. [AMENDED] 2239
450:50-3-2. [AMENDED] 2240
450:50-3-3. [AMENDED] 2240
450:50-3-4. [AMENDED] 2240
450:50-3-5. [AMENDED] 2240
450:50-3-7. [NEW] 2241
450:50-5-1. [AMENDED] 2241
450:50-5-4. [AMENDED] 2241
450:50-5-5. [NEW] 2242
450:50-7-1. [AMENDED] 2242
450:50-7-2. [AMENDED] 2243
450:50-7-3. [AMENDED] 2243
450:50-7-4. [AMENDED] 2243

450:50-7-5. . . . . [AMENDED] 2243
450:50-9-1. . . . . [AMENDED] 2243
450:50-11-1. . . . . [NEW] 2244
450:55-1-2. . . . . [AMENDED] 1016
450:55-3-2. . . . . [AMENDED] 1018
450:55-3-5. . . . . [AMENDED] 1018
450:55-3-6. . . . . [AMENDED] 1018
450:55-3-7. . . . . [AMENDED] 1019
450:55-5-3. . . . . [AMENDED] 1020
450:55-5-5. . . . . [AMENDED] 1020
450:55-5-6. . . . . [AMENDED] 1020
450:55-5-7. . . . . [AMENDED] 1020
450:55-5-9. . . . . [AMENDED] 1021
450:55-11-2. . . . . [AMENDED] 1021
460:20-3-5. . . . . [AMENDED] 2559
460:20-15-2. . . . . [REVOKED] 2566
460:20-15-6. . . . . [REVOKED] 2567
460:20-15-6.1. . . . . [NEW] 2568
460:20-15-6.2. . . . . [NEW] 2568
460:20-15-6.3. . . . . [NEW] 2568
460:20-15-6.4. . . . . [NEW] 2568
460:20-15-6.5. . . . . [NEW] 2569
460:20-15-6.6. . . . . [NEW] 2569
460:20-15-6.7. . . . . [NEW] 2569
460:20-15-6.8. . . . . [NEW] 2569
460:20-15-6.9. . . . . [NEW] 2570
460:20-15-6.10. . . . . [NEW] 2570
460:20-15-9. . . . . [REVOKED] 2571
460:20-15-9.1. . . . . [NEW] 2571
460:20-15-9.2. . . . . [NEW] 2571
460:20-15-10. . . . . [REVOKED] 2572
460:20-15-10.1. . . . . [NEW] 2572
460:20-15-10.2. . . . . [NEW] 2572
460:20-15-13. . . . . [REVOKED] 2572
460:20-15-13.1. . . . . [NEW] 2573
460:20-15-14. . . . . [REVOKED] 2574
460:20-15-14.1. . . . . [NEW] 2575
460:20-15-14.2. . . . . [NEW] 2575
460:20-17-1. . . . . [REVOKED] 2575
460:20-17-1.1. . . . . [NEW] 2575
460:20-17-2.1. . . . . [NEW] 2575
460:20-17-2.2. . . . . [NEW] 2576
460:20-17-5. . . . . [AMENDED] 2576
460:20-23-2. . . . . [REVOKED] 2577
460:20-23-2.1. . . . . [NEW] 2578
460:20-23-2.2. . . . . [NEW] 2578
460:20-23-2.3. . . . . [NEW] 2578
460:20-23-2.4. . . . . [NEW] 2579
460:20-23-3. . . . . [REVOKED] 2579
460:20-23-3.1. . . . . [NEW] 2579
460:20-23-10. . . . . [NEW] 2580
460:20-43-12. . . . . [AMENDED] 2580
460:20-59-2. . . . . [AMENDED] 2582
460:20-59-3. . . . . [AMENDED] 2583
460:20-63-2. . . . . [REVOKED] 2583
460:20-64-1. . . . . [NEW] 2584
460:20-64-2. . . . . [NEW] 2584
460:20-64-3. . . . . [NEW] 2584
460:20-64-4. . . . . [NEW] 2584
485:1-1-1. . . . . [AMENDED] 1022
485:1-1-2. . . . . [AMENDED] 1022
485:1-1-4. . . . . [AMENDED] 1022
485:1-1-5. . . . . [AMENDED] 1023
485:10-1-2. . . . . [AMENDED] 1025
485:10-5-8. . . . . [AMENDED] 1025
485:10-7-2. . . . . [AMENDED] 1026
485:10-9-2. . . . . [AMENDED] 1028
485:10-10-8. . . . . [AMENDED] 1030
485:10-10-8.1. . . . . [AMENDED] 1030
485:10-11-2. . . . . [AMENDED] 1030
485:10-13-1. . . . . [AMENDED] 1032
485:10-19-4. . . . . [AMENDED] 1032
485:10-19-5. . . . . [AMENDED] 1032
485:10-19-8. . . . . [AMENDED] 1032
505:1-3-9. . . . . [AMENDED] 1273
505:10-3-6. . . . . [NEW] 1274
530:10-3-33.4. . . . . [AMENDED] 1568
530:10-3-33.5. . . . . [AMENDED] 1568
530:10-3-33.6. . . . . [AMENDED] 1569
530:10-3-33.7. . . . . [AMENDED] 1569
530:10-3-33.8. . . . . [AMENDED] 1570
530:10-3-33.9. . . . . [AMENDED] 1570
530:10-3-33.11. . . . . [AMENDED] 1570
530:10-7-12. . . . . [AMENDED] 1570
530:10-9-37. . . . . [AMENDED] 1571
530:10-9-38. . . . . [AMENDED] 1571
530:10-13-3. . . . . [AMENDED] (E) 381
530:10-13-3. . . . . [AMENDED] 1572
530:10-15-45. . . . . [AMENDED] (E) 382
530:10-15-45. . . . . [AMENDED] 1572
530:10-15-48. . . . . [AMENDED] (E) 818
530:10-17-70. . . . . [AMENDED] (E) 383
530:10-17-70. . . . . [AMENDED] 1573
530:10-17-75. . . . . [AMENDED] (E) 383
530:10-17-75. . . . . [AMENDED] 1574
530:10-17-76. . . . . [NEW] (E) 384
530:10-17-76. . . . . [NEW] 1574
530:10-17-77. . . . . [AMENDED] (E) 385
530:10-17-77. . . . . [AMENDED] 1575
530:15-1-1. . . . . [AMENDED] (E) 386
530:15-1-1. . . . . [AMENDED] 1577
530:15-1-2. . . . . [AMENDED] (E) 386
530:15-1-2. . . . . [AMENDED] 1577
530:15-1-5. . . . . [AMENDED] (E) 387
530:15-1-5. . . . . [AMENDED] 1578
530:15-1-6. . . . . [AMENDED] (E) 387
530:15-1-6. . . . . [AMENDED] 1578
530:15-1-7. . . . . [AMENDED] (E) 387
530:15-1-7. . . . . [AMENDED] 1578
530:15-1-12. . . . . [AMENDED] (E) 388
530:15-1-12. . . . . [AMENDED] 1578
530:15-3-7. . . . . [AMENDED] (E) 388
530:15-3-7. . . . . [AMENDED] 1579
530:15-3-7.1. . . . . [AMENDED] (E) 388
530:15-3-7.1. . . . . [AMENDED] 1579
530:15-3-8. . . . . [AMENDED] (E) 389
530:15-3-8. . . . . [AMENDED] 1579
530:15-3-14. . . . . [AMENDED] 1579
530:15-5-8. . . . . [AMENDED] (E) 389
530:15-5-8. . . . . [AMENDED] 1580
535:1-7-3. . . . . [AMENDED] 2244
535:1-7-6. . . . . [AMENDED] 2245
535:1-7-7. . . . . [AMENDED] 2245
535:1-7-8. . . . . [AMENDED] 2245
535:1-11-1. . . . . [AMENDED] 2245
535:1-11-3. . . . . [AMENDED] 2245
535:1-11-4. . . . . [AMENDED] 2245
535:1-11-5. . . . . [AMENDED] 2246
535:10-3-1.2. . . . . [AMENDED] 2246
535:10-5-3. . . . . [AMENDED] 2247
535:10-5-4. . . . . [AMENDED] 2248
535:10-5-8. . . . . [AMENDED] 2248
535:10-5-9. . . . . [AMENDED] 2248
535:10-7-4. . . . . [AMENDED] 2249

535:10-7-10. . . . . [AMENDED] 2249
535:15-1-1. . . . . [AMENDED] 2250
535:15-3-2. . . . . [AMENDED] 2250
535:15-3-4. . . . . [AMENDED] 2251
535:15-3-9. . . . . [AMENDED] 2252
535:15-4-1. . . . . [NEW] 2257
535:15-4-2. . . . . [NEW] 2257
535:15-4-3. . . . . [NEW] 2257
535:15-4-4. . . . . [NEW] 2257
535:15-4-5. . . . . [NEW] 2257
535:15-4-6. . . . . [NEW] 2258
535:15-4-7. . . . . [NEW] 2259
535:15-5-2. . . . . [AMENDED] 2259
535:15-5-3. . . . . [AMENDED] 2252
535:15-5-4. . . . . [AMENDED] 2252
535:15-5-10. . . . . [AMENDED] 2252
535:15-5-19. . . . . [NEW] 2259
535:15-6-1. . . . . [AMENDED] 2254
535:15-6-2. . . . . [AMENDED] 2260
535:15-6-5. . . . . [AMENDED] 2254
535:15-6-20. . . . . [NEW] 2261
535:15-9-6. . . . . [AMENDED] 2255
535:15-13-5. . . . . [AMENDED] 2255
535:15-13-8. . . . . [AMENDED] 2256
535:20-3-6.3. . . . . [AMENDED] 2262
535:20-5-6.3. . . . . [AMENDED] 2262
535:20-7-7.3. . . . . [AMENDED] 2263
535:20-7-9.1. . . . . [AMENDED] 2263
535:20-9-3. . . . . [AMENDED] 2263
535:20-9-4. . . . . [AMENDED] 2266
535:25-3-3. . . . . [AMENDED] 2270
535:25-9-8. . . . . [AMENDED] 2270
545:15-1-2. . . . . [AMENDED] 2271
550:1-3-3. . . . . [AMENDED] 1902
550:1-5-2. . . . . [AMENDED] 1903
550:1-7-1. . . . . [AMENDED] 1904
550:15-1-2. . . . . [AMENDED] 1905
550:30-1-1. . . . . [NEW] 1907
550:30-1-2. . . . . [NEW] 1907
580:15-2-1. . . . . [AMENDED] 1908
580:15-2-2. . . . . [AMENDED] 1908
580:15-2-3. . . . . [AMENDED] 1910
580:15-2-4. . . . . [AMENDED] 1911
580:15-2-5. . . . . [AMENDED] 1911
580:15-2-6. . . . . [AMENDED] 1911
580:15-2-7. . . . . [AMENDED] (E) 179
580:15-2-7. . . . . [AMENDED] 1911
580:15-2-8. . . . . [AMENDED] 1912
580:15-2-9. . . . . [AMENDED] 1912
580:15-2-11. . . . . [AMENDED] 1912
580:15-2-12. . . . . [NEW] 1912
580:15-4-1. . . . . [REVOKED] 1913
580:15-4-2. . . . . [AMENDED] 1913
580:15-4-4. . . . . [AMENDED] 1913
580:15-4-5. . . . . [AMENDED] 1914
580:15-4-6. . . . . [AMENDED] 1916
580:15-4-7. . . . . [AMENDED] 1917
580:15-4-9. . . . . [AMENDED] 1917
580:15-4-11. . . . . [AMENDED] 1917
580:15-4-11.1. . . . . [NEW] 1918
580:15-4-12. . . . . [AMENDED] 1919
580:15-4-13. . . . . [AMENDED] (E) 180
580:15-4-13. . . . . [AMENDED] 1919
580:15-4-14. . . . . [AMENDED] 1920
580:15-4-15. . . . . [AMENDED] 1920
580:15-4-16. . . . . [REVOKED] 1921
580:15-4-18. . . . . [AMENDED] 1921
580:15-4-19. . . . . [AMENDED] 1922
580:15-6-1. . . . . [REVOKED] 1923
580:15-6-2. . . . . [AMENDED] 1923
580:15-6-3. . . . . [AMENDED] 1924
580:15-6-4. . . . . [REVOKED] 1924
580:15-6-5. . . . . [AMENDED] (E) 181
580:15-6-5. . . . . [AMENDED] 1924
580:15-6-6. . . . . [AMENDED] (E) 182
580:15-6-6. . . . . [AMENDED] 1925
580:15-6-6.1. . . . . [NEW] (E) 185
580:15-6-6.1. . . . . [NEW] 1929
580:15-6-6.2. . . . . [NEW] (E) 185
580:15-6-6.2. . . . . [NEW] 1929
580:15-6-10. . . . . [AMENDED] (E) 186
580:15-6-10. . . . . [AMENDED] 1930
580:15-6-14. . . . . [AMENDED] (E) 186
580:15-6-14. . . . . [AMENDED] 1930
580:15-6-15. . . . . [AMENDED] 1931
580:15-6-18. . . . . [AMENDED] 1931
580:15-6-19. . . . . [AMENDED] 1931
580:15-6-20. . . . . [AMENDED] 1931
580:15-6-21. . . . . [AMENDED] (E) 187
580:15-6-21. . . . . [AMENDED] 1932
580:25-5-1. . . . . [AMENDED] (E) 321
580:25-5-1. . . . . [AMENDED] 1933
580:35-1-1. . . . . [AMENDED] 1936
580:35-1-7. . . . . [AMENDED] 1936
580:35-1-8. . . . . [AMENDED] 1937
580:35-1-10. . . . . [AMENDED] 1937
580:55-1-2. . . . . [AMENDED] 1939
580:55-1-7. . . . . [AMENDED] 1939
590:10-2-1. . . . . [NEW] 1033
590:10-5-1. . . . . [AMENDED] 1033
590:10-7-16. . . . . [AMENDED] 1034
590:10-7-19. . . . . [NEW] 1035
590:10-7-20. . . . . [NEW] 1035
590:10-7-21. . . . . [NEW] 1035
590:10-7-22. . . . . [NEW] 1035
590:10-7-23. . . . . [NEW] 1036
590:15-1-1. . . . . [AMENDED] 1040
590:15-1-4. . . . . [AMENDED] 1041
590:15-1-11. . . . . [AMENDED] 1041
590:15-1-12. . . . . [AMENDED] 1046
590:15-1-18. . . . . [NEW] 1046
590:15-1-19. . . . . [NEW] 1047
590:15-1-20. . . . . [NEW] 1047
590:15-1-21. . . . . [NEW] 1047
590:25-3-1. . . . . [AMENDED] 1048
590:25-9-17. . . . . [AMENDED] 1048
590:25-9-20. . . . . [NEW] 1049
590:35-7-1. . . . . [AMENDED] 1050
590:35-13-9. . . . . [AMENDED] 1050
590:35-15-2. . . . . [AMENDED] 1051
595:11-1-21. . . . . [AMENDED] (E) 323
595:11-1-31. . . . . [AMENDED] (E) 324
595:11-1-55. . . . . [NEW] (E) 325
595:11-1-62. . . . . [AMENDED] (E) 325
595:11-5-4. . . . . [AMENDED] (E) 325
595:11-5-5. . . . . [AMENDED] (E) 326
595:11-7-3. . . . . [AMENDED] (E) 327
595:30-3-17. . . . . [AMENDED] (E) 329
595:30-3-17. . . . . [AMENDED] (E) 1096
595:30-3-18. . . . . [AMENDED] (E) 331
595:30-3-18. . . . . [AMENDED] (E) 1098
595:35-1-6. . . . . [AMENDED] (E) 332
605:10-1-2. . . . . [AMENDED] 1941
605:10-3-2. . . . . [AMENDED] 1942

605:10-3-6. [AMENDED] 1942
605:10-5-1. [AMENDED] 1944
605:10-5-1.1. [AMENDED] 1945
605:10-5-2. [AMENDED] 1947
605:10-5-3. [AMENDED] 1949
605:10-7-1.1. [AMENDED] 1950
605:10-7-4. [AMENDED] 1950
605:10-7-9. [AMENDED] 1950
605:10-9-1. [AMENDED] 1952
605:10-9-4. [AMENDED] 1952
605:10-11-2. [AMENDED] 1953
605:10-13-1. [AMENDED] 1954
605:10-13-2. [AMENDED] 1956
605:10-17-4. [AMENDED] 1956
605:10-17-5. [AMENDED] 1957
605:10, App. A. [REVOKED] 1958
605:10, App. A. [NEW] 1958
610:15-1-1. [AMENDED] 1276
610:15-1-2. [AMENDED] 1276
610:15-1-3. [AMENDED] 1276
610:20-1-3. [AMENDED] 1277
610:20-1-4. [AMENDED] 1278
610:25-23-1. [AMENDED] (E) 334
610:25-23-1. [AMENDED] 1279
610:25-23-2. [AMENDED] (E) 334
610:25-23-2. [AMENDED] 1279
610:25-23-5. [AMENDED] (E) 335
610:25-23-5. [AMENDED] 1279
610:25-23-7. [AMENDED] (E) 336
610:25-23-7. [AMENDED] 1280
610:25-33-6. [AMENDED] 1281
612:1-3-2. [AMENDED] 1581
612:1-3-2.1. [AMENDED] 1581
612:1-3-3. [AMENDED] 1581
612:1-3-8.1. [AMENDED] 1582
612:1-3-10. [AMENDED] 1582
612:1-5-4.2. [NEW] 1583
612:1-17-1. [AMENDED] 1583
612:3-1-3. [AMENDED] 1585
612:3-3-20. [AMENDED] 1585
612:3-5-12. [AMENDED] 1587
612:3-5-13. [AMENDED] 1587
612:3-5-30. [NEW] 1588
612:5-1-1. [NEW] 1588
612:5-1-2. [NEW] 1588
612:10-1-7. [AMENDED] 1590
612:10-1-10. [NEW] 1591
612:10-3-5. [AMENDED] 1592
612:10-7-1. [AMENDED] 1592
612:10-7-2. [AMENDED] 1593
612:10-7-3. [AMENDED] 1594
612:10-7-6. [AMENDED] 1595
612:10-7-27. [REVOKED] 1595
612:10-7-28. [REVOKED] 1596
612:10-7-29. [REVOKED] 1596
612:10-7-30. [REVOKED] 1596
612:10-7-32. [REVOKED] 1596
612:10-7-33. [REVOKED] 1596
612:10-7-33.1. [REVOKED] 1596
612:10-7-47. [AMENDED] 1596
612:10-7-49. [AMENDED] 1597
612:10-7-62. [AMENDED] 1597
612:10-7-87. [AMENDED] 1598
612:10-7-88. [REVOKED] 1599
612:10-7-98. [AMENDED] 1599
612:10-7-101. [REVOKED] 1599
612:10-7-102. [AMENDED] 1600
612:10-7-103. [AMENDED] 1600
612:10-7-104. [AMENDED] 1600
612:10-7-105. [AMENDED] 1600
612:10-7-106. [AMENDED] 1600
612:10-7-109. [AMENDED] 1600
612:10-7-111. [REVOKED] 1600
612:10-7-112. [AMENDED] 1601
612:10-7-117. [AMENDED] 1601
612:10-7-130. [AMENDED] 1601
612:10-7-131. [AMENDED] 1602
612:10-7-142. [AMENDED] 1603
612:10-7-143. [REVOKED] 1603
612:10-7-145. [AMENDED] 1603
612:10-7-147. [REVOKED] 1603
612:10-7-150. [AMENDED] 1604
612:10-7-151. [AMENDED] 1604
612:10-7-152. [AMENDED] 1604
612:10-7-153. [AMENDED] 1604
612:10-7-154. [REVOKED] 1605
612:10-7-157. [AMENDED] 1605
612:10-7-159. [AMENDED] 1605
612:10-7-161. [AMENDED] 1606
612:10-7-162. [AMENDED] 1606
612:10-7-163. [AMENDED] (E) 126
612:10-7-163. [AMENDED] 1606
612:10-7-164. [AMENDED] 1607
612:10-7-168. [REVOKED] 1607
612:10-7-169. [REVOKED] 1607
612:10-7-220. [AMENDED] 1608
612:10-7-230. [AMENDED] 1609
612:10-7-230.1. [REVOKED] 1609
612:10-7-230.2. [AMENDED] 1610
612:10-7-230.3. [AMENDED] 1610
612:10-7-230.4. [AMENDED] 1610
612:10-7-230.5. [AMENDED] 1611
612:20-2-11. [AMENDED] 1611
612:20-2-14. [AMENDED] 1612
612:20-2-16. [AMENDED] 1612
612:20-2-17. [AMENDED] 1612
630:15-1-14. [AMENDED] 2272
690:10-3-1. [AMENDED] 1961
690:10-3-3. [AMENDED] 1961
690:10-3-4. [AMENDED] 1962
690:10-3-5. [AMENDED] 1963
690:10-3-6. [AMENDED] 1964
690:10-3-8. [AMENDED] 1965
690:10-5-1. [AMENDED] 1967
690:10-5-6. [AMENDED] 1967
690:10-7-1. [AMENDED] 1967
690:10-7-3. [AMENDED] 1967
690:10-7-4. [AMENDED] 1967
690:10-7-5. [AMENDED] 1968
690:10-7-6. [AMENDED] 1968
690:10-7-7. [AMENDED] 1968
690:10-7-9. [NEW] 1968
690:10-7-10. [NEW] 1968
690:10-7-11. [NEW] 1969
690:10-9-1. [AMENDED] 1969
690:10-9-2. [AMENDED] 1969
690:10-9-5. [AMENDED] 1969
710:1-3-6. [AMENDED] (E) 127
710:1-3-6. [AMENDED] 2272
710:10-7-2.2. [AMENDED] 2273
710:10-7-5. [AMENDED] 2274
710:10-7-11. [AMENDED] 2275
710:10-7-15. [AMENDED] 2275
710:10-7-17. [AMENDED] 2275

710:45-9-21. . . . . [AMENDED] 2276
710:45-9-24. . . . . [AMENDED] 2276
710:45-9-31. . . . . [AMENDED] 2276
710:45-9-32.1. . . . . [AMENDED] 2277
710:45-9-34. . . . . [AMENDED] 2277
710:45-9-35. . . . . [AMENDED] 2278
710:45-9-40. . . . . [AMENDED] 2278
710:45-9-41. . . . . [AMENDED] 2278
710:45-9-51. . . . . [AMENDED] 2278
710:45-9-60. . . . . [AMENDED] 2279
710:45-9-70. . . . . [AMENDED] 2279
710:45-9-71. . . . . [AMENDED] 2279
710:45-9-73. . . . . [AMENDED] 2280
710:45-9-90. . . . . [AMENDED] 2280
710:45-9-92. . . . . [AMENDED] 2280
710:45-9-93. . . . . [AMENDED] 2281
710:50-3-45. . . . . [AMENDED] 2282
710:50-3-46. . . . . [AMENDED] 2283
710:50-9-3. . . . . [AMENDED] 2283
710:50-15-35. . . . . [NEW] 2283
710:50-15-47. . . . . [NEW] 2283
710:50-15-50. . . . . [AMENDED] 2284
710:50-15-53. . . . . [AMENDED] 2284
710:50-15-68. . . . . [NEW] 2284
710:50-15-74. . . . . [AMENDED] 2285
710:50-15-81. . . . . [AMENDED] 2285
710:50-15-83. . . . . [AMENDED] 2286
710:50-15-86. . . . . [AMENDED] 2286
710:50-15-87. . . . . [AMENDED] 2288
710:50-17-51. . . . . [AMENDED] 2289
710:50-17-71. . . . . [AMENDED] 2291
710:60-3-10. . . . . [AMENDED] 2294
710:60-3-12. . . . . [AMENDED] 2294
710:60-3-17. . . . . [AMENDED] 2295
710:60-3-18. . . . . [AMENDED] 2296
710:60-3-21. . . . . [AMENDED] 2296
710:60-3-30. . . . . [AMENDED] 2296
710:60-3-31. . . . . [AMENDED] 2296
710:60-3-33. . . . . [AMENDED] 2297
710:60-3-34. . . . . [AMENDED] 2297
710:60-3-35. . . . . [AMENDED] 2297
710:60-3-36. . . . . [AMENDED] 2297
710:60-3-91. . . . . [AMENDED] 2297
710:60-3-111. . . . . [AMENDED] 2297
710:60-3-134. . . . . [AMENDED] 2298
710:60-3-141. . . . . [AMENDED] 2299
710:60-3-142. . . . . [AMENDED] 2299
710:60-3-150. . . . . [AMENDED] 2300
710:60-3-151. . . . . [AMENDED] 2300
710:60-5-55. . . . . [AMENDED] 2300
710:60-5-62. . . . . [AMENDED] 2301
710:60-5-71. . . . . [AMENDED] 2301
710:60-5-74. . . . . [AMENDED] 2302
710:60-5-77. . . . . [AMENDED] 2302
710:60-5-91. . . . . [AMENDED] 2302
710:60-5-96. . . . . [AMENDED] 2303
710:60-5-116. . . . . [AMENDED] 2304
710:60-9-14. . . . . [AMENDED] 2305
710:60-9-94. . . . . [AMENDED] 2305
710:60-9-97. . . . . [AMENDED] 2306
710:60-9-130. . . . . [REVOKED] (E) 128
710:60-9-130. . . . . [REVOKED] 2306
710:60-9-130.1. . . . . [NEW] (E) 128
710:60-9-130.1. . . . . [NEW] 2306
710:60-9-131. . . . . [AMENDED] (E) 128
710:60-9-131. . . . . [AMENDED] 2306
710:60-9-133. . . . . [AMENDED] (E) 128
710:60-9-133. . . . . [AMENDED] 2307
710:60-9-134. . . . . [AMENDED] (E) 128
710:60-9-134. . . . . [AMENDED] 2307
710:60-9-135. . . . . [REVOKED] (E) 129
710:60-9-135. . . . . [REVOKED] 2307
710:60-9-137. . . . . [AMENDED] (E) 129
710:60-9-137. . . . . [AMENDED] 2307
710:65-1-2. . . . . [AMENDED] 2309
710:65-1-8. . . . . [AMENDED] 2312
710:65-1-9. . . . . [AMENDED] 2312
710:65-3-8. . . . . [AMENDED] 2313
710:65-3-32. . . . . [AMENDED] 2313
710:65-3-33. . . . . [AMENDED] 2314
710:65-7-13. . . . . [AMENDED] 2314
710:65-7-16. . . . . [AMENDED] 2315
710:65-7-21. . . . . [NEW] 2315
710:65-7-22. . . . . [RESERVED] 2315
710:65-7-23. . . . . [RESERVED] 2315
710:65-7-24. . . . . [RESERVED] 2315
710:65-7-25. . . . . [NEW] 2315
710:65-9-8. . . . . [AMENDED] 2316
710:65-13-33. . . . . [AMENDED] 2317
710:65-13-40. . . . . [AMENDED] 2317
710:65-13-55. . . . . [AMENDED] 2318
710:65-13-70. . . . . [AMENDED] 2318
710:65-13-80. . . . . [AMENDED] 2319
710:65-13-120. . . . . [AMENDED] 2320
710:65-13-130. . . . . [AMENDED] 2320
710:65-13-133. . . . . [AMENDED] 2321
710:65-13-150.1. . . . . [AMENDED] 2322
710:65-13-157. . . . . [AMENDED] 2323
710:65-13-169. . . . . [AMENDED] 2324
710:65-13-172. . . . . [AMENDED] 2324
710:65-13-173. . . . . [AMENDED] 2325
710:65-13-174. . . . . [AMENDED] 2329
710:65-13-175. . . . . [AMENDED] 2329
710:65-13-177. . . . . [AMENDED] 2330
710:65-13-194. . . . . [AMENDED] 2330
710:65-13-200. . . . . [AMENDED] 2331
710:65-13-210. . . . . [AMENDED] 2331
710:65-13-220. . . . . [AMENDED] 2333
710:65-13-334. . . . . [AMENDED] 2333
710:65-13-335. . . . . [AMENDED] 2334
710:65-13-336. . . . . [AMENDED] 2335
710:65-13-337. . . . . [AMENDED] 2335
710:65-13-338. . . . . [AMENDED] 2335
710:65-13-339. . . . . [AMENDED] 2336
710:65-13-340. . . . . [AMENDED] 2336
710:65-13-341. . . . . [AMENDED] 2336
710:65-13-342. . . . . [AMENDED] 2337
710:65-13-343. . . . . [AMENDED] 2337
710:65-13-344. . . . . [AMENDED] 2338
710:65-13-345. . . . . [AMENDED] 2338
710:65-13-346. . . . . [AMENDED] 2339
710:65-13-348. . . . . [AMENDED] 2339
710:65-13-350. . . . . [AMENDED] 2340
710:65-13-351. . . . . [AMENDED] 2341
710:65-13-352. . . . . [AMENDED] 2341
710:65-13-353. . . . . [AMENDED] 2342
710:65-13-354. . . . . [AMENDED] 2342
710:65-13-355. . . . . [AMENDED] 2343
710:65-13-357. . . . . [AMENDED] 2343
710:65-13-359. . . . . [AMENDED] 2344
710:65-13-360. . . . . [AMENDED] 2344
710:65-13-361. . . . . [RESERVED] 2344
710:65-13-362. . . . . [NEW] 2344
710:65-13-550. . . . . [AMENDED] 2344

710:65-18-5. . . . . [AMENDED] (E) 129
710:65-18-5. . . . . [AMENDED] 2345
710:65-19-52. . . . . [AMENDED] 2346
710:65-19-72. . . . . [AMENDED] 2347
710:65-19-74. . . . . [AMENDED] 2347
710:65-19-114. . . . . [AMENDED] 2348
710:65-19-156. . . . . [AMENDED] 2348
710:65-19-259. . . . . [AMENDED] 2349
710:65-19-328. . . . . [AMENDED] 2349
710:65-19-329. . . . . [AMENDED] 2349
710:65-19-341. . . . . [AMENDED] 2349
710:65-21-2. . . . . [AMENDED] 2350
710:70-2-3. . . . . [AMENDED] 2351
710:70-2-4. . . . . [AMENDED] 2351
710:70-2-8. . . . . [AMENDED] 2351
710:70-2-9. . . . . [AMENDED] 2351
710:70-2-9.1. . . . . [AMENDED] 2351
710:70-2-11. . . . . [AMENDED] 2352
710:70-2-14. . . . . [NEW] 2352
710:70-5-2. . . . . [AMENDED] 2352
710:70-5-3. . . . . [AMENDED] 2352
710:70-5-4. . . . . [AMENDED] 2352
710:70-5-6. . . . . [AMENDED] 2353
710:70-5-8. . . . . [AMENDED] 2353
710:70-5-9. . . . . [AMENDED] 2353
710:70-5-10. . . . . [AMENDED] 2353
710:70-5-13. . . . . [AMENDED] 2354
710:70-5-14. . . . . [NEW] 2354
710:70-7-4. . . . . [AMENDED] 2354
710:70-7-5. . . . . [AMENDED] 2354
710:70-7-7. . . . . [REVOKED] 2354
710:70-7-8. . . . . [AMENDED] 2355
710:70-7-9. . . . . [AMENDED] 2355
710:70-7-10. . . . . [NEW] (E) 647
710:70-7-10. . . . . [NEW] 2356
710:85-1-8. . . . . [AMENDED] 2358
710:85-5-9. . . . . [AMENDED] 2358
710:85-11-1. . . . . [NEW] 2359
710:85-11-2. . . . . [NEW] 2359
710:85-11-3. . . . . [NEW] 2359
710:85-11-4. . . . . [NEW] 2359
710:85-11-5. . . . . [NEW] 2359
710:85-11-6. . . . . [NEW] 2359
710:85-11-7. . . . . [NEW] 2359
710:85-11-8. . . . . [NEW] 2360
710:85-11-9. . . . . [NEW] 2360
710:85-11-10. . . . . [NEW] 2360
710:90-3-4. . . . . [AMENDED] 2360
710:95-15-1. . . . . [NEW] 2362
710:95-15-2. . . . . [NEW] 2362
710:95-15-3. . . . . [NEW] 2362
710:95-15-4. . . . . [NEW] 2363
710:95-15-5. . . . . [NEW] 2363
710:95-15-6. . . . . [NEW] 2363
712:10-5-1. . . . . [AMENDED] 1613
712:10-5-2. . . . . [AMENDED] 1621
712:10-5-3. . . . . [AMENDED] 1622
712:10-5-4. . . . . [AMENDED] 1624
712:10-7-1. . . . . [AMENDED] 1626
712:10-9-1. . . . . [AMENDED] 1626
712:10-11-1. . . . . [AMENDED] 1627
712:10, App. A. . . . . [REVOKED] 1629
712:10, App. A. . . . . [NEW] 1629
715:10-13-1. . . . . [AMENDED] 1283
715:10-13-5. . . . . [AMENDED] 1283
715:10-17-7. . . . . [AMENDED] 1283
715:10-17-12. . . . . [AMENDED] 1283
715:10-19-1. . . . . [AMENDED] (E) 131
715:10-19-1. . . . . [AMENDED] 1284
715:10-19-2. . . . . [AMENDED] (E) 132
715:10-19-2. . . . . [AMENDED] 1284
715:10-19-3. . . . . [AMENDED] (E) 132
715:10-19-3. . . . . [AMENDED] 1284
715:10-19-4. . . . . [AMENDED] (E) 132
715:10-19-4. . . . . [AMENDED] 1285
715:10-19-5. . . . . [AMENDED] (E) 133
715:10-19-5. . . . . [AMENDED] 1285
715:10-19-7. . . . . [AMENDED] (E) 135
715:10-19-7. . . . . [AMENDED] 1287
715:10-19-8. . . . . [AMENDED] (E) 135
715:10-19-8. . . . . [AMENDED] 1287
715:10-19-9. . . . . [AMENDED] (E) 137
715:10-19-9. . . . . [AMENDED] 1290
715:10-19-11. . . . . [AMENDED] (E) 138
715:10-19-11. . . . . [AMENDED] 1290
715:10-19-12. . . . . [AMENDED] (E) 138
715:10-19-12. . . . . [AMENDED] 1291
715:10-19-13. . . . . [AMENDED] (E) 139
715:10-19-13. . . . . [AMENDED] 1291
715:10-21-1. . . . . [REVOKED] 1291
715:10-21-2. . . . . [REVOKED] 1291
723:1-1-1. . . . . [NEW] 1970
723:1-1-2. . . . . [NEW] 1970
723:1-1-3. . . . . [NEW] 1970
723:1-1-4. . . . . [NEW] 1970
723:1-1-5. . . . . [NEW] 1970
723:1-1-6. . . . . [NEW] 1971
723:1-1-7. . . . . [NEW] 1971
723:1-1-8. . . . . [NEW] 1971
723:10-1-1. . . . . [NEW] 1972
723:10-1-2. . . . . [NEW] 1972
723:10-1-3. . . . . [NEW] 1972
723:10-1-4. . . . . [NEW] 1972
723:10-1-5. . . . . [NEW] 1972
723:10-1-6. . . . . [NEW] 1972
723:10-1-7. . . . . [NEW] 1972
723:10-1-8. . . . . [NEW] 1973
723:10-1-9. . . . . [NEW] 1973
723:10-1-10. . . . . [NEW] 1973
725:15-29-1. . . . . [REVOKED] 2585
725:15-29-2. . . . . [REVOKED] 2585
725:15-29-3. . . . . [REVOKED] 2585
725:15-29-4. . . . . [REVOKED] 2585
725:15-29-10. . . . . [REVOKED] 2585
725:15-29-11. . . . . [AMENDED] 2585
725:15-29-20. . . . . [REVOKED] 2585
725:15-29-21. . . . . [REVOKED] 2585
725:15-29-30. . . . . [AMENDED] 2586
725:15-29-32. . . . . [AMENDED] 2586
725:30-2-3. . . . . [AMENDED] 2587
725:30-2-4. . . . . [AMENDED] 2587
725:30-2-6. . . . . [AMENDED] 2589
725:30-2-7. . . . . [AMENDED] 2589
725:30-2-8. . . . . [AMENDED] 2589
725:30-4-1. . . . . [AMENDED] 2590
725:30-4-4. . . . . [AMENDED] 2590
725:30-4-6. . . . . [AMENDED] 2590
725:30-4-8. . . . . [AMENDED] 2591
725:30-4-10. . . . . [AMENDED] 2591
725:30-4-12. . . . . [AMENDED] 2591
725:30-4-13. . . . . [AMENDED] 2591
725:30-4-18. . . . . [AMENDED] 2592
725:30-4-20. . . . . [AMENDED] 2592
725:30-4-25. . . . . [AMENDED] 2592

725:30-6-1. . . . . [AMENDED] 2592
725:30-8-1. . . . . [AMENDED] 2593
725:30-8-3. . . . . [AMENDED] 2593
725:30-8-4. . . . . [AMENDED] 2594
725:30-12-1. . . . . [AMENDED] 2594
725:30-12-3. . . . . [AMENDED] 2594
725:30-12-4. . . . . [AMENDED] 2595
725:30-12-5. . . . . [AMENDED] 2596
725:30-18-3. . . . . [AMENDED] 2597
725:30-20-2. . . . . [AMENDED] 2599
725:30-22-2. . . . . [AMENDED] 2599
725:30-22-8. . . . . [AMENDED] 2600
725:30-26-14. . . . . [AMENDED] 2600
725:30-29-6. . . . . [AMENDED] 2601
725:35-1-1. . . . . [AMENDED] 2601
725:35-1-2. . . . . [AMENDED] 2601
725:35-1-3. . . . . [AMENDED] 2602
725:35-1-5. . . . . [AMENDED] 2605
730:30-9-16. . . . . [NEW] 1973
730:30, App. B. . . . . [REVOKED] 1976
730:30, App. E. . . . . [NEW] 1977
730:35-19-1. . . . . [AMENDED] 1978
730:35-19-2. . . . . [AMENDED] 1978
730:35-19-3. . . . . [AMENDED] 1978
730:35-19-6. . . . . [AMENDED] 1979
730:35-19-7. . . . . [AMENDED] 1979
730:35, App. A. . . . . [REVOKED] 1980
730:35, App. A. . . . . [NEW] 1980
730:35, App. B. . . . . [REVOKED] 1981
730:35, App. B. . . . . [NEW] 1981
730:35, App. C. . . . . [REVOKED] 1982
730:35, App. C. . . . . [NEW] 1982
730:35, App. D. . . . . [REVOKED] 1983
730:35, App. D. . . . . [NEW] 1983
730:35, App. E. . . . . [REVOKED] 1984
730:35, App. E. . . . . [NEW] 1984
730:35, App. F. . . . . [REVOKED] 1985
730:35, App. F. . . . . [NEW] 1985
748:1-1-1. . . . . [NEW] (E) 461
748:1-1-1. . . . . [NEW] 2363
748:1-1-2. . . . . [NEW] (E) 461
748:1-1-2. . . . . [NEW] 2364
748:1-1-3. . . . . [NEW] (E) 461
748:1-1-3. . . . . [NEW] 2364
748:1-1-4. . . . . [NEW] (E) 461
748:1-1-4. . . . . [NEW] 2364
748:3-1-1. . . . . [NEW] (E) 665
748:3-1-1. . . . . [NEW] 2364
748:3-1-2. . . . . [NEW] (E) 665
748:3-1-2. . . . . [NEW] 2365
748:5-1-1. . . . . [NEW] (E) 666
748:5-1-1. . . . . [NEW] 2366
748:5-3-1. . . . . [NEW] (E) 667
748:5-3-1. . . . . [NEW] 2366
748:7-1-1. . . . . [NEW] 2367
748:7-1-2. . . . . [NEW] 2367
748:7-1-3. . . . . [NEW] 2367
748:7-1-4. . . . . [NEW] 2367
748:7-1-5. . . . . [NEW] 2367
748:7-1-6. . . . . [NEW] 2367
748:7-1-7. . . . . [NEW] 2367
748:7-1-8. . . . . [NEW] 2367
748:7-3-1. . . . . [NEW] 2367
748:7-5-1. . . . . [NEW] 2367
748:7-7-1. . . . . [NEW] 2367
748:7-7-2. . . . . [NEW] 2367
748:7-7-3. . . . . [NEW] 2368
748:7-7-4. . . . . [NEW] 2368
748:10-1-1. . . . . [NEW] 2368
748:10-1-2. . . . . [NEW] 2369
748:10-1-3. . . . . [NEW] 2369
748:10-1-4. . . . . [NEW] 2369
748:15-1-1. . . . . [NEW] 2369
748:15-1-2. . . . . [NEW] 2369
748:15-1-3. . . . . [NEW] 2370
748:15-1-4. . . . . [NEW] 2370
748:15-1-5. . . . . [NEW] 2370
765:37-6-1. . . . . [NEW] (E) 139
765:37-6-1. . . . . [NEW] 2606
765:37-7-1. . . . . [AMENDED] (E) 140
765:37-7-1. . . . . [AMENDED] 2606
765:37-7-2. . . . . [AMENDED] (E) 140
765:37-7-2. . . . . [AMENDED] 2607
775:10-3-12. . . . . [AMENDED] 1053
775:10-8-2. . . . . [AMENDED] 1054
775:10-8-3. . . . . [AMENDED] 1055
775:10-8-4. . . . . [AMENDED] 1056
775:10-8-5. . . . . [AMENDED] 1056
775:10-8-6. . . . . [AMENDED] 1057
775:10-8-7. . . . . [AMENDED] 1057
775:10-8-10. . . . . [AMENDED] 1058
775:10-8-11. . . . . [AMENDED] 1058
775:10-8-12. . . . . [AMENDED] 1059
775:10-8-14. . . . . [AMENDED] 1059
775:10-8-15. . . . . [AMENDED] 1059
775:10-8-16. . . . . [AMENDED] 1061
775:10-8-17. . . . . [AMENDED] 1061
775:10-8-21. . . . . [AMENDED] 1062
775:10-8-24. . . . . [AMENDED] 1062
775:10-8-25. . . . . [AMENDED] 1062
775:10-8-26. . . . . [AMENDED] 1063
775:10-8-27. . . . . [AMENDED] 1063
775:10-8-28. . . . . [AMENDED] 1063
775:10-8-29. . . . . [AMENDED] 1063
775:10-8-30. . . . . [AMENDED] 1064
775:10-8-32. . . . . [REVOKED] 1064
775:10-8-33. . . . . [REVOKED] 1064
775:10-8-34. . . . . [REVOKED] 1065
775:30-1-1. . . . . [AMENDED] 1066
780:10-1-1. . . . . [AMENDED] 1986
780:10-3-1. . . . . [AMENDED] 1986
780:10-3-2. . . . . [AMENDED] 1986
780:10-3-3. . . . . [AMENDED] 1987
780:10-3-8. . . . . [AMENDED] 1988
780:10-5-4. . . . . [AMENDED] 1988
780:10-7-3. . . . . [AMENDED] 1989
780:10-9-2. . . . . [AMENDED] 1991
780:15-3-1. . . . . [AMENDED] 1992
780:15-3-2. . . . . [AMENDED] 1993
780:15-3-3. . . . . [AMENDED] 1998
780:15-3-4. . . . . [AMENDED] 1998
780:15-3-6. . . . . [AMENDED] 2000
780:15-3-7. . . . . [AMENDED] 2005
780:15-3-8. . . . . [AMENDED] 2008
780:20-1-1.1. . . . . [NEW] 2008
780:20-1-2. . . . . [AMENDED] 2009
780:20-3-2. . . . . [AMENDED] 2009
780:20-3-3. . . . . [AMENDED] 2015
780:20-3-4. . . . . [AMENDED] 2015
780:20-3-5. . . . . [AMENDED] 2016
785:5-1-6. . . . . [AMENDED] 1293
785:5-1-9. . . . . [AMENDED] 1293
785:5-1-10. . . . . [AMENDED] 1293
785:5-1-11. . . . . [AMENDED] 1294

785:5-1-14. . . . . [AMENDED] 1294
785:20-1-6. . . . . [AMENDED] 1295
785:20-3-2. . . . . [AMENDED] 1295
785:20, App. A. . . . . [REVOKED] 1296
785:20, App. A. . . . . [NEW] 1296
785:25-1-2. . . . . [AMENDED] 1300
785:25-1-4. . . . . [AMENDED] 1301
785:25-3-3. . . . . [AMENDED] 1301
785:25-3-5. . . . . [AMENDED] 1302
785:25-3-10. . . . . [AMENDED] 1302
785:25-5-3. . . . . [AMENDED] 1302
785:25-5-5. . . . . [AMENDED] 1303
785:25-5-6. . . . . [AMENDED] 1303
785:25-5-7. . . . . [AMENDED] 1303
785:25-7-5. . . . . [AMENDED] 1304
785:25-7-7. . . . . [AMENDED] 1304
785:25-9-1. . . . . [AMENDED] 1304
785:25-9-9. . . . . [NEW] 1304
785:25-9-10. . . . . [NEW] 1305
785:25-9-11. . . . . [NEW] 1305
785:30-1-4. . . . . [AMENDED] 1306
785:30-3-6. . . . . [AMENDED] 1306
785:30, App. A. . . . . [REVOKED] 1308
785:30, App. A. . . . . [NEW] 1308
785:35-1-2. . . . . [AMENDED] 1313
785:35-3-2. . . . . [AMENDED] 1315
785:35-7-1. . . . . [AMENDED] 1315
785:35-7-2. . . . . [AMENDED] 1318
785:35-11-2. . . . . [AMENDED] 1320
785:45-1-2. . . . . [AMENDED] 2018
785:45-5-3. . . . . [AMENDED] 2021
785:45-5-19. . . . . [AMENDED] 2021
785:45, App. E. . . . . [REVOKED] 2023
785:45, App. E. . . . . [NEW] 2023
785:45, App. G. . . . . [REVOKED] 2035
785:45, App. G. . . . . [NEW] 2035
785:45, App. H. . . . . [REVOKED] 2041
785:45, App. H. . . . . [NEW] 2041
785:50-8-6. . . . . [AMENDED] 1322
785:50-9-9. . . . . [AMENDED] 1323
785:50-9-23. . . . . [AMENDED] 1325
785:50-9-35. . . . . [AMENDED] 1328
785:50-9-45. . . . . [AMENDED] 1329
785:50-9-60. . . . . [AMENDED] 1330
785:50-9-61. . . . . [AMENDED] 1333
785:50-9-62. . . . . [AMENDED] 1335
800:1-11-1. . . . . [AMENDED] 2050
800:1-19-1. . . . . [AMENDED] 2051
800:10-1-4. . . . . [AMENDED] 2052
800:10-1-5. . . . . [AMENDED] (E) 534
800:10-1-5. . . . . [AMENDED] 2053
800:10-3-5. . . . . [AMENDED] (E) 535
800:10-3-5. . . . . [AMENDED] 2054
800:10-5-4. . . . . [AMENDED] (E) 539
800:10-5-4. . . . . [AMENDED] 2058
800:15-13-1. . . . . [NEW] 2058
800:15-13-2. . . . . [NEW] 2059
800:20-1-2. . . . . [AMENDED] (E) 539
800:20-1-2. . . . . [AMENDED] 2059
800:25-3-2. . . . . [AMENDED] 2061
800:25-3-3. . . . . [AMENDED] 2062
800:25-7-3. . . . . [AMENDED] 2063
800:25-7-19. . . . . [AMENDED] 2063
800:25-7-50. . . . . [AMENDED] 2064
800:25-7-55. . . . . [AMENDED] 2064
800:25-7-57. . . . . [AMENDED] 2064
800:25-7-60. . . . . [AMENDED] 2065
800:25-7-87.1. . . . . [NEW] 2065
800:25-7-92. . . . . [AMENDED] 2065
800:25-7-94.4. . . . . [AMENDED] 2066
800:25-7-105.5. . . . . [AMENDED] 2066
800:25-7-140. . . . . [AMENDED] 2066
800:30-1-4. . . . . [AMENDED] 2067
800:30-1-8. . . . . [AMENDED] 2068

Agency/Title Index

[Assigned as of 7-15-10]

Agency	Title
Oklahoma **ABSTRACTORS** Board	5
Oklahoma **ACCOUNTANCY** Board	10
State **ACCREDITING** Agency	15
AD Valorem Task Force *(abolished 7-1-93)*	20
Oklahoma **AERONAUTICS** Commission	25
Board of Regents for the Oklahoma **AGRICULTURAL** and Mechanical Colleges *(exempted 11-1-98)*	30
Oklahoma Department of **AGRICULTURE**, Food, and Forestry	35
Oklahoma Board of Licensed **ALCOHOL** and Drug Counselors	38
Board of Tests for **ALCOHOL** and Drug Influence	40
ALCOHOLIC Beverage Laws Enforcement Commission	45
ANATOMICAL Board of the State of Oklahoma	50
Board of Governors of the Licensed **ARCHITECTS,** Landscape Architects and Registered Interior Designers of Oklahoma (*Formerly*: Board of Governors of the Licensed **ARCHITECTS** and Landscape Architects of Oklahoma; and Board of Governors of the Licensed **ARCHITECTS,** Landscape Architects and Interior Designers of Oklahoma	55
ARCHIVES and Records Commission	60
Board of Trustees for the **ARDMORE** Higher Education Program *(exempted 11-1-98)*	65
Oklahoma **ARTS** Council	70
Oklahoma State **ATHLETIC** Commission (*Formerly*: Oklahoma Professional **BOXING** Commission) - *See* Title 92	
ATTORNEY General	75
State **AUDITOR** and Inspector	80
State **BANKING** Department	85
Oklahoma State Employees **BENEFITS** Council	87
Council of **BOND** Oversight	90
Oklahoma State **ATHLETIC** Commission (*Formerly*: Oklahoma Professional **BOXING** Commission)	92
State **BURIAL** Board *(abolished 7-1-92)*	95
[RESERVED]	100
Oklahoma **CAPITAL** Investment Board	105
Oklahoma **CAPITOL** Improvement Authority	110
State **CAPITOL** Preservation Commission	115
CAPITOL-MEDICAL Center Improvement and Zoning Commission	120
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education) - See Title 780	
Board of Regents of **CARL** Albert State College *(exempted 11-1-98)*	125
Department of **CENTRAL** Services (*Formerly:* Office of **PUBLIC** Affairs) - *See* Title 580	
CEREBRAL Palsy Commission	130
Commission on **CHILDREN** and Youth	135
Board of **CHIROPRACTIC** Examiners	140
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management)	145
Oklahoma Department of **COMMERCE**	150
COMMUNITY Hospitals Authority	152
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund) - *See* Title 370	
Oklahoma **CONSERVATION** Commission	155
CONSTRUCTION Industries Board	158
Department of **CONSUMER** Credit	160
CORPORATION Commission	165
Department of **CORRECTIONS**	170
State Board of **COSMETOLOGY**	175
Oklahoma State **CREDIT** Union Board	180
CRIME Victims Compensation Board	185
Joint **CRIMINAL** Justice System Task Force Committee	190
Board of **DENTISTRY**	195
Oklahoma **DEVELOPMENT** Finance Authority	200
Office of **DISABILITY** Concerns (*Formerly:* Office of **HANDICAPPED** Concerns) - *See* Title 305	
Board of Regents of **EASTERN** Oklahoma State College *(exempted 11-1-98)*	205
EDGE Fund Policy Board	208
State Department of **EDUCATION**	210
EDUCATION Oversight Board	215
Oklahoma **EDUCATIONAL** Television Authority	220
[RESERVED]	225
State **ELECTION** Board	230
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of **EMBALMERS** and Funeral Directors)	235
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management) - *See* Title 145	
Oklahoma **EMPLOYMENT** Security Commission	240
Oklahoma **ENERGY** Resources Board	243
State Board of Licensure for Professional **ENGINEERS** and Land Surveyors (***Formerly:*** State Board of Registration for Professional **ENGINEERS** and Land Surveyors)	245
Board of Trustees for the **ENID** Higher Education Program *(exempted 11-1-98)*	250
Department of **ENVIRONMENTAL** Quality	252
State Board of **EQUALIZATION**	255
ETHICS Commission *(Title revoked)*	257
ETHICS Commission	258
Office of State **FINANCE**	260
State **FIRE** Marshal Commission	265
Oklahoma Council on **FIREFIGHTER** Training	268
Oklahoma **FIREFIGHTERS** Pension and Retirement System	270
[RESERVED]	275
FORENSIC Review Board	277
State Board of Registration for **FORESTERS**	280
FOSTER Care Review Advisory Board	285
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of Embalmers and Funeral Directors) - *See* Title 235	
Oklahoma **FUTURES**	290
GOVERNOR (*See also* Title 1, Executive Orders)	295
GRAND River Dam Authority	300
Group Self-Insurance Association **GUARANTY** Fund Board	302
Individual Self-Insured **GUARANTY** Fund Board	303
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**)	304
Office of **DISABILITY** Concerns (*Formerly:* Office of **HANDICAPPED** Concerns)	305
Oklahoma State Department of **HEALTH**	310
Oklahoma Basic **HEALTH** Benefits Board *(abolished 11-1-97)*	315
Oklahoma **HEALTH** Care Authority	317
HIGHWAY Construction Materials Technician Certification Board	318
Oklahoma **HISTORICAL** Society	320
Oklahoma **HORSE** Racing Commission	325
Oklahoma **HOUSING** Finance Agency	330
Oklahoma **HUMAN** Rights Commission	335
Department of **HUMAN** Services	340
Committee for **INCENTIVE** Awards for State Employees	345
Oklahoma **INDIAN** Affairs Commission	350
Oklahoma **INDIGENT** Defense System	352
Oklahoma **INDUSTRIAL** Finance Authority	355
INJURY Review Board	357
Oklahoma State and Education Employees Group **INSURANCE** Board	360
INSURANCE Department	365
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund)	370
Oklahoma State Bureau of **INVESTIGATION**	375
Council on **JUDICIAL** Complaints	376
Office of **JUVENILE** Affairs	377
Department of **LABOR**	380
Department of the Commissioners of the **LAND** Office	385
Council on **LAW** Enforcement Education and Training	390
Oklahoma **LAW** Enforcement Retirement System	395
Board on **LEGISLATIVE** Compensation	400

Agency	Title
Oklahoma Department of **LIBRARIES**	405
LIEUTENANT Governor	410
Oklahoma **LINKED** Deposit Review Board	415
Oklahoma **LIQUEFIED** Petroleum Gas Board	420
Oklahoma **LIQUEFIED** Petroleum Gas Research, Marketing and Safety Commission	422
LITERACY Initiatives Commission	425
LONG-RANGE Capital Planning Commission	428
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators) - *See* Title 490	
LOTTERY Commission, Oklahoma	429
Board of Trustees for the **MCCURTAIN** County Higher Education Program *(exempted 11-1-98)*	430
Commission on **MARGINALLY** Producing Oil and Gas Wells	432
State Board of **MEDICAL** Licensure and Supervision	435
MEDICAL Technology and Research Authority of Oklahoma	440
Board of **MEDICOLEGAL** Investigations	445
Department of **MENTAL** Health and Substance Abuse Services	450
MERIT Protection Commission	455
MILITARY Planning Commission, Oklahoma Strategic	457
Department of **MINES**	460
Oklahoma **MOTOR** Vehicle Commission	465
Board of Regents of **MURRAY** State College *(exempted 11-1-98)*	470
Oklahoma State Bureau of **NARCOTICS** and Dangerous Drugs Control	475
Board of Regents of **NORTHERN** Oklahoma College *(exempted 11-1-98)*	480
Oklahoma Board of **NURSING**	485
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators)	490
Board of Regents of **OKLAHOMA** City Community College *(exempted 11-1-98)*	495
Board of Regents of **OKLAHOMA** Colleges *(exempted 11-1-98)*	500
Board of Examiners in **OPTOMETRY**	505
State Board of **OSTEOPATHIC** Examiners	510
PARDON and Parole Board	515
Oklahoma **PEANUT** Commission	520
Oklahoma State **PENSION** Commission	525
State Board of Examiners of **PERFUSIONISTS**	527
Office of **PERSONNEL** Management	530
Oklahoma State Board of **PHARMACY**	535
PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates *(abolished 7-1-06; see also Title 365)*	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
Oklahoma **PUBLIC** Employees Retirement System	590
Department of **PUBLIC** Safety	595
REAL Estate Appraiser Board	600
Oklahoma **REAL** Estate Commission	605
Board of Regents of **REDLANDS** Community College *(exempted 11-1-98)*	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College *(exempted 11-1-98)*	615
Board of Regents of **ROSE** State College *(exempted 11-1-98)*	620
Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College *(exempted 11-1-98)*	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH-LANGUAGE** Pathology and Audiology (*Formerly:* Board of Examiners for **SPEECH** Pathology and Audiology)	690
STATE Employee Charitable Contributions, Oversight Committee for (*Formerly*: **STATE** Agency Review Committee)	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
TOBACCO Settlement Endowment Trust Fund	723
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority (*Name changed to* Oklahoma **TURNPIKE** Authority *11-1-05*) - *See* Title 731	
Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority) - *See* also Title 745	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College *(exempted 11-1-98)*	740
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

Notices of Rulemaking Intent

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

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

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

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 5. FEES

[OAR Docket #10-1059]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

160:5-1-2 [AMENDED]

SUMMARY:

The proposed emergency rule amendments establish all fees authorized by the Uniform Consumer Credit Code, the Credit Services Organization Act, the Oklahoma Pawnshop Act, the Precious Metal and Gem Dealer Licensing Act, the Oklahoma Rental-Purchase Act, the Oklahoma Health Spa Act, the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act and the Deferred Deposit Lending Act. Prior to July 1, 2011, the Commission on Consumer Credit is required to establish authorized fees collected by the Department of Consumer Credit by emergency rule in accordance with Okla. Sess. Laws ch. 415, § 7.

The proposed emergency rule amendments increase existing annual license fees by One Hundred Dollars ($100.00). The proposed emergency rule amendments increase existing examination and investigation fees by Two Hundred Dollars ($200.00).

The proposed emergency rule amendments establish late filing, license or registration renewal fees for supervised lenders, persons filing notification, credit service organizations, pawnbrokers, precious metal dealers and employees, health spas, mortgage brokers, mortgage loan originators and deferred deposit lenders at Ten Dollars ($10.00) per day up to thirty (30) days for each day a license, notification or registration renewal fee is past due. The proposed emergency rule amendments maintain the existing Fifty Dollar ($50.00) late annual report fee for supervised lenders and deferred deposit lenders.

The proposed emergency rule amendments also establish the following new fees (fees not existing prior to July 1, 2010): Ten Dollar ($10.00) per day late filing, license or registration renewal fee for persons required to file notification with the Administrator in accordance with the Uniform Consumer Credit Code, credit service organizations, pawnbrokers, health spas and deferred deposit lenders; Twenty-Five Dollar ($25.00) fee for amended and duplicate licenses or registrations for credit service organizations, pawnbrokers, precious metal and gem dealers and employees, rental purchase lessors, health spas and deferred deposit lenders; Twenty-Five Dollar ($25.00) fee for returned checks due to insufficient bank account funds for credit service organizations, pawnbrokers, precious metal and gem dealers and employees, rental purchase lessors, health spas and deferred deposit lenders; One Hundred Dollar ($100.00) contract reviewal fee for rental purchase lessors and health spas; Two Hundred Dollar ($200.00) application fee for mortgage loan originators; Fifty Dollar ($50.00) examination fee for mortgage loan originators and a Two Hundred Dollar ($200.00) investigation fee for rental purchase lessors and health spas.

The proposed emergency rule amendments also decrease the fee paid by mortgage brokers and mortgage loan originators for deposit in the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund. The existing fee of Fifty Dollars ($50.00) will be decreased to Ten Dollars ($10.00).

AUTHORITY:

Commission on Consumer Credit, Okla. Sess. Laws ch. 415, § 7; Enrolled House Bill number 2831, section 7.

COMMENT PERIOD:

Persons may submit written and oral comments to Roy John Martin, General Counsel, Oklahoma Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105 or via email at rmartin@okdocc.ok.gov during the period July 15, 2010 through August 11, 2010.

PUBLIC HEARING:

A public hearing regarding the proposed emergency rules will be held during a regular meeting of the Commission on Consumer Credit on August 11, 2010 at 10:00 a.m. The location of the meeting is the Oklahoma Department of Consumer Credit conference room, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed emergency rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed emergency rules. Business entities may submit this information in writing to Roy John Martin at the above address during the period July 15, 2010 to August 11, 2010.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the office of the Department of Consumer Credit at 4545 N. Lincoln Boulevard, Suite 164, Oklahoma 73105 or on the Department of Consumer Credit Internet website at www.ok.gov/okdocc. Copies may also be obtained by written

request to the attention of Roy John Martin, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105 or via email at rmartin@okdocc.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §253(B), a rule impact state is being prepared and will be available for review on and after July 30, 2010 at the above address for the Department of Consumer Credit.

CONTACT PERSON:

Roy John Martin, General Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105, rmartin@okdocc.ok.gov, 405-522-4665.

[OAR Docket #10-1059; filed 6-23-10]

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

[OAR Docket #10-1070]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division Tiers and Time Lines

252:4-7-61. Brownfields applications - Tier I [REVOKED]

252:4-7-62. Brownfields applications - Tier II [REVOKED]

252:4-7-63. Brownfields applications - Tier III [REVOKED

SUMMARY:

In 2009, the Oklahoma legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act to better streamline the Brownfields program. One of the amendments clarified that a Certificate of Completion and a Certificate of No Action Necessary were not "permits" as defined in 27A O.S. § 2-14-103. Therefore, it is no longer necessary for the Brownfields program to conform to the permitting tier hierarchy.

This rule revocation process is progressing in tandem with the rulemaking for the new Chapter 221 which includes rules for public involvement in the Brownfields process. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rule revocation to the contact person from July 15, 2010, through August 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by the proposed rule revocation provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule revocation.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rule revocation may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.us or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.us or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1070; filed 6-25-10]

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

[OAR Docket #10-1071]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division Tiers and Time Lines

252:4-7-61. Brownfields applications - Tier I [REVOKED]

252:4-7-62. Brownfields applications - Tier II [REVOKED]

252:4-7-63. Brownfields applications - Tier III [REVOKED]

SUMMARY:

In 2009, the Oklahoma legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act to better streamline the Brownfields program. One of the amendments clarified that a Certificate of Completion and a Certificate of No Action Necessary were not "permits" as defined in 27A O.S. § 2-14-103. Therefore, it is no longer necessary for the Brownfields program to conform to the permitting tier hierarchy.

This rule revocation process is progressing in tandem with the rulemaking for the new Chapter 221 which includes rules for public involvement in the Brownfields process. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then resheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality Board cancelled its June 2010 meeting where the proposed rules were to have been heard.

Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances.

The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

AUTHORITY:

Environmental Quality Board; 27A O.S.§§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed emergency rule revocation to the contact person from July 15, 2010, through August 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by the proposed emergency rule revocation provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule revocation.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed emergency rule revocation may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1071; filed 6-25-10]

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

[OAR Docket #10-1076]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Incinerators

Part 4. Biomedical Waste Incinerators [NEW]

252:100-17-8. Applicability [NEW]

252:100-17-9. Definitions [NEW]
252:100-17-10. Design and operation [NEW]
252:100-17-11. Emission limits [NEW]

SUMMARY:

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

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S.§ 2-2-101; Air Quality Advisory Council powers and duties, 27A O.S.§ 2-2-201; and Oklahoma Clean Air Act, 27A O.S.§§ 2-5-101 through -117.

COMMENT PERIOD:

April 21, 2010 through June 15, 2010. (Comment period was completed pursuant to Notice of Rulemaking Intent previously published at 27 Ok Reg 673)

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 24, 2010, at the Redlands Community College Conference Center, 1300 S. Country Club Road, El Reno, OK 73036.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

The proposed rules are available for review from July 23, 2010 through August 24, 2010 on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

RULE IMPACT STATEMENT:

The rule impact statement is available for review after July 29, 2010 on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please send written comments on the proposed rule changes to Ms. Bradley at cheryl.bradley@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405)702-4101.

ADDITIONAL INFORMATION:

This Notice reflects a date and location change for the hearing of these rules by the Environmental Quality Board.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-7100. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #10-1076; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 220. BROWNFIELDS [REVOKED]

[OAR Docket #10-1072]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

Chapter 220. Brownfields [REVOKED]

SUMMARY:

Title 252, Chapter 220 was originally promulgated to implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*, in order to foster voluntary redevelopment and reuse of abandoned, idled or underused industrial or commercial facilities

at which expansion or redevelopment of the real property is complicated by pollution. Subsequently, the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, was amended to provide specific grant programs for Brownfields with specific eligibility requirements and to provide further protections for those persons redeveloping Brownfields sites. Additionally, the Oklahoma legislature amended the state Brownfields law in 2009 to better streamline the Brownfields program.

Therefore, the current Brownfields rules, Chapter 220, became inconsistent with both federal and state law. The DEQ proposes to revoke Chapter 220 and adopt a new Chapter to cover much of the same content but in a more streamlined context and format. Additionally, the Revolving Loan Fund rules were rewritten to be in compliance with the federal law.

This rule revocation process is progressing in tandem with the rulemaking process of the new Chapter 221. For further information, refer to the Notice of Rulemaking Intent for Chapter 221.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then resheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality

Board cancelled its June 2010 meeting where the proposed rules were to have been heard.

Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances.

The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule revocation adoption.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act, § 2-15-101 *et seq*.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from July 15, 2010, through August 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A copy of the Rule Impact Statement may be obtained from the contact person, may viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1072; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 220. BROWNFIELDS [REVOKED]

[OAR Docket #10-1073]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 220. Brownfields [REVOKED]

SUMMARY:

Title 252, Chapter 220 was originally promulgated to implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S.§ 2-15-101 *et seq.*, in order to foster voluntary redevelopment and reuse of abandoned, idled or underused industrial or commercial facilities at which expansion or redevelopment of the real property is complicated by pollution. Subsequently, the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.§ 9601 *et seq*., was amended to provide specific grant programs for Brownfields with specific eligibility requirements and to provide further protections for those persons redeveloping Brownfields sites. Additionally, the Oklahoma legislature amended the state Brownfields law in 2009 to better streamline the Brownfields program.

Therefore, the current Brownfields rules, Chapter 220, became inconsistent with both federal and state law. The DEQ proposes to revoke Chapter 220 and adopt a new Chapter to cover much of the same content but in a more streamlined context and format. Additionally, the Revolving Loan Fund rules were rewritten to be in compliance with the federal law.

This rule revocation process is progressing in tandem with the rulemaking process of the new Chapter 221. For further

information, refer to the Notice of Rulemaking Intent for Chapter 221.

AUTHORITY:

Environmental Quality Board; 27A O.S.§§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act,§ 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from July 15, 2010, through August 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1073; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS

[OAR Docket #10-1074]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
Subchapter 3. The Brownfield Program [NEW]
Subchapter 5. Verification of Brownfields Projects [NEW]
Subchapter 7. Revolving Loan Funds (RLF) [NEW]

SUMMARY:

The Oklahoma Legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15, effective July 1, 2009. A new chapter of Brownfields rules has been developed to be consistent with the Brownfields law as well as to be compliant with U.S.E.P.A. Brownfields program policies.

The rules in Subchapter 1, General Provisions, include definitions, methodology, transitioning from voluntary cleanup to Brownfields, Superfund and Brownfields, Responsible Parties and other topics.

The Brownfield Program, Subchapter 3, describes the program and its requirements for participation. These rules address eligibility, site characterization, future use, risk evaluation, risk-based cleanup levels, remedial option evaluation, preferred option, approval process, public participation, evaluation of public comments, remediation plans, completion of remedial actions and other topics.

Subchapter 5, Verification of Brownfields Projects, contains the same rules as in Chapter 220. There are two rules, one dealing with applicability and the other with verification of projects. These rules pertain to projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account, 82 O.S. § 1084.1 *et seq* and other state or federal funding sources.

Revolving Loan Funds, Subchapter 7, are funds available to private entities, political subdivisions or units of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use the funds for brownfield cleanup activities. The rules in this subchapter address federal cross-cutting requirements, borrower eligibility, eligible and ineligible fund uses, environmental requirements, project selection criteria, public involvement, special terms and conditions, loan discounts and other topics.

The DEQ proposes to revoke the current chapter of Brownfields rules, OAC 252:220, subsequent to OAC 252:221 being adopted. This rulemaking is progressing in tandem with the rule revocation process of Chapter 220 and three rules in Chapter 4, *i.e.* 252:4-7-61, 62 and 63. For further information, refer to the Notice of Rulemaking Intent for Chapter 220 and the Notice of Rulemaking Intent for Chapter 4.

FINDING OF EMERGENCY:

The Hazardous Waste Management Advisory Council (HWMAC) was unable to hold its meeting originally scheduled for January 28, 2010, and then resheduled for February 8, 2010, due to the two snow and ice storms that moved through the State on those dates. Additionally, the Environmental Quality Board cancelled its June 2010 meeting where the proposed rules were to have been heard.

Because the proposed rules that were to be considered during the January - February 2010 timeframe contain some critical provisions that, once adopted, will allow the DEQ to award ARRA funds for Brownfields projects, the DEQ finds it necessary to offer the proposed rules to the HWMAC as emergency rules at this time. Chapter 221, Subchapter 7, contains proposed rules dealing with the Brownfields Revolving Loan Fund (RLF) which provides low interest loans and subgrants to any private entities, political subdivisions, units of local governments (including municipal and county governments and school districts) and federally recognized Indian tribes for brownfield cleanup activities. The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum, mine-scarred land and controlled substances.

The DEQ has received ARRA stimulus monies for the RLF and must make reasonable progress on making loans and/or subgrants with the funds by October 1, 2010. The new proposed RLF rules must be effective before DEQ can make loans and/or subgrants using the ARRA funds. The DEQ therefore finds that a compelling public interest exists, requiring an emergency rule adoption.

AUTHORITY:

Environmental Quality Board; 27A O.S.§§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act,§ 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed emergency rules to the contact person from July 15, 2010, through August 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed emergency rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed permanent rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed emergency rules may be obtained from the contact person, may viewed on the DEQ web site at www.deq.ok.gov or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1074; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS

[OAR Docket #10-1075]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
Subchapter 3. The Brownfield Program [NEW]
Subchapter 5. Verification of Brownfields Projects [NEW]
Subchapter 7. Revolving Loan Funds (RLF) [NEW]

SUMMARY:

The Oklahoma Legislature amended the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S.§ 2-15, effective July 1, 2009. A new chapter of Brownfield rules has been developed to be consistent with the Brownfields law as well as to be compliant with U.S.E.P.A. Brownfield program policies.

The rules in Subchapter 1, General Provisions, include definitions, methodology, transitioning from voluntary cleanup to Brownfields, Superfund and Brownfields, Responsible Parties and other topics.

The Brownfield Program, Subchapter 3, describes the program and its requirements for participation. These rules address eligibility, site characterization, future use, risk evaluation, risk-based cleanup levels, remedial option

evaluation, preferred option, approval process, public participation, evaluation of public comments, remedation plans, completion of remedial actions and other topics.

Subchapter 5, Verification of Brownfields Projects, contains the same rules as in Chapter 220. There are two rules, one dealing with applicability and the other with verification of projects. These rules pertain to projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account, 82 O.S.§ 1084.1 *et seq* and other state or federal funding sources.

Revolving Loan Funds, Subchapter 7, are funds available to private entities, political subdivisions or units of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use the funds for brownfield cleanup activities. The rules in this subchapter address federal cross-cutting requirements, borrower eligibility, eligible and ineligible fund uses, environmental requirements, project selection criteria, public involvement, special terms and conditions, loan discounts and other topics.

The DEQ proposes to revoke the current chapter of Brownfields rules, OAC 252:220, subsequent to OAC 252:221 being adopted. This rulemaking is progressing in tandem with the rule revocation process of Chapter 220 and three rules in Chapter 4, *i.e.* 252:4-7-61, 62 and 63.. For further information, refer to the Notice of Rulemaking Intent for Chapter 220 and the Notice of Rulemaking Intent for Chapter 4.

AUTHORITY:

Environmental Quality Board; 27A O.S.§§ 2-2-101 and 2-2-201 and Article XV, Oklahoma Brownfields Voluntary Redevelopment Act,§ 2-15-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed permanent rules to the contact person from July 15, 2010, through August, 16, 2010. Oral comments may be made at the meeting of the Environmental Quality Board on August 24, 2010.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on August 24th, 2010, at the Redlands Community College Conference Center, Redlands Community College, 1300 S. Country Club Road, El Reno, OK, 73036..

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed permanent rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed permanent rules.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed permanent rules may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement may be obtained from the contact person, viewed on the DEQ web site at www.deq.ok.gov or reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

CONTACT PERSON:

Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council meeting or the Environmental Quality Board meeting and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #10-1075; filed 6-25-10]

Cancelled Hearings/Comment Periods

If an agency cancels a hearing or comment period announced in a published Notice of Rulemaking Intent, the agency must submit a notice of such cancellation to the Office of Administrative Rules (OAR). The OAR publishes the cancellation notice in the next possible issue of the *Register.*

For additional information on cancelled hearings and comment periods, see OAC 655:10-7-27.

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

[OAR Docket #10-1063]

RULEMAKING ACTION:

Cancelled public hearing relating to a proposed EMERGENCY rulemaking action.

PROPOSED RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division Tiers and Time Lines

252:4-7-61. Brownfields applications - Tier I [REVOKED]

252:4-7-62. Brownfields applications - Tier II [REVOKED]

252:4-7-63. Brownfields applications - Tier III [REVOKED]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent for this action was published at 27 Ok Reg 671.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, El Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, PO Box 1677, Oklahoma City, Oklahoma 73101-1677, email at rita.kottke@deq.ok.gov, phone 405-702-5157 or fax 405-702-5101.

[OAR Docket #10-1063; filed 6-25-10]

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

[OAR Docket #10-1064]

RULEMAKING ACTION:

Cancelled public hearing relating to a proposed PERMANENT rulemaking action.

PROPOSED RULES:

Subchapter 7. Environmental Permit Process

Part 5. Land Protection Division Tiers and Time Lines

252:4-7-61. Brownfields applications - Tier I [REVOKED]

252:4-7-62. Brownfields applications - Tier II [REVOKED]

252:4-7-63. Brownfields applications - Tier III [REVOKED]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent for this action was published at 27 Ok Reg 671.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, El Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, PO Box 1677, Oklahoma City, Oklahoma 73101-1677, email at rita.kottke@deq.ok.gov, phone 405-702-5157 or fax 405-702-5101.

[OAR Docket #10-1064; filed 6-25-10]

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

[OAR Docket #10-1065]

RULEMAKING ACTION:

Cancelled public hearing relating to a proposed PERMANENT rulemaking action

PROPOSED RULES:

Subchapter 17. Incinerators

Part 4. Biomedical Waste Incinerators [NEW]

252:100-17-8. Applicability [NEW]

252:100-17-9. Definitions [NEW]

252:100-17-10. Design and operation [NEW]

252:100-17-11. Emission limits [NEW]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent for this action was published at 27 Ok Reg 673.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, El Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 am. For additional information, please contact Cheryl

E. Bradley, Environmental Programs Manager, email at cheryl.bradley@deq.ok.gov, telephone at 405-702-4100, fax at 405-702-4101.

[OAR Docket #10-1065; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 220. BROWNFIELDS [REVOKED]

[OAR Docket #10-1066]

RULEMAKING ACTION:

Cancelled public hearing relating to a PERMANENT rulemaking action

PROPOSED RULES:

Chapter 220. Brownfields [REVOKED]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent was published at 27 Ok Reg 673.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, EL Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

[OAR Docket #10-1066; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 220. BROWNFIELDS [REVOKED]

[OAR Docket #10-1067]

RULEMAKING ACTION:

Cancelled public hearing relating to a EMERGENCY rulemaking action

PROPOSED RULES:

Chapter 220. Brownfields [REVOKED]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent was published at 27 Ok Reg 673.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, EL Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

[OAR Docket #10-1067; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 221. BROWNFIELDS

[OAR Docket #10-1068]

RULEMAKING ACTION:

Cancelled public hearing relating to a PERMANENT rulemaking action

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
Subchapter 3. The Brownfield Program [NEW]
Subchapter 5. Verification of Brownfields Projects [NEW]
Subchapter 7. Revolving Loan Funds (RLF) [NEW]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent was published at 27 Ok Reg 677.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, EL Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

[OAR Docket #10-1068; filed 6-25-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 221. BROWNFIELDS

[OAR Docket #10-1069]

RULEMAKING ACTION:

Cancelled public hearing relating to a EMERGENCY rulemaking action

PROPOSED RULES:

Subchapter 1. General Provisions [NEW]
Subchapter 3. The Brownfield Program [NEW]
Subchapter 5. Verification of Brownfields Projects [NEW]
Subchapter 7. Revolving Loan Funds (RLF) [NEW]

REGISTER PUBLICATION OF THIS NOTICE:

The Notice of Rulemaking Intent was published at 27 Ok Reg 675.

CANCELLED PUBLIC HEARING:

Before the Environmental Quality Board on June 15, 2010, Redlands Community College, EL Reno, Oklahoma at 9:30 am.

ADDITIONAL INFORMATION:

Another public hearing before the Environmental Quality Board has been scheduled for August 24, 2010 at Redlands Community College, El Reno, Oklahoma at 9:30 a.m. For additional information, please contact Rita Kottke, Land Protection Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at rita.kottke@deq.ok.gov, phone 405-702-5157, or fax 405-702-5101.

[OAR Docket #10-1069; filed 6-25-10]

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 155. OKLAHOMA CONSERVATION COMMISSION
CHAPTER 15. OKLAHOMA'S ABANDONED MINE LAND RECLAMATION PROGRAM

[OAR Docket #10-1055]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

155:15-1-2 [AMENDED]
155:15-1-4 through 155:15-1-6 [AMENDED]
155:15-1-6.1 [NEW]
155:15-1-7 [AMENDED]
155:15-1-7.1 [NEW]
155:15-1-8 through 155:15-1-13 [AMENDED]
155:15-1-14 [REVOKED]
155:15-1-15 through 155:15-1-16 [AMENDED]

GUBERNATORIAL APPROVAL:

March 25, 2010

[OAR Docket #10-1055; filed 6-21-10]

TITLE 155. OKLAHOMA CONSERVATION COMMISSION
CHAPTER 45. CONTROLLED BURN INDEMNITY FUND

[OAR Docket #10-1056]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions [NEW]
155:45-1-1 through 155:45-1-4 [NEW]
Subchapter 3. Pre-Qualifying Application Process [NEW]
155:45-3-1 through 155:45-3-2 [NEW]
Subchapter 5. Claims Process [NEW]
155:45-5-1 through 155:45-5-7 [NEW]

GUBERNATORIAL APPROVAL:

March 25, 2010

[OAR Docket #10-1056; filed 6-21-10]

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 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #10-1052]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 9. Health Access Networks [NEW]
317:25-9-1. through 317:25-9-3. [NEW]
(Reference APA WF # 10-14)
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:
May 13, 2010
Approved by Governor:
June 10, 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 establish provider requirements and billing guidelines for Health Access Networks (HAN's). HAN's are non-profit, administrative entities that work with providers to coordinate and improve the quality of care for SoonerCare members. Effective July 1, 2010, OHCA will initiate a pilot program to pay HAN's a per member per month fee in order to enhance the development of comprehensive medical homes for SoonerCare Choice members. Emergency rules are needed in order to have rules in place by July 1, 2010, the start date for the HAN's pilot project.
ANALYSIS:
Effective July 1, 2010, the Oklahoma Health Care Authority will initiate a pilot program to pay Health Access Networks to coordinate and improve the quality of care for SoonerCare members. Rules are needed to establish provider requirements and billing guidelines for HAN's which are not-for-profit, administrative entities that work with SoonerCare providers to coordinate and improve the quality of care for our members. Contracted HAN's will be paid a $5.00 per member per month fee in order to enhance the development of comprehensive medical homes for SoonerCare Choice 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), WITH A LATER EFFECTIVE DATE OF JULY 1, 2010:

SUBCHAPTER 9. HEALTH ACCESS NETWORKS

317:25-9-1. Purpose

The purpose of this Subchapter is to describe the rules governing the Health Access Networks (HAN's) participating in the statewide SoonerCare program. The rules provide assurances that Health Access Networks will work with providers to coordinate and improve the quality of care for SoonerCare members. The use of Health Access Networks is a limited pilot program with the purpose of enhancing the development of comprehensive medical homes for Oklahoma SoonerCare Choice members.

317:25-9-2. Requirements

(a) HAN's are non-profit, administrative entities that work with providers to coordinate and improve the quality of care for SoonerCare members. The HAN must:

(1) be organized for the purpose of restructuring and improving the access, quality, and continuity of care to SoonerCare members;

(2) offer patients access to all levels of care, including primary, outpatient, specialty, certain ancillary services, and acute inpatient care, within a community or across a broad spectrum of providers across a service region or the State;

(3) submit an application to the OHCA as specified in (c) of this Section;

(4) offer core components of electronic medical records, improved access to specialty care, telemedicine, and expanded quality improvement strategies;

(5) have an organized and systematic quality improvement process, including the identification of measurable performance targets; and

(6) offer care management/care coordination to persons with complex health care needs including:

(A) the co-management of individuals enrolled in OHCA's Health Management Program;

(B) individuals with frequent emergency room utilization;
(C) women enrolled in the Oklahoma Cares Program diagnosed with breast or cervical cancer;
(D) pregnant women enrolled in the High Risk OB Program; and
(E) individuals enrolled in the Pharmacy Lock-In Program; and

(b) Networks must meet at least two of the following:
(1) have a formal affiliation agreement/partnership at the community-level with traditional and non-traditional providers;
(2) have a formal program to promote public health principles, community development, and local educational programs to address the challenges of rural and underserved populations; and
(3) have 501(c)3 or not-for-profit status.

(c) In order to qualify to participate as a SoonerCare contracted HAN's, the network must submit an application to the OHCA that details how the network plans to:
(1) reduce costs associated with the provision of health care services to SoonerCare, uninsured and underinsured individuals;
(2) improve access to, and the availability of, health care services provided to individuals served by the health access network;
(3) enhance the quality and coordination of health care services provided to such individuals through mutually defined quality improvement initiatives;
(4) improve the health status of communities served by the health access network;
(5) reduce health disparities in such communities;
(6) identify all PCPs, specialty providers, and other provider types affiliated with the health access network.

(d) The application to participate as a SoonerCare contracted HAN's will be accepted and approved at the sole discretion of OHCA with implementation initiated after completion of a readiness review by OHCA staff and approval by OHCA's Medical Advisory Taskforce (MAT).

317:25-9-3. Reimbursement

(a) In order to be eligible for payment, HAN's must have on file with OHCA, an approved Provider Agreement. Through this agreement, the HAN assures that OHCA's requirements are met and assures compliance with all applicable Federal and State regulations. These agreements are renewed annually with each provider.

(b) The HAN will be reimbursed a per member per month (PMPM) rate based on the number of member months paid to the PCPs affiliated with the HAN. OHCA reserves the right to limit reimbursement based on availability of funds.

[OAR Docket #10-1052; filed 6-21-10]

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

[OAR Docket #10-1053]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241.1. [AMENDED]
(Reference APA WF # 10-18)
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:
May 13, 2010
Approved by Governor:
June 10, 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 reflect behavioral health assessments and service plan development may only be provided by licensed behavioral health professionals effective July 1, 2010. Policy revisions are needed to clarify services that are permissible under licensed behavioral health providers and certified behavioral health providers. This change ensures compliance with accreditation and certification standards for behavioral health services pursuant to Oklahoma law.
ANALYSIS:
Rules are being revised to reflect behavioral health assessments and service plan development may only be provided by licensed behavioral health professionals. Currently, bachelor level Certified Alcohol and Drug Counselors (CADCs) may perform substance abuse assessments in accordance with their Licensure Act. Due to accreditation standard requirements for Assessments, all outpatient agencies are required to conduct full bio-psycho-social assessments by a licensed Masters level professional. As a result, ODMHSAS and OHCA collaboratively agreed to restrict the realm of behavioral health assessments to licensed behavioral health professionals and disallow the use of CADCs for substance abuse assessments.
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 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in the OHCA BH Provider Billing Manual.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population.** This service is compensable only on behalf of a member who is under a PACT program.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report ,diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP ~~or AODTP for AOD~~. CADCs are permitted to provide Drug and Alcohol assessments through June 30, 2010. Effective July 1, 2010 all assessments must be provided by LBHPs.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.

(D) **Target population and limitations.** This service is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. BH Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of ~~16~~ 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training.

(B) **Qualified professional.** This service is performed by an LBHP ~~or AODTP for AOD~~.

(C) **Time requirements.** Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified professionals.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment.

[OAR Docket #10-1053; filed 6-21-10]

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

[OAR Docket #10-1054]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 103. Qualified Schools As Providers of Health Related Services
317:30-5-1023. [AMENDED]
317:30-5-1027. [AMENDED]
(Reference APA WF # 10-22)
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:
May 13, 2010
Approved by Governor:
June 10, 2010
Effective:
July 15, 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 add a new provider type "Behavior Health School Aide" and service description "Therapeutic Behavioral Services". Currently schools are being allowed to include behavior interventions as a personal care service. This rule change is needed to help better define and separate behavioral interventions that do not appropriately fall within the description of personal care services.
ANALYSIS:
Rules are being revised to add a new provider type and services description for services provided in schools. Therapeutic Behavioral Services will be furnished by a Behavior Health Schools Aide in order to improve a student's ability to function in the community and includes behavioral management, redirection and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills.
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 15, 2010:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH RELATED SERVICES

317:30-5-1023. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults.

(b) **Children.** Payment is made for compensable services rendered by local, regional, and state educational services agencies as defined by IDEA:

(1) **Child health screening examination.** An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination referral is made to the ~~***SoonerCare***~~ SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening.

(2) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.

(3) **Hearing and Hearing Aid evaluation.** Hearing evaluation includes pure tone air, bone and speech audiometry provided by a state licensed audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(4) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(5) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a ~~client's~~ member's ear and providing a finished earmold which is used with the ~~client's~~ member's hearing aid provided by a state licensed audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(6) **Vision Screening.** Vision screening examination must be provided by a state licensed Doctor of Optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). At a minimum, vision services include diagnosis and treatment for defects in vision.

(7) **Speech Language evaluation.** Speech Language evaluation must be provided by state licensed speech language pathologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(8) **Physical Therapy evaluation.** Physical Therapy evaluation must be provided by a state licensed physical therapist.

(9) **Occupational Therapy evaluation.** Occupational Therapy evaluation must be provided by a state licensed occupational therapist.

(10) **Psychological Evaluation and Testing.** Psychological Evaluation and Testing must be provided by state licensed, Board Certified, Psychologist or School Psychologist certified by State Department of Education (SDE).

(11) **Dental Screening Examination.** Screening for dental disease by a state licensed dentist. The child may be referred directly to a dentist for further screening and/or treatment.

(12) **Child guidance treatment encounter.** A child guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an IEP or IFSP and may include the following:

(A) **Hearing and Vision Services.** Hearing and vision services may include provision of habilitation activities, such as auditory training, aural and visual habilitation training, including Braille, and communication management, orientation and mobility, counseling for vision and hearing losses and disorders. Services must be provided by:

(i) state licensed, Master's Degree Audiologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed, Master's Degree Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(iii) state certified Speech Therapist working under the direction of a state licensed Speech Language Pathologist;

(iv) state certified deaf education teacher;

(v) certified orientation and mobility specialists; and

(vi) state certified vision impairment teachers.

(B) **Speech Language Therapy Services.** Speech Language Therapy Services must be provided by a state licensed Speech Language Pathologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate; or

(iv) a Speech Therapy Assistant who has been authorized by the Board of Examiners, working under the direction of a state licensed speech language pathologist. The licensed Speech Language Pathologist may not supervise more that two Speech Therapy assistants, and must be on site.

(C) **Physical Therapy Services.** Physical Therapy Services must be provided by state licensed physical therapist or a Physical Therapy Assistant who has been authorized by the Board of Examiners working under the supervision of a licensed Physical Therapist. The licensed Physical Therapist may not supervise more than three Physical Therapy Assistants.

(D) **Occupational Therapy Services.** Occupational therapy may include provision of services to improve, develop or ~~who~~ restore impaired ability to function independently and must be provided by a state licensed Occupational Therapist or an Occupational Therapy Assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed Occupational Therapist.

(E) **Nursing Services.** Nursing Services may include provision of services to protect the health status of children, correct health problems and assist in removing or modifying health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, administration and monitoring of medication.

(F) **Psychological Services.** Psychological services are planning and managing a program of psychological services, including the provision of counseling for children and parents, consulting on management of severe behavioral and emotional concerns in school and home. All services must be for the direct benefit of the child. Psychological services must be provided by a state licensed Psychologist, or School Psychologist certified by SDE.

(G) **Psychotherapy Counseling Services.** Psychotherapy counseling services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy counseling services must be provided by a state

licensed Social Worker, a state Licensed Professional Counselor, a State licensed Psychologist or School Psychologist certified by the SDE, a State licensed Marriage and Family Therapist or a State licensed Behavioral Practitioner, or under Board supervision to be licensed in one of the above stated areas.

(H) **Assistive Technology.** Assistive technology are the provision of services that help to select a device and assist a student with disability(ies) to use an Assistive technology device including coordination with other therapies and training of child and caregiver. Services must be provided by a:

(i) state licensed, Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed Physical Therapist; or

(iii) state licensed Occupational Therapist.

(13) **Personal Care.** Provision of personal care services allow students with disabilities to safely attend school; includes, but is not limited to assistance with toileting, feeding, positioning, hygiene, and riding school bus to handle medical or physical emergencies. Services must be provided by registered paraprofessionals/assistants who have completed training approved or provided by SDE, or Personal Care Assistants, including Licensed Practical Nurses, who have completed on-the-job training specific to their duties.

(14) **Therapeutic Behavioral Services.** Therapeutic behavioral services is an intervention to modify the non-adaptive behavior necessary to improve the student's ability to function in the community as identified on the plan of care. Medical necessity must be identified and documented through assessment and evaluation. Services encompass behavioral management, redirection, and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills. This service must be provided by a Behavioral Health School Aide (BHSA) who has a high school diploma or equivalent and has successfully completed the paraprofessional training approved by the State Department of Education and a training curriculum in behavioral interventions for Pervasive Developmental Disorders as recognized by OHCA. BHSA must be supervised by a bachelors level individual with a special education certification. BHSA must have CPR and First Aid certification. Six additional hours of related continuing education are required per year.

(~~14~~15) **Immunization.** Immunizations must be coordinated with the Primary Care Physician for those Medicaid eligible children enrolled in ~~***SoonerCare***~~ SoonerCare. An administration fee, only, can be paid for immunizations provided by the schools.

(c) **Individuals eligible for Part B of Medicare.** EPSDT school health related services provided to Medicare eligible recipients are billed directly to the fiscal agent.

317:30-5-1027. Billing

The following units are billed on the appropriate claim form:

(1) Service: Child Health Screening; Unit: Completed comprehensive screening.

(2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.

(3) Service: Child Health Encounter; Unit: 5-10 minutes equals 1 unit; 11-20 minutes equals 2 units; over 21 minutes equals 3 units; limited to 30 units per year, additional units must be prior authorized.

(4) Service: Individual Treatment Encounter for IEP School Based and School Based; Unit: 15 minutes, unless otherwise specified.

(A) Hearing and Vision Services, IEP School Based.

(B) Hearing and Vision Services, School Based.

(C) Speech Language Therapy, IEP School Based.

(D) Speech Language Therapy, School Based.

(E) Physical Therapy, IEP School Based.

(F) Physical Therapy, School Based.

(G) Occupational Therapy, IEP School Based.

(H) Occupational Therapy, School Based.

(I) Nursing Services, IEP School Based; Unit: 5 minutes equals 1 unit; limited to 24 per day.

(J) Nursing Services, School Based; Unit: 5 minutes equals 1 unit; limited to 24 per day.

(K) Psychological Services, IEP School Based.

(L) Psychological Services, School Based.

(M) Psychotherapy Counseling Services, IEP School Based.

(N) Psychotherapy Counseling Services, School Based.

(O) Assistive Technology, IEP School Based.

(P) Assistive Technology, School Based.

(Q) Dental Screening, IEP School Based.

(R) Dental Screening, School Based.

(S) Therapeutic Behavioral Services, IEP School Based; limited to 12 units per day.

(5) Service: Group Treatment Encounter for IEP School Based and School Based; No more than 5 recipients per group, Unit: 15 minutes, unless otherwise specified.

(A) Hearing and Vision Services, IEP School Based.

(B) Hearing and Vision Services, School Based.

(C) Speech Language Therapy, IEP School Based.

(D) Speech Language Therapy, School Based.

(E) Physical Therapy, IEP School Based.

(F) Physical Therapy, School Based.

(G) Occupational Therapy, IEP School Based.

(H) Occupational Therapy, School Based.

(I) Psychological Services, IEP School Based.
(J) Psychological Services, School Based.
(K) Psychotherapy Counseling Services, IEP School Based.
(L) Psychotherapy Counseling Services, School Based.

(6) Service: Administration only, Immunization; Unit: one administration.
(7) Service: Hearing Evaluation; Unit: Completed Evaluation.
(8) Service: Hearing Aid Evaluation; Unit: Completed Evaluation.
(9) Service: Audiometric Test (Impedance); Unit: Completed Test (Both Ears).
(10) Service: Tympanometry and acoustic reflexes.
(11) Service: Ear Impression Mold; Unit: 2 molds (one per ear).
(12) Service: Vision Screening; Unit: one examination, by state licensed O.D., M.D., or D.O.
(13) Service: Speech Language Evaluation; Unit: one evaluation.
(14) Service: Physical Therapy Evaluation; Unit: one evaluation.
(15) Service: Occupational Therapy Evaluation; Unit: one evaluation.
(16) Service: Psychological Evaluation and Testing; Unit: one hour (with written report).
(17) Service: Personal Care Services; Unit: 10 minutes.

[OAR Docket #10-1054; filed 6-21-10]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA/~~OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE~~

[OAR Docket #10-1051]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions
317:45-1-1 through 317:45-1-4. [AMENDED]
Subchapter 3. Insure Oklahoma/~~O-Epic~~ Carriers
317:45-3-1. [AMENDED]
317:45-3-2. [AMENDED]
Subchapter 5. Insure Oklahoma/~~O-Epic~~ Qualified Health Plans
317:45-5-1. [AMENDED]
317:45-5-2. [AMENDED]
Subchapter 7. Insure Oklahoma/~~O-Epic~~ ESI Employer Eligibility
317:45-7-1 through 317:45-7-8. [AMENDED]
Subchapter 9. Insure Oklahoma/~~O-Epic~~ ESI Employee Eligibility
317:45-9-1 through 317:45-9-4. [AMENDED]
317:45-9-6 through 317:45-9-8. [AMENDED]
Subchapter 11. Insure Oklahoma/~~O-Epic~~ IP
Part 1. Individual Plan Providers
317:45-11-1. [AMENDED]
317:45-11-2. [AMENDED]
Part 3. Insure Oklahoma/~~O-Epic~~ IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-11. [AMENDED]
317:45-11-12. [NEW]
317:45-11-13. [NEW]
Part 5. Insure Oklahoma/~~O-Epic~~ IP Member Eligibility
317:45-11-20 through 317:45-11-28. [AMENDED]
(Reference APA WF # 10-08)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Sections 1009.2 and 1010.1 of Title 56 of Oklahoma Statutes
DATES:
Adoption:
May 13, 2010
Approved by Governor:
June 10, 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 the Insure Oklahoma program to comply with Sections 1009.2 and 1010.1 of Title 56 of Oklahoma Statutes. Rules are revised to expand the Insure Oklahoma ESI and IP programs. Expansions include incorporating Oklahoma children through 18 years of age whose household income is from 185 up to and including 300 percent of the Federal Poverty Level. In addition, revisions will expand the current Insure Oklahoma ESI and IP program guidelines to include employees and working adults whose family income does not exceed 250 percent of the Federal Poverty Level. This expansion to the Insure Oklahoma program will help increase access to health care for Oklahomans, thereby reducing the amount of uncompensated care provided by health care providers.
ANALYSIS:
Rules are revised to expand the Insure Oklahoma ESI and IP programs. Expansions include incorporating Oklahoma children through 18 years of age whose household income is from 185 up to and including 300 percent of the Federal Poverty Level. The inclusion of children into the program will be phased in over a period of time as determined by the OHCA. In addition, revisions will expand the current Insure Oklahoma ESI and IP program guidelines to include employees and working adults whose family income does not exceed 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the OHCA. These revisions comply with Sections 1009.2 and 1010.1 of Title 56 of Oklahoma Statutes. This expansion to the Insure Oklahoma program will help increase access to health care for Oklahomans thereby reducing the amount of uncompensated care provided by health care providers.
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 1. GENERAL PROVISIONS

317:45-1-1. Purpose and general program provisions

The purpose of this Chapter is to provide rules, in compliance with all applicable federal and state regulations, for the Insure Oklahoma/~~Oklahoma Employer and Employee~~

~~Partnership for Insurance Coverage (O-EPIC)~~ program that establishes access to affordable health coverage for low-income working adults, ~~their spouses~~ their dependents, and qualified college students. ~~The Oklahoma Health Care Authority (OHCA) contracts with a Third Party Administrator (TPA) for administration of the program.~~

317:45-1-2. Program limitations

(a) The Insure Oklahoma~~/O-EPIC~~ program is contingent upon sufficient funding that is collected and dispersed through a revolving fund within the State Treasury designated as the "Health Employee and Economy Improvement Act (HEEIA) Revolving Fund". This fund is a continuing fund, not subject to fiscal year limitations.

(1) All monies accruing to the credit of the fund are budgeted and expended by the OHCA to implement the program.

(2) The program is funded through a portion of monthly proceeds from the Tobacco Tax, ~~O.S.S.~~ Okla. Stat. §68-302-5 et seq., collected and dispersed through the HEEIA revolving fund, pursuant to Title 68, Section 302-5 (B.1. and D.1.) and Section 402-3 (B.1 and C.1.) of the Oklahoma Statutes.

(3) The program is limited in scope such that available funding is not exceeded. Available funding includes the estimated annual deposits from tax collections, accrued interest, federal matching funds and any other revenue source deposited in the HEEIA Revolving Fund for the purpose of this program. If at any time it becomes apparent there is risk the available funding may be exceeded, OHCA must take action to ensure the Insure Oklahoma~~/O-EPIC~~ program continues to operate within its fiscal capacity.

(A) Insure Oklahoma~~/O-EPIC~~ may limit eligibility based on:

(i) the federally-approved ~~capacity of the Insure Oklahoma/O-EPIC services for the~~ Health Insurance Flexibility and Accountability (HIFA) Waiver/1115 Waiver; ~~and~~

(ii) Tobacco Tax collections~~.~~; and

(iii) the State Child Health Plan for the State Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act.

(B) The Insure Oklahoma~~/O-EPIC~~ program may limit eligibility when the utilization of services is projected to exceed the spending authority, or, may suspend new eligibility determinations instead, establishing a waiting list.

(i) Applicants, not previously enrolled and participating in the program, submitting new applications for the Insure Oklahoma~~/O-EPIC~~ program are placed on a waiting list. ~~These applications are date and time stamped when received by the TPA.~~ Applications, with the exception of college students, are identified by region and Insure Oklahoma~~/O-EPIC~~ program. Regions are established based on population density statistics as determined through local and national data and may be periodically adjusted to assure statewide availability. Insure Oklahoma~~/O-EPIC~~ program size is determined by OHCA and may be periodically adjusted.

(ii) The waiting list utilizes a "first in - first out" method of selecting eligible applicants by region and program.

(iii) When an applicant is determined eligible and moves from the waiting list to active participation, the applicant must submit a new application.

(iv) Enrolled applicants who are currently participating in the program are not subject to the waiting list.

(v) For approved employers, if the employer hires a new employee after the employer's program eligibility begins, the new employee is allowed to participate during the employer's current eligibility period.

(vi) For approved employers, if the employer has an employee who has a ~~Qualifying Event~~ qualifying event after the employer's program eligibility begins, the employee is allowed to make changes pertaining to the ~~Qualifying Event~~ qualifying event.

(b) College ~~students'~~ student eligibility and participation in the Insure Oklahoma~~/O-EPIC~~ program is contingent upon sufficient funding from the Oklahoma legislature. This funding is separate from the funding described in subsection (a) of this Section.

317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which

is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employee" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"Employer" means the business entity that pays earned income to employees.

"Employer Sponsored Insurance" means the program that provides premium assistance to qualified businesses for approved applicants.

"EOB" means an Explanation of Benefits.

"Explanation of Benefit" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma~~/O-EPIC~~ member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

"Gross Household Income" or "Annual Gross Household Income" means the countable income (earned or unearned) that is computed pursuant to OHCA's waiver and/or state plan using rules found in OAC 317:35.

"Individual Plan" means the safety net program for those qualified individuals who do not have access to Insure Oklahoma~~/O-EPIC~~ ESI.

"Insure Oklahoma ~~/O-EPIC~~" means a health plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

"Insure Oklahoma ~~/O-EPIC~~ IP" means the Individual Plan program.

"Insure Oklahoma ~~/O-EPIC~~ ESI" means the Employer Sponsored Insurance program.

"Member" means an individual enrolled in the Insure Oklahoma~~/O-EPIC~~ ESI or IP program.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCP" means Primary Care Provider.

"PEO" or "Professional Employer Organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et.seq.

"Primary Care Provider" means a provider under contract ~~to~~ with the Oklahoma Health Care Authority to provide primary care services, including all ~~medically necessary~~ medically necessary referrals.

"Premium" means a monthly payment to a carrier for health plan coverage.

~~**"QHP"** means Qualified Health Plan.~~

"Qualified Health Plan" means a health plan that has been approved by the OHCA for participation in the Insure Oklahoma~~/O-EPIC~~ program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group health plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's health plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority ~~or its designee~~.

~~**"TPA"** means the Third Party Administrator.~~

~~**"Third Party Administrator"** means the entity contracted by the State to provide the administration of the Insure Oklahoma/Oklahoma Employer and Employee Partnership for Insurance Coverage program.~~

317:45-1-4. Reimbursement for out-of-pocket medical expenses

(a) ~~Members are responsible for all out-of-pocket expenses. Out-of-pocket expenses for services covered by the health plan, as defined by the health plan's benefit summary and policies, that exceed five percent of the employee's gross annual household income during the current eligibility period may be reimbursable.~~ Out-of-pocket medical expenses for all approved and eligible members (and/or their approved and eligible dependents) will be limited to 5 percent of their annual gross household income. The OHCA will provide reimbursement for out-of-pocket medical expenses in excess of the 5 percent annual gross household income. A medical expense must be for an allowed and covered service by a qualified health plan to be eligible for reimbursement. For the purpose of this Section, an allowed and covered service is defined as an in-network service covered in accordance with a qualified health plan's benefit summary and policies.

(b) ~~The member must submit a reimbursement claim form with appropriate documentation to the TPA. Information may be submitted at any time but no later than 90 days after the~~

~~close of their eligibility period to be considered for reimbursement. Appropriate supporting documentation includes an original EOB or paid receipt if no EOB is issued. Both EOB and paid receipts must include required information listed in OAC 317:45-5-1(c)(1)-(6). Reimbursement for out-of-pocket medical expenses is made for the amount indicated as the member's responsibility on the EOB or receipt reflecting the amount paid for medical expenses. Appropriate supporting documentation for prescribed prescriptions must be an original receipt and include information about the pharmacy at which the drug was purchased, the name of the drug dispensed, the quantity dispensed, the prescription number, the name of the person the drug is for, the date the drug was dispensed and the total amount paid.~~ For all eligible medical expenses as defined above in OAC 317:45-1-4(a), the member must submit the OHCA required form and all OHCA required documentation to support that the member incurred and paid the out-of-pocket medical expense. The required documentation must be submitted no later than 90 days after the close of the member's eligibility period. The OHCA required documentation must substantiate that the member actually incurred and paid the eligible out-of-pocket expense. The OHCA may request additional documentation at any time to support a member's request for reimbursement of eligible out-of-pocket medical expenses.

~~(c) Reimbursement for qualified medical expenses is subject to a fixed cap amount. The fixed cap for reimbursement is established annually and is calculated using local and national data concerning individual out-of-pocket health care expenses. The objective of the fixed cap is to set the amount high enough such that, in the great majority of households, all of the costs above the five percent threshold would be absorbed.~~

SUBCHAPTER 3. INSURE OKLAHOMA/~~O-EPIC~~ CARRIERS

317:45-3-1. Carrier eligibility

Carriers must be able to submit all required and requested information and documentation to OHCA for each health plan to be considered for qualification. Carriers must be able to supply specific claim payment scenarios as requested by OHCA. Carriers must also provide the name, address, telephone number, and, if available, email address of a contact individual who is able to verify employer enrollment status in a ~~QHP~~ qualified health plan.

317:45-3-2. Audits

Carriers are subject to audits related to health plan qualifications. These audits may be conducted periodically to determine if ~~QHPs continue~~ each qualified health plan continues to meet all requirements as defined in OAC 317:45-5-1.

SUBCHAPTER 5. INSURE OKLAHOMA/~~O-EPIC~~ QUALIFIED HEALTH PLANS

317:45-5-1. Qualified Health Plan requirements

(a) Participating ~~QHPs~~ qualified health plans must offer, at a minimum, benefits that include:

(1) hospital services;
(2) physician services;
(3) clinical laboratory and radiology;
(4) pharmacy; ~~and~~
(5) office visits~~.~~;
(6) well baby/well child exams;
(7) age appropriate immunizations as required by law; and
(8) emergency services as required by law.

(b) The health plan, if required, must be approved by the Oklahoma Insurance Department for participation in the Oklahoma market. All health plans must share in the cost of covered services and pharmacy products in addition to any negotiated discounts with network providers, pharmacies, or pharmaceutical manufacturers. If the health plan requires co-payments or deductibles, the co-payments or deductibles cannot exceed the limits described in this subsection.

(1) An annual in-network out-of-pocket maximum cannot exceed ~~an amount that is established by OHCA. This amount includes any non-pharmacy, annual deductible amount for in-network services~~ $3,000 per individual, excluding pharmacy deductibles.
(2) Office visits cannot require a co-payment exceeding $50 per visit.
(3) Annual in-network pharmacy deductibles cannot exceed $500 per individual.

(c) ~~QHPs may~~ Qualified health plans will provide an EOB, an expense summary, or required documentation for paid ~~or~~ and/or denied claims subject to member co-insurance or member deductible calculations. ~~If an EOB is provided it~~ The required documentation must contain, at a minimum, the:

(1) provider's name;
(2) patient's name;
(3) date(s) of service;
(4) code(s) and/or description(s) indicating the service(s) rendered, the amount(s) paid or the denied status of the claim(s);
(5) reason code(s) and description(s) for any denied service(s); and
(6) amount due and/or paid from the patient or responsible party.

317:45-5-2. Closure criteria for health plans

Eligibility for the carrier's health plans ends when:

(1) changes are made to the design or benefits of the ~~QHP~~ health plan such that it no longer meets the requirements ~~for QHPs~~ to be considered a qualified health plan. Carriers are required to report to OHCA any changes in health plans potentially affecting ~~its~~ their qualification for participation in the program not less than 90 days prior to the effective date of such change(s).
(2) the carrier no longer meets the definition set forth in OAC 317:45-1-3.
(3) the health plan is no longer an available product in the Oklahoma market.

(4) the health plan fails to meet or comply with all requirements for a ~~QHP~~ qualified health plan as defined in OAC 317:45-5-1.

SUBCHAPTER 7. INSURE OKLAHOMA~~/O-EPIC~~ ESI EMPLOYER ELIGIBILITY

317:45-7-1. Employer application and eligibility requirements for Insure Oklahoma~~/O-EPIC~~ ESI

(a) In order for an employer to be eligible to participate in the Insure Oklahoma~~/O-EPIC~~ program the employer must:

(1) have no more than a total of 250 employees on its payroll. The increase in the number of employees from 50 to 250 will be phased in over a period of time as determined by the Oklahoma Health Care Authority. The number of employees is determined based on the third month employee count of the most recently filed OES-3 form with the Oklahoma Employment Security Commission (OESC) ~~and that is in compliance with all requirements of the OESC~~. Employers may provide additional documentation confirming terminated employees that will be excluded from the OESC employee count. If the employer is exempt from filing an OES-3 form or is contracted with a PEO or is a Child Care Center, in accordance with OHCA rules, this determination is based on appropriate supporting documentation, such as the W-2 Summary Wage and Tax form to verify employee count. Employers must be in compliance with all OESC requirements to be eligible for the program. As requested by the OHCA, employers that do not file with the OESC must submit documentation that proves compliance with state law;

(2) have a business that is physically located in Oklahoma;

(3) be currently offering, or at the contracting stage to offer a ~~QHP~~ qualified health plan. The ~~QHP~~ qualified health plan coverage must begin on the first day of the month and continue through the last day of the month;

(4) offer ~~QHP~~ qualified health plan coverage to employees; and

(5) contribute a minimum 25 percent of the eligible employee monthly health plan premium or an equivalent 40 percent of premiums for covered dependent children~~;~~.

(b) An employer who meets all of the requirements listed ~~in subsection (a) of this Section must complete and submit an employer enrollment packet to the TPA~~ in OAC 317:45-7-1(a) must complete and submit the OHCA required forms and application to be considered for participation in the program.

(c) The employer must provide its Federal Employee Identification Number (FEIN).

(d) ~~The employer must notify the TPA, within 5 working days from occurrence, of any Insure Oklahoma/O-EPIC employee's termination or resignation.~~ It is the employer's responsibility to notify the OHCA of any changes that might impact eligibility in the program. Employers must notify the OHCA of any participating employee terminations, resignations, or new hires within five working days of the occurrence.

317:45-7-2. Employer eligibility determination

Eligibility for employers is determined ~~by the TPA~~ using the eligibility requirements listed in OAC 317:45-7-1. An employer determined eligible for Insure Oklahoma~~/O-EPIC~~ is approved for up to a 12 month period. The eligibility period begins on the first day of the month following the date of approval. The eligibility period ends the last day of the 12th month. The eligibility period will renew automatically unless the employer's eligibility has been closed (refer to OAC 317:45-7-8). ~~The TPA notifies the employer of the eligibility decision for employer and employees.~~ Employers will be notified of their eligibility decision.

317:45-7-3. Employer cost sharing

Employers are responsible for a portion of the eligible employee's monthly health plan premium as defined in OAC 317:45-7-1. ~~Employers are not required to contribute to an eligible dependent's coverage.~~

317:45-7-4. Qualifying Event

Employers must allow an employee to enroll or change coverage following a ~~Qualifying Event~~ qualifying event. The employer ~~files form OEPIC-4, Small Business Employer Change Form, with the TPA for that~~ must submit the required form for each employee experiencing the ~~Qualifying Event~~ qualifying event.

317:45-7-5. Reimbursement

In order to receive a premium subsidy, the employer must submit all pages of the current health plan invoice ~~or other approved documentation to the TPA~~.

317:45-7-6. Credits and adjustments

When an overpayment ~~has occurred~~ occurs, the employer must immediately ~~refund~~ report the ~~TPA, by check, to the attention of the Finance Division~~ erroneous payment. ~~The TPA system has the capability of automatic credits and debits. When an erroneous payment occurs, that results in an overpayment, an automatic recoupment is made to the employer's account against monies owed to the employer on behalf of their employee(s).~~ When such an overpayment(s) occurs, an automatic recoupment is made to the employer's account against future reimbursements.

317:45-7-7. Audits

Employers are subject to audits related to program eligibility ~~status~~ requirements found at OAC 317:45-7-1 and subsidy payments. Eligibility may be revoked at any time if inconsistencies are found. Any monies paid in error are subject to recoupment.

317:45-7-8. Closure

Eligibility provided under the Insure Oklahoma~~/O-EPIC~~ ESI program may end during the eligibility period when:

(1) the employer no longer meets the eligibility requirements in OAC 317:45-7-1;

(2) the employer fails to pay premiums to the carrier;

(3) the employer fails to provide an invoice verifying the monthly health plan premium has been paid; or

(4) an audit indicates a discrepancy that makes the employer ineligible.

SUBCHAPTER 9. INSURE OKLAHOMA/~~O-EPIC~~ ESI EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) ~~Employee applications are submitted to the TPA~~ Employees must complete and submit the OHCA required forms and application to be considered for participation in the program.

(b) The eligibility determination ~~is~~ will be processed within 30 days from the date the application is received ~~by the TPA~~. The employee ~~is~~ will be notified in writing of the eligibility decision.

(c) All eligible employees described in this ~~Section are enrolled in their Employer's QHP~~ section must be enrolled in their employer's qualified health plan. Eligible employees must:

(1) have ~~a countable~~ an annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level (FPL). The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member;

(2) be a US citizen or alien as described in OAC 317:35-5-25;

(3) be Oklahoma residents;

(4) provide social security number for all household members;

(5) not be receiving benefits from ~~SoonerCare/Medicare~~ SoonerCare or Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64 or an emancipated minor;

(8) be eligible for enrollment in the employer's ~~QHP~~ qualified health plan;

(9) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(10) select one of the ~~QHPs~~ qualified health plans the employer is offering.

(d) An employee's dependents are eligible when:

(1) the employer's health plan includes coverage for dependents;

(2) the employee is eligible;

(3) if employed, the spouse may not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(4) the dependents are enrolled in the same health plan as the employee.

(e) If an employee or their dependents are eligible for multiple ~~QHPs~~ qualified health plans, each may receive a subsidy under only one health plan.

(f) Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA).

(g) Dependent children in families whose annual gross household income is from 185 up to and including 300 percent of the Federal Poverty Level may be eligible. The inclusion of children into the Insure Oklahoma program will be phased in over a period of time as determined by the OHCA. No other deductions or disregards apply.

(1) Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.

(2) Children are not eligible for Insure Oklahoma if they are a member of a family eligible for employer-sponsored dependent health insurance coverage under any Oklahoma State Employee Health Insurance Plan.

(3) Children who already have coverage through another source must undergo, or be excepted from, a six month uninsured waiting period prior to becoming eligible for Insure Oklahoma. Exceptions to the waiting period may include:

(A) the cost of covering the family under the ESI plan meets or exceeds ten percent of the annual gross household income. The cost of coverage includes premiums, deductibles, co-insurance, and co-payments;

(B) loss of employment by a parent which made coverage available;

(C) affordable ESI is not available; "affordable" coverage is defined by the OHCA annually using actuarially sound rates established by the Oklahoma State and Education Employee Group Insurance Board (OSEEGIB); or

(D) loss of medical benefits under SoonerCare.

317:45-9-2. Employee eligibility period

(a) Employee eligibility is contingent upon the employer's program eligibility.

(b) The employee's eligibility is determined ~~by the TPA~~ using the eligibility requirements listed in OAC 317:45-9-1.

(c) If the employee is determined eligible, he/she is approved for a period not greater than 12 months. ~~The length of the eligibility period is based on the remaining number of months the employer has left in its eligibility period.~~

(d) The employee's eligibility period begins on the first day of the month following the date of approval.

317:45-9-3. Qualifying Event

~~(a) Employees are allowed to apply following a Qualifying Event.~~

~~(b) An employee's dependents may become eligible for coverage and are allowed to apply following a Qualifying Event.~~

Employees and/or an employee's dependents may apply for the ESI program following a qualifying event.

317:45-9-4. Employee cost sharing

Employees are responsible for up to ~~15%~~ 15 percent of their health plan premium. The employees are also responsible for up to ~~15%~~ 15 percent of their dependent's health plan premium if the dependent is included in the program. The combined portion of the employee's cost sharing for health plan premiums cannot exceed three percent of his/her annual gross ~~annual~~ household income computed monthly.

317:45-9-6. Audits

Individuals participating in the Insure Oklahoma~~/O-EPIC~~ program are subject to audits related to their eligibility, subsidy payments, and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

317:45-9-7. Closure

(a) Employer and employee eligibility are tied together. If the employer is no longer eligible, then the associated employees enrolled under that employer are also ineligible. Employees are mailed a notice 10 days prior to closure of eligibility.

(b) The employee's certification period may be terminated when:

(1) termination of employment, either voluntary or involuntary, occurs;

(2) the employee moves out-of-state;

(3) the covered employee dies;

(4) the employer ends its contract with the ~~QHP~~ qualified health plan;

(5) the employer's eligibility ends;

(6) an audit indicates a discrepancy that makes the employee or employer ineligible;

(7) the employer is terminated from the program;

(8) the employer fails to pay the premium;

(9) the ~~QHP~~ qualified health plan or carrier ~~is no longer qualified~~ no longer meets the requirements set forth in this Chapter;

(10) the employee becomes eligible for ~~Medicaid/Medicare~~ SoonerCare or Medicare;

(11) the employee or employer reports ~~to the OHCA or the TPA~~ any change affecting eligibility;

(12) the employee is no longer listed as a covered person on the employer's health plan invoice; or

(13) the employee requests closure.

317:45-9-8. Appeals

(a) Employee appeal procedures based on denial of eligibility due to income are described at OAC 317:2-1-2.

(b) ~~Employee appeals regarding out-of-pocket expenses are made to the TPA. If the employee disagrees with the TPA's findings, reconsideration of the finding may be made to the OHCA. The decision of the OHCA is final~~ Employee appeals regarding out-of-pocket medical expense reimbursements may be made to the OHCA. The OHCA may request documentation to support the out-of-pocket appeal. The decision of the OHCA is final.

SUBCHAPTER 11. INSURE OKLAHOMA/~~O-EPIC~~ IP

PART 1. INDIVIDUAL PLAN PROVIDERS

317:45-11-1. Insure Oklahoma/~~O-EPIC~~ Individual Plan providers

Insure Oklahoma~~/O-EPIC~~ Individual Plan (IP) providers must comply with existing SoonerCare rules found at OAC 317:25 and OAC 317:30. In order to receive reimbursement, the IP provider:

(1) must enter into a SoonerCare contract; and

(2) must complete Insure Oklahoma~~/O-EPIC~~ IP addendum if provider wants to provide primary care services as a PCP.

317:45-11-2. Insure Oklahoma/~~O-EPIC~~ IP provider payments

Payment for covered benefits rendered to Insure Oklahoma~~/O-EPIC~~ IP members~~, as shown in OAC 317:45-11-10 and not listed as a non-covered service in OAC 317:45-11-11,~~ is made to contracted Insure Oklahoma~~/O-EPIC~~ IP healthcare providers for medical and surgical services within the scope of OHCA's medical programs, provided the services are medically necessary as defined in OAC 317:30-3-1(f).

(1) Coverage of certain services requires prior authorization ~~as shown in OAC 317:45-11-10~~ and may be based on a determination made by a medical consultant in individual circumstances;

(2) The decision to charge a ~~copayment~~ co-payment for a missed visit is at the provider's discretion;

(3) The provider may collect the member's ~~co-pay~~ co-payment in addition to the SoonerCare reimbursement for services provided; and

(4) The provider may refuse to see members based on their inability to pay their ~~co-pay~~ co-payment.

PART 3. INSURE OKLAHOMA/~~O-EPIC~~ IP MEMBER HEALTH CARE BENEFITS

317:45-11-10. Insure Oklahoma/~~O-EPIC~~ IP adult benefits

(a) All IP adult benefits are subject to rules delineated in OAC 317:30 except as specifically set out in this Section. The scope of IP adult benefits described in this Section ~~are~~ is subject to specific non-covered services listed in OAC 317:45-11-11.

(b) A PCP referral is required to see any other provider with the exception of the following services:

(1) behavioral health services;

(2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;

(3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;

(4) women's routine and preventive health care services;

(5) emergency medical condition as defined in OAC 317:30-3-1; and

(6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

(c) IP covered adult benefits for in-network services, limits, and applicable co-payments are listed in this subsection. In addition to the benefit-specific limits, there is a maximum lifetime benefit of $1,000,000. Dependent children coverage is found at OAC 317:45-11-12. Children are not held to the maximum lifetime benefit. Coverage includes:

(1) Anesthesia / Anesthesiologist Standby. Covered in accordance with OAC 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA) or Anesthesiologist Assistant (AA).

(2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.

(3) Chelation Therapy. Covered for heavy metal poisoning only.

(4) Diagnostic X-ray, including Ultrasound. Covered in accordance with OAC 317:30-5-22(b)(2). PCP referral is required. Standard radiology (X-ray or Ultrasound): $0 co-pay. Specialized scanning and imaging (MRI, MRA, PET, or CAT Scan); $25 co-pay per scan.

(5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a $30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.

(6) Inpatient Hospital Benefits. Covered in accordance with OAC 317:30-5-41, 317:30-5-47 and 317:30-5-95; $50 co-pay per admission.

(7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year with a $10 co-pay. This visit counts as an office visit.

(8) Office Visits/Specialist Visits. Covered in accordance with OAC 317:30-5-9, 317:30-5-10, and 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits; $10 co-pay per visit.

(9) Outpatient Hospital/Facility Services.

(A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures; $25 co-pay per visit.

(B) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections; $10 co-pay per visit.

(C) Physical, Occupational and Speech Therapy services. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year; $10 co-pay per visit.

(10) Maternity (Obstetric). Covered in accordance with OAC 317:30-5-22. Nursery care paid separately under eligible child; $50 inpatient hospital co-pay.

(11) Laboratory/Pathology. Covered in accordance with OAC 317:30-5-20; $0 co-pay.

(12) Mammogram (Radiological or Digital). Covered in accordance with OAC 317:30-5-901; $0 co-pay.

(13) Immunizations. Covered in accordance with OAC 317:30-5-2.

(14) Assistant Surgeon. Covered in accordance with OAC 317:30-5-8.

(15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility; $0 co-pay.

(16) Oral Surgery. Services are limited to the removal of tumors or cysts; Inpatient Hospital $50 or Outpatient Hospital/Facility; $25 co-pay applies.

(17) Behavioral Health (Mental Health and Substance Abuse) Treatment (Inpatient). Covered in accordance with OAC 317:30-5-95.1; $50 co-pay per admission.

(18) Behavioral Health (Mental Health and Substance Abuse) Treatment (Outpatient).

(A) Agency services. Covered in accordance with OAC 317:30-5-241 and OAC 317:30-5-596; $10 co-pay per visit.

(B) Individual provider services. Licensed Behavioral Health Professionals (LBHPs) are defined as follows for the purpose of Outpatient ~~Mental~~ Behavioral Health Services and Outpatient Substance Abuse Treatment:

(i) 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.

(ii) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and 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 (I) through (VI) below. The exemptions from licensure under ~~59 §1353(4) and (5)~~ 59 Okla.

Stat. §1353(4) and (5), 59 §1903(C) and (D), 59 §1925.3(B) and (C), and 59 §1932(C) and (D) do not apply to Outpatient Behavioral Health Services.

(I) Psychology,
(II) Social Work (clinical specialty only),
(III) Professional Counselor,
(IV) Marriage and Family Therapist,
(V) Behavioral Practitioner, or
(VI) Alcohol and Drug Counselor.

(iii) Advanced Practice Nurse (certified in a 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.

(iv) A Physician's 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.

(v) LBHPs must have a valid Insure Oklahoma contract in order to bill for services rendered.

(vi) LBHP services require prior authorization and are limited to 8 therapy services per month per member and 8 testing units per year per member; $10 co-pay per visit.

(19) Durable Medical Equipment and Supplies. Covered in accordance with OAC 317:30-5-210 through 317:30-5-218. A PCP referral and prior authorization is required for certain items. DME/Supplies are covered up to a $15,000 annual maximum; exceptions from the annual DME limit are diabetic supplies, oxygen, home dialysis, and parenteral therapy; $5 co-pay for durable/non-durable supplies and $25 co-pay for durable medical equipment.

(20) Diabetic Supplies. Covered in accordance with OAC 317:30-5-211.15; not subject to $15,000 annual DME limit; $5 co-pay per prescription.

(21) Oxygen. Covered in accordance with OAC 317:30-5-211.11 through 317:30-5-211.12; not subject to $15,000 annual DME limit; $5 co-pay per month.

(22) Pharmacy. Covered in accordance with OAC 317:30-5-72.1 and 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits; $5/$10 co-pay per prescription.

(23) Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with OAC 317:30-5-72.1; $5/$10 co-pay per product.

(24) Nutrition Services. Covered in accordance with OAC 317:30-5-1076; $10 co-pay per visit.

(25) External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with OAC 317:30-5-211.13; $25 co-pay per prosthesis.

(26) Surgery. Covered in accordance with OAC 317:30-5-8; $50 co-pay per inpatient admission and $25 co-pay per outpatient visit.

(27) Home Dialysis. Covered in accordance with OAC 317:30-5-211.13; not subject to $15,000 annual DME limit; $0 co-pay.

(28) Parenteral Therapy. Covered in accordance with OAC 317:30-5-211.14; not subject to $15,000 annual DME limit; $25 co-pay per month.

(29) Family Planning Services and Supplies, including Sterilizations. Covered in accordance with OAC 317:30-3-57; $0 co-pay.

(30) Home Health Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with OAC 317:30-5-211.15 and 317:30-5-42.16(b)(3).

(31) Ultraviolet Treatment-Actinotherapy.

(32) Fundus photography.

(33) Perinatal dental care for pregnant women. Covered in accordance with OAC 317:30-5-696; $0 co-pay.

317:45-11-11. Insure Oklahoma~~/O-EPIC~~ IP adult non-covered services

Certain health care services are not covered in the Insure Oklahoma~~/O-EPIC~~ IP adult benefit package listed in OAC 317:45-11-10. These services include, but are not limited to:

(1) services ~~that the member's PCP or Insure Oklahoma/O-EPIC does not consider~~ not considered medically necessary;

(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;

(3) organ and tissue transplant services;

(4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;

(5) procedures, services and supplies related to sex transformation;

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);

(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in OAC 317:30-5-696;

(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

(12) physical medicine including chiropractic~~, acupuncture and osteopathic manipulation~~ and acupuncture therapy;

(13) hearing services;

(14) transportation [~~emergent~~ emergency or ~~non-emergent~~ non-emergency (air or ground)];

(15) rehabilitation (inpatient);

(16) cardiac rehabilitation;
(17) allergy testing and treatment;
(18) home health care with the exception of medications, intravenous (IV) therapy, supplies;
(19) hospice regardless of location;
(20) Temporomandibular Joint Dysfunction (TMD) (TMJ);
(21) genetic counseling;
(22) fertility evaluation/treatment/and services;
(23) sterilization reversal;
(24) Christian Science Nurse;
(25) Christian Science Practitioner;
(26) skilled nursing facility;
(27) long-term care;
(28) stand by services;
(29) thermograms;
(30) abortions (for exceptions, refer to OAC 317:30-5-6);
(31) services of a Lactation Consultant;
(32) services of a Maternal and Infant Health Licensed Clinical Social Worker; and
(33) enhanced services for medically high risk pregnancies as found in OAC 317:30-5-22.1.

317:45-11-12. Insure Oklahoma IP children benefits

(a) IP covered child benefits for in-network services, limits, and applicable co-payments are listed in this Subsection. All IP benefits are subject to rules delineated in OAC 317:30 except as specifically set out in this Section. All services provided must be medically necessary as defined in OAC 317:30-3-1(f). The scope of IP child benefits described in this Section is subject to specific non-covered services listed in OAC 317:45-11-13. Dependent children are not held to the maximum lifetime benefit of $1,000,000. Coverage includes:

(1) **Ambulance services.** Covered as medically necessary; $50 co-pay per occurrence; waived if admitted.
(2) **Blood and blood products.** Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.
(3) **Chelation therapy.** Covered for heavy metal poisoning only.
(4) **Chemotherapy and radiation therapy.** Covered as medically necessary; $10 co-pay per visit.
(5) **Clinic services including renal dialysis services.** Covered as medically necessary; $0 co-pay for dialysis services; $10 co-pay per office visit.
(6) **Diabetic supplies.** One glucometer, one spring-loaded lancet device, three replacement batteries per year - 100 glucose strips and lancets per month; not included in DME $15,000 max/year; $5 co-pay per billable service. Additional supplies require prior authorization.
(7) **Diagnostic X-ray services.** Covered as medically necessary; $25 co-pay per scan for MRI, MRA, PET, CAT scans only.
(8) **Dialysis.** Covered as medically necessary.
(9) **Durable medical equipment and supplies.** Covered as medically necessary with $15,000 annual maximum; $5 co-pay per item for durable/non-durable supplies; $25 co-pay per item for DME.
(10) **Emergency department services.** Covered as medically necessary; $30 co-pay per occurrence; waived if admitted.
(11) **Family planning services and supplies.** Birth control information and supplies; pap smears; pregnancy tests.
(12) **Home health services.** Home health visits limited to 36 visits per year, prior authorization required, includes medications IV therapy and supplies; $10 co-pay per visit, appropriate pharmacy and DME co-pays will apply.
(13) **Hospice services.** Covered as medically necessary, prior authorization required; $10 co-pay per visit.
(14) **Immunizations.** Covered as recommended by ACIP; $0 co-pay.
(15) **Inpatient hospital services (acute care only).** Covered as medically necessary; $50 co-pay per admission.
(16) **Laboratory services.** Covered as medically necessary.
(17) **Psychological testing.** Psychological, neurological and development testing; outpatient benefits per calendar year, prior authorization required issued in four unit increments - not to exceed eight units/hours per testing set; $0 co-pay.
(18) **Mental health/substance abuse treatment-outpatient.** All outpatient benefits require prior authorization. Outpatient benefits limited to 48 visits per calendar year. Additional units as medically necessary; $10 co-pay per outpatient visit.
(19) **Mental health/substance abuse treatment-inpatient.** Acute, detox, partial, and residential treatment center (RTC) with 30 day max per year, 2 days of partial or RTC treatment equals 1 day accruing to maximum. Additional units as medically necessary; $50 co-pay per admission. Requires prior authorization.
(20) **Nurse midwife services.** Covered as medically necessary for pregnancy-related services only; $0 co-pay.
(21) **Nutrition services.** Covered as medically necessary; $10 co-pay.
(22) **Nutritional support.** Covered as medically necessary; not included in DME $15,000 max/year. Parenteral nutrition covered only when medically necessary; $25 co-pay.
(23) **Other medically necessary services.** Covered as medically necessary.
(24) **Oral surgery.** Covered as medically necessary and includes the removal of tumors and cysts; $25 co-pay for outpatient; $50 co-pay for inpatient hospital.
(25) **Outpatient hospital services.** Covered as medically necessary and includes ambulatory surgical centers and therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments

per month for children with proven malignancies or opportunistic infections; $25 co-pay per visit; $10 co-pay per visit for therapeutic radiology or chemotherapy.

(26) **Oxygen.** Covered as medically necessary; not included in DME $15,000 max/year; $5 co-pay per month.

(27) **PCP visits.** Blood lead screen covered as medically necessary. Hearing services limited to one outpatient newborn screening. Well baby/well child exams follow recommended schedule to age 19; $0 co-pay for preventive visits and well baby/well child exams; $10 co-pay for all other visits.

(28) **Physical, occupational, and speech therapy.** Covered as medically necessary; prior authorization required; $10 co-pay per visit.

(29) **Physician services, including preventive services.** Covered as medically necessary; $0 co-pay for preventive visits; $10 co-pay for all other visits.

(30) **Prenatal, delivery and postpartum services.** Covered as medically necessary; $0 co-pay for office visits; $50 co-pay for delivery.

(31) **Prescription drugs and insulin.** Limited to six per month; generic preferred. Prenatal vitamins and smoking cessation products do not count toward the six prescription limit; $5-$10 co-pay.

(32) **Smoking cessation products.** Limited coverage; 90-day supply; products do not count against prescription drug limit; $5-$10 co-pay.

(33) **Specialty clinic services.** Covered as medically necessary; $10 co-pay.

(34) **Surgery.** Covered as medically necessary; $25 co-pay for outpatient facility; $50 co-pay for inpatient hospital.

(35) **Tuberculosis services.** Covered as medically necessary; $10 co-pay per visit.

(36) **Ultraviolet treatment-actinotherapy.** Covered as medically necessary; prior authorization required after one visit per 365 sequential days; $5 co-pay.

(b) A PCP referral is required to see any other provider with the exception of the following services:

(1) behavioral health services;

(2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;

(3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;

(4) women's routine and preventive health care services;

(5) emergency medical condition as defined in OAC 317:30-3-1; and

(6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

317:45-11-13. Insure Oklahoma IP children non-covered services

Certain health care services are not covered in the Insure Oklahoma IP benefit package for children listed in OAC 317:45-11-12. These services include, but are not limited to:

(1) services not considered medically necessary;

(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;

(3) organ and tissue transplant services;

(4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;

(5) procedures, services and supplies related to sex transformation;

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);

(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) transportation [non-emergency (air or ground)];

(11) rehabilitation (inpatient);

(12) cardiac rehabilitation;

(13) allergy testing and treatment;

(14) Temporomandibular Joint Dysfunction (TMD) (TMJ);

(15) genetic counseling;

(16) fertility evaluation/treatment/and services;

(17) sterilization reversal;

(18) Christian Science Nurse;

(19) Christian Science Practitioner;

(20) skilled nursing facility;

(21) long-term care;

(22) stand by services;

(23) thermograms;

(24) abortions (for exceptions, refer to OAC 317:30-5-6);

(25) donor transplant expenses; and

(26) tubal ligations and vasectomies.

PART 5. INSURE OKLAHOMA/~~O-EPIC~~ IP MEMBER ELIGIBILITY

317:45-11-20. Insure Oklahoma/~~O-EPIC~~ IP eligibility requirements

(a) ~~Employees~~ Working adults not eligible to participate in an employer's ~~QHP~~ qualified health plan, employees of non-participating employers, self-employed, unemployed seeking work, ~~and~~ workers with a disability, and qualified college students may apply for the Individual Plan. Applicants cannot obtain IP coverage if they are eligible for ESI. Applicants, unless a qualified college student, must be engaged in employment as defined under state law, or must be considered unemployed as defined under state law.

(b) The eligibility determination ~~is~~ will be processed within 30 days from the date the complete application is received ~~by~~

~~the TPA~~. The applicant ~~is~~ will be notified in writing of the eligibility decision.

(c) In order to be eligible for the IP, the applicant must:

(1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;

(2) be a US citizen or alien as described in OAC 317:35-5-25;

(3) be an Oklahoma resident;

(4) provide social security numbers for all household members;

(5) be not currently enrolled in, or have an open application for~~, SoonerCare/Medicare~~ SoonerCare or Medicare;

(6) be age 19 through 64 or an emancipated minor;

(7) make premium payments by the due date on the invoice; ~~and~~

(8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(9) be not currently covered by a private health insurance policy or plan.

(d) If employed and working for an approved Insure Oklahoma~~/O-EPIC~~ employer who offers a ~~QHP~~ qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and:

(1) have annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.

(2) be ineligible for participation in their employer's ~~QHP~~ qualified health plan due to number of hours worked.

(3) have received notification from Insure Oklahoma~~/O-EPIC~~ indicating their employer has applied for Insure Oklahoma~~/O-EPIC~~ and has been approved.

(e) If employed and working for an employer who ~~doesn't~~ does not offer a ~~QHP~~ qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and have ~~a countable~~ an annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member.

(f) If self-employed, the applicant must meet the requirements in subsection (c) of this Section and:

(1) must have an annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority;

(2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms;

(3) verify current income by providing appropriate supporting documentation; and

(4) ~~must not be employed by any full-time employer who meets the eligibility requirements in OAC 317:45-7-1(a)(1)-(2)~~ must not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2).

(g) If unemployed seeking work, the applicant must meet the requirements in subsection (c) of this Section and the following:

(1) Applicant must have an annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority. In determining income, payments of regular unemployment compensation in the amount of $25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, will not be counted, as authorized under the American Recovery and Reinvestment Tax Act of 2009.

(2) Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

(A) OESC eligibility letter,

(B) OESC weekly unemployment payment statement, or

(C) bank statement showing state treasurer deposit.

(h) If working with a disability, the applicant must meet the requirements in subsection (c) of this Section and:

(1) Applicant must have an annual gross household income at or below ~~200%~~ 250 percent of the Federal Poverty Level based on a family size of one~~; and~~. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.

(2) Applicant must verify eligibility by providing a copy of their:

(A) ticket to work, or

(B) ticket to work offer letter.

317:45-11-21. Dependent eligibility

(a) If the spouse of an Insure Oklahoma~~/O-EPIC~~ IP approved individual is eligible for Insure Oklahoma~~/O-EPIC~~ ESI, they must apply for Insure Oklahoma~~/O-EPIC~~ ESI. Spouses cannot obtain Insure Oklahoma~~/O-EPIC~~ IP coverage if they are eligible for Insure Oklahoma~~/O-EPIC~~ ESI.

(b) The employed or self-employed spouse of an approved applicant must meet the guidelines listed in OAC 317:45-11-20(a) through (g) to be eligible for Insure Oklahoma~~/O-EPIC~~ IP.

(c) The dependent of an applicant approved according to the guidelines listed in OAC 317:45-11-20(h) does not become automatically eligible for Insure Oklahoma~~/O-EPIC~~ IP.

(d) The applicant and the dependents' eligibility are tied together. If the applicant no longer meets the requirements for

Insure Oklahoma~~/O-EPIC~~ IP, then the associated dependent enrolled under that applicant is also ineligible.

(e) Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA).

(f) Dependent children in families whose annual gross household income is from 185 up to and including 300 percent of the Federal Poverty Level may be eligible. The inclusion of children into the Insure Oklahoma program will be phased in over a period of time as determined by the OHCA. No other deductions or disregards apply.

(1) Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.

(2) Children are not eligible for Insure Oklahoma if they are a member of a family eligible for employer-sponsored dependent health insurance coverage under any Oklahoma State Employee Health Insurance Plan.

(3) Children who already have coverage through another source must undergo, or be excepted from, a six month uninsured waiting period prior to becoming eligible for Insure Oklahoma. Exceptions to the waiting period may include:

(A) the cost of covering the family under the ESI plan meets or exceeds 10 percent of the annual gross household income. The cost of coverage includes premiums, deductibles, co-insurance, and co-payments;

(B) loss of employment by a parent which made coverage available;

(C) affordable ESI is not available; "affordable" coverage is defined by the OHCA annually using actuarially sound rates established by the Oklahoma State and Education Employee Group Insurance Board (OSEEGIB); or

(D) loss of medical benefits under SoonerCare.

317:45-11-21.1. Certification of newborn child deemed eligible

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma~~/O-EPIC~~ IP and the ~~household countable~~ annual gross household income does not exceed SoonerCare requirements. ~~(For purposes of this subparagraph, a newborn child is defined as any child under the age of one year).~~ The newborn child is deemed eligible through the last day of the month the child attains the age of one year.

(b) The newborn child's eligibility is not dependent on the mother's continued eligibility ~~for~~ in Insure Oklahoma~~/O-EPIC~~ IP. The child's eligibility is based on the original eligibility determination of the mother for Insure Oklahoma~~/O-EPIC~~ IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period is shortened only in the event the child:

~~(1) leaves the mother's home;~~

(~~2~~1) loses Oklahoma residence; or

~~(3) has medical needs included in another assistance case; or~~

(~~4~~2) expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration~~; however, it~~ and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

317:45-11-22. PCP choices

(a) The applicant (and dependents if also applying for Insure Oklahoma~~/O-EPIC~~ IP) is required to select a valid PCP ~~choices as required on the application~~.

(b) If a valid PCP is selected by the applicant or dependents and they are not enrolled with the first PCP choice, they are enrolled with the next available PCP choice. The applicant is notified in writing why their initial choice was not selected.

(c) After initial enrollment in Insure Oklahoma~~/O-EPIC~~ IP, the applicant or dependents can change their PCP selection by calling the Insure Oklahoma~~/O-EPIC~~ helpline. ~~Changes take effect the first day of the next month or the first day of the 2nd consecutive month. Applicant and dependents are only allowed to change their PCP a maximum of four times per calendar year.~~

317:45-11-23. Employee eligibility period

(a) The rules in this subsection apply to applicants eligible according to OAC 317:45-11-20(a) through (e).

(1) The employee's coverage period begins only after receipt of the premium payment.

(A) If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is received and approved on January 14th and the premium is received before February 15th, eligibility begins March 1st; or an application is received and approved January 15th and the premium is received on March 15th, eligibility begins April 1st.)

(B) If premiums are paid early, eligibility still begins as scheduled.

(2) Employee eligibility is contingent upon the employer meeting the program guidelines.

(3) The employee's eligibility is determined ~~by the TPA~~ using the eligibility requirements listed in OAC 317:45-9-1 or OAC 317:45-11-20(a) through (e).

(4) If the employee is determined eligible for Insure Oklahoma~~/O-EPIC~~ IP, he/she is approved for a period not greater than 12 months. ~~The length of the eligibility period is based on the remaining number of months the employer has left in its eligibility period as defined in OAC 317:45-7-1, 317:45-7-2 and 317:45-7-8.~~

(b) The rules in this subsection apply to applicants eligible according to OAC 317:45-11-20(a) through (c) and OAC 317:45-11-20(f) through (h).

(1) The applicant's eligibility is determined ~~by the TPA~~ using the eligibility requirements listed in OAC 317:45-11-20(a) through (c) and OAC 317:45-11-20(f) through (h).

(2) If the applicant is determined eligible for Insure Oklahoma~~/O-EPIC~~ IP, he/she is approved for a period not greater than 12 months.

(3) The applicant's eligibility period begins only after receipt of the premium payment.

(A) If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is approved on January 14th and the premium is received before February 15th, eligibility begins March 1st; or an application is approved January 15th and the premium is received on March 15th, eligibility begins April 1st.)

(B) If premiums are paid early, eligibility still begins as scheduled.

317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for health plan premiums. The premiums are due, and must be paid in full, no later than the 15th day of the month prior to the month of IP coverage.

(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent of their ~~gross~~ monthly gross household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed ~~4%~~ four percent of their ~~gross~~ monthly gross household income, based on a family size of one and capped at ~~200%~~ 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of Insufficient/Non-sufficient funds.

317:45-11-25. Premium payment

IP health plan premiums are established by the OHCA. Employees and college students are responsible for up to 20 percent of their IP health plan premium. The employees are also responsible for up to 20 percent of their ~~spouse's~~ dependent's IP health plan premium if the dependent is included in the program. The combined portion of the employee's or college student's cost sharing for IP health plan premiums cannot exceed four percent of his/her ~~gross~~ annual gross household income computed monthly.

317:45-11-26. Audits

Members participating in the Insure Oklahoma~~/O-EPIC~~ program are subject to audits related to their eligibility, subsidy payments, premium payments and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

317:45-11-27. Closure

(a) Members are mailed a notice 10 days prior to closure of eligibility.

(b) The employer and employees' eligibility are tied together. If the employer no longer meets the requirements for Insure Oklahoma~~/O-EPIC~~ then eligibility for the associated employees enrolled under that employer are also ineligible.

(c) The employee's certification period may be terminated when:

(1) the member requests closure;

(2) the member moves out-of-state;

(3) the covered member dies;

(4) the employer's eligibility ends;

(5) an audit indicates a discrepancy that makes the member or employer ineligible;

(6) the employer is terminated from Insure Oklahoma~~/O-EPIC~~;

(7) the member fails to pay the amount due within 60 days of the date on the bill;

(8) the ~~QHP~~ qualified health plan or carrier ~~is no longer qualified~~ no longer meets the requirements set forth in this chapter;

(9) the member begins receiving ~~SoonerCare/Medicare~~ SoonerCare or Medicare benefits;

(10) the member begins receiving coverage by a private health insurance policy or plan; or

(11) the member or employer reports ~~to the OHCA or the TPA~~ any change affecting eligibility.

(d) This subsection applies to applicants eligible according to OAC 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h). The member's certification period may be terminated when:

(1) the member requests closure;

(2) the member moves out-of-state;

(3) the covered member dies;

(4) the employer's eligibility ends;

(5) an audit indicates a discrepancy that makes the member or employer ineligible;

(6) the member fails to pay the amount due within 60 days of the date on the bill;

(7) the member becomes eligible for ~~SoonerCare/Medicare~~ SoonerCare or Medicare;

(8) the member begins receiving coverage by a private health insurance policy or plan; or

(9) the member or employer reports ~~to the OHCA or the TPA~~ any change affecting eligibility.

317:45-11-28. Appeals

(a) Member appeal procedures based on denial of eligibility due to income are described at OAC 317:2-1-2.

(b) ~~Member appeals related to premium payments and/or out-of-pocket expenses are made to the TPA. If the member disagrees with the TPA's findings, reconsideration of the finding may be made to the OHCA. The decision of the OHCA is final.~~

~~(c) Employee appeals regarding out-of-pocket expenses are made to the TPA. If the employee disagrees with the TPA's findings, reconsideration of the finding may be made to the OHCA. The decision of the OHCA is final~~ Employee appeals regarding out-of-pocket medical expense reimbursements may be made to the OHCA. The OHCA may request documentation to support the out-of-pocket appeal. The decision of the OHCA is final.

[OAR Docket #10-1051; filed 6-21-10]

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 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-1042]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Individual Procedures
35:1-9-3 [AMENDED]
Subchapter 10. Requirements for Department Programs [NEW]
35:1-10-1 through 35:1-10-5 [NEW]
Subchapter 11. Licensing Procedures
35:1-11-2 [AMENDED]
35:1-11-5 [AMENDED]
35:1-11-7 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2010 through March 3, 2010
Public hearing:
March 3, 2010
Adoption:
March 17, 2010
Submitted to Governor:
March 17, 2010
Submitted to House:
March 17, 2010
Submitted to Senate:
March 17, 2010
Gubernatorial approval:
April 14, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 13, 2010
Final adoption:
May 13, 2010
Effective:
July 25, 2010
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules add procedures for audits of out-of-state companies, political activity of agriculture investigators, procedures for appeals of stop-sale and stop work orders, unilateral administrative orders, service of process for administrative hearings, and licensing procedures. The proposed rules are necessary to ensure that out-of-state companies are treated the same as in-state companies when an audit is required. In addition, the rules make sure the Department's agriculture investigators are held to the same standards as other state employed law enforcement members. Also, procedures for appeals of stop-sale and stop work orders as well as unilateral administrative orders and service of process for administrative hearings are addressed to ensure due process is met.

CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 9. INDIVIDUAL PROCEDURES

35:1-9-3. Notice to parties

(a) As soon as possible after the filing of the Notice of Violation, the Department shall notify the respondents of the filing and of the date set for hearing.

(b) The notice shall include a copy of the petition and the date, time, and place of the hearing, which shall be at least twenty (20) days after notice of the hearing is sent, unless otherwise provided by law or agreed by the parties.

(c) Service of notice shall be made in accordance with the Oklahoma Pleading Code, 12 O.S. § 2001 et seq.

(d) Where the Department is serving notice, personal service may be made by any agriculture law enforcement agent pursuant to 2 O.S. 6-310.

(e) Notice shall be sent to the address for the respondent as maintained in the records of the Department.

(f) Notice sent to the address on file by certified mail shall be considered good service to the respondent and the respondent shall have the burden of showing that an appropriate address change was filed with the Department prior to the notice being sent.

SUBCHAPTER 10. REQUIREMENTS FOR DEPARTMENT PROGRAMS

35:1-10-1. Addresses for regulated persons

(a) Any person regulated by the Department shall notify the Department of a change of address within thirty (30) days of the change.

(b) Failure to notify the Department of an address change within thirty (30) days may result in an administrative fine.

35:1-10-2. Auditing of entities located in another state

(a) Any person located in another state and conducting business in Oklahoma that requires a license, permit, or other form of registration shall by virtue of obtaining that license, permit, or other form of registration consent to any inspection or audit by the Department.

(b) Any person located in another state and denying entry for inspection or audit by an agent of the Board shall result in automatic suspension of all licenses, permits, or other forms of registration issued by the Board, an immediate stop-sale being issued, and the person shall no longer do business in Oklahoma for the licensed, permitted, or other form of registration.

(c) Any automatic suspension pursuant to this section shall be in effect until the person or entity suspended receives written notice that the suspension has been lifted or set aside by the Board.

(d) Any person subject to an automatic suspension of any licenses, permits, or other forms of registration may request an administrative enforcement hearing within fifteen (15) working days after the suspension occurs. The hearing shall be held by the Department within ten (10) working days after receipt of the request.

35:1-10-3. Administrative compliance orders

(a) The Commissioner, upon the request of a Division, may issue an administrative order requiring compliance, assessing penalties for past violations and specifying penalties for continuing noncompliance.

(b) An administrative compliance order shall specify the findings of fact and conclusions of law upon which it is based and shall set a time for the Respondent to comply. The Order shall specify the penalty, not to exceed the statutory maximum per day of noncompliance, to be assessed in the event that the Respondent fails to comply with the Order within the prescribed time, and, if applicable, the penalty assessed for past violations of the Code, rules, or licenses or permits. The Order shall advise the Respondent that it shall become final unless an administrative hearing is requested in writing within fifteen (15) working days of service of the Order.

(c) Based on the hearing and record, a proposed order will be sustained, modified, or dismissed by the State Board of Agriculture. If the hearing process extends beyond any compliance deadline specified in the Order, fines specified in the Order for violations of the Order will continue to accrue during the hearing process unless the Administrative Law Judge stays the penalty upon request for good cause shown.

35:1-10-4. Political activity of agriculture investigators

No Oklahoma Department of Agriculture, Food, and Forestry agriculture investigators who has the power of a peace officer shall:

(1) Serve as an officer of a party committee at the national, state or local level;

(2) Organize or reorganize a party committee;

(3) Solicit votes in support of or in opposition to a candidate for state office in a partisan election or a candidate for party committee office;

(4) Act as a watcher at the polls in behalf of a party committee or a candidate in a partisan election;

(5) Drive voters to the polls on behalf of a party committee or a candidate in a partisan election;

(6) Endorse or oppose a candidate for state office in a partisan election or a candidate for party committee office in a political advertisement, broadcast, campaign, literature or similar material;

(7) Serve as a delegate, alternate or proxy to a party committee convention;

(8) Address a convention, caucus, rally or similar gathering of a party committee in support of or in opposition to a partisan candidate for state office or party committee office;

(9) Initiate or circulate a partisan nominating petition; or

(10) Take any active part in political organization management.

35:1-10-5. Appeals of stop sale, stop work orders

(a) Any person issued a stop sale or stop work order may file a written request for an appeal of the order within fifteen (15) working days of receipt of the order.

(b) The Department shall hold a hearing on the appeal within ten (10) working days of receipt of the request.

(c) This procedure shall not replace any other statute or rule with an appellate procedure spelled out for a specific topic or program.

SUBCHAPTER 11. LICENSING PROCEDURES

35:1-11-2. Expiration date of license

The specific requirements and expiration dates for each license are set forth in the Oklahoma Agricultural Code, 2 O.S. ~~1981~~ 2001, Sections 1-1, et seq., or as subsequently amended, or by rule.

35:1-11-5. Notification of action on license; time granted for compliance

In accordance with statute, no license ~~will~~ shall be revoked, suspended, annulled, withdrawn, or its renewal refused, until the licensee is notified by certified mail or by other means of notification as specified in individual proceedings of the facts which warrant the intended action by the Board, and is given an opportunity to achieve compliance with the requirements for petition of the license, and time for achieving compliance shall be that time prescribed by law or if no time is specified, a reasonable time to be determined by the circumstances of the case at the discretion of the Board and specified in the notice. After ~~such~~ that lapse of time, if the Board deems the proceedings should continue, the rules governing individual proceedings shall be followed.

35:1-11-7. List of licenses required

All licenses, permits or certificates required by law are listed ~~either~~ in the statutes or rules of the respective divisions that issue them ~~or in the attached list or both~~.

[OAR Docket #10-1042; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #10-1035]

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Subchapter 3. Fee Schedules
35:2-3-12 [AMENDED]
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27 Ok Reg 1091
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#10-684
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N/A
ANALYSIS:
Pursuant to federal law, the proposed rules mirror the phytosanitary certificate fee increases that the Department is required to collect on behalf of the federal government. These fees are set to be raised over time.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-12. Schedule of horticulture program fees

(a) The fee for each Federal Phytosanitary Certificate issued or renewed shall be as follows:

(1) Federal Phytosanitary Certificate PPQ Form 577.

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more— ~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00— ~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(2) Federal Phytosanitary Certificate, Processed Plant Products PPQ Form 578.

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more— ~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00— ~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(3) Federal Phytosanitary Certificate for Re-export PPQ Form 579

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more— ~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00— ~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(4) Ten Dollars ($10.00) for the re-issuance of a Federal Phytosanitary Certificate.

(5) All Federal Phytosanitary Certificates shall require an administrative fee paid by the Department to USDA in the following amounts:

(A) Three Dollars ($3.00) if the certificate is issued in PCIT, or Six Dollars ($6.00) if the certificate is issued outside of PCIT for 2010.

(B) Six Dollars ($6.00) if the certificate is issued in PCIT, or Twelve Dollars ($12.00) if the certificate is issued outside of PCIT for 2011 and following years.

(b) The fee for each State Phytosanitary Certificate issued or renewed shall be Twenty Dollars ($20.00) except there shall be no charge for the issuance of a certificate required by the Japanese Beetle Harmonization Plan unless a treatment is monitored by an authorized agent of the Board.

(c) The fee for each grower, dealer, broker, and landscaper license issued or renewed and inspection conducted shall be as follows:

(1) Growers license - Twenty five Dollars ($25.00) for each business location.

(2) Growers inspection fee - One Dollar ($1.00) per acre and per 1000 square feet of greenhouse area inspected.

(3) Dealers, broker license and landscapers fees -Thirty eight Dollars ($38.00) for each business location.

(4) Landscaper or Personal Use Only license fee - One Hundred Dollars ($100.00) for each business location.

(5) No fee for shall be charged for a grower's license issued to any scientific, agricultural, or horticultural club, garden center, educational or eleemosynary institution, or any department or branch of the state or federal government:

(6) Failure to remit the license fee by the 15th of the month following the expiration month shall result in a penalty fee equal to the cost of the license.

(d) A fee of Twenty-Five Dollars ($25.00) shall be charged for any requested inspection or certification and shall be payable at the time of inspection and includes inspections and certificates issued for transporting plants.

(e) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

[OAR Docket #10-1035; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #10-1039]

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ANALYSIS:
Pursuant to an order of the State Board of Agriculture, this rule increases the surety required of a grain warehouse. The surety was increased in December of 2008 by the Board pursuant to the authority found in 2 O.S. § 9-22. This rulemaking is for the purpose of updating rules to match the current surety required for grain warehouses.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-23. Schedule of fees for the public warehouse program

(a) All state commodity warehouses shall be chartered. A one-time charge of one hundred dollars ($100.00) for each charter will be due with the application for all new public warehouse charters.

(b) If an applicant for a public warehouse charter or a chartered warehouseman desires to purchase surety through the Department, the Board shall charge and collect a fee of ~~Ten~~ Twenty Dollars ~~($10.00)~~ ($20.00) per One Thousand Dollars ($1,000.00) of surety. The fee shall be deposited in the Commodity Storage Indemnity Fund and be specifically designated and accounted for as a reinsurance fee. The Board shall use the reinsurance fee to provide protection to the Indemnity. The additional assessment shall only be collected from persons securing surety through this subsection.

(c) The fee for each warehouse examination shall be figured progressively for each 10,000 bushels or portion of 10,000 bushels of chartered storage capacity with a minimum examination fee of $100.00. The fee shall be:

(1) Minimum base or 1st 200,000 bu.: $100.00
(2) From 200,001 bu. - 250,000 bu.: $5.00 per 10,000 bu.
(3) From 250,001 bu. - 500,000 bu.: $4.75 per 10,000 bu.
(4) From 500,001 bu. - 750,000 bu.: $4.50 per 10,000 bu.
(5) From 750,001 bu. - 1,000,000 bu.: $4.00 per 10,000 bu.
(6) From 1,000,001 bu. - 2,000,000 bu.: $3.50 per 10,000 bu.
(7) From 2,000,001 bu. - 10,000,000 bu.: $3.00 per 10,000 bu.
(8) From 10,000,001 bu. - : $1.00 per 10,000 bu.

(d) The audit or examination fee shall be due and payable at the completion of each warehouse audit. If a statement covering the cost of the audit is mailed to the warehouseman, they shall remit payment within thirty (30) calendar days in the form of a check, money order, or cashier's check made payable to the Oklahoma Department of Agriculture.

(e) When requesting approval of temporary space, an examination shall be conducted of the temporary space and the cost of the examination charged to the warehouseman at the following rates: Ten Dollars ($10.00) for each 10,000 bushels of the temporary storage capacity, with a minimum charge of One Hundred Dollars ($100.00) and a maximum charge of One Thousand Dollars ($1,000.00)

(f) The fee for conducting a specialty audit for the a commission, agency, or board shall be $55.00. Terms and conditions of the specialty audits shall be specified in the contract with each commission, agency, or board.

(g) The fee for measuring grain for independent auditors shall be $35.00 per hour in addition to mileage charged at the current State Motor Pool rate.

[OAR Docket #10-1039; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #10-1034]

RULEMAKING ACTION:
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RULES:
35:13-1-6 [NEW]
AUTHORITY:
State Board of Agriculture; 2 O.S. §§ 2-4; Article 6, Section 31, Constitution of the State of Oklahoma
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ANALYSIS:
The proposed rules incorporate fees for the fuel alcohol program into the program rules rather than statute. This movement is only a repeat of the rules and does not give the Department any additional authority over setting fees for this program than is already established by the Legislature. These rules do not result in fee increases or decreases. They are simply a copy of existing fees to ensure the public can view a program and know the fees associated with that program. In addition, this rule gives no new authority to the Department regarding fees that is not already given to the Department in statute.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

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 25, 2010:

35:13-1-6. Fuel alcohol fees

The permits issued for the fuel alcohol program shall have the following annual fees:
(1) Alcohol Fuel Producer Permit (Small) shall be $25.00;
(2) Alcohol Fuel Producer Permit (Medium) shall be $100.00; and
(3) Alcohol Fuel Producer Permit (Large) shall be $250.00.

[OAR Docket #10-1034; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #10-1044]

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Subchapter 1. General Provisions
35:15-1-2 [AMENDED]
Subchapter 9. Livestock Dealers and Livestock Special Sales
Part 3. Livestock Special Sales
35:15-9-8 [AMENDED]
35:15-9-9 [AMENDED]
35:15-9-11 [REVOKED]
Subchapter 11. Importation of Livestock, Poultry, and Pets
Part 7. Livestock
35:15-11-20 [AMENDED]

Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-1 [AMENDED]
35:15-13-3 [AMENDED]
35:15-13-5 through 35:15-13-7 [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 5. Change of Ownership of Equidae
35:15-15-51 [AMENDED]
Part 7. Requirements for Approved Markets
35:15-15-71 [AMENDED]
35:15-15-72 [AMENDED]
Part 9. Equine Exhibitions
35:15-15-91 [AMENDED]
Part 11. Requirements for Equidae Entering Oklahoma
35:15-15-111 [AMENDED]
Subchapter 22. Swine Pseudorabies
Part 1. General Provisions
35:15-22-2 [AMENDED]
Part 3. Requirements for Swine Entering Oklahoma
35:15-22-31 [AMENDED]
35:15-22-32 [AMENDED]
Part 7. Requirements for Swine Exhibitions
35:15-22-71 [AMENDED]
Part 9. Requirements for Approved Markets
35:15-22-91 [AMENDED]
Subchapter 24. Swine Brucellosis
Part 1. General Provisions
35:15-24-3 [AMENDED]
Subchapter 34. Feral Swine
35:15-34-3 [AMENDED]

AUTHORITY:
2 O.S. §§ 2-4; Article 6, Section 31, Constitution of the State of Oklahoma

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ANALYSIS:
The proposed rules cleanup the general provisions of the animal health rules by clarifying the official identification definition. In addition, in the remainder of the proposed rules, animal identification terminology is revised to the term official identification. The proposed changes to the livestock special sales section modifies the list of items necessary for recordkeeping and deletes obsolete language. The requirements for denial of entry for animals from a state with a premise quarantined for vesicular stomatitis was changed to a county quarantined area. In testing and inspection for disease and release of livestock at auction markets, the changes are to be consistent with federal brucellosis requirements, and to clarify what types of livestock auctions are required to employ an approved veterinarian. The rules also clarify the responsibilities of the approved veterinarian at the livestock auction. Next, the rules clean up the rules related to equine infectious anemia, clarifying the equine passport acceptance in Oklahoma. The swine pseudorabies and brucellosis rules contain language clarifying entry requirements for swine entering the state. Finally, feral swine rules are amended to address movement of feral swine directly to slaughter within the state.

CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

35:15-1-2. Definitions

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

"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

"Backtag" means a USDA approved identification system consisting of a tag of special tough paper, bearing identification codes relating to origin of animals, which are stuck to the back of animals with very strong glue. The backtag is designed for easy reading in sale barns, short life and to help with traceback during investigation of the origin of disease outbreaks.

"Certificate of veterinary inspection" means an official document or its electronic equivalent approved by the chief livestock official of the state of origin issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term certificate of veterinary inspection shall also include an official health certificate, an official certificate, or a certificate.

"Designated epidemiologist" means an epidemiologist selected by the State Veterinarian who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with a particular disease, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors.

"Official identification" means any official method of identification approved by USDA or the State Veterinarian, including but not limited to a metal ear tag that provides unique identification for each animal by conforming to the national

uniform nine (9) character alphanumeric ear tag system and electronic identification or radio frequency identification (RFID). Backtags shall not be considered ~~an~~ official ~~ear tag,~~ identification unless the animal is shipped directly to slaughter. Animals identified by the approved veterinarian for a livestock auction market as too debilitated to enter the identification chutes may be officially identified by a backtag or any other form of official identification and shall have a "slaughter only" tag applied. The term "official eartag" is synonymous with "official identification."

"Quarantine" means a written notice or order issued by an authorized agent of the Board showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.

"State animal health official" means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in ~~the~~ a state.

SUBCHAPTER 9. LIVESTOCK DEALERS AND LIVESTOCK SPECIAL SALES

PART 3. LIVESTOCK SPECIAL SALES

35:15-9-8. Written records

Each permit holder shall keep written records for not less than twenty-four (24) months after the special sale that are necessary and adequate to determine the sources and disposition of livestock sold at the sale, and shall at a minimum include the following:

(1) Accounts of sales;

(2) Accounts of purchases;

(3) Bills and invoices to purchasers;

(4) ~~Cancelled checks and drafts;~~

~~(5) Check stubs;~~

~~(6) Scale tickets;~~

~~(7)~~ Documents certifying the health status of animals presented by consignors:

(~~8~~5) Records identifying each purchaser at the sale, including the name, mailing address, and telephone number~~, and drivers license number~~ of the purchaser or, if a minor, the representative of the purchaser; and

(~~9~~6) All other written correspondence pertaining to livestock advertised or sold in the sale.

35:15-9-9. Submission of record sales

The permit holder shall submit to the Board within fifteen (15) days after the special sale a record identifying ~~and showing the sex and breed of~~ each animal consigned. ~~from out-of-state purchased by an Oklahoma buyer,~~ The record shall include the name , mailing address, and telephone number~~, and drivers license number~~ of the consignor or representative, and the name, mailing address, and telephone number~~, and drivers license number~~ of the purchaser or, if a minor, the representative of the purchaser.

35:15-9-11. Swine Special Sales [REVOKED]

~~(a) If swine from Class I, Class II, or Class III states are allowed to attend a sale, the fee for the Swine Special Sale Permit shall be Three Hundred Dollars ($300.00).~~

~~(b) If only swine from Class IV or Class V states are allowed to attend a sale, no fee shall be required for the Swine Special Sale Permit.~~

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 7. LIVESTOCK

35:15-11-20. Requirements regarding vesicular stomatitis

~~(a)~~ Any livestock (equine, bovine, porcine, caprine, ovine, or cervidae) entering ~~or reentering~~ Oklahoma from a ~~state~~ county where vesicular stomatitis has been diagnosed within the last thirty (30) days or a county that contains a premise quarantined for vesicular stomatitis shall be accompanied by a ~~Certificate~~ certificate of ~~Veterinary Inspection~~ veterinary inspection dated within five (5) days of entry containing the following statement: "All animals identified on this ~~health~~ certificate of veterinary inspection have been examined and found to be free from signs of vesicular stomatitis and have not originated from a premise which is under quarantine for vesicular stomatitis."

~~(b) The Certificate of Veterinary Inspection shall be signed by an accredited veterinarian of the state where vesicular stomatitis has been diagnosed and shall be obtained prior to each entry or reentry into Oklahoma.~~

SUBCHAPTER 13. TESTING AND INSPECTION FOR DISEASE AND RELEASE OF LIVESTOCK AT AUCTION MARKETS

35:15-13-1. Definitions

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

~~**"Approved laboratory"** means a facility used in conducting necessary diagnostic tests, and is constructed, equipped, and maintained in accordance with Board regulations.~~

"Approved veterinarian" means a licensed accredited veterinarian who has complied with all Board regulations, and who has been approved by the Board to conduct necessary tests, vaccinations, inspections, and other duties of an Auction Market Veterinarian at auctions selling cattle, horses, or swine.

"Drive-in" means a written record of livestock in a single consignment. Information on a drive-in shall include name

and address of the consignor, license tag number of vehicle used to haul livestock, list and brief description of livestock and corresponding backtags applied, and any special notes or instructions concerning the livestock.

"Official forms" means ~~a form~~ forms furnished or approved by the State Board of Agriculture or Animal and Plant Health Inspection Service~~,~~ of the United States Department of Agriculture.

"~~Test~~ Brucellosis test eligible cattle" means all cattle eighteen (18) months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed cattle which have been "S" branded, steers, and spayed heifers~~, official vaccinates of dairy breeds under twenty (20) months of age, and official vaccinates of beef breeds under twenty four (24) months of age which are not parturient or postparturient~~.

35:15-13-3. General requirements for a livestock auction market

(a) Any person owning, operating, conducting, or maintaining a livestock auction market shall be required to:

(1) Submit an application for a license ~~prior to operation~~ to the Board on an official form prior to operation.

(2) Bond the market pursuant to 2 O.S.~~,~~ Section 9-132, as amended or according to the provisions of the Federal Packers and Stockyards Act as amended.

(3) Employ an approved veterinarian for auctions selling cattle, horses, or swine.

(b) The livestock auction market license shall cost Twenty Five Dollars ($25.00) per year and shall expire ~~each~~ on December 31 of each year.

(c) Both the buyer's and seller's invoices shall ~~be complete as to~~ include the name, address of the owner and description of the cattle as to breed, sex and age. Invoices for swine shall show the predominate breed and shall show them to be feeding, breeding or slaughter swine.

(d) The approved veterinarian or sale company shall not be responsible for results of any tests that are made properly, or any reactor or responder animals found in the market. ~~All~~ Ownership of all reactor or responder animals shall revert back to the consignor.

(e) No cattle or swine shall be allowed to leave the market until an approval for release is secured from an approved veterinarian or an authorized agent of the Board. The market shall be responsible to see that no cattle or swine are removed without first being released by an approved veterinarian or an authorized agent of the Board. Approval for release shall be presumed upon the approved veterinarian's completion of pen inspections unless the cattle or swine are sent to the quarantine pen.

(f) Each market shall have a quarantine pen or pens for yarding reactor or responder animals. ~~Said~~ The pen ~~is to~~ shall be identified by painting the top of the gate either red or yellow and the word "Quarantine" spelled out on ~~said~~ the gate. The pen shall be constructed ~~so as~~ to make it easily cleaned and disinfected after each sale. Any watering troughs or feed bunks in the quarantine pen shall be located ~~so that~~ to ensure livestock in adjoining pens ~~will~~ do not have access to them.

(g) All reactor or responder animals shall be yarded in the quarantine pen and shall be sold last. ~~Such~~ The animals shall be identified as reactors or responders on the invoices of both the buyer and seller.

(h) Refusal or failure to comply with the Board rules shall be just cause for the revocation or suspension of the Livestock Auction Market License.

(i) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any ~~animal~~ of the animals identified ~~below~~ by the following to leave the livestock auction market unless it is individually identified by an official identification:

(1) All beef cattle eighteen (18) months of age or older, except fat steers, heifers, and bulls, going directly to a feedlot or slaughter;

(2) All dairy cattle two (2) months of age or older; and

(3) All "M" branded cattle.

(j) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to the livestock auction market for a period of two (2) years ~~sufficient~~ for disease traceback purposes, including but not limited to the following:

(1) "Drive-in" or any other documents identifying the backtag, owners name and address, and license tag of mode of transportation;

(2) Any records kept pursuant to the Livestock Auction Market Act;

(3) Records of any official identification applied to the animal or already existing with the animal; and

(4) Any records available regarding the purchaser of the animals.

35:15-13-5. Approval and responsibilities of veterinarians in livestock auction markets

(a) The veterinarian shall make application for approval to the Board and shall be examined as to his ability to function as an Auction Market Veterinarian.

(b) The veterinarian shall ~~examine~~ inspect each ~~animal~~ bovine, bison, horse, or swine at the livestock market auction for the purposes of determining the condition of health and freedom from infectious or contagious diseases.

(c) The veterinarian shall arrive at the market in sufficient time to do all required testing, official identification, and inspection prior to the beginning of the sale.

(d) The veterinarian is responsible for completion of state and federal forms necessary for the release of livestock from markets and other state and federal forms required for disease control and eradication programs.

(e) In the event that an official identification is already present in the animal being tested, the veterinarian shall use this tag instead of retagging, and include all prefixes and numbers in recording ~~said~~ the tag on test charts.

(f) The veterinarian shall use separate bleeding ~~needle~~ needles or separate ~~syringe~~ syringes for each animal. The use of the same syringe or needle for all animals is prohibited.

(g) If the veterinarian cannot determine the class of livestock to be shipped by the description on the purchaser's invoice, ~~then~~

~~it will be necessary for him to~~ the veterinarian shall look at each shipment ~~before releasing them~~ prior to release.

(h) All reactor or responder cattle received for sale shall be examined as to official identification by the Auction Market Veterinarian prior to sale.

(i) Copies of all forms shall be forwarded to the office of the State Veterinarian by the veterinarian immediately after sale. ~~All blood samples shall be forwarded to the State Federal Brucellosis Laboratory for confirmation of test immediately after sale.~~

(j) All official forms, certificates of veterinary inspection, or documents and official stamps and signature stamps, shall be kept in the exclusive possession of the veterinarian and shall be dated and signed by him only at the time it is filled out and issued. Under no circumstances shall any official document be presigned or prestamped by the veterinarian. Use of any official stamp by persons other than the approved veterinarian or a state or federal employee is expressly prohibited. The approved veterinarian shall be solely responsible for the unauthorized or improper issuance of any official document or the use of any official stamp or signature stamp.

(k) The veterinarian shall ~~be responsible to replace himself with~~ ensure another approved veterinarian ~~in the event he finds it necessary to be~~ is available at the market when the regular approved veterinarian is absent from the market.

(l) The veterinarian shall not resign his duties without written notice to the sale company and State Veterinarian's ~~Office~~ office at least ten (10) days prior to resignation.

(m) The veterinarian's failure or neglect to perform any of the functions in this Section shall be cause for disapproval and immediate removal from the market.

35:15-13-6. Movement of livestock through auction markets

(a) All certificates of veterinary inspection, permits, and other documents, including out-of-state documents accompanying livestock into Oklahoma markets that are incomplete or have been altered in any way are void and ~~are~~ shall not ~~to~~ be accepted. This includes documents that are incomplete as to official identification number and description of animal it represents. In order to be accurate and acceptable, the prefix of each official identification number shall be recorded.

(b) ~~Cattle reacting to the required tests shall be tagged and branded immediately unless a retest is requested by the owner prior to the sale of the animals.~~

~~(c)~~ Cattle consigned directly from an out-of-state farm of origin to an approved livestock market in Oklahoma will not need a permit prior to entry. Out of state brucellosis test eligible cattle moving through an Oklahoma market shall be identified by market management at the time of sale.

~~(d) All reactor or responder cattle received for sale shall be examined as to official identification number by the Auction Market Veterinarian prior to sale.~~

(~~e~~c) The market shall maintain the identity of reactor or responder animals and restrict their sale to slaughtering establishments approved for the purpose of slaughtering reactors or responders. Reactors or responders shall only be sold directly to slaughter on a VS 1-27 and are not be returned to the country or be transported from market to market.

(~~f~~d) All cattle, regardless of age, weight, sex, or breed, shall ~~be approved for~~ obtain a release by an approved veterinarian or an agent of the Board and ~~are~~ shall not ~~to~~ be released unless they meet the importation and transportation requirements of the state of destination, including the State of Oklahoma.

(~~g~~e) All cattle, including slaughter, feeding, breeding, and dairy animals, shipped or exported from the State of Oklahoma, regardless of "purpose of movement,"~~,~~ shall be accompanied by ~~an official Oklahoma health~~ certificate of veterinary inspection. ~~This includes slaughter, feeding, breeding, and dairy animals. In addition to this health certificate, they~~ The cattle shall also meet the state of destination importation requirements ~~as they pertain to permits, test requirements, and the like~~.

(~~h~~f) All swine destined for interstate shipment shall be accompanied by ~~an official health~~ certificate of veterinary inspection.

35:15-13-7. Specific approval of livestock auction markets

(a) No market shall be specifically approved until proper application is made and a determination is made by the State Veterinarian that the Board regulations and standards are met.

(b) Each market shall have a packer buyer present at each sale.

(c) All animals received at the market shall be considered in ~~Interstate Commerce~~ interstate commerce and be handled in accordance with ~~the Interstate Regulations~~ interstate regulations.

(d) All ~~livestock~~ cattle, horses, and swine shall be visually inspected by the approved veterinarian prior to sale for diseased conditions such as cattle scab, sheep scab, Actinomycosis (lump jaw), Carcinomas (cancer eye), Infectious Rhinitis (bull nose) or any other infectious, contagious, or communicable disease.

(e) Any animal ~~found~~ determined to be diseased by the veterinarian shall be sold direct to slaughter or quarantined for treatment ~~according~~ pursuant to the ~~judgement~~ judgment of the veterinarian.

(f) Each market shall furnish and maintain in good repair sufficient equipment suitable for restraining animals for careful inspection, testing, tagging, branding, and other treatments and procedures ordinarily required in providing livestock sanitary service at markets. ~~Said~~ The equipment ~~is to~~ shall be covered or housed so that necessary work can ~~be taken care of~~ take place during inclement weather.

(g) The appointment and termination of the approved veterinarian by the livestock auction market is subject to approval of both state and federal officials.

(h) Failure or neglect to perform any of the functions in this ~~Section~~ section shall be cause for ~~removal~~ withdrawal of the approval.

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 5. CHANGE OF OWNERSHIP OF EQUIDAE

35:15-15-51. Testing requirements for change of ownership

(a) All test eligible Equidae ~~which are~~ sold, bartered, traded, or offered for sale within Oklahoma shall be accompanied by a record of a negative official test for EIA conducted at an approved laboratory within the previous twelve (12) months.

(b) The record shall include the name of the laboratory, case number, and the date of the official test.

(c) A copy or a certified copy of a VS Form 10-11 shall not be considered an official record of test.

(d) On all private sales, trades, barters, or any sale other than through an approved market, the buyer and the seller shall be equally and individually responsible for meeting the EIA testing requirements prior to the sale.

PART 7. REQUIREMENTS FOR APPROVED MARKETS

35:15-15-71. Movement of Equidae through approved markets

(a) All test eligible Equidae offered for sale or sold at any market shall meet one of the following requirements:

(1) Be accompanied by a record of an official negative test for EIA conducted by an approved laboratory within twelve (12) months of the date of the sale.

(2) Have a blood sample collected by an accredited veterinarian or authorized agent of the Board at the market and obtain official negative test results for EIA from an approved laboratory before the animal leaves the market.

(3) Have a blood sample collected by an accredited veterinarian or authorized agent of the Board at the market and be quarantined to the market or to an Oklahoma premise until negative results are received from an approved laboratory.

~~(4) Be allowed to return to the premise of origin prior to consignment.~~

(b) A copy or a certified copy of a VS Form 10-11 shall not be considered an official test record.

(c) All Equidae consigned to an approved market shall be released by the market veterinarian to meet the requirements of this ~~Subchapter~~ subchapter and the state of destination.

(d) Known positive or exposed Equidae shall not be consigned for sale at approved markets.

(e) Equidae found to be positive or exposed through testing conducted at an approved market shall be maintained in quarantine pens, isolated as far as possible from all other Equidae in the sale facility, and the quarantine pen or pens shall be clearly identified, by sign or paint, with the word "Quarantined."

35:15-15-72. Identification of untested Equidae

(a) All untested Equidae offered for sale at approved markets shall be released from the sale premise and consigned to an approved slaughter establishment on a VS Form 1-27, issued by an accredited veterinarian or authorized agent of the Board showing the sex, age, color, and markings sufficient to positively identify each animal.

(b) If no accredited veterinarian or authorized agent of the Board is available for proper identification, testing, inspection, and release of Equidae at the approved auction market, all Equidae offered for sale shall be quarantined to the market facility until an accredited veterinarian or authorized agent of the Board is available.

PART 9. EQUINE EXHIBITIONS

35:15-15-91. Requirements of Equidae entering equine exhibitions

(a) All Equidae moving within the state to equine exhibitions, including but not limited to fairs, livestock shows, breed association shows, rodeos, racetracks, or other equine gatherings shall be accompanied by a record of a negative official test for EIA conducted within the previous twelve (12) months. The official test shall be conducted by an approved laboratory and the name of the laboratory, the case number, and the date of the test shall appear on the official test record.

(b) A certified copy of a VS Form 10-11 shall be ~~accepted as~~ considered an official record of test ~~record~~ at equine exhibitions.

(c) The official in charge shall be responsible for verifying that all Equidae entering an equine exhibition meet all recordation requirements.

(1) An official in charge of an equine exhibition shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

(2) Any person providing erroneous or fictitious information shall be in violation of these rules.

(d) Any official in charge who knowingly, negligently, or willfully allows an untested or positive animal to enter an equine exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

(e) A certified copy of a VS 10-11 shall be acceptable for entry to Oklahoma Horse Racing Commission licensed tracks. The original VS 10-11 for horses offered for sale through claiming races shall be on file with the Racing Secretary.

PART 11. REQUIREMENTS FOR EQUIDAE ENTERING OKLAHOMA

35:15-15-111. General requirements for Equidae entering Oklahoma

(a) All test eligible Equidae~~,~~ entering Oklahoma for any purpose other than consignment to a veterinarian's clinic or an approved slaughter facility shall be accompanied by one of the following:

(1) An Official Equine Passport.

(2) A record of a negative official test for EIA conducted within the previous twelve (12) months and a certificate of veterinary inspection.

(3) An equivalent certificate as approved by the State Veterinarian.

(4) A copy or a certified copy of a VS Form 10-11 shall be considered an official record of test when accompanied by a properly completed certificate of veterinary inspection.

(b) An Official Equine Passport shall include the following:

(1) The name, breed, sex, age, color, and an electronic identification, a unique brand, or a tattoo to positively identify each Equidae listed on the form, provided that any owner using electronic identification shall carry and maintain a functional reader or scanner.

(2) A record of a physical examination of each Equidae verifying freedom from visible evidence of any contagious, infectious, or communicable diseases at the time of the examination.

(3) The negative test results of an official test for EIA, including the name of the approved laboratory, the case or accession number, and the date of the most recent test.

(4) A VS Form 10-11 or equivalent EIA test chart for each animal.

(c) The Official Equine Passport shall be valid and meet import requirements for a period of six (6) months when accompanied by proof of an official negative VS Form 10-11 or equivalent EIA test chart. In no instance shall a permit expiration date exceed twelve (12) months after the date of a negative EIA test.

(d) An Official Equine Passport shall ~~only~~ be ~~issued by a state animal health official from Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, or West Virginia in accordance with the signed Memorandum of Agreement by and between the state animal health regulatory agencies~~ accepted from states approved by the State Veterinarian.

SUBCHAPTER 22. SWINE PSEUDORABIES

PART 1. GENERAL PROVISIONS

35:15-22-2. Import requirements for Stage IV and Stage V

(a) Certification for feedlots on premises where there are no breeding swine shall show:

(1) The feedlot is included in a ~~down the road herd testing~~ "down the road" herd testing program, or

(2) The herd is monitored by slaughter or ~~first point~~ first point surveillance of butcher hogs, or

(3) During the period since the last pseudorabies case in the state was cleaned up, the herd:

(A) Tested negative to an official ~~random sample~~ random sample test (95/10), or

(B) Underwent a ~~30-day~~ thirty (30) day depopulation with appropriate cleaning and disinfection.

(4) Any feedlots not tested pursuant to this subsection shall be operated ~~all-in~~ as all in and ~~all-out~~ all out by premises.

(b) Vaccination is prohibited except by permission of the State Veterinarian in high-risk herds or as part of an approved ~~herd cleanup~~ herd cleanup plan.

(c) Swine import requirements shall be as follows:

(1) ~~Slaughter swine:~~

~~(A)~~ Infected or exposed swine may only be shipped through or into the state with prior written approval from the State Veterinarian and shall move directly to a recognized slaughter establishment. The swine shall be accompanied by a shipping permit, conveyed in sealed vehicles, and unloaded under the supervision of ~~State~~ state or ~~Federal~~ federal officials to ensure that biosecurity measures are observed.

~~(B) Imports of slaughter swine from a state with Stage III status or less are permitted to a recognized slaughter establishment or an approved slaughter market only.~~

(2) Breeding swine shall meet one of the following:

(A) Direct shipment from a Stage IV or V state~~, or~~;

(B) Direct shipment from a qualified ~~pseudorabies negative~~ pseudorabies negative herd in any ~~State/Area,~~ state or area; or

(C) Negative official pseudorabies serologic test within thirty (30) days prior to shipment with quarantine, isolation, and retest at destination in ~~30-60~~ thirty (30) to sixty (60) days following importation.

(3) Feeder pigs shall meet one of the following:

(A) Direct shipment from a farm of origin or a market in a Stage IV or V state~~, or~~;

(B) Direct shipment from a farm of origin in a Stage III state~~, or~~;

(C) Direct shipment from a qualified ~~pseudorabies negative~~ pseudorabies negative herd or ~~qualified negative gene altered~~ qualified negative gene altered vaccinated herd~~,~~; or

(D) Entry from ~~feeder pig monitored~~ feeder pig monitored herds in Stage II states or from approved ~~feeder pig~~ feeder pig markets ~~shall occur only~~ pursuant to the following conditions:

(i) The swine enter on permit directly to a designated feedlot; and

(ii) The swine are restricted to the designated feedlot until sent to slaughter.

PART 3. REQUIREMENTS FOR SWINE ENTERING OKLAHOMA

35:15-22-31. Entry requirements for commercial production breeding swine

(a) A person importing commercial production breeding swine into Oklahoma shall obtain an entry permit from the Department.

(b) Commercial production breeding swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection containing the following information:

(1) ~~the~~ The entry permit number;

(2) ~~a~~ A statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies has not existed in the herd of origin in the past six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow; and

(3) ~~if~~ If applicable, the qualified pseudorabies herd number and date of last pseudorabies test.

(c) Commercial production breeding swine that are offspring of a pseudorabies vaccinated sow shall be accompanied with an individual negative pseudorabies test using an official pseudorabies test for Oklahoma.

(d) Commercial production breeding swine entering Oklahoma under a completed and approved commuter herd agreement pursuant to 35:15-22-35 are exempt from ~~requirements~~ subsections (a) and (b) provided the swine are not changing ownership.

(e) Commercial production breeding swine entering Oklahoma shall ~~either~~:

(1) ~~be~~ Be accompanied with a negative official pseudorabies test performed within thirty (30) days prior to entry,

(2) ~~originate~~ Originate from a qualified pseudorabies negative herd, or

(3) ~~originate from a Class IV or V state, or~~

~~(4)~~ ~~enter~~ Enter under a completed and approved commuter herd agreement provided that the swine are accompanied by an ~~owner-shipper~~ owner shipper statement.

(f) For purposes of requirements (e)(2) and (e)(3), all commercial production breeding swine that are commingled with other swine shall assume the lowest status of the commingled swine.

(g) After entry into Oklahoma, the owner of the imported commercial production breeding swine shall comply with one of the following requirements:

(1) ~~quarantine the swine upon arrival, hold the swine in isolation, and at the owner's expense, not less than thirty (30) but not more than sixty (60) days after arrival, obtain a post-entry negative official pseudorabies test. The owner is responsible for notifying the Department that the post-entry test has been completed;~~

~~(2)~~ ~~add the~~ The swine are added to a qualified pseudorabies negative herd according to the requirements of 35:15-22-52;

(~~3~~2) The swine meet the commuter herd agreement requirements of 35:15-22-35; or

(~~4~~3) ~~if~~ If importing from a Stage V state, ~~test~~ the swine are tested pursuant to the requirements for a pseudorabies monitored herd.

35:15-22-32. Entry requirements for commercial production feeding swine

(a) A person importing commercial production feeding swine into Oklahoma shall obtain an entry permit from the Department.

(b) Commercial production feeding swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection~~,~~ containing the following information:

(1) ~~the~~ The entry permit number;

(2) ~~a~~ A statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies has not existed in the herd of origin in the past six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow; and

(3) ~~if~~ If applicable, the qualified herd number and date of last pseudorabies test.

(c) Commercial production feeding swine that are offspring of a pseudorabies vaccinated sow shall be accompanied with an individual negative pseudorabies test using an official pseudorabies test recognized by Oklahoma.

(d) Commercial production feeding swine entering Oklahoma under a completed and approved commuter herd agreement pursuant to 35:15-22-35 are exempt from ~~requirements~~ subsections (a) and (b) provided the swine are not changing ownership.

(e) Commercial production feeding swine entering Oklahoma shall ~~either~~:

(1) ~~be~~ Be accompanied with a negative official pseudorabies test performed within thirty (30) days prior to entry,

(2) ~~originate~~ Originate from a qualified pseudorabies negative herd,

(3) ~~originate from a Class III, IV, or V state,~~

~~(4)~~ ~~enter~~ Enter under a completed and approved commuter herd agreement provided that the swine are accompanied by an ~~owner-shipper~~ owner shipper statement, or

(~~5~~4) ~~originate~~ Originate from a pseudorabies monitored herd.

(f) Swine from an infected or exposed herd shall not enter Oklahoma.

PART 7. REQUIREMENTS FOR SWINE EXHIBITIONS

35:15-22-71. Exhibition requirements

(a) All Oklahoma origin swine shall have ~~an~~ official ~~ear-tag~~ identification and shall be accompanied with either a certificate of veterinary inspection or a copy of an official test chart for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding official ~~ear-tag~~ identification for each pig.

(b) All ~~out-of-state~~ swine originating from outside of Oklahoma shall have ~~an~~ official ~~ear-tag~~ identification and shall

be accompanied with a certificate of veterinary inspection for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding official ~~ear tag~~ identification for each pig.

(c) Testing requirements.

(1) Oklahoma origin exhibition swine shall have a negative official pseudorabies test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to pseudorabies.

(2) ~~Out-of-state swine~~ Swine originating from outside of Oklahoma shall have either a negative official pseudorabies test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a qualified pseudorabies negative herd and show the corresponding official ~~ear tag~~ identification for each pig.

(3) Owners or immediate family members of owners of a qualified pseudorabies negative herd may exhibit swine originating from the qualified herd without a negative official pseudorabies test ~~as~~ so long as the swine are accompanied with evidence of the herd status at each exhibition. This documentation shall include the corresponding official ~~ear tag~~ identification for each pig entered in the exhibition.

(d) ~~All swine, after~~ After being exhibited, all swine shall be kept isolated from all non-exhibition swine until the swine retest negative for pseudorabies not less than thirty (30) days but not more than sixty (60) days following the exhibition unless the swine are consigned to a quarantined feedlot, an approved slaughter establishment, or an approved market for sale to slaughter or to a quarantined feedlot.

(e) The official in charge shall obtain a permit from the Department prior to conducting a swine exhibition.

(f) The official in charge shall verify that all swine present meet all testing and recordation requirements.

PART 9. REQUIREMENTS FOR APPROVED MARKETS

35:15-22-91. Requirements for approved markets

(a) All swine consigned to an approved livestock market shall have an official ~~ear tag~~ identification for each pig. The market operator shall maintain a record of all official ~~ear tags~~ identifications, the consignee's name and address, and the premise of origin.

(b) The livestock market shall immediately identify all ~~out-of-state~~ farm origin swine originating from outside of Oklahoma.

(c) The livestock market shall not release any ~~out-of-state~~ swine originating from outside of Oklahoma unless the appropriate entry requirements ~~from~~ of Part 3 ~~of~~ in this Subchapter have been met or the swine are to be shipped directly from the market to an approved slaughter facility.

(d) Upon release from a livestock market, untested ~~out-of-state~~ swine originating from outside of Oklahoma shall be quarantined until, at the owner's expense, the swine ~~are tested~~ test negative for pseudorabies and brucellosis not less than thirty (30) or more than sixty (60) days after the release. The owner is responsible for notifying the Department that the pseudorabies and brucellosis test have been completed.

(e) Untested ~~out-of-state~~ swine originating from outside of Oklahoma released from a livestock market directly to an approved slaughter establishment are exempt from subsection (d) of this section.

(f) Any market that is approved to handle ~~out-of-state~~ slaughter swine originating from outside of Oklahoma and is the final market for ~~these~~ those swine prior to release directly to an approved slaughter facility shall keep the slaughter swine separate from any feeding or breeding swine. Any facilities or equipment used for the ~~out-of-state~~ slaughter swine originating from outside of Oklahoma, including but not limited ~~too,~~ to scales, loading chutes, ~~etc.,~~ and other equipment shall be thoroughly cleaned prior to use for any feeding or breeding swine.

SUBCHAPTER 24. SWINE BRUCELLOSIS

PART 1. GENERAL PROVISIONS

35:15-24-3. ~~Administrative~~ Requirements

(a) Authorized agents of the Oklahoma Department of Agriculture, Food, and Forestry shall be authorized to enter premises as required to meet the standards of the Swine Brucellosis Eradication Program.

(b) All human cases of B. suis shall be reported to appropriate public health officials.

(c) All Oklahoma origin swine shall have ~~an~~ official ~~ear tag~~ identification and shall be accompanied by either a certificate of veterinary inspection or a copy of an official test chart for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official Brucellosis test or the validated Brucellosis negative herd number and current quarterly herd test date and ~~show~~ the corresponding official ~~ear tag~~ identification for each pig.

(1) All swine from other than Oklahoma shall have ~~an~~ official ~~ear tag~~ identification and shall be accompanied with a certificate of veterinary inspection for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official brucellosis test or the validated brucellosis negative herd number and current quarterly herd test date and ~~show~~ the corresponding official ~~ear tag~~ identification for each pig.

(2) Oklahoma origin exhibition swine shall have a negative official brucellosis test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to brucellosis.

(3) ~~Out-of-state swine~~ Swine originating from outside of Oklahoma shall have either a negative official brucellosis test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a validated brucellosis negative herd and current quarterly herd test date and show the corresponding official ~~ear tag~~ identification for each pig.

(4) Owners or immediate family members of owners of a validated brucellosis negative herd may exhibit swine originating from the validated herd without a negative official brucellosis test as long as the swine are accompanied with evidence of the herd status at each exhibition. This documentation shall include the corresponding official ~~ear tag~~ identification for each pig entered in the exhibition.

(5) All swine, after being exhibited, shall be kept isolated from all ~~non-exhibition~~ nonexhibition swine until the swine retest negative for brucellosis not less than thirty (30) days but not more than sixty (60) days following the exhibition unless the swine are consigned to a quarantined feedlot, an approved slaughter establishment, or an approved market for sale to slaughter or to a quarantined feedlot.

(6) The official in charge shall obtain a permit from the Department prior to conducting a swine exhibition.

(7) The official in charge shall verify that all swine present meet all testing and recordation requirements.

(d) All swine shall be tested and found negative to Brucellosis within the previous thirty (30) days prior to changing ownership, or originate from a Brucellosis Validated Free Herd. Test eligible swine moving directly from a premise of origin to an approved slaughter facility, or through an approved market to an approved slaughter facility, are exempt from test requirements provided identity to the herd of origin is maintained.

(e) The State Board of Agriculture shall have the authority to impose administrative penalties for any person found to be in violation of the provisions of this rule~~. The~~ pursuant to the Board's rules for individual proceedings and the Administrative Procedures Act ~~shall be utilized in determining any action~~.

SUBCHAPTER 34. FERAL SWINE

35:15-34-3. Importation of feral swine

(a) Any person importing live feral swine into this state shall be accompanied by a ~~Certificate~~ certificate of ~~Veterinary Inspection~~ veterinary inspection signed by an accredited veterinarian that contains the following:

(1) ~~Individual~~ Official identification of each feral swine; and

(2) Negative brucellosis and pseudorabies test results.

(b) Any person importing live feral swine into this state shall be accompanied by a written entry permit approved by the State Veterinarian.

(c) A person shall obtain a negative brucellosis and pseudorabies test within fifteen (15) days prior to entry.

(d) All live feral swine imported into this state shall be quarantined and isolated to retest for brucellosis and pseudorabies. The testing shall be conducted no earlier than thirty (30) days and no later than sixty (60) days following the date of importation~~, except for feral swine going directly to an approved slaughter facility~~.

(e) Feral swine going directly to an approved slaughtering facility shall be exempt from these requirements.

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TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

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April 14, 2010
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules amend the brucellosis rules to reflect changes made to the federal brucellosis programs and to clean up the existing rules.
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 25, 2010:

SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS

PART 1. DEFINITIONS

35:15-17-1. Definitions

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

"Affected herd" means a herd of cattle that has had a brucellosis reactor disclosed from an on-farm test or is the herd of origin of a market cattle identification brucellosis reactor from which a field strain Brucella ~~abortis~~ abortus bio-variety has been isolated.

"Animals" means all bovine, dairy~~,~~ and beef breeds, and bison.

"Approved brucella vaccine" means a product that is approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison to enhance their resistance to brucellosis.

"Cattle" means bison, dairy, and beef animals.

"Commuter herd" means all cattle under common ownership or supervision, that are located on one (1) or more premises in two (2) or more states and there is an interchange or interstate movement of animals between premises in those states as part of the normal farming, breeding or ranching operation without a change of ownership. A commuter herd agreement shall be completed and approval of commuter herd status shall be obtained from each chief animal health official of all states in which the herd resides.

"Domestic livestock" means those species of animals that have adapted to life in intimate association with, and provide advantage to man for use as food, fiber (furs and leather), labor and companionship. This adaptation usually involves the modification of growth or other traits through the provision of food, protection from enemies and selective breeding, thereby reducing the ability of that species to survive in the wild.

"Exposed animals" means animals that are part of a known affected herd or have been in contact with brucellosis reactors in marketing channels for periods of twenty-four (24) hours or periods of less than twenty-four (24) hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge. These animals are considered to be exposed regardless of the blood test results, and shall be placed under quarantine and restricted pending slaughter or testing after return to the herd of origin. These animals shall be identified with a hot iron letter "S" brand on the tailhead at least 2x2 inches~~,~~ prior to movement from the premise.

"Farm of origin~~ of cattle~~" means a farm or other premises where the cattle to be shipped were born or have been kept for not less than four (4) months prior to the date of shipment and the premises within the four (4) months prior to the date of shipment have not been used to assemble cattle from any other premises.

"Feedlot" means a confined drylot area for finish feeding of animals on concentrated feed with no facilities for pasturing or grazing. The feedlot may not hold any test eligible animals of unknown status or "S" branded animals.

"Herd" means all cattle (genus Bos) and bison (genus Bison bison) under common ownership or supervision, that are grouped on one or more parts of any single premise (lot, farm, or ranch) or on two (2) or more premises geographically separated, but have had an interchange movement or contact. ~~Such contact~~ Contact shall be accepted as fact unless otherwise established by the owner and consistent with the findings of the epidemiologic investigation. Groups of animals under multiple ownership on common premises, such as community pastures, grazing association allotments, etc., shall also be considered as a herd. For brucellosis eradication purposes ~~such~~ the herds shall include all other groups of animals owned by those persons unless the veterinary medical officer, based on an epidemiologic investigation, establishes that association has not occurred.

"Herd test" means a test that includes all animals over six (6) months of age except steers~~,~~ and spayed heifers~~ and official vaccinates of the dairy breeds under 20 months of age, and of the beef breed and bison under 24 months of age~~. ~~Bulls, steers, and female animals held in feedlots meeting the requirements of quarantined feedlots as defined in 35:15-17-5 are exempt from herd test requirements.~~ Breeding animals tested shall be identified with ~~an~~ official ~~eartag or other permanent~~ identification.

~~**"High risk herd"** means those herds of cattle from which an MCI test or herd test reactor has been disclosed as an adjacent or exposed herd within the previous five (5) years.~~

"Individual herd plan" means a herd management and testing plan designed by the herd owner and a veterinarian of the Cooperative Brucellosis Eradication Program that will control and eradicate brucellosis from an affected herd and shall include a similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd.

~~**"Market test animals"** means test eligible animals moving in trade channels through auction markets, stockyards, commission firms or to slaughtering establishments; also those animals assembled at farms or ranches that are being readied for immediate movement to markets, stockyards,~~

~~slaughtering establishments or other sales. The animals shall be identified by eartag or backtag to the herd of origin prior to or at the first point of concentration in marketing channels. All test eligible animals shall be tested prior to removal from the sale premises.~~

"Official test" means any serologic or bacteriologic test recognized by and listed in the USDA Uniform Methods and Rules of Brucellosis Eradication or the Code of Federal Regulations. The official test sample shall be collected by an accredited veterinarian or an employee of the State-Federal Brucellosis Program. The test shall be conducted in an official State-Federal Brucellosis Laboratory or licensed and approved Auction Market Laboratory, or by an employee of the State-Federal Brucellosis Program in field situations. All tests shall be confirmed in an official State-Federal Brucellosis Laboratory.

"Official vaccinate" means a female bovine or bison animal vaccinated against brucellosis with an approved brucella vaccine between four (4) and ten (10) months of age. All vaccination shall be conducted under the supervision of a federal or state veterinary official or accredited veterinarian. Vaccinated animals shall be permanently identified as vaccinates and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis.

"Permit" means an official document (USDA VS Form 1-27 or comparable State Form) that is required to accompany "B" branded cattle, "S" branded cattle, and exposed cattle moved under official seal, issued by a veterinary services representative, state representative or accredited veterinarian that lists the official identification ~~tag, tattoo~~, USDA backtag, registration number, ~~or similar identification,~~ reactor tag number, owner's name and address, origin and destination, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary a new permit shall be prepared. No diversion from the permitted destination is allowed. Copies of the permit shall be distributed in accordance with the instructions printed on the official document.

"Permit for entry" means a premovement authorization for entry of cattle into a state from the animal health official in that state. The authorization shall state the conditions under which movement may be made, and these conditions may be in addition to the requirements of the USDA Uniform Methods and Rules for Brucellosis Eradication (UM&R) and Code of Federal Regulations.

"Rodeo bulls" means sexually intact male cattle kept ~~solely~~ for the purposes of performances at rodeos, ~~or~~ for exhibition purposes ~~and in no case shall include any animal offered for sale~~ or ~~used~~ for breeding to produce rodeo bulls, and shall include bulls changing ownership.

~~**"S brand permit"** means any document required to accompany animals in marketing channels having a restricted destination. It shall show the origin, the destination, the number of restricted animals, the purpose of the movement, the USDA backtag numbers (when applied serially, only the beginning and the ending number need be recorded), and a statement certifying to the "S" brand identification. It shall be prepared at the point of origin by an accredited veterinarian, a representative of the animal health officials, or a designated official at a quarantined feedlot. A copy shall be maintained at the quarantined feedlot and a copy shall be immediately sent to the state animal health official with the original accompanying the animals. The original shall be delivered at the destination and retained at that location for a minimum of six (6) months.~~

"S ~~branded animals~~ brand" means identification of animals ~~identified~~ by branding with a hot iron the "S" that is ~~(~~at least 2x2 inches~~)~~ and placed on the tailhead. "S" branding is required for suspect animals and movement of exposed animals from affected herds.

"Test eligible animals" means all animals eighteen (18) months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed animals that have been "S" branded, steers, and spayed heifers~~, official vaccinates of dairy breeds under 20 months of age, and official vaccinates of beef breeds and bison under 24 months of age that are not parturient or postparturient~~.

~~**"Tested herds"** means a herd of animals for which the state has records showing that the herd has been subjected to official testing for brucellosis within 12 months prior to movementand the herd is not known to be affected with brucellosis.~~

35:15-17-2. Whole herd vaccination

~~With "Whole herd vaccination", animals~~ Animals older than the age of official calfhood vaccination ~~can~~ may be vaccinated under specific conditions with a dose of vaccine as prescribed in the UM&R for Brucellosis Eradication. All eligible calves shall also be vaccinated and identified as official vaccinates.

35:15-17-3. Identification of vaccinates

Calfhood vaccinated animals are to be permanently identified as vaccinates by tattoo and by official vaccination eartag. Brands, ~~or~~ registration tattoos, or other official identification may be used in lieu of official vaccination eartag. For Brucella abortus Strain 19 vaccinates, the tattoo will be in a form prescribed in the UM&R for Brucellosis Eradication and approved by the United States Department of Agriculture. For Brucella abortus Strain RB51 vaccinates, the tattoo will include the U.S. Registered Shield and "V", which will be preceded by a letter "R" and followed by a number corresponding to the last digit of the year in which the vaccination was done. Official vaccination eartags and tattoo shall be applied to the right ear. The eartag will include the state prefix and a "V," "S," "T," "U" or "W" followed by two (2) letters and four (4) numbers ~~which individually identifies such~~ officially identifying the vaccinated animal. Registration or individual animal identification tattoos may be substituted for official eartags.

35:15-17-4. Traceback of reactors

(a) ~~Successful traceback of reactors.~~ A successful traceback of reactors occurs when the premises of the herd of origin of a market test reactor, including those animals identified as reactors on laboratory confirmation of market test, is located and the herd is tested as ~~is~~ deemed necessary. If all animals at the premises of origin were sold for slaughter, a ~~successful~~

traceback ~~can also be claimed~~ is considered successful. Tracing to dealers, feedlots, commission firms, and ~~such are~~ other interim holders of animals shall not be considered a successful traceback of reactors.

(b) ~~Epidemiologic investigation of reactors.~~ Every traceback of reactors requires a comprehensive epidemiologic investigation and follow-up, ~~(~~including traces to "sold-out" herds~~)~~, to effectively locate and control the disease. This investigation ~~must~~ shall include:

(1) ~~reactors~~ Reactors in marketing channels with positive ~~CF, RIV, or other appropriate~~ supplemental test titers~~.~~:

(A) Contact and~~/or~~ adjacent herds shall be identified, recorded, and investigated.

(B) ~~Blood test the~~ The herd of origin shall be blood tested unless the comprehensive epidemiology investigation indicates conclusively that the titers are not caused by field strains of B. abortus.

(C) All sales following the estimated date of onset of infection shall be traced and the herds of destination identified, recorded, and investigated for evidence of infection by testing.

(D) If a herd identified in ~~(A), (B), or (C) of~~ this ~~Paragraph~~ subparagraph is negative, the herd ~~will~~ shall be retested thirty to ninety (30-90) days later if deemed necessary by the epidemiologist.

(2) ~~reactors~~ Reactors in marketing channels with negative ~~CF, RIV, or other official or~~ supplemental test results~~.~~:

(A) The owner shall be advised of ~~these~~ negative test results by writing, telephone, or ~~by a~~ personal visit.

(B) ~~A joint decision shall be reached to test or not test the herd.~~ The herd shall be tested if reasonable doubt exists as to the reason for the serologic response, ~~or~~ if evidence of brucella infection is present, or if the status of contact or other neighborhood herds is questionable.

35:15-17-5. Quarantined feedlot [REVOKED]

~~(a) A quarantined feedlot shall be a confined area under official state quarantine and shall be approved jointly by the state and federal animal health officials. All animals in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of animals in drylot with no provision for pasturing or grazing. There shall be no breeding or "two way" animals allowed in the quarantine feedlot. All negative exposed animals must be permanently identified with a hot iron "S" brand, on the tail head prior to entering such feedlots.~~

~~(b) All animals leaving such quarantined feedlot must go direct to slaughter; or, may be moved direct to another quarantine feedlot with a permit from the state animal health official; or may be "S" branded at the feedlot and move through a market to be sold to move direct to another quarantine feedlot or move direct to slaughter with a permit being issued at the market to cover the movement.~~

~~(c) The animal health officials shall establish procedures for accounting of all animals entering or leaving such quarantined feedlots.~~

~~(d) Community notification shall be made of the presence of a quarantined feedlot.~~

~~(e) The quarantined feedlot may include the entire feedlot or only designated sections of the feedlot provided that the quarantined section is properly isolated to prevent the spread of brucellosis to the non-quarantined section.~~

PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES (UM&R) FOR BRUCELLOSIS ERADICATION

35:15-17-32. Laboratories

Blood samples are to be tested only by cooperative state-federal laboratories, or by ~~such~~ persons ~~as may be~~ authorized to conduct the standard agglutination tests or the card test. All samples initially tested at other than cooperating state-federal laboratories shall be promptly submitted and confirmed at the cooperating state-federal laboratory.

35:15-17-33. Reporting

Activities conducted privately or as part of the official brucellosis eradication program, ~~such as~~ including results of agglutination tests or vaccination, ~~must~~ shall be reported immediately to state-federal cooperating agencies. A complete epidemiological report shall be prepared and filed on each infected herd.

35:15-17-35. Quarantine

When there is a reason to suspect brucellosis infection ~~i.e.,~~ due to the presence of an undiagnosed abortion in the herd or presence of a suspect or reactor as evidenced by an approved test for brucellosis~~,~~, all cattle and bison except steers and spayed heifers may be confined to the premises ~~and/~~or livestock market until the herd is freed of brucellosis or sold for slaughter ~~or to a quarantined feedlot~~. In emergency hardship cases animals may be moved to a new premises and placed under quarantine. All movements ~~must~~ shall be accompanied by proper permit.

35:15-17-36. Disposition of affected herds

(a) Known affected herds ~~as of June 1, 1995, and all affected herds disclosed subsequent to June 1, 1995,~~ shall be completely depopulated except for steers and spayed heifers unless the State Veterinarian determines otherwise.

(b) Partial herd depopulations may be approved if a complete herd test and an epidemiological investigation discloses that certain separate pastures of cattle in the herd have passed a negative test and have had no exposure to the affected pasture~~(s)~~ ~~in not less~~ more than 180 days prior. Heifers which were progeny of cows in the affected pasture~~(s)~~ ~~will be~~ are considered ~~as~~ exposed and required to be included in the depopulation or spayed. Bull calves produced by cows in the affected pasture~~(s)~~ ~~will~~ shall be ~~required to be~~ neutered.

(c) Depopulation may be waived if in the opinion of the Designated Brucellosis Epidemiologist, the State Veterinarian and

the APHIS VS Area Veterinarian in Charge depopulation is not warranted and an approved herd plan is followed.

35:15-17-37. Community notification of brucellosis affected herds

The Oklahoma Department of Agriculture, Food, and Forestry shall notify owners of herds adjacent to Brucellosis infected herds ~~will be notified~~ of the presence of the infection by mail or personal contact.

35:15-17-38. Contact herds~~,~~ and adjacent herds

~~Those herds~~ Herds within one (1) mile of the periphery of the herd of origin of a market cattle identification reactor are to be tested within thirty (30) days of notification or ~~be~~ placed under quarantine. These herds ~~are to~~ shall be retested six (6) to eight (8) months after notification. ~~This~~ The test requirement and the extent of the testing area may be altered by the Designated Brucellosis Epidemiologist if it is justified by epidemiological evidence. Those herds within one (1) mile of the periphery of the affected ~~(index)~~ herd, herds sharing common pasture, and herds containing previous purchases from or exchanges with the affected ~~(index)~~ herd ~~are to~~ shall be tested within thirty (30) days of notification or ~~be~~ placed under quarantine. All herds~~, which have~~ having direct fence to fence or across a road contact ~~with~~, or sharing common pasture with or containing previous purchases from or exchanges with the affected ~~(index)~~ herd~~,~~ shall be ~~rested~~ retested from four (4) to eight (8) months after removal of the last reactor from the affected ~~(index)~~ herd. These herds~~, as well as~~ and all other herds located within one (1) mile of the periphery of the affected ~~(index)~~ herd shall be retested ten (10) to fourteen (14) months after the removal of the last reactor from the affected ~~(index)~~ herd. The extent of the testing area from the affected ~~(index)~~ herd may be altered by the Designated Brucellosis Epidemiologist if it is justified by epidemiological evidence.

35:15-17-39. Cleaning and disinfection

Premises shall be cleaned and disinfected under regulatory supervision within fifteen (15) days following the removal of reactors or the entire herd for slaughter. An extension of time may be considered under extenuating circumstances. Exemptions from cleaning and disinfection requirements~~, when indicated,~~ can be authorized by the cooperative state-federal officials directing the brucellosis program activities within the state.

35:15-17-40. Classification of cattle and bison

(a) ~~**Serologic tests.**~~ Animals are classified as Negative, Suspect, or Reactor based in part on their serologic test results~~,~~ using the criteria listed in the Uniform Methods and Rules of Brucellosis Eradication and the Code of Federal Regulations for evaluation of titer response. Titer responses for all cattle ~~must~~ shall be evaluated by a trained, experienced epidemiologist~~(s)~~ who has been designated to perform ~~and/~~or supervise this function~~ in each of the States~~. The designated epidemiologist ~~must~~ shall take into consideration the animal and herd history and other epidemiologic factors. The designated epidemiologist ~~has the authority to~~ may deviate from the reactor criteria but ~~must~~ shall document the reasons for doing so.

(b) ~~**Negative.**~~ Cattle and bison are classified as brucellosis negative when their blood serums ~~have been~~ are subjected to official serologic tests and the test results ~~fail to~~ do not disclose evidence of Brucella infection, and if blood, milk or tissues are subjected to bacteriologic methods for culturing field strain brucella and none are recovered. ~~In short, for an~~ An animal ~~to~~ shall only be classified as negative~~,~~ if all procedures that are performed ~~must~~ fail to disclose evidence of brucellosis.

(c) ~~**Suspect.**~~ Cattle and bison are classified as suspects when their blood serums ~~have been~~ are subjected to official serologic tests and the test results are suggestive of infection but are inconclusive~~. Bacteriologic methods~~ and a bacteriologic method to culture brucella~~,~~ from blood, milk, or tissues~~, if used, did~~ do not yield field strain brucella.

(d) ~~**Reactor.**~~ Cattle and bison are classified as reactors when their blood serums ~~have been~~ subjected to official serologic tests and the test results indicate that the animal ~~has been~~ was exposed to and is infected with Brucella. Cattle and bison are also classified as reactors in the absence of significant serologic test results when ~~other diagnostic methods, such as~~ bacteriologic methods~~,~~ result in the recovery of field strain Brucella organisms, ~~or~~ a significant rise in the serologic titer occurs, or when other epidemiologic evidence of infection is demonstrated.

(e) ~~**Classification by designated epidemiologist.**~~ The evaluation and classification of titer responses for all animals shall be the responsibility of a trained, experienced epidemiologist who has been designated to perform this function, taking into consideration the animal and herd history and other epidemiologic considerations. The selection of the epidemiologist shall be made jointly by ~~the brucellosis staff,~~ USDA Veterinary Services~~ (VS)~~, Regional Epidemiologist, and state and federal animal health officials. Deviations from the reactor criteria ~~in this Subchapter~~ are acceptable when made by the designated epidemiologist.

(f) ~~**Other diagnostic tests and methods.**~~ Infection of animals by Brucella may also be indicated or confirmed by other diagnostic procedures such as the bacteriologic cultivation and isolation of Brucella from tissues, secretions, or excretions and positive agglutination in tests such as the semen plasma test.

(g) ~~**Reclassification of reactors.**~~ Animals initially classified as reactors ~~under 35:15-17-1 and 35:5-17-40~~ may be eligible for reclassification provided an appropriate epidemiological investigation of the herd is conducted, including a serological test of the herd~~,~~ if necessary~~,~~ and there is no evidence of brucella infection or exposure thereto; and~~, provided~~ final classification is determined by the designated epidemiologist. The herd ~~must~~ shall emain under quarantine pending final classification.

35:15-17-41. Identification of reactors

All reactor animals are to be permanently identified by branding with the letter "B" (at least 2x2 inches) placed on the tailhead. An approved reactor tag ~~must~~ shall be placed in the left ear. Identification of reactors ~~must~~ shall be ~~accomplished~~

completed within fifteen (15) days of the date of classification. The time may be extended for an additional additional (15) days for reasons mutually acceptable to the cooperating state and federal officials in charge.

35:15-17-42. Identification of exposed animals

(a) Exposed animals shall be identified by branding with a hot iron the letter "S" (at least 2x2 inches) placed on the tailhead prior to movement. These exposed animals may move from a farm of origin or from a livestock market direct to slaughter ~~or to a quarantined feedlot~~.

(b) Exposed animals returned from the livestock market to the herd of origin under quarantine pending further testing are exempt from this requirement.

(c) Exposed animals may move from the farm of origin direct to a federal or state inspected slaughtering establishment in a sealed truck without permanent identification by "S" brand provided:

(1) ~~the~~ The animals are destined for slaughter at a single slaughtering establishment, ~~and the entire lot is consigned direct to slaughter, with no diversion into holding facilities, and are moved in sealed vehicles with official shipping permit with eartag or backtag identification of each animal in the shipment, and the appropriate seal number is recorded, and the permit accompanies each shipment. Seals are to be placed and broken only by state or federal regulatory personnel during normal working hours. Livestock to be transported in sealed vehicles must remain on the premises until the appropriate regulatory personnel writes the permit and seals the vehicle. No post-authorized permits may be approved.~~

(2) The entire lot is consigned direct to slaughter with no diversion to holding facilities,

(3) The animals are moved in sealed vehicles with an official shipping permit with eartag or backtag identification of each animal in the shipment,

(4) The appropriate seal number is recorded, and

(5) The permit accompanies each shipment.

(d) Seals are to be placed and broken only by state or federal regulatory personnel during normal working hours.

(e) Livestock to be transported in sealed vehicles shall remain on the premises until the appropriate regulatory personnel writes the permit and seals the vehicle.

(f) Post-authorized permits shall not be approved.

35:15-17-43. Slaughter requirements

(a) Reactor ~~or responder~~ animals and "B" brand exposed animals shall be sold for immediate slaughter and removed from the premises under state or federal permit within fifteen (15) days of the date of identification. The time may be extended fifteen (15) days for reasons mutually acceptable to the cooperating state and federal officials in charge. Reactors or responders and "B" branded exposed animals in herd depopulations shall remain on the premises ~~where disclosed~~ of origin until a state or federal permit for movement to slaughter is obtained. Movement for immediate slaughter shall be to a slaughtering establishment where federal or state inspection is maintained or to a state or federal approved market for sale to the slaughtering establishment. There shall be no diversion from the permitted destination.

(b) Exposed animals consigned for immediate slaughter ~~or to a quarantined feedlot~~ shall remain on the premise of origin until an "S" brand permit for movement to slaughter ~~or quarantined feedlot has been~~ is prepared. Movement for immediate slaughter shall be to a slaughtering establishment where state or federal inspection is maintained or to a state or federal approved market for sale to a slaughtering establishment ~~or quarantined feedlot~~. There shall be no diversion from the permitted destination.

(c) All test eligible animals shall have a blood sample collected at slaughter and all man-made identity shall be properly collected and submitted with each blood sample.

35:15-17-44. Movement of reactors, exposed animals and suspects

(a) Reactors, "B" branded exposed animals and "S" branded animals ~~must~~ shall be moved under permit or "S" brand permit. There shall be no diversion from the permitted destination. When moved, the animals ~~must~~ shall be maintained separate and apart from all other classes of livestock~~,~~ in specially designed pens reserved for this purpose at livestock markets.

(b) Heifer calves born in affected herds or consigned with ~~an MCI~~ a market cattle investigation reactor shall meet one of the following to qualify for movement from the herd or sale premise.

(1) The heifer calves ~~must~~ shall be "S" branded or spayed, ~~or~~

(2) The heifer calves ~~must~~ shall be quarantined and held separate and apart from the affected adult herd after weaning until the entire quarantined group is negative on an official test occurring not less than thirty (30) days following the completion of their first calving, or

(3) If the heifer calves remain in or return to the affected adult herd, the entire herd shall not be released from quarantine until all the heifer calves have matured and ~~calves~~ calved, then at not less than thirty (30) days after all the retained heifers have completed first calving, the entire herd ~~must be tested~~ shall test negative for brucellosis to qualify for quarantine release.

35:15-17-46. Services to owner [REVOKED]

~~Services should be rendered to the livestock owner as long as funds allocated for such purposes are available; however, owners are to provide for the handling of their animals. Contracts with accredited veterinarians, nonprofessionals, other state and federal agencies, or with the management of privately owned firms are to be used as needed to assist state and federal animal health personnel accomplish necessary sample collections, animal identifications, and other activities.~~

35:15-17-47. Herd depopulation

All affected herds shall be depopulated unless granted a waiver as prescribed in 35:15-17-36. Following herd depopulation, all contact herds and adjacent herds within one (1)

mile of the perimeter of the depopulated herd shall be tested as prescribed in 35:15-17-38.

35:15-17-48. Diagnostic agents for brucellosis

Brucella antigens and all supplies accompanying these antigens used for the diagnosis or detection of brucellosis in domestic livestock ~~will~~ shall be distributed only to state or federal animal health personnel and approved accredited veterinarians ~~testing domestic livestock or bison consigned to state or federally approved markets~~. Only state or federal animal health personnel, approved veterinary technicians, and approved accredited veterinarians may possess brucella antigens or the supplies accompanying these antigens. Approved accredited veterinarians may use the brucella antigens and the supplies accompanying these antigens only in approved laboratories at state or federally approved markets for testing domestic livestock or bison consigned for sale at state or federally approved markets.

35:15-17-49. ~~Individual herd plan with adult~~ Adult vaccination

~~According~~ Adult vaccinations shall adhere to current recommendations of the USDA Uniform Methods and Rules (UM&R) for Brucellosis Eradication.

35:15-17-50. Epidemiologic services

The brucellosis eradication program shall furnish quality epidemiologic services to aid veterinarians and herd owners in brucellosis prevention and control leading toward local eradication. To accomplish this goal, the following components relating to epidemiologic service shall be instituted:

(1) State employed veterinarians having brucellosis program responsibilities shall attend an APHIS brucellosis epidemiology short course or its equivalent within the first year of their assignment.

(2) State livestock inspectors and APHIS animal health technicians shall have in their job descriptions a requirement for a structured program of continuing education on program elements.

(3) The state brucellosis program supervisor shall notify the state public health agency at the time or within fifteen (15) days of the imposition of each new affected herd quarantined for brucellosis. The public health agency ~~will be required to~~ shall take appropriate steps to mail to these herd owners educational letters ~~which should encourage~~ encouraging any existing human cases of brucellosis to see a physician and recommend procedures to minimize further potential exposure of family members and employees to brucellosis.

35:15-17-51. Individual herd plan

A written plan for the elimination of brucellosis from each affected herd shall be developed by the herd owner ~~(~~and his veterinarian if ~~so~~ requested by the owner~~),~~ and a veterinarian of the cooperative state-federal brucellosis eradication program.

35:15-17-52. Heifers to be spayed

Heifers less than test eligible age and are to be spayed may be released from an auction market to a licensed approved veterinarian's clinic within the state of Oklahoma. These heifers shall be accompanied by an official permit. All heifers spayed ~~must~~ be marked with a ~~spayed~~ spade brand on the tailhead. ~~The spayed brand is to be in the form illustrated in Appendix P of this Chapter. No~~ "S" branded females ~~may~~ shall not be released to a veterinarian's clinic for spaying.

35:15-17-53. Assurance test

All animals not included in a herd depopulation of an affected herd ~~will~~ shall be placed under herd surveillance after quarantine release until they pass negative assurance tests. ~~Assurance~~ The assurance test schedule ~~will~~ shall be between four (4) and eight (8) months and again between ten (10) and fourteen (14) months after the last reactor ~~has been~~ is removed from the herd. If all animals test negative to the assurance tests, the herd ~~will~~ shall be removed from the surveillance list. The assurance test schedule may be modified by the Designated Brucellosis Epidemiologist ~~(DBE)~~ if epidemiological evidence justifies a less stringent schedule.

35:15-17-54. Fictitious names and erroneous information

Test charts, vaccination charts and other official forms ~~must~~ shall be completed in the name of the actual owner~~,~~ or the person responsible for the cattle. An auction market or market operator ~~may~~ shall not be held responsible for recording erroneous information provided by an owner, buyer or seller. The individual providing the erroneous or fictitious information shall be ~~held accountable for a~~ in violation of ~~regulations~~ rules adopted by the State Board of Agriculture.

35:15-17-55. Area test [REVOKED]

~~An area denoted by the Designated Brucellosis Epidemiologist in which all test eligible cattle shall be tested within a specified time. The Area Test must have prior approval of the Board of Agriculture.~~

35:15-17-56. Commuter herds

(a) Any person, firm or corporation importing or exporting cattle or bison as a commuter herd in Oklahoma ~~must complete and obtain approval of a~~ shall prepare an approved commuter herd agreement. ~~This~~ The agreement ~~must~~ shall be signed by the ~~herdowner~~ herd owner, or ~~their~~ legal representative, and the State Veterinarians of all states in which the commuter herd resides. A commuter herd permit number will be assigned to each approved commuter herd.

(b) All commuter herds ~~must~~ shall be a part of a valid farming, breeding, or ranching operation and any movement shall be in the course of normal farming, breeding or ranching activities without change of ownership. Only those bulls and cows and their calves which are a part of the breeding herd may be moved as a commuter herd. Movements shall only be between premises designated on the agreement.

(c) Any commuter herd which has disclosed reactors affected with field strain brucellosis during the previous forty-eight (48) months ~~must~~ shall have a negative complete herd test within thirty (30) days of submission of the commuter herd agreement for consideration. Approval, denial or revocation of commuter herd status ~~will~~ shall be based on the herd management and health history as evaluated by the designated brucellosis epidemiologists of all states in which the commuter herd resides.

(d) The animals in an approved commuter herd may be moved between the states approving the commuter herd agreement without additional tests for brucellosis provided they are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian within thirty (30) days of the movement. All requirements regarding any other infectious or contagious diseases ~~must~~ shall be completed prior to issuance of the certificate of veterinary inspection.

35:15-17-57. High risk herds [REVOKED]

~~The Designated Brucellosis Epidemiologist, with the approval of the State Veterinarian and the APHIS, Veterinary Services Area Veterinarian in Charge, shall have the authority to require any inspection, testing, investigation or quarantine of a high risk herd as is deemed necessary following the evaluation of animal and herd histories and other epidemiologic considerations.~~

PART 5. BRUCELLA VACCINE

35:15-17-59. Brucella vaccine

(a) Use of approved brucella vaccine shall be in accordance with instructions approved by the State Board of Agriculture accompanying each lot of vaccine.

(b) Non-approved brucella vaccine is prohibited for use or distribution.

(c) Approved brucella vaccine ~~can~~ shall only be used ~~only~~ by approved veterinarians and approved regulatory personnel.

(d) Before obtaining or using any approved brucella vaccine, veterinarians and regulatory personnel ~~must~~ shall have successfully completed a formal course of training in the dilution, handling and use of the vaccine.

35:15-17-60. Official calfhood vaccination shield

The official metal calfhood vaccination shield or any other approved device for the identification of official vaccinates ~~must~~ shall remain exclusively in the possession of an accredited veterinarian or state or federal animal health official at all times. The approved official tattoo ~~will~~ shall only be used to properly identify all officially calfhood vaccinated animals ~~as defined in 35:15-17-1 and 35:15-17-3~~. Any unauthorized use or possession of this shield or other approved identification device shall constitute a violation of ~~regulations~~ rules adopted by the State Board of Agriculture.

PART 7. CERTIFIED BRUCELLOSIS-FREE HERDS OF CATTLE OR BISON

35:15-17-64. Qualifying methods

A herd of cattle or bison may qualify as Certified Brucellosis-Free ~~by~~ through one or more of the following methods:

(1) **Milk Ring Test ~~(BRT)~~.**

(A) ~~**Initial qualification.**~~ A minimum of four (4) consecutive negative milk ring tests conducted at not less than ninety (90) day intervals, following by a negative herd blood test conducted within ninety (90) days after the last negative milk ring test are required for initial qualification.

(B) ~~**Recertification.**~~ Milk ring test procedures ~~are~~ shall not be used for herd recertification.

(2) **Complete herd test.**

(A) ~~**Initial certification.**~~ At least two (2) consecutive negative tests of all test eligible animals not less than ten (10) months nor more than fourteen (14) months apart are required for initial certification. Additional herd tests may be conducted if the owner ~~so~~ desires or if the certifying agencies deem it necessary.

(B) ~~**Recertification.**~~ A negative herd test of all test eligible animals conducted within sixty (60) days of each anniversary date is required for ~~continuous certification~~ recertification. If the herd certification test is conducted within sixty (60) days following the anniversary date the certification period will be twelve (12) months from the anniversary and not twelve (12) months from the date of the recertifying test. If a herd test for recertification is not conducted within sixty (60) days following the anniversary date, then ~~certification~~ recertification requirements are the same as for initial certification.

35:15-17-65. Qualifying standards

~~**Qualifying standards.**~~ Qualifying standards for a Certified Brucellosis-Free Herd of cattle or bison are as follows:

(1) ~~**Size of area.**~~ Size of area is on a herd basis, including all offspring.

(2) ~~**Length of status.**~~ Length of status is twelve (12) months.

(3) ~~**Testing period.**~~ Testing period.

(A) ~~**Initial certification.**~~ For initial certification the period is ten (10) to fourteen (14) months, ~~(~~ or a minimum of nine (9) months if ~~BRT~~ the milk ring test is used~~)~~.

(B) ~~**Recertification.**~~ For recertification a negative blood test of all ~~text~~ test eligible animals ~~is to~~ shall be conducted within ten (10) to fourteen (14) months of the last certification date for continuous status.

(4) ~~**Herd infection rates.**~~ The individual herd ~~must disclose~~ shall have no evidence of infection at the time of initial herd certification or recertification.

(5) ~~**Animal infection rates.**~~ The individual animals ~~must disclose~~ shall have no evidence of infection at the time of initial herd certification or recertification.

(6) ~~**Suspects.**~~ Animals classified as suspects shall be tested sufficiently to determine their status. The various supplemental tests shall be conducted on blood samples, and the results evaluated by a brucellosis epidemiologist and a determination made that an infection does not exist before the surveillance on suspects is dropped. If the suspects requiring retests are not available, then a complete herd test is ~~necessary~~ required.

(7) ~~**Herd status, if infection occurs.**~~ When one or more reactors are disclosed in a certified herd or in a herd under test for initial certification, the herd status shall be ~~considered~~ affected and the ~~quarantined~~ quarantine and retest provisions ~~in 35:15-17-35 and 35:15-17-36~~ shall apply.

(A) ~~**Initial certification.**~~ A herd qualifies for initial Certified Brucellosis-Free status when the herd is free of infection, all provisions of release of quarantine ~~have been~~ are met, and ~~when the~~ additional provisions required under 35:15-17-64~~(1) and 35:15-17-64(2) have been~~ are met.

(B) ~~**Recertification.**~~ A herd decertified because a brucellosis reactor is ~~found may~~ discovered shall only be recertified ~~only~~ by repeating the entire certification process.

(8) ~~**Movement of animals into a Certified Brucellosis-Free Herd.**~~ Standards for movement of animals into a Certified Brucellosis-Free Herd are as follows:

(A) ~~**From quarantine feedlots**~~ ~~No animal consigned to a quarantined feedlot may be maintained in association with a Certified Brucellosis-Free Herd.~~

~~(B)~~ ~~**From other feedlots**~~ Animals consigned to feedlots ~~other than quarantined feedlots~~ may be held on premises with a Certified Brucellosis-Free Herd provided these animals meet the blood testing requirements prior to entry into the feedlot and there is no contact with the Certified Brucellosis-Free Herd.

(~~C~~ B) ~~**From Certified Brucellosis-Free Herds or Class Free States or Areas**~~ No test requirements on breeding ~~ordairy~~ or dairy animals originating from Certified Brucellosis-Free Herds or Class Free States or Areas shall be required. Animals added to the Certified Brucellosis-Free Herd under this provision shall not receive new herd status for sale purposes until they have passed a sixty to one hundred twenty (60-120) day post-entry retest.

(~~D~~ C) ~~**From Class A, B, or C Areas or States**~~ Test eligible animals from herds not under quarantine ~~must~~ and from Class A, B, or C Areas or States shall be blood tested negative for brucellosis within thirty (30) days prior to the date of being moved. In addition, all other requirements for interstate or intrastate movement ~~must~~ shall be met. A sixty to one hundred twenty (60-120) day post-entry retest is required for all cattle purchased from noncertified free herds. Animals added to a Certified Brucellosis-Free Herd under this provision shall not receive new herd status for sale purposes until ~~they have passed~~ passing a sixty to ninety (60-120) day post-entry retest and ~~have been~~ are included in an anniversary herd test.

35:15-17-66. Certified Brucellosis-Free Herd

(a) Certified Brucellosis-Free Herds ~~must~~ shall have at least two (2) consecutive negative tests not less than ten (10) months nor more than fourteen (14) months apart. Additional herd tests may be conducted if the owner ~~so~~ desires or if ~~the certifying agencies~~ USDA Veterinary Services or the Oklahoma Department of Agriculture, Food, and Forestry deem it necessary. ~~Commercial dairy herds require a minimum of four consecutive negative milk ring tests conducted at not less than 90 day intervals followed by a negative herd blood test conducted within 90 days after the last negative milk ring test. Herd additions and requalification must be made in accordance with procedures outlined in 35:15-17-64 and 35:15-17-65.~~

(b) Commercial dairy herds require a minimum of four (4) consecutive negative milk ring tests conducted at not less than ninety (90) day intervals followed by a negative herd blood test conducted within ninety (90) days after the last negative milk ring test.

(c) Herd additions and requalification shall be in accordance with procedures outlined in 35:15-17-64 and 35:15-17-65.

PART 11. ENTRY PERMIT AND RETEST REQUIREMENTS

35:15-17-73. Brucellosis requirements for entry of cattle into Oklahoma

All cattle and bison ~~must~~ shall have a Certificate of Veterinary Inspection prior to entry. Test eligible cattle and bison from Class B ~~&~~ and C states ~~must~~ shall have a permit in addition to a Certificate of Veterinary Inspection prior to entry. All test eligible cattle and bison ~~must be tested~~ shall test negative within thirty (30) days prior to entry and those test eligible cattle from Class B ~~&~~ and C States shall be quarantined and retested at owner's expense in not less than fort-five (45) nor more than one hundred twenty (120) days after entry. All test eligible cattle and bison from Class A states shall test negative within thirty (30) days prior to entry. Cattle from Certified Free Herds and~~/or~~ "Free" states are exempt from the test requirements prior to entry provided they are ~~individually~~ officially identified and the certified free herd number or "Free" state status is recorded on the Certificate of Veterinary Inspection.

35:15-17-74. Cattle and bison from an out-of-state farm of origin

Cattle and bison from an out-of-state farm of origin may be consigned to an approved market in Oklahoma without test, permit or vaccination. Before release from the market~~, they must~~ the cattle or bison shall meet all Oklahoma entry requirements. Test eligible animals from Class B ~~&~~ and C States moving through an Oklahoma market ~~must~~ shall be identified by the livestock market ~~management~~ at the time of

sale. These animals ~~must~~ shall be released on an official permit and ~~be~~ consigned directly to slaughter, to a licensed feedlot, to other approved markets, or to a premise in Oklahoma. ~~These~~ The animals ~~being~~ released to a premise in Oklahoma ~~must~~ shall meet the test requirements as defined in 35:15-17-73, and will be held under quarantine and retested at owner's expense in not less than forty-five (45) days nor more than one hundred twenty (120) days. ~~These animals~~ Animals going to another state ~~must~~ shall meet state of destination requirements.

35:15-17-75. "S" branded cattle

All "S" branded cattle ~~must~~ shall obtain a permit prior to entry, be individually identified on a USDA, Veterinary Services, Form 1-27, or a comparable state form, and~~;~~

(1) Be shipped directly to an approved ~~quarantined feedlot or approved~~ slaughter establishment~~,~~ with no diversion enroute~~,~~; or~~;~~

(2) ~~Farm-origin cattle may be~~ Be consigned to an approved market to be sold direct to slaughter with no diversion enroute.

35:15-17-76. Out-of-state animals held under quarantine

Those out-of-state animals ~~being~~ held under quarantine for retest after entry may be sold and the quarantine transferred to the new owner provided that the new owner agrees to the quarantine and to retest at ~~his~~ the new owner's expense in not less than forty-five (45) nor more than one hundred twenty (120) days from the test date ~~that met~~ for entry requirements. A ~~prior~~ permit ~~must~~ shall be obtained from the office of the state veterinarian prior to ~~sell~~ sale of quarantined cattle.

35:15-17-77. Cattle and bison shipped to an approved slaughter ~~plant~~ facility in Oklahoma

Cattle and bison shipped into Oklahoma to an approved slaughter ~~plant~~ facility for immediate slaughter are exempt from the permit and test requirements provided ~~that~~ they meet interstate requirements as specified in the Code of Federal Regulations

35:15-17-78. Test eligible sexually intact animals

(a) Test eligible sexually intact animals imported into the state in violation of any import regulation shall be quarantined to the nearest approved market~~, quarantined feedlot~~ or approved slaughtering establishment.

(b) Sexually intact animals which are not test eligible imported into the state in violation of any import regulation shall be quarantined to the premise of destination.

35:15-17-80. Rodeo bulls

(a) Rodeo bulls may move into the State of Oklahoma provided:

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement;

(2) The bull is identified with ~~an~~ permanent official identification;

(3) There is no change of ownership since the date of the last official test;

(4) A certificate accompanies each interstate movement of the bull; and

(5) A permit for entry is issued for each interstate movement of the bull.

(b) Rodeo bulls moving within the state shall be tested and meet the following requirements:

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of intrastate movement;

(2) The bull is identified with ~~an~~ permanent official ~~eartag~~ identification; and

(3) There is no change of ownership since the date of the last official test.

(c) ~~Rodeo bulls shall not be offered for sale or used for breeding unless they meet the testing requirement for beef breeds.~~

~~(d)~~ Rodeo bulls shall be tested prior to any change in ownership.

35:15-17-81. International import requirements

(a) All sexually intact cattle and bison~~,~~ from any foreign country or part thereof with no recognized brucellosis program equivalent to Oklahoma and ~~the requirements of~~ the UM&R standards of the U.S. Bovine Brucellosis Eradication program~~,~~ that are imported for reasons other than immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry, and

~~(2)~~ ~~Be~~ be quarantined to the Oklahoma premise approved in the entry permit pending two (2) consecutive negative brucellosis tests.

(~~3~~2) Males shall have the first test conducted not less than ninety (90) days nor more than one hundred twenty (120) days after arrival and the second test to be not less than 210 days nor more than 240 days after arrival in Oklahoma.

(~~4~~3) Females shall have the first test conducted not less than ninety (90) days nor more than one hundred twenty (120) days after arrival and the second test to be thirty (30) to sixty (60) days after all females in the consignment have calved and not less than 210 days after arrival. Any females which are S-branded for immediate slaughter or feeding for slaughter prior to calving ~~must be tested~~ shall test negative within thirty (30) days of being S-branded.

(b) Those sexually intact cattle and bison, from any foreign country or part thereof with or without a recognized brucellosis program equivalent to Oklahoma and ~~the requirements of~~ the UM&R standards of the U.S. Bovine Brucellosis Eradication program, imported for immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry, and

(2) Be consigned direct to an approved slaughter establishment ~~or quarantined feedlot~~ with no diversion from the

permitted destination. ~~Those animals consigned to a quarantined feedlot must be S-branded upon arrival at the feedlot.~~

(c) All sexually intact cattle or bison, from any foreign country or part thereof with a recognized brucellosis program equivalent to Oklahoma and ~~the requirements of~~ the UM&R standards of the U.S. Bovine Brucellosis Eradication program, imported for reasons other than immediate slaughter or feeding for slaughter ~~must~~ shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry.

(2) All test eligible cattle and bison from areas equivalent to Class A state status ~~must be tested~~ shall test negative within thirty (30) days prior to entry.

(3) All test eligible cattle and bison from areas equivalent to Class B and C state status shall be required to meet the same requirements for entry as listed in subsection (a) ~~above~~ of this section.

(4) Test eligible cattle and bison from areas equivalent to Class Free state status are exempt from quarantine and retest requirements provided they are individually identified and the Free state status is recorded on the certificate of veterinary inspection.

PART 13. COMMUNITY PASTURES

35:15-17-83. Community pastures

Groups of test eligible cattle and bison under multiple ownership that ~~are to~~ share a common premises, ~~(such as~~ including but not limited to a community pasture, grazing ~~associations~~ association, or ~~leases~~lease, ~~etc.)~~ shall be from a herd not known to be affected with brucellosis, and have passed a negative test within thirty (30) days prior to sharing a common premises with other herds.

PART 15. DEPOPULATION PAYMENT

35:15-17-87. Conditions and animal qualifications for depopulation payment

(a) Any owner of cattle or bison destroyed because of an approved brucellosis depopulation agreement with the State of Oklahoma shall be entitled to payment in an amount of $50.00 for each eligible animal, provided the animal qualifies for payment pursuant to official state brucellosis ~~regulations~~ rules and agreement for depopulation.

(1) All eligible animals ~~must~~ shall be tagged and "B" branded as reactor animals.

(2) All eligible "B" branded animals ~~must~~ shall be handled in accordance with 35:15-17-44.

(b) State depopulation monies, within the limits of availability, shall be in addition to any payments made by the United States Department of Agriculture for depopulation.

(c) State depopulation monies shall not be paid unless the owner of ~~said~~ the cattle or bison is in compliance with all the requirements of the State of Oklahoma brucellosis depopulation agreement.

PART 17. BLOOD TYPING

35:15-17-91. Misrepresentation of blood samples or animals ~~is a violation~~

(a) It shall be a violation of ~~regulations~~ rules adopted by the State Board of Agriculture to misrepresent any blood sample submitted for official testing. ~~Currently~~ Methodology currently used for blood typing ~~methodology shall~~ may be used to assure the validity of ~~such~~ samples.

(b) When a retest of a serologically positive animal is conducted, it shall be a violation of ~~regulations~~ rules adopted by the State Board of Agriculture for anyone to present any animal other than the original animal for ~~this~~ the retest. ~~Currently~~ Methodology currently used for blood typing ~~methodology will~~ may be used to assure that the samples match.

[OAR Docket #10-1043; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #10-1037]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 38. Bovine Trichomoniasis
35:15-38-1 [AMENDED]
35:15-38-2 [AMENDED]
35:15-38-2.1 [NEW]
35:15-38-3 [AMENDED]
35:15-38-4 [REVOKED]
AUTHORITY:
State Board of Agriculture; O.S. §§ 2-4 (A)(2)
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N/A
ANALYSIS:
The proposed rules amend the bovine trichomoniasis rules to include intrastate testing and to delete portions of the original rule that are obsolete. In addition, the proposed rules clean up the rules for bovine trichomoniasis. Trichomoniasis is a venereal disease of cattle, characterized primarily by

early pregnancy loss and, occasionally, by abortion and uterine infections. Oklahoma ranks as one of the top five cattle producing states in the US so it is imperative that this devastating disease is controlled.

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 25, 2010:

SUBCHAPTER 38. BOVINE TRICHOMONIASIS

35:15-38-1. Definitions

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

"Acceptable specimen" means a specimen determined satisfactory for diagnostic testing by the testing laboratory, including complete documentation.

"Approved laboratory" means any laboratory designated and approved by the state veterinarian for examining T. foetus samples.

"Approved veterinarian" means an accredited veterinarian who has attended trichomoniasis training that is approved by the state veterinarian, and the training shall include preputial sampling, sample handling and shipping, appropriate record keeping, and official bull trichomoniasis identification.

"Bovine" means any sexually intact male and female animal of the genus bos.

"Change of ownership" means control of an animal being transferred between two (2) persons by sale, lease, or lending.

"Commingle" means animals of opposite sex and belonging to different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

"Complete herd test" means an official T. foetus test from each non-virgin bull in the herd.

"Herd" means the group of animals consisting of all male and female bovines over twelve (12) months of age that have commingled during the last twelve (12) months.

"Official T. foetus laboratory testing" means the laboratory procedures that shall be approved by the state veterinarian for culture and identification of T. foetus.

"Official T. foetus bull test" means the sampling of the preputial content of a bull by a licensed, accredited and trich test certified veterinarian or a veterinarian from the Oklahoma Department of Agriculture, Food, and Forestry. The test shall be conducted after a one week separation from all female bovine and the bull and sample shall be positively and individually identified and documented for laboratory submission. The test may consist of three (3) culture tests one (1) week apart or one (1) PCR test.

"Positive T. foetus bull" means a bull that has had a positive T. foetus test.

"Positive T. foetus herd" means the group of all bovines which have had any opportunity for sexual contact in the previous breeding season and in which any male or female animal has had a positive diagnosis for T. foetus.

"Negative T. foetus bull" means a bull that qualifies by one of the following:

(A) originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last year;

(B) originate from a positive herd but has a series of three

(C) negative official T. foetus bull tests at intervals of at least one week; or

(D) a negative ~~import and negative in-state~~ official T. foetus bull test within thirty (30) days prior to ~~and post~~ entry ~~and prior to~~ with no sexual activity for one (1) week prior to the test and between the test and movement.

"Suspect T. foetus bull" means a bull from a positive T. foetus herd that has not yet had three (3) consecutive negative official T. foetus bull tests.

"Trichomonas (Tritrichomonas) foetus" or **"T. foetus"** means a contagious venereal protozoan parasite disease of the trichomonas foetus species that frequently results in lifetime infection of male bovidae as an inapparent carrier and causes infertility, pyometra, abortions and reproductive inefficiency in female bovidae.

"Unacceptable sample" means a sample that is deemed not diagnostic by the official testing laboratory.

"Virgin bull" means a sexually intact male bovine less than twelve (12) months of age or a sexually intact male bovine between twelve (12) and twenty-four (24) months ~~that is accompanied by signed affidavit from the owner or manager as having~~ that has had no breeding and no potential breeding contact with females.

"Virgin bull affidavit" means a signed affidavit from the owner, manager, or veterinarian that verifies the bull has had no breeding and no potential breeding contact with females.

35:15-38-2. Import requirements for ~~breeding~~ bulls

(a) All bulls entering Oklahoma shall be accompanied by a certificate of veterinary inspection. All non-virgin bulls shall have a negative T. foetus test within thirty (30) days prior to entry.

(b) The pre-entry test shall be conducted at a laboratory approved by the American Association of Veterinary Diagnostic Laboratories or the Oklahoma state veterinarian. ~~In-state post entry test shall be required within thirty (30) days of entry into Oklahoma and prior to any sexual activity.~~

(c) No bull that has ever previously tested positive for T. foetus shall enter Oklahoma unless the bull is consigned directly to slaughter and is individually identified for movement on a ~~USDA~~VS form 1-27.

(d) No bull from a known positive T. foetus herd shall enter Oklahoma unless the bull has three (3) consecutive negative tests at least a week apart within thirty (30) days prior to entry, in addition to ~~the~~ a post entry test and the bulls shall be isolated from all females until the in-state test results are known.

(e) The veterinarian issuing the certificate of veterinary inspection shall ~~forward a copy of all official negative T. foetus tests for the bulls~~ list the date of the test, name of the laboratory, laboratory accession number, type of test, and result of the test for each bull represented on the certificate of veterinary inspection~~ to the Oklahoma state veterinarian's office~~.

(f) Exceptions to the importation requirements are:

(1) transient rodeo or exhibition bulls that will have ~~had~~ no sexual contact with a female bovine and are held in a secure facility to prevent contact, ~~(does not include~~ excluding pasture~~)~~ while in Oklahoma;

(2) bulls consigned direct to slaughter; or

(3) bulls consigned to a feedlot for feeding purposes where they will be isolated from all females~~:~~

~~(A) bulls moved from a feedlot shall have three (3) consecutive official negative T. foetus tests at least one week apart unless consigned directly to slaughter; and~~

~~(B) any known positive T. foetus bull quarantined in a feedlot shall go directly to slaughter from the feedlot~~.

35:15-38-2.1. Intrastate change of ownership requirements for bulls

(a) Any bull changing ownership within the state of Oklahoma shall have a negative official T. foetus test within thirty (30) days prior to change of ownership with no exposure to females from seven (7) days prior to the test to the time of change of ownership.

(b) Exceptions to this rule shall include the following:

(1) A bull accompanied by a virgin bull affidavit;

(2) A bull sold directly to slaughter; or

(3) A bull sold for feeding and slaughter that will be castrated within seven (7) days of change of ownership.

(c) Any bull presented for sale at a livestock auction market without a virgin bull affidavit or verification of a negative official T. foetus test:

(1) Shall be tagged for slaughter only and sold for slaughter on a VS 1-27 form;

(2) May go to the purchaser's destination so long as the market veterinarian takes a sample for an official T. foetus test and the purchaser agrees to keep the bull under quarantine at the destination until receipt of negative test results.

(d) A livestock auction market shall not be liable for a virgin bull affidavit verifying no sexual contact with females within seven (7) days prior to arrival at the livestock auction market, and shall not be liable for the results of a market veterinarian's sampling and results for an official T. foetus test.

(e) The above requirements shall become effective on January 1, 2011.

35:15-38-3. Import requirements for reproductive bovine females

(a) Female cattle or bison may enter Oklahoma with no restrictions unless originating from a known positive T. foetus herd.

(b) ~~No~~ A female bovine originating from a known positive T. foetus herd ~~shall~~ may enter Oklahoma~~, except in~~ only upon a CVI with a statement that the female is from a known T. foetus infected herd pursuant to one of the following circumstances:

(1) The female bovine has a calf at side and no exposure to other than known negative bulls since parturition;

(2) The female bovine are at least one hundred twenty (120) days pregnant;

(3) The female bovine are known to be virgin heifers;

(4) The female bovine are heifers exposed only to known negative bulls and are not yet one hundred twenty (120) days pregnant;

(5) The female bovine are documented to have had at least one hundred twenty (120) days of sexual isolation; or

(6) The female bovine are consigned directly to slaughter or to a quarantined feedlot.

35:15-38-4. Voluntary T. foetus free herd certification [REVOKED]

~~(a) All non-virgin breeding bulls shall be tested annually for T. foetus for the three (3) years following the effective date of this rule.~~

~~(1) During the initial three (3) year period, all non-virgin breeding bulls with changes of ownership, leased, or rented shall be tested for T. foetus within thirty (30) days prior to the change unless consigned directly to slaughter. The test shall be completed and test results known prior to the time a bull is physically transferred to the receiving premises or herd.~~

~~(2) Negative T. foetus bulls shall be identified with an official Oklahoma negative T. foetus tag.~~

~~(3) All slaughter bulls removed from the herd shall be tested for T. foetus. The test may be performed at a slaughter facility if prior arrangement with a veterinarian and an appropriate agreement with the slaughter facility management are made.~~

~~(4) Bovine females added to a certified herd shall not originate from known T. foetus infected herd. Female herd additions shall originate from an Oklahoma certified T. foetus free herd or qualify in one of the following categories:~~

~~(A) calf at side and no exposure to other than known negative T. foetus bulls;~~

~~(B) checked by an accredited veterinarian at least one hundred twenty (120) days pregnant and properly documented;~~

~~(C) virgin; or~~

~~(D) heifers exposed as virgins only to known negative T. foetus infected bulls and not yet one hundred twenty (120) days pregnant.~~

~~(5) Records shall be maintained for all tests including all non-virgin bulls entering the herd and made available~~

~~for inspection by a designated accredited veterinarian or state animal health official.~~

~~(6) Following successful completion of the three (3) year testing requirement, the participating entity shall receive a T. foetus free certification from the state veterinarian's office. Annual recertification shall require documented evidence that all male herd additions were virgin or that non-virgin breeding bulls added to the herd had three (3) official negative T. foetus test within thirty (30) days prior to commingling with female bovine and that all slaughter bulls removed from the herd have been negative for T. foetus prior to or at slaughter.~~

~~(7) A herd in which a bull has a confirmed T. foetus infection shall be classified as a positive T. foetus herd and shall be removed from the free status. The herd shall be quarantined until positive T. foetus bulls are sent to slaughter and all other bulls in the herd test negative to three (3) consecutive official T. foetus tests at least seven (7) days apart. The initial negative T. foetus test is included in the three (3) negative tests.~~

~~(b) A non-tested non-virgin bull that commingles with a herd that holds or is actively working toward the Oklahoma certified trich-free status by fence breach or any commingled situation shall obligate the owner of the non-tested bull to test the bull from one to three times at the option of the state veterinarian in consultation with the owner and veterinarian of the negative herd.~~

~~(c) A bull from a herd holding a current or has a pending free certification and commingles with a non-tested herd shall undergo one to three official T. foetus tests prior to return to the herd of origin. In the event of a positive test, all bulls from both herds may be subject to test. The state veterinarian in consultation with the herd owner and herd veterinarian shall require all bulls to be tested negative on three (3) consecutive cultures or PCR prior to reinstatement of status.~~

[OAR Docket #10-1037; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #10-1036]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1 [AMENDED]
Part 3. Rules Adopted from USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication
35:15-40-31 through 35:15-40-43 [AMENDED]
35:15-40-45 through 35:15-40-49 [AMENDED]
35:15-40-49.1 [AMENDED]
35:15-40-50 [AMENDED]
Part 5. Herd Status Requirements
35:15-40-71 [AMENDED]
35:15-40-72 [AMENDED]
Part 7. Import Requirements
35:15-40-90 [AMENDED]
35:15-40-90.1 [AMENDED]
35:15-40-91 through 35:15-40-93 [AMENDED]
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The proposed rules amend the tuberculosis rules to reflect changes made to the federal programs and to clean up the existing rules.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

"Accredited ~~Free State~~ free state" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

"Accredited ~~Herd~~ herd" means a herd of cattle, bison, or dairy goats that ~~has~~ passed at least two (2) consecutive negative caudal fold tuberculin tests at an interval of not less than ten (10) months nor more than fourteen (14) months, has no other evidence of bovine tuberculosis, and ~~meets~~ meet the standards of this Subchapter.

~~**"Adjacent Herd"** means a group or groups of animals sharing common pasture, or having other direct contact with an affected herd, and herds containing previous purchases from or exchanges with an affected herd. Herds separated by a single fence are considered contact or adjacent herds.~~

"Affected ~~Herd~~ herd" means a herd of cattle, bison, or dairy goats that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis and ~~that~~ has not passed the required tests necessary for release from quarantine.

"Annual ~~Tests~~ tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Auction" means a public sale of cattle, bison, or dairy goats to the highest bidder.

~~**"Auctioneer"** means a person who sells or makes a business of selling cattle, bison, or dairy goats at auction.~~

"Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

"Bovine Tuberculosis" means a disease in cattle, bison, or dairy goats caused by Mycobacterium bovis.

"Cattle" means all domestic bovine (genus Bos).

"Caudal Fold Tuberculin ~~(CFT)~~ Test" or **"CFT"** means the intradermal injection of 0.1 milliliters of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or - 6 hours) following injection. Animals or herds of unknown status shall not be subjected to retest at intervals of less than sixty (60) days.

"Commission ~~Firm~~ firm" means a person, partnership, or corporation that buys or sells livestock as a third party and reports to the seller or to the buyer details of the transactions whether or not a fee is charged for the services.

~~**"Commission Sales"** means those sales that are conducted by a third party who reports to the seller or to the buyer details of the transactions.~~

"Comparative Cervical Tuberculin ~~(CCT)~~ Test" or **"CCT"** means the intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (M. bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection.

"Dairy cattle" means any typical dairy framed animals as determined by the inspecting veterinarian.

"Dairy ~~Goats~~ goats" means domestic caprine (genus Capra) kept for the purpose of producing milk for human consumption.

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on ~~their~~ the dealer's own account or as the employee or agent of the vendor or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include any person who buys or sells cattle, bison, or dairy goats as a part of their own bona fide breeding, feeding, or dairy operation; is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or receives cattle, bison, or dairy goats exclusively for immediate slaughter on ~~their~~ the person's own premise.

~~**"Designated feedlot"** means a feedlot under official state quarantine and approved by the State Veterinarian and federal animal health officials. The designated feedlot may include pens or pasture. All animals leaving the feedlot shall move directly to slaughter and shall be accompanied by permit.~~

~~**"Designated pens"** or **"designated pastures"** means pens or pastures associated with any feedlot that has a Memorandum of Understanding with the State Veterinarian to house cattle destined for slaughter.~~

~~**"Direct Shipment to Slaughter"** means the shipment of tuberculosis reactors, tuberculosis suspects, and tuberculosis exposed cattle, bison, or dairy goats from the premises of origin directly to a slaughter establishment without diversion to assembly points such as auctions, dealers or commission firm premises, public stockyards, and feedlots.~~

"Eradication" means the complete elimination of bovine tuberculosis from cattle and bison in the state so that the disease does not appear unless introduced from another species or from outside the state.

"Exposed ~~Animals~~ animals" means cattle, bison, or dairy goats that have been exposed to bovine tuberculosis by reason of associating with known tuberculous animals.

"Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

"Herd" means one or more cattle, bison, or dairy goats maintained on common ground or two (2) or more groups of cattle, bison, or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

~~**"Herd Depopulation"** means the removal of all cattle, bison, swine, and dairy goats exposed to bovine tuberculosis in a herd directly to slaughter prior to any restocking of the premises with cattle or bison.~~

"Herd ~~Plan~~ plan" means a herd management and testing plan designed by a state or federal regulatory veterinarian and the herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd.

"Mexican origin" means cattle that originate or have ever resided in Mexico.

"Modified Accredited Advanced State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Modified Accredited State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Natural ~~Additions~~ additions" means animals born and raised in a herd.

~~**"Negative Animals"** means any cattle, bison, or dairy goats that show no response to a tuberculin test or have been classified negative by the testing veterinarian following the application of the CCT test.~~

"No Gross Lesion ~~(NGL)~~ Animals" or **"NGL"** means any cattle, bison, or dairy goats that do not reveal a lesion of bovine tuberculosis upon postmortem inspection. Any animal with skin lesions alone shall be considered a NGL animal.

~~**"Non-modified Accredited State"** means a state that has not received accredited free status or modified accredited state status.~~

"Official in charge" means any manager, superintendent, secretary, or other person responsible for an exhibition.

"Official ~~Tuberculin Test~~ tuberculin test" means a test for tuberculosis ~~applied~~ conducted and reported by approved personnel in accordance with this Subchapter and the USDA Uniform Methods and Rules for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test, gamma interferon test, or any other test that is approved by the United States Department of Agriculture (USDA).

~~**"Passed Herd"** means a herd in which no animals were classified as reactors or suspects as the result of a herd test of all test eligible animals.~~

"Permit" means ~~an official document~~ a VS 127 issued by an authorized agent of the State Board of Agriculture, a representative of USDA APHIS ~~VS~~ Veterinary Services or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter. ~~The permit lists the reactor tag or, in the case of suspect animals, an official identification number; the owner's name and address; origin and destination locations; number of animals covered and the purpose of the movement. If a change in destination becomes necessary, a new permit shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.~~

"Reactor" means any ~~cattle, bison, or goat that shows a response to a tuberculin test and is classified a reactor by the testing veterinarian, or any~~ animal that may be classified as a reactor by the designated ~~Epidemiologist~~ epidemiologist based on supplemental diagnostic tests results from approved laboratories or other information.

"Restricted feedlot" means a feedlot that operates as a terminal feeding facility only, does not engage in grazing or backgrounding of cattle or bison, has official identification of all animals, can trace all animals to the state of origin, and makes all records available to the Department upon request.

"Rodeo bulls" means sexually intact male cattle kept for the purposes of performances at rodeos, bucking events, ~~or for~~ exhibition purposes, or for breeding to produce rodeo bulls.

~~**"Routine Screening Tuberculin Test"** means a caudal fold tuberculin test, or any other test that may be approved by the USDA, conducted as part of an area eradication program in which all responding animals are reported without classification to the State Veterinarian.~~

~~**"Single Cervical Tuberculin Test"** means the intradermal injection of 0.1 milliliters USDA bovine single cervical PPD tuberculin in the cervical (neck) region with reading by visual observation and palpation in seventy-two (72) hours (+ or - 6 hours) following injection.~~

"Suspect" means any cattle, bison, or goats that show a response to the caudal fold tuberculin test and are not classified as reactors, and cattle, bison, or goats that are classified suspects by a comparative cervical test.

"Tuberculin" means a product that is approved by and produced under USDA license for injection into cattle, bison, or goats for the purpose of detecting bovine tuberculosis.

PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES FOR BOVINE TUBERCULOSIS ERADICATION

35:15-40-31. Authority to require test

The State Veterinarian, or any accredited veterinarian as defined by USDA-APHIS working under ~~his~~ the direction of the State Veterinarian, upon reliable information that tuberculosis exists in any bovine, bison or goats, or that any of these animals may have been exposed to tuberculosis, may ~~cause the~~ require a tuberculin test ~~to be applied to such~~ of those animals. Should the owner or caretaker refuse or neglect to comply with the instructions of the accredited veterinarian, the State Veterinarian or ~~his duly authorized representative or~~ authorized agent, ~~said~~ the animals shall be quarantined and the quarantine shall prohibit the movement of any animals from ~~said~~ the premises. The State Veterinarian reserves the right to supervise, or have supervised, any test conducted by an accredited veterinarian.

35:15-40-32. Personnel authorized to apply tuberculin tests

Tuberculin tests shall be ~~applied~~ conducted by a veterinarian employed as a full-time state or federal regulatory veterinarian or by an accredited veterinarian. Technicians or livestock inspectors employed by state or federal governments ~~and approved by said governments~~ may conduct routine screening tuberculin tests when directly supervised by state or federal veterinarians.

35:15-40-33. Approved laboratories

The primary laboratory for all tuberculosis diagnostic purposes shall be the National Veterinary Services Laboratories (NVSL), Ames, Iowa. USDA Food Safety and Inspection Service (FSIS) laboratory results are acceptable for tissue examination of regular kill slaughter cattle or bison in those cases where no submission was made to NVSL. Other approved laboratories may be used for other approved supplemental tests.

35:15-40-34. Presumptive diagnostic tests

The caudal fold test, or any other test approved by the USDA, is the official tuberculin test for routine use in individual cattle, bison or dairy goats in herds ~~of such animals~~ where the tuberculosis status of the animals is unknown.

35:15-40-35. Supplemental diagnostic tests

The comparative cervical test (CCT), or any other test approved by the USDA, is the official tuberculin test for retesting of suspects. It shall be ~~applied~~ conducted only by a full-time state or federal regulatory veterinarian and shall not be used in known infected herds without the prior consent of cooperating state and federal officials. The CCT shall not be used as a primary test for animals of unknown status.

35:15-40-36. Primary/diagnostic tests

(a) The single cervical test is for use in herds affected with bovine tuberculosis and for testing exposed cattle or bison from ~~such~~ those herds. It shall be ~~applied~~ conducted only by a full-time state or federal regulatory veterinarian.

(b) The caudal fold test is a primary diagnostic test when used in herds affected with bovine tuberculosis in lieu of the single cervical test. It shall be ~~applied~~ conducted only by a full-time state or federal regulatory veterinarian. ~~Responses~~ Any responses shall ~~warrant the~~ result in a reactor classification.

(c) In the event new technology and advancements provide alternative testing procedures~~, which are~~ approved by the USDA, the State Veterinarian may alter testing procedures listed above to conform and utilize the new approved methods and test.

35:15-40-37. Tuberculin test interpretation

(a) Decisions regarding tuberculin test interpretations ~~will~~ shall be based upon the professional judgment of the testing veterinarian in accordance with policies established by the cooperating state and federal officials and the test requirements discussed in 35:15-40-38.

(b) The injection site on each animal shall be observed and palpated. Observation without palpation is not acceptable and shall constitute a violation of rules adopted by the Board~~ of Agriculture~~.

35:15-40-38. Classification of cattle and bison tested

(a) ~~**Official caudal fold tuberculin test.**~~ All responses to an official caudal fold test shall be recorded and the animal classified as suspect and quarantined for retest unless, in the professional judgement of the testing veterinarian, the reactor classification is ~~indicated~~ required.

(b) ~~**Single cervical test.**~~ All animals with a response to a single cervical test shall be classified as reactors. Responses shall be recorded in millimeters.

(c) ~~**Comparative cervical test.**~~ Responses to a comparative cervical test shall be recorded and plotted on the CCT scattergram. Classification shall be according to the zone in which the animal is plotted on the scattergram. Animals plotting in the negative zone may be reclassified as negative. Animals plotting in the reactor zone may be classified as suspect provided that there has been no known association of the herd with M. bovis. ~~The~~ A suspect shall be moved directly to slaughter under permit. The post mortem examination shall be witnessed by a regulatory veterinarian, and specimens shall be submitted for laboratory examination. If the animal fails to disclose gross or microscopic evidence of bovine tuberculosis and a complete epidemiological investigation, including a herd test of all eligible animals, fails to disclose evidence of bovine tuberculosis or exposure thereto, the herd may be considered free of bovine tuberculosis.

(d) ~~**Animals classified.**~~ Responding animals classified as reactors shall not be retested or reclassified.

(e) ~~**Reclassification of animals.**~~ Animals responding to the caudal fold tuberculin test that were found negative or suspect ~~to~~ by the comparative cervical test shall be reclassified as reactors when included in a herd test that results in the confirmation of bovine tuberculosis in the herd.

(f) ~~**New technology.**~~ In the event new technology and advancements provide alternative testing procedures, which are approved by the USDA, the State Veterinarian may alter testing procedures listed above to conform and utilize the new approved methods and tests.

35:15-40-39. Intrastate movement

No animal with a response to an official tuberculin test is eligible for intrastate movement unless ~~said~~ the animal is subsequently classified "negative for M. bovis" based on an official comparative cervical test or accompanied by an official permit and consigned direct to slaughter with no diversion from the approved destination.

35:15-40-40. Reporting of tests

A report of all tuberculin tests, including the ~~individual~~ official identification of each animal ~~by identification number, individual permanent numerical brand, or registration tattoo~~, age, sex, and breed and a record of the size of the response and test interpretation, shall be submitted to the Oklahoma Department of Agriculture, ~~Animal Industry Services Division~~ Food, and Forestry within ten (10) days of the date the test is read.

35:15-40-41. Procedures in affected herds

Disclosure of tuberculosis in any herd shall be followed by a complete epidemiologic investigation and written report. All cattle or bison in herds from which tuberculosis cattle or bison originate, and all cattle or bison that are known to have been associated with affected cattle or bison, shall be tested or an approved herd plan shall be on file within thirty (30) days of the date disclosed. These procedures shall apply to adjacent and contact herds as well as to the evaluation and testing of possible source herds for the affected herd. Herds that have received exposed animals shall be tested following the slaughter or testing of exposed animals. Every effort shall be made to insure the immediate elimination of the disease from all species of domestic livestock on the premise. ~~The first consideration in affected~~ Affected herds ~~is the depopulation of the entire herd. If~~ shall be depopulated ; however, if depopulation ~~cannot be accomplished~~ is not possible, the herd shall be handled as outlined under 35:15-40-46.

35:15-40-42. Procedures in tuberculosis infected feedlots

A tuberculosis infected feedlot shall be handled in the same manner as an affected herd in regard to epidemiologic investigation and the development of epidemiologic tracings for animal movements into and out of the feedlot. ~~Emphasis on investigations~~ Investigations and testing shall be utilized to detect possible spread from the feedlot. Cattle and bison in feedlots known to be exposed to tuberculous cattle or bison shall be quarantined and shipped under permit directly to slaughter. Feedlots or portions of feedlots~~, which have~~ that contained affected and exposed cattle or bison~~,~~ shall be vacated, cleaned and disinfected following removal of ~~such~~ the cattle or bison to slaughter.

35:15-40-43. Disposition of tuberculin responding cattle, bison and goats

(a) Reactors shall remain on the premises where they were ~~disclosed~~ identified until a state or federal permit for movement has been obtained. Movement for immediate slaughter ~~will~~ shall be directly to a slaughtering establishment where approved state or federal inspection is maintained within fifteen (15) days of classification. Alternatively, the animals may be destroyed under the direct supervision of a regulatory veterinarian to insure that a proper post mortem examination can be conducted and that the carcass is either cooked or condemned.

(b) Herds containing suspects to the caudal fold tuberculin test shall be quarantined until the suspect animals are:

(1) Retested by the comparative cervical tuberculin test within ten (10) days of the caudal fold injection, or

(2) Retested by the comparative cervical tuberculin test after sixty (60) days, or

(3) Shipped under permit directly to slaughter in accordance with state and federal laws, rules, and regulations.

(c) Suspects to the comparative cervical test shall remain under quarantine until they are:

(1) Retested by the comparative cervical test in sixty (60) days, or

(2) Shipped under permit directly to slaughter.

(d) An animal in the suspect zone on two successive comparative cervical tests will be classified as a reactor and branded. The testing veterinarian shall justify exceptions in writing to ~~the~~ state and federal animal health officials.

35:15-40-45. Identification of exposed cattle, bison, swine and goats

Exposed cattle and bison shall be identified by branding the letter "S" on the tail head not less than two (2) inches wide nor less than three (3) inches high and by tagging with an approved metal eartag bearing a serial number attached to either ear of each animal. In lieu of branding, ~~such~~ the animals may be accompanied to an approved slaughter facility by a state or federal representative or be shipped in vehicles closed with official seals. Exposed swine and goats shall be identified by tagging with a serially number metal eartag attached to either ear. All such animals to be destroyed shall be transported to the place of destruction in vehicles closed with official seals or shall be accompanied to the place of destruction by a state or federal representative. The above conditions ~~prevail provided that~~ are required unless animals are destroyed and disposed ~~of~~ under the direct supervision of a state or federal representative on the premises where the animals were exposed ~~do not require individual identification~~.

35:15-40-46. Quarantine procedures

(a) All herds ~~in which~~ with reactor animals ~~are disclosed~~ shall be quarantined. Exposed animals shall remain on the premises where disclosed unless a state or federal permit ~~has been~~ is obtained. Movement for immediate slaughter shall be directly to an approved slaughtering establishment where state or federal inspection is administered. Animals shall be identified by official identification. Use of the "S" brand is required on cattle and bison or animals ~~shall be~~ shipped in a sealed vehicle.

(b) Sale of feeder calves from quarantined herds shall be restricted. Feeder calves under twelve (12) months of age that have passed a caudal fold tuberculin test within sixty (60) days may be permitted to move intrastate to a ~~quarantine~~ restricted feedlot.

(c) Herds in which mycobacterium bovis infection ~~has been~~ is confirmed shall remain under quarantine if not depopulated and shall pass two tuberculin tests of intervals of at least sixty (60) days and one (1) additional test after one hundred eighty (180) days. All animals moved from the farm shall be shipped directly to slaughter and shall be accompanied by slaughter permit issued by a state or federal representative.

(d) Herds in which only NGL reactor(s) occur and in which no evidence of mycobacterium bovis infection ~~has been~~ is disclosed may be released from quarantine after a sixty ~~(60) day~~ (60) day negative caudal fold retest of the entire herd.

(e) Suspects in herds where only suspect animals are disclosed shall be quarantined on the premises until retested and classified negative or shipped directly to slaughter under permit. If an animal is slaughtered as a comparative cervical test reactor ~~(~~following two (2) CCT tests as a suspect~~)~~ and shows no gross lesions, ~~then the~~ results in an entire herd ~~may be retested~~ retest at sixty (60) days by caudal fold test and released from quarantine as in 35:15-40-46(d). If animals are slaughtered as suspects, but show no gross lesions, a sixty ~~(60) day~~ (60) day herd retest is recommended.

(f) Herds indicated as the source of slaughter trace back case investigations shall be placed under quarantine within thirty (30) days of notification, and a herd test ~~shall be~~ scheduled.

(g) The issuance of a quarantine may be waived if the State Board of Agriculture or the State Veterinarian enters into a formal cooperative agreement with the affected party that will control and eradicate bovine tuberculosis.

35:15-40-47. Retest schedules for high-risk herds

(a) In herds with a history of lesions suspicious of bovine tuberculosis ~~(~~but not confirmed~~)~~, two (2) complete annual herd tests shall be given after release from quarantine ~~the~~. The first test ~~to~~ shall be ~~applied~~ conducted not less than ten (10)

months nor more than fourteen (14) months after release from quarantine.

(b) In a newly ~~assembled~~ established herd on premises where a tuberculosis herd has been depopulated, two (2) annual herd tests shall be ~~applied~~ conducted to all cattle and~~/or~~ bison. The first test shall be ~~applied~~ conducted not less than four (4) months nor more than eight (8) months after ~~assembly~~ establishment of the new herd. If the premises are vacated for one (1) year, these requirements may be waived by the designated epidemiologist or State Veterinarian.

(c) Exposed animals previously sold from a known infected herd shall be depopulated, if ~~at all~~ possible. If the exposed ~~animal(s)~~ animal is not depopulated, ~~only~~ the single cervical test shall be the only test used. All responding animals shall be classified as reactors. If negative to the test, the exposed ~~animal(s) will subsequently~~ animals shall be handled as if a part of the infected herd of origin for purposes of testing, quarantine release and the five (5) annual high-risk tests. The remainder of the herd shall be retested in one (1) year with the caudal fold test. The balance of the receiving herd shall be retested as follows:

(1) If lesions of tuberculosis ~~(~~based on histopathologic examination~~)~~ are found in an exposed animal, the remainder of the herd shall be tested with the single cervical test.

(2) In all other cases, the remainder of the herd shall be tested by the caudal fold test. The responding animals may be classified as suspects and retested with the comparative cervical test.

(d) The testing of source herds of regular kill animals having lesions of tuberculosis shall be done by full-time state or federal regulatory veterinarians. If the herd of origin is positively identified, all animals responding to the caudal fold test shall be classified as reactors. ~~Only when~~ If the herd of origin is not positively identified, ~~should~~ the comparative cervical test shall be used to classify animals that respond to the caudal fold test.

(e) Testing of source herds of reactors shall be by full-time state or federal regulatory veterinarians using the caudal fold test procedure. Responding animals may be classified as reactors or, if classified as suspects, may be retested by the comparative cervical test.

(f) In herds where mycobacterium bovis infection ~~has been~~ in confirmed, but the herd ~~has~~ is not ~~been~~ depopulated, five (5) annual tests on the entire herd shall be ~~given~~ required following the release from quarantine.

(g) In the event new technology and advancements provide alternative testing procedures~~, which are~~ approved by ~~the~~ USDA, the State Veterinarian may alter testing schedules listed above to conform and utilize the new approved methods and tests.

35:15-40-48. Cleaning and disinfection of premises, conveyances, and materials

All premises, including all structures, holding facilities, conveyances and materials ~~which are~~ determined by ~~the appropriate cooperating~~ state~~/federal~~ and federal officials to constitute a health hazard to humans or animals because of tuberculosis, shall be properly cleaned and disinfected. ~~This~~ Cleaning and disinfection shall be ~~done~~ performed in accordance with procedures approved by ~~said~~ state and federal officials within fifteen (15) days after the removal of tuberculosis affected or exposed animals. ~~However, these~~ State and federal officials~~, for reasons satisfactory to them,~~ may extend the time for disinfection to thirty (30) days ~~when~~ upon a request ~~for such extension is~~ received prior to the expiration date of the original fifteen (15)-day period ~~allowed~~.

35:15-40-49. Identification

(a) All animals tested shall be ~~individually~~ officially identified ~~by official identification, individual tattoo, individual permanent numerical brand or any other identification method approved by the State Veterinarian~~ at the time of injection. ~~Devices easily removed and transferred are not satisfactory.~~

(b) ~~Animals~~ Identification eligible animals moved in channels of trade shall be officially identified and recorded as to origin and destination at the first point of concentration including, but not limited to, dealers, livestock auction markets and stockyards.

(c) Animals over two (2) years of age that are returned to farms or ranches shall be identified by official identification ~~or any other method approved by the State Veterinarian~~.

35:15-40-49.1. Dairy cattle change of ownership

(a) Sexually intact dairy cattle six (6) months of age or older and weighing four hundred fifty (450) pounds or more shall:

(1) Test negative for tuberculosis no more than sixty (60) days prior to a change in ownership; or

(2) Originate from a herd with a biennial complete herd negative caudal fold tuberculin test of all cattle twenty (20) months of age or greater that exhibit no other evidence of bovine tuberculosis; or

(3) Originate from an accredited tuberculosis free herd.

(b) Any dairy cattle that do not meet these testing requirements shall be tagged as slaughter only and sent either directly to slaughter or to a ~~designated~~ restricted feedlot.

(c) For purposes of this section a biennial negative caudal fold tuberculin test shall occur at an interval of not less than twenty-two (22) nor more than twenty-six (26) months and be valid for a period of two (2) years.

(d) For purposes of this section dairy cattle shall include typical dairy framed animals as determined by the inspecting veterinarian.

35:15-40-50. Dealers and record keeping

All dealers, auction markets and commission firms shall keep sufficient records for a minimum of two (2) years of all animals purchased for resale to enable any authorized agent to trace ~~such~~ the animals satisfactorily to their herd of origin and to their disposition at the time of sale. These records shall be made available to any authorized agent for the purpose of inspection or photocopying during normal business hours. Failure to maintain or provide adequate records shall constitute a violation of rules adopted by the Board ~~of Agriculture~~.

PART 5. HERD STATUS REQUIREMENTS

35:15-40-71. Minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle or bison herds

The minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle and bison herds are as follows:

(1) All test eligible cattle and bison shall pass two (2) consecutive negative official tuberculin tests not less than ten (10) months nor more than fourteen (14) months apart. Test eligible animals shall include all cattle or bison twenty-four (24) months of age and older.

(2) All cattle and bison in the herd shall be individually identified by ~~an~~ official identification~~, registration tattoo, or individual permanent numerical brand~~.

(3) Any cattle or bison added to an accredited herd shall either:

(A) Test negative to an official tuberculin test sixty (60) days prior to entering the premises, be kept in isolation, and test negative sixty (60) days following entry, or

(B) Be from one of the following:

(i) An accredited herd,

(ii) A herd from an accredited free state, or

(iii) A herd in a modified accredited area that passed a herd test of all cattle and bison over twenty-four (24) months of age within the previous twelve (12) months and the added cattle and bison test negative to an official tuberculin test within sixty (60) days of entering the herd.

(4) Any cattle or bison added to an accredited herd that did not originate from an accredited herd shall not receive new herd status for sale purposes until they have been a herd member for at least sixty (60) days and are included in a complete herd test.

(5) All additions, both purchased and natural, shall be identified as herd members for the herd retest.

(6) The owner shall keep records individually identifying each animal, including all natural or other additions, and shall also keep records of the death or other disposition of each animal.

(7) Accreditation is valid for a twenty-four (24) month period. The original date of accreditation shall be the herd's official accreditation date.

(8) Reaccreditation shall require a negative test of all test eligible herd members not less than twenty-two (22) nor more than twenty-six (26) months from the official accreditation date. All cattle or bison shall be bona fide members of the herd.

(9) Any evidence of bovine tuberculosis in a herd shall result in a denial of accreditation or reaccreditation.

35:15-40-72. Minimum standards for accreditation and reaccreditation of tuberculosis accredited goat herds

Minimum standards for accreditation and reaccreditation of tuberculosis accredited goat herds are as follows:

(1) Testing of herds for accreditation or reaccreditation shall include all goats over six (6) months of age and any animals other than natural additions under six (6) months of age. All natural additions shall be individually identified and recorded on the test report as members of the herd at the time of the annual test.

(2) Herd additions shall originate directly from one of the following:

(A) Accredited herd, or

(B) Herd in an accredited free state, or

(C) Herd in a modified accredited area that has passed a herd test of all animals over six (6) months of age within twelve (12) months, and the individual animals for addition were negative to the official tuberculin test conducted within sixty (60) days, or

(D) Herd in a modified accredited area not meeting requirements of 35:15-40-72(2)(A)(B) or (C). Individual animals for addition shall pass a negative test within sixty (60) days prior to entering the premises of the accredited herd and shall be kept in isolation from all members of the accredited herd until negative to a test conducted after sixty (60) days of date of entry.

(3) Animals added under 35:15-40-72(2)(B)(C) and (D) shall not receive accredited herd status for sale purposes until they have been members of the herd at least sixty (60) days and are included in a herd retest.

(4) Reaccreditation shall require a negative test of all test eligible herd members not less than ten (10) nor more than fourteen (14) months from the official accreditation date. All animals shall be bona fide members of the herd.

(5) No evidence of bovine tuberculosis may be disclosed in the herd for the purposes of accreditation or reaccreditation.

PART 7. IMPORT REQUIREMENTS

35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(c) All dairy steers and spayed heifers shall be accompanied by a certificate of veterinary inspection.

(d) All sexually intact dairy cattle under ~~six (6)~~ two (2) months of age shall be individually identified by ~~an~~ official identification and accompanied by a certificate of veterinary inspection.

(e) All sexually intact dairy cattle six (6) months of age and older shall be accompanied by a certificate of veterinary

inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free herd; or

(2) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.

(f) Beef cattle under the age of eighteen (18) months and all spayed heifers or steers shall be accompanied by a certificate of veterinary inspection.

(g) All other beef cattle eighteen (18) months or older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:

(1) Originate from a tuberculosis free state;

(2) Originate from a tuberculosis free herd; or

(3) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.

(h) Any cattle that do not meet these testing requirements shall be tagged as slaughter-only and sent either directly to slaughter or to a ~~designated~~ restricted feedlot.

35:15-40-90.1. Requirements for cattle entering Oklahoma from a modified accredited advanced state or zone

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

(c) All cattle shall be accompanied by a permit number and a certificate of veterinary inspection that was approved by the Oklahoma State Veterinarian prior to entry into Oklahoma.

(d) Cattle or bison may move directly to slaughter at an approved slaughtering facility.

(e) Sexually intact heifers may move to ~~an approved~~ a restricted feedlot.

(f) Steers or spayed heifers may move into Oklahoma so long as they meet one of the following:

(1) Cattle or bison are individually identified by an official identification and the cattle or bison:

(A) ~~are~~ Are accompanied by the original certificate of veterinary inspection at all times;

(B) ~~are~~ Are placed at a single location for grazing; and

(C) ~~are~~ Are only removed from the single location directly to ~~an approved~~ a restricted feedlot or directly to slaughter;

(2) Cattle or bison enter on a ~~NAIS Premise Identification Number~~ state or federal identification number for the premise of origin and premise of destination with an approved Group Lot Number and the group lot:

(A) ~~is~~ Is accompanied by the original certificate of veterinary inspection at all times;

(B) ~~is~~ Is placed at a single location for grazing;

(C) ~~remains~~ Remains as a group lot;

(D) ~~does~~ Does not commingle with other cattle or bison; and

(E) ~~is~~ Is only removed from the single location directly to ~~an approved~~ a restricted feedlot or directly to slaughter; or

(3) Cattle or bison are individually identified by an official identification and test negative to an official tuberculosis test conducted within sixty (60) days prior to movement into Oklahoma.

(g) Cattle or bison from an accredited herd may enter Oklahoma with a certificate of veterinary inspection that includes complete herd tuberculosis negative test results within one (1) year prior to entry.

(h) Sexually intact cattle or bison, not from an accredited herd, shall be individually identified and accompanied by a certificate of ~~veterinarian~~ veterinary inspection stating the cattle or bison tested negative to an official tuberculin test conducted within sixty (60) days prior to the date of movement.

(i) The state veterinarian may grant a variance to this section so long as the variance is consistent with federal law.

35:15-40-91. International importation of sexually intact cattle or bison

(a) All sexually intact cattle and bison from any foreign country or part thereof with a status less than Modified Accredited Advanced as compared to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program and imported for reasons other than immediate slaughter or feeding for slaughter shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be quarantined to the premise approved in the entry permit pending two (2) consecutive negative tuberculosis tests, with the first test conducted not less than ninety (90) days nor more than 120 days after arrival and the second test conducted not less than 210 days nor more than 240 days after arrival in the state.

(b) All sexually intact cattle and bison from any foreign country or part thereof with no recognized tuberculosis status comparable to the UM&R standards of the U.S. Bovine Tuberculosis Eradication program of Modified Accredited Advanced or above and imported for immediate slaughter or feeding for slaughter shall meet the following criteria:

(1) Obtain a permit issued by the Oklahoma Department of Agriculture, Food, and Forestry prior to entry; and

(2) Be consigned direct to an approved slaughter establishment or ~~designated~~ restricted feedlot with no diversion from the permitted destination.

~~(3) Animals consigned to a designated feedlot shall be tagged for slaughter only prior to or upon arrival at the feedlot.~~

35:15-40-92. Importation of Mexican origin steers and spayed heifers

(a) Mexican origin steers and spayed heifers imported as stocker, feeder, slaughter animals may enter Oklahoma provided they test negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within sixty (60) days prior to entry into Oklahoma and they obtain a telephone entry

permit prior to entering Oklahoma providing the following information:

(1) ~~a~~ A certificate of veterinary inspection containing the individual identification and all tag numbers, tuberculosis testing information, statement that the animals are "Mexican Origin Cattle," and complete consignor or consignee information including telephone numbers; and

(2) ~~a~~ A VS Form 17-30.

(3) Cattle from states in Mexico that meet USDA Tuberculosis Free standards are not required to have a negative NOM tuberculosis test.

(b) Mexican origin steers and spayed heifers and any commingled cattle shall not be diverted from the stocker, feeder, slaughter channel.

(c) Mexican origin steers and spayed heifers shall not be commingled with any cattle other than stocker, feeder, slaughter cattle.

(d) Holstein and Holstein-cross steers and spayed heifers from Mexico shall not enter Oklahoma regardless of test history.

(e) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock prior to entry into Oklahoma shall obtain an entry permit, provide individual identification and all tag numbers, and be accompanied by a negative tuberculosis test that meets one of the following:

(1) Performed by an accredited veterinarian within the previous 365 days; or

(2) Performed in accordance with the Norma Official Mexicana (NOM), the animal is accompanied by a VS 17-30, and the animal is quarantined upon entry into Oklahoma until retested by an accredited veterinarian within sixty (60) to one hundred twenty (120) days of the original tuberculosis test.

(f) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock moving within the state shall meet the following requirements:

(1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days;

(2) Be identified with an official identification; and

(3) There is no change of ownership since the date of the last official test.

(g) No sexually intact Mexican origin rodeo stock shall enter Oklahoma.

(h) The official in charge of an event shall be responsible for verifying that all Mexican origin cattle utilized as rodeo stock entering any exhibition meet all testing requirements.

(1) The official in charge of an event shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

(2) Any person providing erroneous or fictitious information shall be in violation of these rules.

(i) Any official in charge of an event who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

35:15-40-93. Rodeo bulls

(a) Rodeo bulls may move into the State of Oklahoma provided:

(1) The rodeo bull is accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner;

(2) The bull is identified with an official identification;

(3) A certificate of veterinary inspection accompanies each interstate movement of the bull; and

(4) A permit for entry is issued for each interstate movement of the bull.

(b) Rodeo bulls moving within the state shall meet the following requirements:

(1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner; and

(2) Be identified with an official identification.

(c) The official in charge of an event shall be responsible for verifying that all rodeo bulls entering any exhibition meet all testing requirements.

(1) The official in charge of an event shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

(2) Any person providing erroneous or fictitious information shall be in violation of these rules.

(d) Any official in charge of an event who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

[OAR Docket #10-1036; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

[OAR Docket #10-1038]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 17. Combined Pesticide
Part 2. Pesticide Rule Advisory Committee [NEW]
35:30-17-3.4 [NEW]
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-20 [AMENDED]
Part 15. Minimum Standards for Termite Work for Existing Structures
35:30-17-55 through 35:30-17-59 [AMENDED]
35:30-17-60 through 35:30-17-64 [REVOKED]
35:30-17-65 through 35:30-17-69 [AMENDED]
35:30-17-69.l [NEW]
35:30-17-69.2 [NEW]
Part 16. Minimum Standard for the Performance of Spot/Partial Treatments of Termite Work for Existing Structures (Spot Treatments) [REVOKED]
35:30-17-70 [REVOKED]
Part 22. Wood Infestation Reports
35:30-17-105 [AMENDED]

AUTHORITY:
Article 6, Section 31, Constitution of the State of Oklahoma; 2 O.S. §§ 2-4 (A)(2) and § 3-84
DATES:
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ANALYSIS:
The proposed rules reflect rule changes suggested by a group of Oklahoma pesticide operators. The rules include changes to contracts, minimum standards for termite work for existing structures, wood infestation reports, perimeter termite treatments, and a pesticide advisory committee. The rules combine some sections, define certain terms, and general cleanup and reorganization of the rules.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

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 25, 2010:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 2. PESTICIDE RULE ADVISORY COMMITTEE

35:30-17-3.4. Pesticide rule advisory committee

(a) The State Board of Agriculture may appoint a pesticide rule advisory committee to serve as advisors to the Department regarding review and recommendations for revisions to pesticide rules.

(b) The committee shall consist of:

(1) One member shall represent agribusiness retailers;

(2) One member shall represent vegetation managers;

(3) One member shall represent aerial pesticide applicators;

(4) One member shall represent commercial pest control applicators;

(5) One member shall represent restricted use pesticide dealers;

(6) One member shall represent manufacturers of pesticides;

(7) One member shall represent private pesticide applicators;

(8) Two members shall represent agricultural organizations;

(9) One member shall represent the general public, with an emphasis on consumer protection;

(10) One member shall represent Oklahoma State University or Oklahoma State University Cooperative Extension Service; and

(11) One member shall represent the turfgrass industry.

(c) Of the initial members, four (4) shall serve one (1) year terms, four (4) shall serve two (2) year terms, and four (4) shall serve three (3) year terms. Thereafter, all members shall serve for three (3) year terms; provided, all members shall serve at the pleasure of the Board.

(d) The advisory committee shall meet at least annually to review and recommend proposed rules. The committee shall present written recommendations to the Department no later than October 1 of each year.

(e) The advisory committee may create subcommittees to address specific areas of concern. The subcommittees may meet more frequently to discuss the specific areas of concern.

PART 9. MINIMUM STANDARDS FOR CONTRACTS AND KEEPING OF RECORDS

35:30-17-20. Contract contents

(a) Contracts shall be issued for the commercial application of pesticides in the Structural Pest Category. Information on the contracts shall include:

(1) Specific information from 2 O. S. Sections 3-81(11) and 3-83, and ~~rule~~ OAC 35:30-17-21.

(2) Minimum standards for termite work for existing structures and preconstruction ~~application(s)~~ applications. Any minimum requirements that ~~are~~ will not ~~going to~~ be met ~~must~~ shall be explained in the contract.

(b) Visible termite damaged material, whether structural or superficial, that will not be replaced or repaired at the time of the original contract shall be in the contract in a clear statement, e.g. "No replacements of damaged material due to termites or other wood destroying organisms are to be made."

(c) "Replaced" means to remove all visible damaged material and bring the area back to sound condition using new materials. The use of putty, paint, or similar materials shall not constitute replacement.

(d) "Repaired" means to bring the area back to sound condition.

PART 15. MINIMUM STANDARDS FOR TERMITE WORK FOR EXISTING STRUCTURES

35:30-17-55. Access

~~(a)~~ Where new or modified access openings are necessary, they shall be a minimum of 14" X 16" to permit entrance under all crawl spaces. No wood of any access opening shall be in contact with the soil.

~~(b) Existing access openings shall only be required to be modified, if wood is in contact with the soil. If modification is necessary to gain entry into the crawl space, modifications shall meet or exceed the dimensions in(a).~~

35:30-17-56. Debris and form boards

~~(a)~~ Wood or other cellulose material that can be caught with a rake shall be removed from the ground in the crawl area. Visible form boards shall be removed. Form boards that are buried in concrete shall be removed if practical. Visible stumps and any other cellulose materials that are not removed shall be treated ~~if they cannot be removed~~.

~~(b) All cellulose material shall be removed except pieces which are small enough to go through a rake.~~

35:30-17-57. Clearance under buildings

(a) Where necessary for proper treatment, all ~~earth which is within~~ soil less than twelve inches (12") ~~of~~ from the bottom edge of the floor joist or ~~within~~ less than five inches (5") ~~of~~ from the stringer, but not below the top of the footing of foundation walls, shall be removed. If foundation footings are less than twelve inches (12") below the bottom of the joist, a bank of soil twelve inches (12") to eighteen inches (18") wide shall be left adjacent to the footing for support.

(b) The clearance ~~mentioned in (a)~~ between floor joists and stringers and the ~~earth below~~ soil are minimums.

(c) Where the footing is exposed at soil level, trench and treat along the edge of the footing but not below the bottom of the footing.

35:30-17-58. Shelter tubes

Remove all ~~visible~~ accessible shelter tubes ~~under the structure, in the interior of the structure, and from piers, walls, sills, joists, subfloor, pipes, and all other parts of the structure~~.

35:30-17-59. Piers and stiff-legs

Stiff-legs, wood steps, or other wood supports shall ~~have concrete or other termite impervious bases extending at least four inches (4") above the ground, or rest on unbroken concrete bases which must extend four inches (4") beyond the support~~ be treated according to label directions.

35:30-17-60. Outside wood steps [REVOKED]

~~All outside wood steps shall be placed on concrete bases extending at least four inches (4") above ground level and four inches (4") beyond the steps in all directions, or trench or rod as allowed by the termiticide label.~~

35:30-17-61. Dampness [REVOKED]

~~Ventilators or access openings in foundation or veneer walls that are within 2" of exterior grade or constucted to allow normal rainfall to run under the house, shall be corrected by the construction of a permanent masonry or metal water barrier or wall that stops water from running under the structure through the opening.~~

35:30-17-62. Replacements [REVOKED]

~~(a) Visible termite damaged material, whether structural or superficial, that will not be replaced or repaired at the time of the original contract shall be in the contract in a clear statement, e.g. "No replacements of damaged material due to termites or other wood destroying organisms are to be made."~~

~~(b) "Replaced" means to remove all visible damaged material and bring the area back to sound condition using new materials. The use of putty, paint, or similar materials shall not constitute replacement.~~

~~(c) "Repaired" means to bring the area back to sound condition.~~

35:30-17-63. Skirting and lattice work [REVOKED]

~~Skirting and lattice work shall rest on concrete or other continuous, termite impervious material extending several inches above the outside grade. If suspended at least one inch (1") clearance above grade shall exist, or trench or rod as allowed by the termiticide label.~~

35:30-17-64. Frame siding [REVOKED]

~~On homes where the frame siding runs below grade, the soil shall be treated the same as for stucco, or a barrier wall shall be erected to hold back the soil from contact with structural timber, or trench or rod as allowed by the termiticide label.~~

35:30-17-65. Stucco, frame siding, or similar type materials

Where stucco, ~~extends~~ frame siding, or similar type materials extend to or below grade, termiticide shall be applied in trenches dug below and under the bottom edge ~~of stucco~~ to assure treatment of the ~~ground underneath, in addition to ground treating under the building~~ soil. Where ~~ground~~ concrete slabs prevent trenching, the ~~ground~~ soil beneath shall be treated through holes drilled in the slab.

35:30-17-66. ~~Ground~~ Soil treatment under buildings ~~(crawl space)~~

(a) ~~Ground~~ Soil treatment under a building shall include the following:

(1) Termiticides shall be applied underneath the structure as specified on the label.

(2) For inaccessible crawl spaces where making a new access opening is not feasible, soil shall be treated by an alternate method ~~such as drilling and rodding through foundation walls from outside or above~~ pursuant to the label.

(3) Termiticide shall not be applied to soil intended for a plenum air space unless permitted by the label.

(4) An overall broadcast application of termiticide shall not be made in a crawl space unless permitted by the label.

(5) Treatment of the backfill of the trench is permitted, and shall be stated in the contract.

(6) Soil applied termiticide shall not be used to treat any structure containing a well or cistern unless allowed by the label of the termiticide.

(b) These minimum standards shall not be written out of a contract~~ pursuant to 35:30-17-54~~.

35:30-17-67. Void treatment

(a) ~~Required treatment. The ground or hollow area in cracks and voids in the following areas:~~ Voids shall be drilled or otherwise entered and treated~~: in foundation walls, in piers, between foundation walls, behind masonry veneer, and in fireplaces and chimneys. Masonry veneer voids shall be treated by drilling the veneer at intervals no greater than 24 inches and applying termiticide into the void at the label rate~~. Drill holes shall be securely plugged after treatment except in crawl spaces, unless required by the label. Application pressure shall not exceed 25 psi. ~~A lateral or 180 or less dispersion type tip is recommended.~~

(b) Masonry veneer voids shall be entered and treated.

(1) ~~Masonry veneer voids shall be entered and treated, except veneer~~ Veneer resting on unbroken concrete ~~which~~ that extends more than~~ 12~~ twelve inches (12") above the outside grade~~ does~~ shall not require treatment.

(2) Masonry veneer shall be treated by drilling at intervals no greater than sixteen inches (16") and applying termiticide into the void at the label rate.

(3) The treatment holes shall be no higher than the level of the top of the slab.~~ If the treatment holes do not accept the termiticide at the label rate, a lock-on device or equivalent shall be used.~~

(c) ~~Concrete blocks~~ Voids in a given row of a concrete block wall, except those sitting on an unbroken concrete slab floor, shall be drilled or entered and treated.

(1) ~~Voids in a given row of a concrete block wall, except those sitting on an unbroken concrete slab floor, shall be drilled or entered and treated.~~ Drilling may follow the grade contour, but shall not be made in the bottom row of blocks. The concrete blocks that sit on an unbroken concrete slab floor shall not be drilled and treated. Where termite activity is present, the floor slab shall be drilled or rodded underneath.

(2) ~~Where brick stem walls or outside concrete block walls are behind brick or other veneer, the treatment of the block voids may be effected by trenching and treating the inside grade to the footing.~~

~~(3)~~ Where concrete block foundations have adequate ~~opening~~ openings at the top, treatment may be applied at the opening in lieu of drilling~~, if~~ so long as stated in the contract.

~~(4) Any type of treatment of voids in concrete blocks that does not involve drilling shall be in the contract.~~

(d) ~~Chimneys~~Chimneys shall be treated in all critical areas.

(1) ~~Care shall be taken to establish a termiticide barrier across all potential avenues of termite access in or around chimneys.~~

~~(2)~~ Critical areas to be treated are the expansion joints between the floor slab and stem wall, the fireplace~~/chimney~~ and chimney base and stemwall, and the outer voids.

(~~3~~2) The fireplace~~/chimney~~ and chimney base and stemwall may be treated by long rodding.

~~(4) Care shall be taken not to puncture the fire box.~~

35:30-17-68. ~~Ground~~ Soil treatment outside of building

The exterior~~ open ground~~ soil along the foundation or veneer wall shall be trenched or trenched and rodded through the bottom of the trench~~, and treated, except along solid, unbroken concrete foundations which are exposed more than 12" above the outside grade~~. Treatment of the backfill of the trench is permitted. Rod holes shall not be spaced more than~~ one (1) foot~~ twelve inches (12") apart. The size of the trench shall be consistent with~~ pesticide~~ product label requirements.

(1) Where the footing is exposed at ground level, trench or trench and rod through the bottom of the trench along the outside edge of the footing.

(2) Where trenching or trenching and rodding is not possible due to presence of masonry walls, gutters, terraces, ~~etc.~~ sidewalks, and other similar locations, holes shall be drilled at not more than ~~18"~~ twelve inch (12") intervals and the~~ ground beneath~~ soil shall be treated adjacent to the structure.~~ Treating may also be performed by rodding or tunneling.~~

35:30-17-69. Concrete slabs– for existing structures

(a) The minimum standard for existing structure concrete slabs shall include the following:

(1) Termiticide shall be injected immediately under and adjacent to the slab at the rate specified on the label by drilling and treating to create a continuous barrier between the soil and the outside perimeter walls of the structure. Use of a sub-slab injector or similar device to prevent backflow is recommended. All drill holes shall be securely plugged. Application pressure shall not exceed 25 psi. Monolithic, supported slab with thickened perimeter or post tension slabs, with or without footing, shall be treated by drilling only in areas where known cracks exist.

(2) Where evidence of termite infestation exists on interior walls, the slab shall be treated ~~as follows:~~ by drilling the slab and treating the soil under the slab at the base of the wall where the termite activity is present and continue for a minimum of three (3) feet in at least two (2) directions from the termite activity. The treatment may be performed on either side of the wall if construction elements prevent treatment on the side of termite activity, so long as the reason for treating only one side of the treatment is discussed on the contract and the customer consents in writing.

~~(A) Slabs under petition walls shall be treated by drilling the slab and treating the soil under the slab at~~

~~the base of the wall on the side where termite activity is present.~~

~~(B) Slabs under load bearing walls shall be treated by drilling the slab on both sides at the base of the wall and treating the soil underneath.~~

(3) Maximum spacing for ~~vertical~~ drilling shall be ~~18"~~ twelve inches (12") except where long rodding of the perimeter is performed.

(4) Termiticide shall not be applied to any area intended as a plenum air space unless permitted by the label.

(5) Soil applied ~~Termiticide~~ termiticide shall not be used to treat any structure containing a well or cistern unless allowed by the label.

(6) Basement concrete slab floors shall not be drilled and treated unless ~~the slab is cracked or has expansion joint with~~ there is evidence of termite infestation in the basement area.

(7) Where wooden parts are resting on known cracked concrete or expansion joints, ~~(Example:~~ including but not limited to garage floor, patio, porches, or interior~~)~~, holes shall be drilled on one or both sides of the wooden part and the soil below treated. Where wood parts extend into or through concrete slab or are adjacent to an expansion joint, the slab adjacent to the wood part shall be drilled at ~~18"~~ a maximum of twelve inch (12") intervals on one or both sides and treated.

(8) Dirt filled porches, entry platforms, sidewalks, patios, and other similar areas~~of~~ shall be treated by~~:~~ drilling~~,~~ or rodding~~, or tunneling. If tunneled, the tunnel shall be a minimum of 12" X 12" and treated with chemical. Ventilators shall be placed at both ends, if practical.~~ If drilled, holes shall not be in excess of ~~18"~~ twelve inches (12") apart.

(b) These minimum standards shall not be written out of a contract ~~pursuant to 35:30-17-54~~.

35:30-17-69.1. Perimeter termite treatments

(a) These minimum standards are intended to address perimeter termite treatments with termiticides which allow perimeter treatments.

(b) Perimeter treatments can not be performed using any pesticide which does not allow this type treatment as stated on the product label.

(1) Perimeter Termite Treatments shall be considered a complete structural treatment unless limited by the label.

(2) The exterior open ground area along the foundation wall shall be trenched or trenched and rodded through the bottom of the trench to the bottom of the footing at no more than twelve inch (12") intervals. The trench shall be a minimum of six inches (6") in depth and six inches (6") wide. The trench shall be backfilled and the backfill treated at label rate. If physical obstructions prevent trenching then rodding can be performed at twelve inch (12") intervals.

(3) All concrete slabs adjoining the structure shall be drilled and treated at no more than twelve inch (12") intervals.

(4) With an accessible crawl space, all piers, pipes and interior support walls shall be trenched or trenched and rodded through the bottom of the trench to the bottom of the footing at no more than twelve inch (12") intervals. The trench shall be a minimum of six inches (6") in depth and six inches (6") wide.

(5) If termites are found in an inaccessible crawl space the soil shall be treated in accordance with label directions.

(6) Treatment of a garage shall be performed around all garage door supports and along any wall or portion of wall that has not been treated in accordance with this section. The drilling shall be at twelve inch (12") intervals.

(7) Basements shall be trenched or trenched and rodded through the bottom of the trench to a depth of at least four feet (4'). The trench shall be a minimum of six inches (6") in depth and six inches (6") wide.

(8) The contract shall specifically identify the exact location where a spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The spot treatment shall be at least three feet (3') in two (2) or more directions unless label requires a distance greater than three feet (3').

35:30-17-69.2. Exceptions to minimum standards

(a) Exceptions to minimum standards for a complete treatment shall include the following:

(1) The property owner agrees with the written explanation in the contract as to why the standard was not performed. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract; or

(2) The termiticide label specifically allows for a variation and the variation is stated in the contract.

(b) Exceptions to minimum standards for a spot or partial treatment shall include the following:

(1) The property owner agrees with the written explanation in the contract as to why the standard is not performed, or the termiticide label specifically allows for a variation and the variation is stated in the contract. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract.

(2) The contract shall include the statement, "This is a SPOT/PARTIAL treatment," or otherwise clearly convey that the treatment is not a complete termite treatment.

(3) The contract shall specifically identify the exact location where the spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The identified spot treatment location shall not be equal to the entire structure.

(4) The contract shall not contain any misrepresentations or false claims regarding the effectiveness of a spot or partial treatment.

PART 16. MINIMUM STANDARD FOR THE PERFORMANCE OF SPOT/PARTIAL TREATMENTS OF TERMITE WORK FOR EXISTING STRUCTURES (SPOT TREATMENTS) [REVOKED]

35:30-17-70. Exceptions to minimum standards [REVOKED]

~~(a) Exceptions to minimum standards for a complete treatment shall include the following:~~

~~(1) The property owner agrees with the written explanation in the contract as to why the standard was not performed. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract; or~~

~~(2) The termiticide label specifically allows for a variation and the variation is stated in the contract.~~

~~(b) Exceptions to minimum standards for a spot/partial treatment shall include the following:~~

~~(1) The property owner agrees with the written explanation in the contract as to why the standard is not performed, or the termiticide label specifically allows for a variation and the variation is stated in the contract. Sections 35:30-17-66 and 35:30-17-69 shall in no case be written out of the contract.~~

~~(2) The contract shall include the statement, "This is a SPOT/PARTIAL treatment" or otherwise clearly convey that the treatment is not a complete termite treatment.~~

~~(3) The contract shall specifically identify the exact location where the spot treatment is performed and the treatment shall meet all minimum standards for the specific location identified. The identified spot treatment location shall not be equal to the entire structure.~~

~~(4) The contract shall not contain any misrepresentations or false claims regarding the effectiveness of a spot/partial treatment.~~

PART 22. WOOD INFESTATION REPORTS

35:30-17-105. WIR inspections

(a) Areas to be inspected shall include, but not be limited to, the following:

(1) All structures on the property, unless specifically identified on the WIR.

(2) Areas around the plumbing in bathrooms, kitchens, laundry areas, or any other areas with plumbing.

(3) Window and door frames and sills.

(4) Baseboards, flooring, walls, and ceilings.

(5) Floored attics.

(6) Entrance steps and porches.

(7) Exteriors of slabs or foundations walls.

(8) Exteriors of all structures.

(9) Crawl spaces, including but not limited to, support piers or stiff legs, floor joists, sub floors, sill plates, or foundation walls.

(10) Fireplaces.

(b) Inaccessible areas are not required to be inspected for the WIR, and may include, but are not limited to, the following:

(1) Areas of attics with no flooring.

(2) Interiors of hollow walls, floors, or ceilings.

(3) Structural segments that cannot be accessed without defacing or tearing out lumber, masonry, or finished work, such as enclosed bay windows, buttresses, and other similar areas.

(4) Areas behind or beneath stoves, refrigerators, furniture, built in cabinets, insulation, or floor coverings.

(5) Areas where storage, locks, or other conditions render an inspection impracticable.

(6) Insufficient clearance for inspection of a crawl space.

(c) Any structures on the property not included in the inspection shall be identified on the WIR as not inspected.

(d) Any subsequent inspections shall be considered a follow up inspection.

(e) ~~A written inspection form pursuant to this part shall be completed on all inspections~~ An ODAFF-1 Form shall be completed on all property transactions or when contesting a WIR issued on a property. An ODAFF-1 Form is not required for routine termite inspections not involving property transactions.

(f) Any routine report not intended for a property transaction shall contain a disclaimer stating it is not intended for a property transaction.

[OAR Docket #10-1038; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

[OAR Docket #10-1041]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 36. Weed Free Hay Certification [NEW]
35:30-36-1 through 35:30-36-14 [NEW]
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Article 6, Section 31, Constitution of the State of Oklahoma; 2 O.S. §§ 2-4 (A)(2) and § 3-213
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules will address prohibition of noxious weeds, procedures to obtain certification, inspectors' qualifications, crop inspection procedures, treatment procedures, procedures to identify and tract certified crops, and reasonable fees to obtain certification.

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 25, 2010:

SUBCHAPTER 36. WEED FREE HAY CERTIFICATION

35:30-36-1. Purpose

(a) These rules shall provide the standards for inspection and certification by the Oklahoma Department of Agriculture, Food, and Forestry of weed free hay.

(b) The weed free hay certification program is a voluntary program and is intended to reduce the exportation, importation, growth, and spread of noxious weeds.

35:30-36-2. Definitions

The following words or terms shall be defined as follows:

"Bale" means a mechanically compressed package of forage or mulch bound by string or wire.

"Bale certification inspection" means inspection of forage or mulch which has been baled prior to inspection.

"Certificate of inspection" means a certificate issued by a qualified inspector that states the results of a field or commodity inspection. This certificate shall document that the inspected field or commodity is free from state or regional noxious weeds or that the field or commodity contains noxious weeds.

"Certification" means the process the Department utilizes to conduct field or hay inspections to determine if the field or hay is free of noxious weeds.

"Field" means the land on which a hay is grown and is not divided by streams, public roads, other crops, or other barriers.

"Field certification inspection" means an onsite inspection of forage or mulch in the field, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting.

"Forage" means alfalfa, grain, and grass hay, and combinations of alfalfa, grain, or grass hay.

"Hay" means any agricultural forage crop product whether cultivated or not cultivated, irrigated or not irrigated, planted or naturally occurring, and may include mulch;

"Mulch" means the straw remaining after grain is harvested.

"Noxious weeds" means those weeds, including any weed seed or propagative plant parts, designated by the State Board of Agriculture as noxious and are prohibited, and shall include those noxious weeds identified in Section 3-220 of Title 2 of the Oklahoma Statutes;

"Propagative plant parts" means any parts of a plant capable of reproduction, including seeds, live roots, rhizomes, stolons or any other plant part.

"Qualified inspector" means a person qualified to identify noxious weeds pursuant to standards promulgated by the Board;

"Regional noxious weed free" means hay inspected for, and determined to be free of weeds designated as noxious by states participating in a regional noxious weed free forage and mulch certification program, including but not limited to the following: Colorado, Idaho, Kansas, Montana, Oregon, Utah, Washington, and Wyoming.

"State noxious weed free" means hay inspected for weeds designated as noxious and certified as free of noxious weeds, seed, and propagative plant parts.

"Treated" means utilizing treatment methods to prevent weed seed formation, including, but not limited to burning, mechanical methods, rouging, or application of chemical herbicides.

"Weed free" means any hay certified as free of noxious weeds; and

"Weed free hay certification" means hay inspected and certified as free of noxious weeds pursuant to standards adopted by the Board.

35:30-36-3. Voluntary weed free hay certification

(a) The Oklahoma Department of Agriculture, Food, and Forestry is the certifying authority for weed free hay certifications.

(b) The Department shall complete the following for the weed free hay certification program:

(1) Coordinate hay inspections within the state.

(2) Select, train, and supervise persons who serve as qualified inspectors.

(3) Issue certificates of inspection and bale tags to qualifying applicants.

(4) Maintain a record of all inspections performed and certificates and bale tags issued.

(c) The Department may issue a certificate of inspection for each field and crop cutting inspected and found to be free of noxious weeds.

(1) The certificate shall document that the hay is weed free and shall contain the applicant's name, address, commodity, and estimated yield.

(2) A copy of the certificate shall be retained by the Department.

(d) Sufficient tags will be provided to the applicant to identify the hay bales harvested from the certified field.

(e) Any excess tags shall be returned to the Department no later than December 31 of the calendar year issued and the price shall be nonrefundable.

(f) All certified weed free hay shipments shall be accompanied by a certificate of inspection and a state phytosanitary certificate, if required, and tag as evidence that the hay is certified to be weed free and traceable to the source of the original hay.

35:30-36-4. Application for certification

(a) Applications for a certification inspection shall be submitted to the Department on forms prepared by the Department.

(b) Applications for a certification inspection shall be submitted to the Department no less than ten (10) working days prior to the desired inspection date.

(c) The application for a certification inspection shall include the following:

(1) Applicant's name, address, telephone numbers, and email address, if applicable;

(2) Field locations, including driving directions from the nearest town;

(3) Crop, acreage, estimated yield, and anticipated harvest date; and

(4) A detailed map of the fields with the township, range, section and quarter section, or GPS coordinates.

(d) An applicant shall verify the accuracy of the information submitted, and the intent of the applicant to comply with the post certification and distribution requirements by signing the application.

35:30-36-5. Field certification inspection

(a) Hay shall be inspected in the field of origin prior to the beginning of harvest for each field and cutting.

(b) Each field inspected shall be identified by the name of the applicant and a field name or number. The field certification inspection may be performed on an entire field or a portion of a field, if the portion of the field is plainly marked and identified by the applicant prior to inspection.

(c) Field inspections shall take place prior to any farming practice that limits the qualified inspector's ability to properly inspect and certify the field.

(d) When performing field certification inspections, the qualified inspector shall inspect the following:

(1) The entire field and the entire field border;

(2) Any ditches, fence rows, roads, easements, rights-of-way, and buffer zones, as applicable, surrounding the field.

(3) A minimum of two (2) entry points per field and a minimum of one (1) entry point per each ten (10) acres, and at each entry point the qualified inspector shall walk at least one hundred and fifty feet (150') into the field.

(e) Storage areas shall also be inspected and shall meet the same standards as field certifications.

(f) If noxious weeds are found that could result in hay contamination, the field shall not be certified weed free. The qualified inspector shall complete an inspection report identifying the weeds present and their locations in the field.

35:30-36-6. Baled hay certification inspection

(a) Hay that is already in bales may be inspected to determine if the bales are certified as weed free.

(b) Bales inspected shall be identified by the name of the applicant.

(c) When performing baled hay certification inspections, the qualified inspector shall inspect the following:

(1) The baled hay storage areas and surrounding areas;

(2) Any ditches, fence rows, roads, easements, rights-of-way, and buffer zones, as applicable, surrounding the baled hay storage area.

(3) Sample hay bales shall be broken apart and examined by the authorized inspector for any sign of noxious weeds.

(d) Baled hay that is identified with the presence of noxious weeds shall not be certified weed free.

(e) An inspection report shall be completed by the authorized inspector identifying the weeds present in the baled hay.

35:30-36-7. Treated field certification inspections

(a) Fields containing any noxious weeds may be certified in the following circumstances:

(1) The field upon which the hay is produced is treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion from noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant.

(2) Noxious weeds were treated not later than rosette to bud stage, or boot stage for grass species classified as weeds, prior to harvesting or cutting.

(3) Treatment can include but is not limited to:

(A) Burning;

(B) Mowing, cutting or rouging;

(C) Mechanical methods; or

(D) Chemicals.

(b) The applicant may treat the noxious weeds and request a follow up inspection at additional cost to the applicant. If upon re-inspection, the qualified inspector determines that the weeds were treated in a manner that will prevent seeds or propagative plant parts from contaminating the hay, the field can be certified.

35:30-36-8. Exports

Certification under these rules shall not qualify hay for export from the United Sates. Applications for export shall be made directly to the Department for federal phytosanitary certificates.

35:30-36-9. Fees

(a) Each application shall be accompanied by a nonrefundable fee of Twenty Five Dollars ($25.00).

(b) Each applicant shall pay an inspection fee to the Department for each requested inspection or follow up inspection at a rate of Fifty Dollars ($50) per hour with a four (4) hour minimum, or Three Dollars ($3) per acre, whichever is greater and mileage charged at the current official state mileage rate.

(c) Bale tags shall be Twenty Five Cents ($.25) per tag with a minimum purchase of one hundred (100) tags.

35:30-36-10. Voluntary posting

(a) After certification, an applicant may post signs or other forms of notification indicating that the hay is certified as weed free.

(b) The Department may post a list of all certified producers and commodities on its website.

35:30-36-11. Qualified inspector qualifications

(a) The Department shall appoint, as needed, qualified inspectors throughout the state who may issue certificates of inspection.

(b) Only qualified inspectors shall certify hay as weed free.

(c) The principal purpose of the qualified inspector is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of hay to determine if the hay is weed free.

(d) Each person designated as a qualified inspector shall attend a training session give by the Department to recognize noxious weeds and learn standardized inspection, certification and recordkeeping procedures.

(e) The Department shall determine minimum training and accreditation standards for qualified inspectors. Qualified inspectors shall obtain continuing education as required by the Department.

(f) A qualified inspector shall not inspect fields or bales in which the qualified inspector has ownership or a financial interest.

35:30-36-12. Violations

It shall be a violation of these rules to:

(1) Make false, misleading, deceptive, or fraudulent representations regarding certification of any hay;

(2) Refuse or fail to comply with any provision of these rules;

(3) Fail to maintain or submit documents required by these rules;

(4) Fail to return unused tags to the Department by December 31 of the calendar year issued;

(5) Alter or deface in any manner any document or marking system produced as the result of a weed free hay inspection; and

(6) Reproduce, produce a facsimile of, or utilize in any fashion any documentation or marking system pertaining to certification of any crop.

35:30-36-13. Oklahoma noxious weed list

The following are noxious weeds pursuant to Oklahoma law:

(1) Canada thistle (Cirsium arvense).

(2) Field bindweed (Convolvulus arvensis).

(3) Musk thistle (Carduus nutans).

(4) Scotch thistle (Onopordum acanthium).

35:30-36-14. Regional noxious weed free certification

(a) The Department may certify hay as a noxious weed free pursuant to the North American Weed List certification standards. The Department shall follow the above standards during inspections, except where the North American Weed List standards are more strenuous.

(b) The North American Noxious Weed List shall be utilized for the regional noxious weed free certification and is available on the Department website.

[OAR Docket #10-1041; filed 6-15-10]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #10-1040]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Agriculture Environmental Permitting and AGPDES [NEW]
Part 1. General Provisions [NEW]
35:44-1-1 through 35:44-1-3 [NEW]
Part 2. The Process [NEW]
35:44-1-20 through 35:44-1-36 [NEW]
Part 3. Tiers and Time Lines [NEW]
35:44-1-37 through 35:44-1-41 [NEW]
Subchapter 3. ~~Concentrated Animal Feeding Operations~~Permit Conditions and Requirements
35:44-3-4 through 35:44-3-8 [NEW]

AUTHORITY:
State Board of Agriculture; 2 O.S. §§ 2-4, 2A-3, and 2A-23; Article 6, Section 31, Constitution of the State of Oklahoma

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Incorporated standards:
40 CFR Part 3; Part 122 §§ 122.2, 122.3, 122.4 (a), (b), (d), and (i), 122.5 (b) and (c), 122.6, 122.7 (b) and (c), 122.21 (a)-(b), (e)-(i), (k), (m), (o), and (p), 122.22, 122.23, 122.26, 122.27 (a), and (b)(1) and (3), 122.28, 122.29, 122.41, 122.42 (a) and (d)-(e), 122.43, 122.45, 122.46, 122.47, 122.48, 122.50, 122.61 (transfer of permits), 122.62, 122.63, 122.64; Part 124 §§ 124.2, 124.3(a), 124.5(a), and (c) - (d), 124.6(a), (c) - (e),124.8, 124.10(a)(1)(ii), (iii),

and (iv), (b) - (e), 124.11, 124.12(a), 124.13,124.15,124.16,124.17(a) and (c), 124.19,124.56, 124.59, 124.6; Part 125, Subparts A and D; Part 412.

Incorporating rules:

35:44-1-2

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298, 405-522-4576

ANALYSIS:

These rules provide additional Code of Federal Regulations rules that are incorporated for purposes of the Department seeking authorization to operate the federal NPDES program for those environmental programs within the Department's environmental jurisdiction. In addition the rules provide procedural requirements to implement the Oklahoma Agriculture Environmental Permitting Act and the Oklahoma Agriculture Pollutant Discharge Elimination Act.

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 25, 2010:

SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

PART 1. GENERAL PROVISIONS

35:44-1-1. Purpose and jurisdiction

(a) The rules in this Subchapter implement the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act, 2 O.S. §§ 2A-1 et seq. and 2A-21 et seq., and apply to applicants for and holders of Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) permits and other authorizations.

(b) Any facility that discharges as that term is defined in 2 O.S. § 2A-2 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act that are within the Oklahoma Department of Agriculture, Food, and Forestry's areas of environmental jurisdiction pursuant to 27A O.S. § 1-3-101 (D) required by federal regulations to obtain a National Pollutant Discharge Elimination System (NPDES) permit or an authorization pursuant to a NPDES general permit shall be required to obtain an Agriculture Pollutant Discharge Elimination System (AgPDES) permit or an authorization pursuant to an AgPDES general permit.

(c) The Oklahoma Department of Agriculture, Food, and Forestry shall have the following areas of environmental responsibility except as provided in (d) of this subsection:

(1) Point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,

(2) Pesticide control,

(3) Forestry and nurseries,

(4) Fertilizer,

(5) Facilities which store grain, feed, seed, fertilizer and agricultural chemicals,

(6) Dairy waste and wastewater associated with milk production facilities,

(7) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,

(8) Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,

(9) Development and promulgation of a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility, and

(10) Storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

(d) The Department of Environmental Quality shall have environmental jurisdiction over:

(1) Including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at the facilities,

(A) Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,

(B) Slaughterhouses, but not including feedlots at these facilities, and

(C) Aquaculture and fish hatcheries, and

(2) Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

35:44-1-2. Incorporation by reference of federal regulations

(a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to the National Pollutant Discharge Elimination System are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 3 (Electronic Reporting) in its entirety.

(2) The following from Part 122 (NPDES Permit Regulations):

(A) 122.2 (definitions), excluding those definitions that are less stringent than the state of Oklahoma definitions found in Title 2 of the Oklahoma Statutes, Sections 2A-2 and 2A-22.

(B) 122.3 (exclusions).

(C) 122.4 (a), (b), (d), and (i) (prohibitions).

(D) 122.5 (b) and (c) (effect of a permit).

(E) 122.6 (continuation of expiring permits).

(F) 122.7 (b) and (c) (confidentiality of information).

(G) 122.21 (a)-(b), (e)-(i), (k), (m), (o), and (p) (application for permit).

(H) 122.22 (signatories to permit applications and reports).
(I) 122.23 (concentrated animal feeding operations).
(J) 122.26 (storm water discharges).
(K) 122.27 (a), and (b)(1) and (3) (silvicultural activities).
(L) 122.28 (general permits).
(M) 122.29 (new sources and new dischargers).
(N) 122.41 (conditions applicable to all permits).
(O) 122.42 (a) and (d)-(e) (additional conditions applicable to specified categories of NPDES permits).
(P) 122.43 (establishing permit conditions).
(Q) 122.44 (establishing limitations, standards, and other permit conditions).
(R) 122.45 (calculating NPDES permit conditions).
(S) 122.46 (duration of permits).
(T) 122.47 (schedules of compliance).
(U) 122.48 (requirements for recording and reporting of monitoring results).
(V) 122.50 (disposal of pollutants into wells, into publicly owned treatment works or by land application).
(W) 122.61 (transfer of permits).
(X) 122.62 (modification or revocation and reissuance of permits).
(Y) 122.63 (minor modifications permits).
(Z) 122.64 (termination of permits).

(3) The following from Part 124 (Procedures and Decisionmaking):
(A) 124.2 (definitions).
(B) 124.3(a) (application for a permit).
(C) 124.5(a), and (c) - (d) (modification, revocation and reissuance, or termination of permits).
(D) 124.6(a), (c) - (e) (draft permits).
(E) 124.8 (fact sheet).
(F) 124.10(a)(1)(ii), (iii), and (iv), (b) - (e) (public notice of permit actions and public comment period).
(G) 124.11 (public comments and requests for public hearings).
(H) 124.12(a) (public hearings).
(I) 124.13 (obligation to raise issues and provide information during the public comment period.
(J) 124.15 (issuance and effective date of permit).
(K) 124.16 (stays of contested permit conditions).
(L) 124.17(a) and (c) (response to comments).
(M) 124.19 (appeal of RCRA, UIC, NPDES, and PSD permits).
(N) 124.56 (fact sheets).
(O) 124.59 (conditions requested by the Corps of Engineers and other government agencies).
(P) 124.62 (decision on variances).

(4) Part 125 (Criteria and Standards), Subparts A and D.

(5) Part 412 (Effluent Limitations Guideline for Concentrated Animal Feeding Operations (CAFO) Point Source Category) in its entirety.

(b) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(c) Environmental Protection Agency Form 1 (general information for all applicants), Form 2b (concentrated animal feeding operations application), Form 2c (other applications), and the storm water construction activity Notice of Intent shall be incorporated by reference.

35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, 2009.

PART 2. THE PROCESS

35:44-1-20. Compliance

Applicants and permittees are subject to the laws and rules pertaining to ODAFF as they exist on the date of filing an application.

35:44-1-21. Filing an application

(a) **Tier I.** The applicant shall file (2) copies of a Tier I application unless the application form or instructions specifies that only one (1) copy is needed.

(b) **Tier II and III.** The applicant shall file three (3) copies of Tier II and Tier III applications with ODAFF and place one (1) copy for public review in the county in which the site, facility or activity is located.

35:44-1-22. Fees

(a) Fees shall be submitted with the application or notice of intent and, except as herein provided, shall not be refunded.

(b) No fee shall be required for a notice of termination or a notice of change, other than change of permittee or co-permittee.

(c) As of July 1, 2010, a request for a storm water construction waiver (rainfall erosivity) shall be:
(1) One hundred fifty dollars ($150.00) for electronic submissions.
(2) Two hundred dollars ($200.00) for paper submissions.

(d) As of July 1, 2010, application fees for authorizations covered under a general permit shall be as follows:
(1) Renewal or change of permittee or co-permittee shall be seventy-five dollars ($75.00) submitted electronically by e-permitting.
(2) Renewal or change of permittee or co-permittee shall be one hundred dollars ($100.00) submitted by paper.

(3) New applications for authorizations covered under a general permit shall be three hundred fifty dollars ($350.00).

(4) Significant expansions of facilities covered under authorizations of existing general permits shall be three hundred fifty dollars ($350.00).

(5) The annual fee for an authorization covered under a general permit during the term of that permit shall be eight hundred dollars ($800.00).

(6) Storm water authorizations for construction sites of agriculture related activities shall be three hundred sixteen dollars ($316.00).

(e) As of July 1, 2010, individual permit application fees shall be as follows:

(1) Renewals of individual permits of existing facilities shall be three hundred fifteen dollars ($315.00).

(2) New applications for individual new proposed facilities shall be three hundred fifty dollars ($350.00).

(3) Annual fees for individual permittees during the term of the individual permit shall be one thousand two hundred and fifty dollars ($1,250.00).

(4) In no case shall an individual permittee be required to pay an annual fee in the same fiscal year an application or renewal fee was paid.

(f) To assist in meeting costs to the Department of the Ag-PDES program associated with permitting, the fees set out in this section may be adjusted on July 1st of each year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar.

35:44-1-23. Receipt of applications

When an application and appropriate fee are received, each program shall:

(1) File stamp the application with the date of receipt;

(2) Assign the application to a permit reviewer; and

(3) Enter this information in a database or log book.

35:44-1-24. Administrative completeness review

The reviewer shall have sixty (60) calendar days from the file-stamped date of filing to determine if the application is administratively complete.

(1) **Not complete.** If the reviewer decides that the application is not complete, ODAFF shall immediately send a Notice of Deficiencies to the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information. The reviewer may continue to ask for specific information until the application is administratively complete. If the reviewer does not notify the applicant of deficiencies, the period for technical review shall begin at the close of the administrative completeness review period.

(2) **Complete.** When the application is administratively complete, the reviewer shall enter the date in the database or log book and immediately notify the applicant by mail. The period for technical review begins.

35:44-1-25. Technical review

(a) Each program shall have the time period specified in these rules to review each application for technical compliance with the relevant rules and to reach a final determination. If the data in the application does not technically comply with the relevant rules or law, the reviewer may notify the applicant by certified mail, describing with reasonable specificity the deficiencies and requesting supplemental information.

(b) Any environmental permit that is not described in this Subchapter shall be reviewed with all due and reasonable speed.

35:44-1-26. When review times stop

The time period for review stops during:

(1) litigation;

(2) public review and participation, including waiting periods, comment periods, public meetings, administrative hearings, ODAFF preparation of response to comments or review by state or federal agencies;

(3) requests for supplemental information; and

(4) the time in which an applicant amends the application of their own accord.

35:44-1-27. Supplemental time

The Notice of Deficiencies and request for supplemental information may state that up to thirty (30) additional calendar days may be added to the application processing time. Requests for supplemental information may also state that additional days for technical review equal to the number of days the applicant used to respond may be added to the review time.

35:44-1-28. Extensions

Extensions to the time lines shall only be made at the request of an applicant and at the discretion of the Department, except as provided in section 35:44-1-29 (2). Requests of applicants shall not be unnecessarily denied.

35:44-1-29. Failure to meet deadline

Where failure to meet a deadline by the Department is imminent, then:

(1) At least thirty (30) calendar days prior to the deadline ODAFF shall reassign staff or retain outside consultants to meet the deadline; or

(2) The applicant may agree to an extension of time for a specific purpose and period of time with refund of the entire application fee, unless a refund is prohibited by law.

35:44-1-30. Notices

(a) **Statutory requirements for notice.** The Agriculture Environmental Permitting Act requires an applicant to publish notice of filing a legal notice in one newspaper local to the proposed location or existing facility in accordance with 2 O.S. § 2A-25.

(b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or

easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) **Notice content.** The applicant shall provide ODAFF with a draft notice for approval prior to publication. All published legal notices shall contain the:

(1) Name and address of the applicant;

(2) Name, address and legal description of the site, facility and activity;

(3) Purpose of notice;

(4) Type of permit or permit action being sought;

(5) Description of activities to be regulated;

(6) Locations where the application may be reviewed;

(7) Names, addresses and telephone numbers of contact persons for ODAFF and for the applicant;

(8) Description of public participation opportunities and time period for comment and requests; and

(9) Any other information required by ODAFF rules.

(d) **Proof of publication.** Within twenty (20) calendar days after the date of publication, an applicant shall provide ODAFF with a written affidavit of publication for each notice published. In case of a mistake in a published notice, ODAFF shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) **Additional notice.** Applicants for a NPDES permit are subject to additional notice provisions of federal requirements adopted by reference as ODAFF rules.

(f) Notices provided by ODAFF will include a fact sheet or statement of basis and the draft permit.

35:44-1-31. Withdrawing applications

(a) **By applicant.** An applicant may withdraw an application at any time with written notice to ODAFF and forfeiture of fees.

(b) **By ODAFF.** Except for good cause shown, when an applicant fails to supplement an application within 180 calendar days after the mailing date of a Notice of Deficiencies, or by an agreed date, ODAFF shall void the application. ODAFF shall notify the applicant of an opportunity to show cause why this should not occur.

35:44-1-32. Permit issuance or denial

(a) **Compliance required.** A new, modified or renewed permit or other authorization sought by the applicant shall not be issued until ODAFF has determined the application is in substantial compliance with applicable requirements of ODAFF laws and rules.

(b) **Conditions for issuance.** ODAFF may not issue a new, modified or renewed permit or other authorization sought by the applicant if:

(1) The applicant has not paid all monies owed to ODAFF or is not in substantial compliance with the ODAFF laws and rules and the terms of any existing ODAFF permits and orders. ODAFF may impose special conditions on the applicant to assure compliance and a separate schedule which ODAFF considers necessary to achieve required compliance; or

(2) Material facts were misrepresented or omitted from the application and the applicant knew or should have known of such misrepresentation or omission.

(c) **Burden of persuasion.** The applicant bears the burden of persuading ODAFF that the permit should issue. Title 75 O.S. § 307 is the appropriate mechanism to address any alleged failure by ODAFF to conform the issuance or denial of the permit to the requirements of a Final Order.

35:44-1-33. Tier II and III modifications

For Tier II and III permit modification actions, only those issues relevant to the modifications shall be reopened for public review and comment.

35:44-1-34. Permit decision-making authority

(a) **Designated positions.** The AgPDES Director may delegate duties in writing to qualified officials who meet the standards set in Title 2 of the Oklahoma Statutes, Sections 2A-4 and 2A-5 the power and duty to issue, renew, amend, modify and deny permits and take other authorization or registration action.

(b) **Revision.** The AgPDES Director may amend any delegated duties in writing.

35:44-1-35. Pre-issuance permit review and correction

(a) **Applicant review.** ODAFF may ask an applicant to review its permit for calculation and clerical errors or mistakes of fact or law before the permit is issued.

(b) **Correction.** ODAFF may correct any permit before it is issued.

(1) **Notice of significant corrections.** For permits based on Tier II and III applications, an applicant shall publish legal notice in one newspaper local to the site of any correction or change proposed by ODAFF which significantly alters a facility's permitted size, capacity or limits.

(2) **Comments.** ODAFF shall open a public comment period and reconvene a public meeting and administrative hearing to receive public comments on the proposed significant corrections.

35:44-1-36. Consolidation of permitting process

(a) **Discretionary.** Whenever an applicant applies for more than one permit for the same site, ODAFF may authorize, with the consent of the applicant, the review of the applications to be consolidated so that each required draft permit, draft denial, and proposed permit is prepared at the same time and public participation opportunities are combined.

(b) **Scope.** When consolidation is authorized by ODAFF:

(1) The procedural requirements for the highest specified tier shall apply to each affected application.

(2) ODAFF may also authorize the consolidation of public comment periods, process and public meetings, and administrative permit hearings.

(3) Final permits may be issued together.

(c) **Renewal.** ODAFF may coordinate the expiration dates of new permits issued to an applicant for the same facility or activity so that all permits are of the same duration.

(d) **Multiple modifications.** Subsections (a) and (b) of this section shall also apply to multiple Tier II and III applications for permit modifications.

PART 3. TIERS AND TIME LINES

35:44-1-37. Water quality time lines, permit issuance, and permit application

(a) The Division shall technically review applications for Tier I, II, and III permits and issue or deny permits within 180 calendar days.

(b) Permits shall become effective within thirty (30) calendar days of notice of issuance.

(c) Prior to expiration of the permit, the permittee shall apply for a renewal or new authorization as follows:

(1) Ninety (90) calendar days for Tier I permits,

(2) One hundred eighty (180) calendar days for Tier II permits, or

(3) By the date specified in a new permit or upon submission of a notice of termination.

35:44-1-38. Water quality applications - Tier I

The following water quality authorizations require Tier I applications:

(1) New, modified or renewed authorization under a general permit, except authorization pursuant to a concentrated animal feeding operations general permit.

(2) Transfer of discharge permit considered minor pursuant to 40 CFR 122.63(d).

(3) Minor modification of discharge permit or of an authorization pursuant to a general permit.

(4) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

35:44-1-39. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) New individual discharge permit for small and medium concentrated animal feeding operations.

(2) Permit renewal or major modification for a facility with individual discharge permit, including concentrated animal feeding operation permits.

(3) New, modified or renewed general permit promulgation.

(4) New, major modification, or renewed authorization under a concentrated animal feeding operation general permit.

(5) Any new individual discharge permit for a non-major facility.

35:44-1-40. Water quality applications - Tier III

A new individual discharge permit requires a Tier III application for any facility not already covered by Tier I or II, including a new large concentrated animal feeding operation or a new major discharge facility.

35:44-1-41. Permit duration

(a) Any permit issued pursuant to these rules shall not exceed a duration of five (5) years.

(b) The conditions of an expired permit shall continue in force until the effective date of a new permit or until a notice of termination is submitted, whichever comes first.

SUBCHAPTER 3. ~~CONCENTRATED ANIMAL FEEDING OPERATIONS~~ PERMIT CONDITIONS AND REQUIREMENTS

33:44-3-4. Terms and conditions of permits

(a) Terms and conditions of permits issued under this Chapter shall include requirements necessary to assure compliance with the Oklahoma Water Quality Standards, the Implementation of Oklahoma's Water Quality Standards, and the ODAFF Water Quality Standards Implementation Plan.

(b) Where practicable and as deemed appropriate by the AgPDES Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the ODAFF.

35:44-3-5. Technology-based methodologies

Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in OAC 35:44-1-2. If there are no industry category or pollutant guidelines applicable to the applicant's industry, Best Professional Judgment of the permit writer applies.

35:44-3-6. Water quality review

(a) The provisions of "Quality Criteria for Water, 1986", United States Environmental Protection Agency, EPA 440/5-86-001, as amended, are incorporated herein by reference and shall be consulted where Oklahoma's Water Quality Standards do not contain a specific criterion on a particular pollutant and a criterion is necessary to protect a designated beneficial use.

(b) In all cases, where appropriate, to ensure that beneficial uses of receiving waters are protected or when deemed necessary to establish waste load allocations of dischargers to a stream, the AgPDES Director shall require the applicant to perform and submit to ODAFF appropriate stream studies and water quality modeling. If resources allow, ODAFF may conduct stream studies and modeling.

35:44-3-7. Water Quality Standards Variance

Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards shall be obtained directly from the Oklahoma Water Resources Board and the permittee or applicant shall submit written evidence of the variance to the AgPDES Director in a timely manner.

35:44-3-8. Technical Standards

(a) The contents of the manure management plan for a concentrated animal feeding operation shall be based on the nutrient management plan standards prepared in the Agricultural Waste Management Field Handbook, published by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS).

(b) Manure or animal waste shall be applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure or animal waste in compliance with the best management practices of the most current USDA NRCS-Oklahoma Waste Utilization Standard Code 633 and Conservation Practice Standard for Nutrient Management Code 590, and the Midwest Plan Service Publication 18, Livestock Waste Facilities Handbook.

(c) This section is promulgated to meet the requirements of 40 CFR 412.4(c)(2).

[OAR Docket #10-1040; filed 6-15-10]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 1. ORGANIZATION

[OAR Docket #10-1061]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
130:1-1-2 [AMENDED]
130:1-1-13 [AMENDED]
130:1-1-14 [AMENDED]
Appendix A. Waiver Form [REVOKED]
AUTHORITY:
Cerebral Palsy Commission: 63 O.S. § 485.2; Administrative Procedures Act: 75 O.S. §§ 302, 305.
DATES:
Comment Period:
February 16, 2010, to March 24, 2010
Public Hearing:
March 24, 2010
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March 30, 2010
Submitted to Governor:
April 1, 2010
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Gubernatorial approval:
May 4, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010.
Final adoption:
May 26, 2010
Effective:
July 25, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rules update the Center's contact information, clarify the Center's role in providing educational services to inpatients and update the procedure for public use of Center facilities.
CONTACT PERSON:
Grant Moak, Assistant Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105; tel. 405-522-0152.

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 25, 2010:

130:1-1-2. Purpose of Commission

(a) The purpose of the Commission is to maintain the Center to provide for the care, maintenance, training, treatment and general mental and physical rehabilitation of the residents of Oklahoma, and when space permits nonresidents, who are afflicted with cerebral palsy or other developmental disabilities or who may benefit from the services available from the Center. [63:485.1 and 485.3 (A)(1), (3) and (4)] ~~The Center is prohibited by statute from providing educational services to inpatients at the Center and can not be considered a local education agency. [63:485.1] However, the Center shall coordinate to the extent possible educational services for inpatients through the appropriate local education agency, as more fully set forth in Chapter 15 of this title.~~ The Center is not a local education agency and does not provide educational services. Inpatients receive educational services from Norman Public Schools.

(b) The Center seeks to:

(1) Utilize measurable quality standards and to ensure excellence in health care through a comprehensive, multi-disciplinary approach to service delivery which will enable patients to maximize their potential and enhance their quality of life;

(2) Provide an intensive and comprehensive habilitative environment through direct services, referrals and consultations that will lead to increased productivity and a quality standard of living;

(3) Increase the physical and emotional well-being of patients and their households through a process of education, training, transitional planning and community support; and

(4) Advocate for the needs of patients by increasing awareness and supplementing habilitative services in all communities as well as to pro-actively seek solutions to expressed concerns.

130:1-1-13. Use of Tobacco

(a) The use of tobacco and tobacco products on Center property is prohibited.

(b) All persons shall report violators of this rule.

130:1-1-14. Use of Center by public

(a) **Building.** No organization or individual may use the ~~building~~ auditorium or conference rooms without ~~signing the release form in Appendix A and receiving specific approval by the Commission or Director.~~ having an approved contract on file with the Catering Manager.

~~(b) **Pool.**~~

~~(1) No organization or individual may use the pool without signing the release form in Appendix A, receiving specific approval by the Commission or Director and successfully completing pool in service training.~~

~~(2) Rules. Any person using the pool shall comply with 130:13-3-33(a) and the following rules:~~

~~(A) No one shall use the pool without a companion that shall be responsible for the safety and well being of the user.~~

~~(B) No more than four (4) children under the age of eighteen (18) shall use the pool at any one time.~~

~~(C) The charge nurse shall be notified before anyone enters the pool area and when use of the pool is completed.~~

(~~c~~b) **Grounds.** No organization or individual may ~~use~~ be on the grounds or use the grounds without signing the release form in Appendix A and receiving specific approval by the Commission or Director.

~~(d) **Park.** No organization or individual may use the park without signing the release form in Appendix A and receiving specific approval by the Commission or Director. Any person using the park shall comply with the park use rules that shall be posted at the gate.~~

(c) **Lake.** No organization or individual may use the lake or fish in the lake without signing the release form in Appendix A and receiving specific approval by the Commission or Director.

(~~e~~d) **Liability.** The Commission, Center and its employees shall not be responsible for injury occurring to anyone who uses the Center except as provided by Oklahoma's Risk Management Plan and the Governmental Tort Claims Act.

APPENDIX A. WAIVER FORM [REVOKED]

PERSONAL WAIVER

I, the undersigned, acknowledge and agree to hold the State of Oklahoma free of any liability for damages because of injuries to persons or property or other losses resulting from or arising out of the use of the Center's building, pool, grounds or park.

_____ _____
Signature Date

_____ _____
Signature of Witness (Center Employee) Date

GUARDIAN WAIVER

I, the undersigned as the legal guardian of _____, acknowledge and agree to hold the State of Oklahoma free of liability for damages because of injuries to persons or property or other losses resulting from or arising out of the use of the Center's building, pool, grounds or park.

_____ _____
Signature of Legal Guardian Date

_____ _____
Signature of Witness (Center Employee) Date

[OAR Docket #10-1061; filed 6-24-10]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 12. ADMINISTRATIVE PROCEDURES

[OAR Docket #10-1061A]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 3. Admission
Part 1. Inpatient
130:12-3-3 [AMENDED]
130:12-3-6 [AMENDED]
Part 3. Outpatient
130:12-3-20 [AMENDED]
130:12-3-21 [AMENDED]
Subchapter 5. Leaving the Center
130:12-5-2 [AMENDED]
130:12-5-3 [AMENDED]
130:12-5-5 [AMENDED]
130:12-5-6 [AMENDED]
130:12-5-7 [AMENDED]
130:12-5-8 [AMENDED]
130:12-5-9 [REVOKED]
Subchapter 7. Records
130:12-7-1 [AMENDED]
130:12-7-2 [REVOKED]
Subchapter 9. Billing
130:12-9-1 [AMENDED]
AUTHORITY:
Cerebral Palsy Commission: 63 O.S. § 485.2; Administrative Procedures Act: 75 O.S. §§ 302, 305.
DATES:
Comment Period:
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Public Hearing:
March 24, 2010
Adoption:
March 30, 2010
Submitted to Governor:
April 1, 2010
Submitted to House:
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Gubernatorial approval:
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010.
Final adoption:
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Effective:
July 25, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rules clarify that medical as well as behavioral criteria will be considered in determining staff-to-patient ratio for the purpose of admitting a patient from the waiting list. The rules simplify admission and discharge procedures for persons in state custody. The rules clarify that Physician Assistants may sign admission orders. The rules modify out-patient admission procedures to include a waiting list and clarify responsibilities of parents and legal guardians.

The rules simplify and clarify protocol in the event a parent or legal guardian abandons a patient. The rules modify Center policy on providing meals to patients returning from furlough. The amendments clarify the Center's role in providing educational services to patients. The rules revoke visitation of patients in staff members' homes.

Changes to subchapter 7 reflect changes in federal law, namely, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191, Aug. 21, 1996 110 Stat. 1936), as amended.

The rules also contain clean-up language not affecting substantive policy.
CONTACT PERSON:
Grant Moak, Assistant Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105; tel. 405-522-0152.

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 25, 2010:

SUBCHAPTER 3. ADMISSION

PART 1. INPATIENT

130:12-3-3. Admission procedures

(a) Upon the request for services, a social worker shall be assigned, who shall schedule an admission screening if the person does not have a completed form on file. The admission screening is reviewed to assess the person's acuity for nursing services, behavior management and bed availability. The person may be considered for inpatient admission as either an evaluation patient or habilitation patient.

(b) The person may be placed on a waiting list or immediately admitted. If placed on a waiting list, the person shall be scheduled for an admission once a bed becomes available, and the staff to patient ratio is acceptable to handle any established medical and/or behavioral concerns.

(c) The person or legal guardian shall be notified in writing of admission in order to enhance communication between households and the Center and to provide an efficient and effective procedure for initiation of services.

130:12-3-6. Admission of persons in state custody

(a) A person in the custody of the Department of Human Services, whether DHS custody is emergency, temporary or permanent, shall be considered for immediate inpatient admission to the Center if the person otherwise meets admission criteria in 130:12-3-1 through 130:12-3-5 and bed space is available.

~~(b) The Center shall accept a person in the custody of DHS only upon presentation, in writing, by DHS of a request for the placement of the person. The Center shall not admit any person in DHS custody until the Center shall receive a written request. The written request shall include the basis for the request by DHS for admission and plans of DHS regarding discharge of the person. Any confidential information received by the Center regarding any person in DHS custody shall be kept confidential by the Center.~~

(~~c~~b) A person in DHS custody shall be eligible to receive a thirty (30) day evaluation upon admission unless the person has received an evaluation within the previous (6) months. If the Center has performed an evaluation within the previous six (6) months and no extenuating circumstance exists which warrants

additional evaluation in the opinion of medical personnel of the Center, the person will be placed in habilitative status only if the person will meet criteria in habilitative status. During the evaluation period, all appropriate rules shall apply.

(~~d~~ c) If the person is recommended for continued service at the end of the person's thirty (30) day evaluation, the person shall be placed in habilitative status. Inpatient status shall continue as the person meets treatment criteria.

PART 3. OUTPATIENT

130:12-3-20. Admission requirements

(a) Application for admission of a person 0 to 21 shall be done by the person's legal guardian.

(b) A physician's order or an order from a physician's assistant is required to be treated as an outpatient~~, but the order can be received from any board certified or licensed physician practicing in Oklahoma~~.

(c) Releases and statements relating to furnishing the appropriate therapies shall be completed before or upon admission to outpatient services.

(d) Outpatients must meet all admission criteria for inpatient admission as set forth in this chapter, provided that outpatients may be admitted on a more specialized therapeutic basis.

130:12-3-21. Admission procedures

(a) The availability of outpatient services shall depend upon the availability of therapeutic staff. A waiting list may be used if staff is limited.

(b) Upon the request for services, the Center shall schedule an admission screening if the person does not have a completed screening on file or can not bring a physician's order for evaluation or treatment. Requestors for outpatient services shall state specific therapies requested and what the person is currently receiving.

(c) Outpatient treatment will be provided on a first come, first served basis, recognizing in some cases all three primary therapists require coordination of service time. ~~Upon completion of the admission process~~ Once identified for admission, the person's legal guardian shall be notified and appointment(s) scheduled.

~~(d) The legal guardian must wait at the Center during the person's therapy session.~~ The parent and/or guardian can leave the Center during the therapy session(s) as long as they are back in time to pick up their child. If the parent/guardian fails to be timely in picking up their child after the completion of therapy more than twice, the Center may choose to terminate the service.

SUBCHAPTER 5. LEAVING THE CENTER

130:12-5-2. Discharge criteria

(a) Inpatients shall be discharged from the Center upon written order from the attending physician or the physician's designee.

(b) The treatment team, consisting of all therapeutic service members and the attending physician, shall consider an inpatient for discharge under the following circumstances:

(1) the inpatient has achieved all treatment goals established at the time of and subsequent to admission;

(2) the inpatient no longer requires 24 hour habilitation or rehabilitative nursing;

(3) the inpatient is not receiving the required therapeutic services;

(4) the inpatient has no evidence of progress towards documented goals over a two week period'

(5) the inpatient develops an intercurrent medical condition which requires acute care and suspension of habilitative or rehabilitative services for no longer than seven (7) days.

(6) The inpatient is admitted as an inpatient to another facility for surgical or other procedures. Such an inpatient shall be discharged prior to admission at another facility regardless of an intent for habilitative treatment at the Center following the procedure.

130:12-5-3. Discharge procedures

~~(a)~~ Upon discharge the inpatient shall be provided with documentation of evaluation results, treatment plan, goals, progress, diet instructions and recommendations to facilitate the inpatient's after care.

~~(b) The Center shall assist in coordinating continuation of education provided to inpatients upon discharge to avoid disruption of educational services from local educational areas.~~

130:12-5-5. Discharge of persons in state custody

(a) A discharge date shall be established immediately at the end of an evaluation if habilitative stay is not recommended, or when the inpatient no longer meets habilitative status as set forth in 130:12-3-I and 130:12-3-5. The Center shall notify DHS immediately of any planned discharge date and shall coordinate with DHS the transfer of the inpatient to the physical custody of DHS or the person designated by DHS to maintain physical custody of the inpatient after discharge.

(b) An inpatient who is in DHS custody and who no longer meets criteria for inpatient shall be set for discharge no ~~longer~~ later than sixty (60) days after the treatment team recommends discharge.

~~(c) In the event DHS is unable to arrange appropriate placement of the inpatient following discharge, upon written notice to this effect and a full update from DHS about the progress of matters related to arranging of placement, the Center, at its discretion, may extend the discharge date for no more than thirty (30) days. The Center shall make reasonable efforts to meet with appropriate personnel with DHS to assist arranging for placement. The decision to grant a thirty day extension shall be made by the Director, following consultation with the inpatient's attending physician.~~

(~~d~~ c) In the event DHS is unable to arrange placement for the inpatient by the end of ~~the thirty day extension, upon written request of DHS, which shall include all pertinent facts regarding placement of the inpatient, personnel from DHS may request~~

~~an additional extension from the Commission at a regular, special or emergency meeting of the Commission. The request from DHS shall be in writing and shall include current placement plans and efforts undertaken. In addition, personnel from DHS may appear in person before the Commission. The Commission, at its sole discretion, may grant an extension of no more than thirty (30) days.~~ 60 days, DHS must come and pick up the child unless a court order for continued stay is received or until appropriate placement is made.

(~~e~~ d) ~~The Center shall coordinate with DHS regarding arrangements for the payment of fees associated with the placement of inpatients in DHS custody at the Center.~~ Fees for inpatients in DHS custody who ~~are placed~~ remain at the Center until appropriate placement can be found shall be the regular rate for inpatients at the Center. ~~for whom fees have not been waived by the Director.~~

130:12-5-6. Abandonment

~~(a) In the event a patient is left without legal authority at the Center, the patient shall be considered to have been abandoned. The Center recognizes that it is within jurisdiction to determine the custody of any child at the Center. Nevertheless the Center shall cooperate fully with appropriate state authorities and shall attempt to have placement through DHS arranged immediately. The Center shall make all reasonable efforts to out place the child.~~

~~(b) Following abandonment, the Center shall immediately notify the Cleveland County District Attorney's Office and the Child Welfare Division of the Department of Human Services. The Center shall likewise send written notice to the legal guardian of the patient that it is the determination of the Center that the patient has been abandoned and that the Center has or shall notify appropriate authorities.~~

(a) If a parent or legal guardian fails to pick up a patient at discharge, and after reasonable efforts have been made to contact the parent or guardian, the Center will consider the patient abandoned and immediately contact the Cleveland County District Attorney's Office and the Child Welfare Division of the Oklahoma Department of Human Services. The Center will also immediately send written notice to the parent or guardian informing him/her of the abandonment and actions taken by the Center.

(~~c~~ b) The patient shall be allowed to remain at the Center temporarily while placement is arranged by the Department of Human Services. In the event the patient requires immediate medical services, Center personnel shall request the Department of Human Services to take all prudent action to have the patient placed in temporary emergency custody to allow medical services to be provided.

(~~d~~ c) The status of a patient abandoned shall be that of a discharged patient who had remained in residence. The legal guardian of any such patient shall be billed for direct expenses at a flat rate scale for the care of the patient. Such fees shall be due immediately upon billing.

(~~e~~ d) In the event the patient is removed from the Center for any reason, the legal guardian shall be prohibited from returning the patient to the Center, unless the patient is subsequently placed in DHS custody and may be considered for inpatient status pursuant to 130:12-3-7.

130:12-5-7. Furlough

(a) Patient will be granted overnight stays and short term furloughs not to exceed 14 days away from the Center upon request by the legal guardian.

(b) A written, signed consent form must be on file at the Center. The consent form shall identify individuals designated by the legal guardian to take patients to off-premises activities.

(c) In order to minimize disruptions in the patient's schedule, patients should not be picked up before 4:00 P.M. on Fridays and should be returned to the Center no later than 8:00 P.M. on Sunday. ~~If a patient is returned before 4:00 P.M. on Sunday, the Center will provide supper; however, if the patient returns later than 4:00 P.M., it will be the responsibility of the legal guardian to provide supper.~~

(d) If a patient furlough lasts longer than 14 days, discharge will occur pursuant to 130:12-5-2.

130:12-5-8. Denial of furlough

(a) **Legal guardian.**

(1) An inpatient shall not be furloughed to a legal guardian who is suspected to be under the influence of alcohol, ~~other~~ or drugs or who is otherwise incapacitated to a degree that may impair that individual's ability to assume the responsible care of that inpatient beyond the Center.

(2) If the legal guardian who is suspected of being incapacitated insists on furloughing the inpatient, the inpatient shall be discharged immediately, and the legal guardian shall be requested to sign a form stating that the inpatient was discharged against the advice of the attending physician. A record shall be made of any legal guardian who refuses to sign such a form.

(3) If the legal guardian who is suspected of being incapacitated proceeds to discharge the inpatient and subsequently places that inpatient's safety in jeopardy by attempting to transport that inpatient in an automobile, a designated staff member shall notify the Cleveland County Sheriff.

(b) **Other individual.**

(1) If an individual who has been designated by the legal guardian to have furlough privileges for a particular inpatient is suspected of being incapacitated and unable to assume the responsible care of that inpatient, the individual shall be denied furlough privileges, and the legal guardian shall be informed of the situation.

(2) If this individual does not leave the Center in a timely and orderly manner, a designated staff member shall notify the Cleveland County Sheriff.

130:12-5-9. Visits to staff member homes [REVOKED]

~~(a) Patients may therapeutically benefit by visiting in a staff member's home. Concern for the safety and welfare of patients and a desire to minimize the liability risk to the Center and staff shall be considered in planning such a visit.~~

~~(b) Patients may be granted permission to visit in a staff member's home when approval is on record from the legal guardian, a recommendation is on record from the rehabilitative staffing, the Director has given approval and a doctor's order has been obtained.~~

~~(c) A patient-to-staff ration of one to two is required when patients are taken from the premises on home visits.~~

SUBCHAPTER 7. RECORDS

130:12-7-1. Medical records

~~(a) Medical records are the property of the Center and are maintained for the benefit of the patient, the clinical staff and the Center. The Center shall take reasonable measures to ensure that patient records in physical or electronic storage shall be secure.~~

~~(b) In accordance with state statutes, medical records compiled at the Center are legal documents.~~

(a) The Center is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") (Pub.L 104-191, Aug. 21, 1996, 110 Stat. 1936). All individually identifiable health information of patients shall be obtained, maintained, transmitted and/or disclosed in conformity with HIPPA regulations and all other applicable state and federal law.

(b) Requests for medical records may be made pursuant to 130:1-1-7 of this title.

130:12-7-2. Release of medical records [REVOKED]

~~(a) The Center shall safeguard patient confidentiality and ensure that confidential information is made available only to properly authorized individuals or bodies [See 130:1-1-7 (relating to requests for information)]. The release of medical records shall be made only in accordance with applicable state and federal law.~~

~~(b) Any person who is or has been a patient of the Center shall be entitled to obtain access to the information contained in the patient's medical records upon request and in compliance with 76 O.S. § 1-109 (psychological or psychiatric records).~~

~~(c) When a patient is transported to another facility for consultation or transferred to another hospital or facility, records may be provided that will aid in the patient's treatment pursuant to 42 CFR ch.1 subpart C 482.~~

~~(d) Medical records and information shall not be furnished to a third party payor without proper patient consent and authorization. However, utilization review for Medicare or Medicaid patients is provided for by law. Access by the professional review organization to medical records of Medicare or Medicaid patients shall not require patient consent. Medicare or Medicaid intermediaries may examine medical records as part of an annual audit (42 CFR 482.24(b)(3))~~

~~(e) Non-custodial parents (unless otherwise determined by the courts) may obtain copies of the medical record without the consent of the custodial parent. If a request is received from a non-custodial parent, the custodial parent shall be notified and given five (5) days to respond or object.~~

~~(f) Access to patient medical records shall be allowed to the extent required for child protective services.~~

~~(g) All records concerning child abuse shall be confidential and shall be open to inspection only to persons fully authorized by the State or United States in connection with the performance of their official duties. The court-appointed attorney shall be provided access as authorized by law.~~

~~(h) All information which identifies any person who has, or may have, any communicable or venereal disease which is required to be reported to the State Department of Health shall be confidential. Such information shall not be released except under the following circumstances:~~

~~(1) Release is made upon court order.~~

~~(2) Release is made by or with the informed written consent of the person whose information is being kept confidential, or with the informed written consent of the legal guardian of such person, if such person is a minor.~~

~~(3) Release is necessary as determined by the State Department of Health to protect the health and well being of the general public. Any such order for release by the Department shall be in accordance with 75 O.S. §§ 309 through 323.~~

~~(4) Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified.~~

~~(5) Disclosure to hospital personnel caring for the patient for diagnostic or treatment purposes.~~

~~(i) Release shall be made in compliance with a court order, to the extent specified in the order.~~

~~(j) A patient or legal guardian if the patient is a minor, may waive the privilege of confidentiality to the extent set forth in a written authorization, with which the Center shall comply, as follows:~~

~~(1) The authorization shall specify each release to which it applies.~~

~~(2) The authorization shall be dated and executed subsequent to the patient's date of admission.~~

~~(3) The authorization shall be valid for one year after made.~~

~~(4) A photographic copy of an otherwise acceptable authorization shall be acceptable authorization shall be accepted if certified by the patient or the legal guardian as accurate.~~

~~(5) An authorization in regard to a deceased patient shall be accepted from the next of kin, executor or administrator only. Legal representatives may include guardians, conservators, executors, administrators or a person holding a power of attorney if the power of attorney is broad enough to cover medical care. Proof of status shall be obtained in the form of a court-certified copy of letters of guardianship or appointment. The certified copy shall be updated as necessary. Where parents are deceased and no legal guardian has been appointed, the rights fall to the next of kind. [63:1-555.1] The Center may accept an authorization from the patient's brothers and sisters or other close relative of the patient who is of legal age.~~

SUBCHAPTER 9. BILLING

130:12-9-1. Billing

(a) **Inpatients.**

(1) **General.** The Center shall bill and attempt to collect the established full daily rate for all inpatient services unless the inpatient has been admitted to a charity care bed. Upon admission, the inpatient or legal guardian shall provide all information necessary to collect payment from third party payors if applicable.

(2) **Medicaid.** Medicaid shall be filed and accepted as payment in full for those Medicaid eligible inpatients except for Medicaid spend-downs that are the inpatient's responsibility.

(3) **Third party payor(s).** Claims shall be filed with third party payors in accordance with appropriate procedures. In cases where the third party payor does not cover the full amount of the bill, the inpatient shall be responsible for the remaining amount. In cases where an inpatient requests services that are not covered or for which authorization has been denied, the inpatient shall be responsible for the full amount of the bill.

(4) **No Medicaid or third party payor.** Inpatients having no Medicaid or third party payor shall be expected to pay the full amount of the bill. If a household ~~feels~~ believes they can not afford to pay the ~~associated fees~~ full amount, they may request, ~~to the admission clerk~~ to apply for a payment plan or fee reduction. If the household still feels they can not pay the fees in accordance with the reduced rate, they may contact the ~~Business Office Manager~~ Director, listing the reason(s) they can not meet their obligation and request a fee waiver.

(5) **Therapeutic services contracts.** The Center may additionally enter into contractual agreements with a third party to provide therapeutic services. These individual agreements shall specify the negotiated amounts for services rendered.

(6) **Charity beds.** The Center shall provide charity care not to exceed 10% of utilized beds. The legal guardian shall be notified in advance if admission will be as charity care status. Charity care inpatients shall otherwise meet admission and continued stay requirements. If it is determined that an inpatient should be discharged for failure to meet admission and continued stay requirements and the legal guardian shall be provided a written notice that the full daily rate shall be charged for each day the person remains at the Center.

(b) **Outpatients.**

(1) **General.** The Center shall bill and attempt to collect fees for all outpatient services rendered. Upon admission, the outpatient or legal guardian shall provide all information necessary to collect payment from third party payors if applicable. All co-pays shall be paid on the date the service is rendered.

(2) **Medicaid.** Medicaid shall be filed and accepted as payment in full for those Medicaid eligible outpatients except for Medicaid spend-downs that are the outpatient's responsibility.

(3) **Third party payor(s).** Claims shall be filed with third party payors in accordance with appropriate procedures. In cases where the third party payor does not cover the full amount of the bill, the outpatient shall be responsible for the remaining amount. IN cases where an outpatient requests services that are not covered or for which authorization has been denied, the outpatient shall be responsible for the full amount of the bill.

(4) **No Medicaid or third party payor.** Outpatients having no Medicaid or third party payor shall be expected to pay for services on the date they are entered. If a household ~~feels~~ believes they can not afford to pay the ~~associated fees~~ the full amount, they may request ~~to the admission clerk~~, to apply for a payment plan or fee reduction. If the household still feels they can not pay the fees in accordance with the reduced rate, they may contact the ~~Business Office Manager~~ Director, listing the reason(s) they can not meet their obligation and request a fee waiver.

(5) **Therapeutic services contracts.** The Center may additionally enter into contractual agreements with a third party to provide therapeutic services. These individual agreements shall specify the negotiated amounts for services rendered.

(c) **Respites.**

(1) **Medicaid.** The fees for Medicaid eligible inpatients are paid through a grant with the Department of Human Services.

(2) **Non-Medicaid.** Inpatients are responsible for a percentage of the fees based on a sliding fee scale. A co-pay shall be paid prior to admission.

(d) **Bill conflicts.** Any person having a conflict with a patient bill may contact the Finance Office for resolution. In the event that the conflict can not be resolved by the Finance Office, the information shall be forwarded to the Director for resolution. If the conflict can not be resolved satisfactorily, a grievance may be filed.

[OAR Docket #10-1061A; filed 6-24-10]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 13. CENTER SERVICES

[OAR Docket #10-1061B]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 3. Inpatient Services
Part 1. General Provisions
130:13-3-1 [AMENDED]
130:13-3-2 [AMENDED]
130:13-3-4 [NEW]
Part 3. Daily Care Services
130:13-3-12 [AMENDED]
Part 5. Habilitation Services
130:13-3-21 [AMENDED]
Part 7. Recreational Services
130:13-3-30 [AMENDED]
130:13-3-31 [AMENDED]
130:13-3-32 [REVOKED]

130:13-3-33 [AMENDED]
130:13-3-34 [REVOKED]
130:13-3-36 [AMENDED]
Subchapter 5. Outpatient Services
130:13-5-1 [AMENDED]
Subchapter 7. Dental Services
130:13-7-1 [AMENDED]
130:13-7-2 [AMENDED]
Subchapter 9. Isolation and Disease Spread Prevention Services
130:13-9-2 [AMENDED]
Subchapter 13. Outreach and Contractual Services
130:13-13-1 [AMENDED]
130:13-13-2 [AMENDED]
Subchapter 15. Other Services
130:13-15-2 [AMENDED]

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Cerebral Palsy Commission: 63 O.S. § 485.2; Administrative Procedures Act: 75 O.S. §§ 302, 305.

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ANALYSIS:
The amendments reflect changes in services and assessments provided at the Center as well as changes in admission and length of stay in respite care. New language clarifies that the Center is not a local educational authority and does not provide educational services. The rules simplify the procedure for providing patients with outside food. The rules authorize the Center to provide diagnostic radiology services. The rules restrict the use of the Center's swimming pool to rehabilitative therapeutic uses and reflect changes in the physical plant of the Center. The rules change the evening hours of recreational services, clarify the Center's participation in patient preparation for Special Olympics and revoke the section on showing films. The rules clarify that the Center will follow CDS and State Department of Health and State Department Labor standards regarding bodily fluid exposures. The rules also contain clean-up language that does not affect substantive policy.

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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 25, 2010:

SUBCHAPTER 3. INPATIENT SERVICES

PART 1. GENERAL PROVISIONS

130:13-3-1. Inpatient services

(a) Services available at the Center for inpatients include Pediatric Orthopedic, Ophthalmology, Physical Therapy, Speech Therapy, Occupational Therapy, ~~Recreation,~~ Social Services, Special education provided by Norman Public Schools, Psychological Testing and Counseling, ~~Psychiatry Services,~~ Food and Nutritional Services, ~~Dental Services, Neurological Services,~~ nursing care to include post-operative care, referral services, follow-up services, and Independent Living Training.

(b) Inpatients are medically supervised by a physician with specialized training or experience in developmental disabilities and rehabilitation, receive 24 hour ~~habilitative~~ nursing and receive at least 2 hours of therapeutic training services per day. One hour of the required therapeutic services shall be from Speech-language Therapy, Occupational Therapy, Physical Therapy or any combination of the three. Therapy shall be provided in at least two different sessions daily. The second hour of the required therapeutic training services shall be ~~from Psychological Services or Nutritional Services~~ a combination of the therapeutic services. ~~or a combination of the two~~. Because the Center's primary purpose is the treatment of children and recognizing the emotional and social needs of children, the Center shall provide recreation to all patients.

(c) As discussed more thoroughly in Chapter 15 of this title, the Center shall cooperate with each patient's local education agency to allow patients to receive special education when not receiving therapeutic services, unless they have completed school requirements.

(d) The Center offers a comprehensive multi-disciplinary program designed to enable each patient to reach the patient's potential. While each department provides therapies and treatment within a specific discipline, they all compliment each other, and it is the totality of the program that makes improvement possible. The formal "treatment day" at the Center is from 8:00 A.M. to 4:00 P.M. However, the activities of the Recreation Department, Nursing, Food and Nutritional Services and Social Work may extend beyond these hours.

130:13-3-2. Respite care

(a) Respite care may be offered to the legal guardian of a person with developmental disabilities ~~developmentally disabled person~~ to allow a brief period of relief from stresses associated with caring for the person, or to allow coping with a transitory event or situation during which the burden of caring for the person would be an excessive strain on the mental or psychological welfare, the health situation or other household concerns.

(b) Respite care is available for no less than four days and no more than ~~fourteen~~ seven days ~~at a time~~. A person shall not be scheduled more than ~~twice~~ once a year. ~~or exceed more than 20 days of respite care per year.~~ Exceptions to the above limitations for crisis or genuine medical emergencies or both may be considered by the Director on an individual basis.

(c) Respite care includes nursing care services, recreational activities and nutritional services. The ~~minimum~~ treatment

team shall be composed of a social worker, physician, registered nurse and dietitian. ~~Other disciplines shall be included if specifically ordered by the attending physician upon request of the legal guardian and therapist availability~~.

(d) Prior to admission the person shall have an admission screening on file. The initial ~~application~~request for respite care ~~to include the requested dates~~ shall be taken by the ~~person's social~~ rehabilitation administrative worker two months prior to the requested month. The legal guardian shall be informed of the decision, and a respite admission packet shall be sent prior to the scheduled date. While every effort shall be made to give a final decision as soon as possible, special circumstances may render this impossible.

130:13-3-4. Education

The Center is not a local education agency and does not provide educational services to inpatients. Educational services are provided by the Norman Public Schools pursuant to applicable state and federal laws. The Center will provide the Norman Public Schools with facility space for conducting classes and make every reasonable effort to accommodate the school district's needs in providing education services to inpatients.

PART 3. DAILY CARE SERVICES

130:13-3-12. Outside foods

(a) The Center is committed to insuring that wholesome, nourishing, and safe food is provided for patient consumption.

(b) Foods prepared outside the Center and offered to our patients must be approved in advance by the Dietician~~, Diet Technician, Food Service Supervisor or Cook in that order. Written notification including the scheduled date and proposed menu, snack or beverage shall be required 5 working days prior to the date~~. Criteria for approval may include food prepared in an environment licensed for operations by the State Health Department, food prepared by a patient's household members for consumption by that patient only, foods offered that maintain the prescribed diets for patients involved.

PART 5. HABILITATION SERVICES

130:13-3-21. Treatment areas

(a) The Center shall provide necessary service and technology to facilitate a patient's overall communication. Patient demonstrating deficits in oral or verbal communication skills to such a degree that functional communicative interaction with others is reduced, restricted, or prevented may be candidates for augmentative communication assessment.

(b) The Center shall seek to train patients in basic transfer skills where appropriate and necessary. Transfer activities are indicated for patients with the capability or potential for learning transfers to the floor, chair, toilet, bed, car or other place.

(c) The Center shall attempt to help each patients establish successful elimination into the toilet on a regular basis and so avoid unscheduled soiling of clothing, avoid skin irritation, avoid social embarrassment, develop a sense of personal price and responsibility and develop good habits of personal hygiene.

(d) The Center shall attempt to assess and determine pain accurately, to ensure respectful and responsive treatment and to establish protocols and a procedure for pain management that will incorporate the patient's values, beliefs and philosophy. All patients will have the right to be as pain-free as possible. Pharmacological and non-pharmacological management and techniques shall be used.

(e) Psychological counseling for the patient or household is a component of the services available at the Center.

(f) The emotional well being of the patient shall be monitored and addressed.

Emotional concerns include, but are not limited to: substance abuse, depression, loss of self-esteem and social adjustment.

(g) The Center ~~shall~~ may provide diagnostic radiology services. All radiological procedures shall be conducted in compliance with established policies to ensure the safety of both personnel and the public.

PART 7. RECREATIONAL SERVICES

130:13-3-30. Recreational Services

(a) The Center recognizes the need to provide recreation to inpatients. The Center further recognizes that Oklahoma law does not provide for recreational therapy, as such. However, recreation shall be provided for the emotional and social well-being of patients. ~~who are at the Center for long periods of time.~~

(b) Recreation shall be scheduled to the extent allowed by the staffing of the Center and the ability of each patient to take part. No patient shall be scheduled for recreational activities beyond the proper abilities of the patient as determined by the patient's attending physician.

(c) Patients may be granted permission to participate in activities off the premises, when approval is on record from the legal guardian. A member of the Center's staff ~~(excluding PIC and work study)~~ shall accompany patients on off-premises activities and an appropriate patient to staff ratio is required when patients are taken from the premises.

130:13-3-31. Evening and weekend recreational activities

(a) The Center considers socialization and development of effective interpersonal skills to be as important as the traditional therapies, and these facets of the Center's program continue into the evening and on weekend.

(b) Evening Recreational Department activities are held from ~~3:30~~ 4:00 p.m. - 8:00 p.m. Evening activities shall provide small and large group experiences. Patients shall be encouraged to attend the evening program activities.

(c) For patients who remain at the Center on Saturday and Sunday, a recreation program shall be offered from 8:00 a.m.

- 8:00 p.m. The major goal of this program is to involve the patients in fun, informative, interesting and age appropriate recreational activities. The activities will attempt to accommodate small and large groups of patients as is appropriate for the number of helpers and volunteers that can be recruited. Other activities may include field trips (large or small groups), cookouts and picnics, walks and vehicle riding, crafts and games.

130:13-3-32. Films [REVOKED]

~~Movies shown on television, VCR, movie house, videodisc are a part of the recreational program of the patients. General guidelines established by the movie industry and the developmental level of the patient shall be considered when planning for the patient's viewing time. The following guidelines, as established by the film industry, will be in force for the Center.~~

~~(1) G - can be viewed by all patients.~~

~~(2) PG - can be viewed by patients 10 years of age and above~~

~~(3) PG-13 - can be viewed by patients 13 years and above.~~

~~(4) R - can be viewed by patients 17 years and above - will be reviewed on a case-by-case basis~~.

130:13-3-33. Swimming pool

(a) The swimming pool at the Center shall be used ~~primarily~~ solely for aquatic and rehabilitative therapy ~~and recreation of the patients~~. Any person using the swimming pool shall comply with the following rules:

(1) No diving or running in the pool area.

(2) No food, drink, glass or litter shall be allowed in the pool area.

(3) The last person in the pool area shall clean up the area around the pool, straighten equipment, hang up life jackets in the designated area, turn off lights~~, exhaust fan, and heating unit~~ and lock all doors or means of access to the pool.

~~(4) The door in the General Purpose Room opening to the corridor to the pool shall be kept closed at all times to prevent the loss of heat or air conditioning, depending on the season.~~

(~~5~~4) All accidents or injuries shall be reported immediately to the charge center nurse. ~~In case of an injury or accident a pool bell is located at the south wall to alert nursing staff to come and assist.~~

~~(b) A swim program shall be provided to all patients at the Center. The purpose of a swim program is to benefit the patients in five general areas: leisure, instruction, relaxation, fitness and interdisciplinary training. Medical authorization shall be required for each patient who participates in the swim program.~~

~~(c) Current Certified American Red Cross Advanced Life-saving or YMCA lifeguard certified personnel shall be in the water or on the deck for every activity.~~

(~~d~~b) The Commission, the Center and its employees shall not be responsible for injury occurring to anyone who uses the swimming pool except as provided by Oklahoma's Risk Management Plan and the Governmental Tort Claims Act.

130:13-3-34. Wading pool [REVOKED]

~~The wading pool may provide a unique experience for patients in a variety of ways by providing a different environment than normally experienced by the patient, a different opportunity for sensory experiences and a new opportunity for peer interaction.~~

130:13-3-36. Special Olympics

(a) The Special Olympics Competitions permit each patient to function to the best of the patient's ability and to receive an appropriate reward for their effort.

(b) Patients at the Center may participate in as many district level Special Olympics events as possible. Some of these events include art, track and field, swimming and walley-ball/volleyball, music and bowling.

~~(c) The Center's staff will assist in completing and providing paperwork and medical review (including necessary X-rays for Down Syndrome patients) to allow patients at the Center to take part in Special Olympics.~~

SUBCHAPTER 5. OUTPATIENT SERVICES

130:13-5-1. Outpatient services

(a) Patients admitted for daily outpatient services at the Center shall be scheduled for departmental services based upon identified patient needs and responsibilities to inpatients. Requests for individual outpatient therapy services shall be reviewed on a case-by-case basis, reviewing the nature of request, staff availability and departmental capability of performing requested service.

(b) Therapy departments will evaluate and treat outpatients who have a signed physician's order for treatment.

~~(c) Outpatient assessments and screenings are not expected to be thorough or comprehensive assessments, but shall merely provide a limited review of the patient's abilities and possible deficits.~~

SUBCHAPTER 7. DENTAL SERVICES

130:13-7-1. Dental care

(a) Based upon availability, dental ~~Dental~~ services shall be provided to relieve pain and infection, to provide adequate medications and function, to restore and maintain the oral cavity in a health condition, to develop with the patients the desire to retain and maintain their natural dentition, and to provide reasonable restoration as authorized.

~~(b) Services include routine visual examination, cleaning, routine restorative work, extractions and some emergency care. Services not included are orthodontics, bridgework and other extensive dental work. Services rendered shall depend on the ability of each patient to cooperate.~~

~~(c) Any legal guardian wishing to schedule an appointment for a patient in the dental clinic shall contact the dental nurse and set up an appointment. The following procedures will be followed:~~

~~(1) There are three Thursdays per month that clinics are scheduled. Scheduling shall be done on a first-come, first-serve basis. When the appointment slots for that day are filled, no more appointments shall be made. Except for emergencies, appointments shall be made during the available time slots only.~~

~~(2) All patients must be a minimum of 3 years of age (unless child under 3 years is having a dental problem) and a maximum of 21 years of age.~~

(b~~3~~) Antibiotic therapy is required for patients with a shunt or patients with cardiac problems.

130:13-7-2. Emergency dental treatment

~~(a)~~ The Center shall provide for emergency dental care to inpatients ~~during hours when dental clinic is closed~~.

~~(b) In an emergency, the Center's dentist shall be contacted to arrange treatment, and if the Center's dentist is unavailable, the patient shall be transported to a recommended dentist or Norman Regional Hospital.~~

SUBCHAPTER 9. ISOLATION AND DISEASE SPREAD PREVENTION SERVICES

130:13-9-2. Needle stick or other body fluid substance exposure

(a) Parenteral, mucous membrane non-intact skin exposures to blood and other body fluids may result in exposure to the Hepatitis B virus or HIB or both. Exposure shall be managed in accordance with ~~OSHA,~~ CDC ~~and~~ State Health Department and State Department of Labor standards. ~~recommendations.~~

(b) The blood of any person identified as a source of a needle stick or other body fluid substance may be drawn and tested for HBs Ag and HIB antibody when:

(1) the identified person or legal guardian provides written consent, or

(2) a health care worker provides a written statement that the worker as been exposed to the bodily fluids of the identified person in an occupational setting, and the exposure placed the work at risk for transfer of bodily fluids, or

(3) a court of competent jurisdiction orders the withdrawal and testing of the blood [63:1-502.3(A)(1), (2) and (3)]

(c) The withdrawal and testing of the blood shall be performed in a reasonable manner, according to generally accepted clinical practice. [63:1-502.3(A)]

(d) When the Center or its employees acts in compliance with 63 O.S. §1-502.3, they shall not incur any civil or criminal liability.

SUBCHAPTER 13. OUTREACH AND CONTRACTUAL SERVICES

130:13-13-1. Outreach services

(a) Outreach services shall provide consultation and services to maintain benefits of patient care in include, but are not limited to: seating/positioning recommendations or evaluations, augmentative communication evaluation or in-service, feeding/nutritional program, behavior modification, home physical therapy program, home visit evaluation, and nursing care in-service.

(b) Outreach services may be provided to ~~developmentally disabled~~ people with developmental disabilities from birth to 21 years of age who have received services from the Center either as an inpatient, outpatient or a recipient of an interdisciplinary admission screening. This service shall be offered and scheduled when appropriate as part of discharge planning and on follow-up services for our inpatients or as part of an admission screening.

(c) Requests for outreach services shall be reviewed on a case-by-case basis, reviewing the requests, staff availability and needs of the patient and distance. If approved, a social worker shall act as case manager for the patient receiving an outreach service. Patients approved for Center-based outreach services shall be notified of approval in writing.

130:13-13-2. Contractual services

(a) Contractual therapeutic services to include evaluation and treatment may be provided to ~~developmentally disabled~~ individuals with developmental disabilities based upon contractual guidelines and identified patient needs.

(b) Contractual services ~~are~~ may be provided to the following programs, facilities and public agencies.

(1) DDSD

(2) Sooner Start

(3) Oklahoma Public Schools

~~(4) New Frontiers~~

(c) Upon receipt of approval therapist(s) will provide services to DDSD and Sooner Start on a case-by-case basis, reviewing the nature of the request, staff availability, and departmental capability of performing service.

(d) All requests for contractual services other than DDSD and Sooner Start determine if current staff is able to accurately meet contractual needs/guidelines and if so implementation of appropriate charging/billing arrangements and drafting of contract.

(e) Therapists provide therapeutic/contractual services in accordance with contractual guidelines/standards, J.D. McCarty Center approved rules and Quality Assurance/Improvement Plan.

(f) Patients approved for Center-based contractual services shall be notified of approval in writing.

SUBCHAPTER 15. OTHER SERVICES

130:13-15-2. Cultural awareness

The Center will acknowledge and facilitate the exhibition and practice of ~~minority~~ a patient's cultural behaviors and activities to the extent that they do not interfere with the treatment of the patient or the treatment of other patients in the Center.

[OAR Docket #10-1061B; filed 6-24-10]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 14. PATIENT BILL OF RIGHTS

[OAR Docket #10-1061C]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. General Provisions
130:14-1-6 [AMENDED]
Subchapter 3. Personal Rights
Part 1. Property
130:14-3-1 [AMENDED]
130:14-3-2 [AMENDED]
130:14-3-4 [AMENDED]
Part 3. Self
130:14-3-12 [AMENDED]
Subchapter 5. Medical Rights
130:14-5-3 [AMENDED]
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ANALYSIS:
The proposed changes comply with federal CMS standards. The rules update communication methods used by patients to include e-mail and modify procedures for handling inpatient personal money. The rules clarify patient access to medical records and modify Center weapons policy to comply with 12 O.S. § 1289.7a. The rules modify the types of beds used to reflect current practices and clarify the use of powered wheel chairs for patient safety.
CONTACT PERSON:
Grant Moak, Assistant Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105; tel. 405-522-0152.

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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

130:14-1-6. Grievances

(a) A staff member shall serve as Patient Advocate with the specific duty of resolving problems with patients and their households.

(b) The purpose of the patient grievance system is to provide an effective means whereby a patient, who is experiencing a problem that is affecting the patient's adjustment and progress toward habilitation, may seek help in resolving that problem.

(c) Patients shall receive an orientation about the grievance system from the Center's social workers. Initial orientation shall be supplemented at some later date by additional training in grievance system usage, as needed.

(d) Patients shall not be discouraged or delayed from filing a grievance. Patient problems shall be dealt with promptly to prevent the escalation of the grievance into serious problems and dangerous situations. Center personnel shall attempt to resolve grievances at the lowest level and in the quickest time possible. It is the staff's duty to alleviate the problem as quickly and efficiently as possible.

(e) A patient, or any person acting on behalf of a patient, including staff, may file a complaint alleging abuse or neglect by staff. Grievances may include matters involving the substance or application of any written or unwritten policy, or rule of the Center or of an agent or contractor of the Center, or any decision, behavior or action by an employee, agent or contractor or by other patients at the Center.

(f) The grievance procedures shall provide for a sure, but reasonable, access to the system by all patients at all times. When the filing of a grievance would disrupt the daily scheduled activities of the Center, the grievance shall be received at the earliest practical time.

(g) The grievant may present the grievant's side of the issues. This right extends to all parties to the grievance. All parties have the right to present not only their contentions, but also to present suggestions for resolving the grievance.

(h) An initial response to a grievance shall be made ~~within 24 hours~~ promptly following the submission of the grievance, with the exception of weekends and holidays. The initial response shall notify the patient that the grievance has been received and that the grievance officer shall set up a meeting to discuss the problem with the patient.

(i) Responses to a grievance shall address the grievance such that the patient is able to know that the patient's problem was understood and that attempts were made to resolve the grievance. Responses shall include the names of those participating in any meeting, the date of the meetings, the topics discussed and the offered resolution. The staff shall strive to

make the resolution permanent and be one that completely resolves the problem in such a manner as to permit the resolution of similar problems that might arise in the future.

(j) The patient shall be informed and encouraged to appeal decisions that the patient believes to be unsatisfactory. A grievant that is dissatisfied with the resolution to a filed grievance may appeal the grievance first to the Director and then to the Commission.

(k) Appeals to the Commission are required when there is a determination made that the satisfactory resolution to the grievance requires consideration of a policy, procedure, or budgetary amendment which is beyond the directors scope of authority. Appeals to the Director are required where there is a finding that the satisfactory resolution of the grievance is beyond the staff member's authority.

(l) If a patient at the Center who is in the custody of the Department of Human Services has not accepted the resolution of the Commission, the Grievance Coordinator shall immediately forward the grievance, together with the proposed resolution and all supporting documentation, to the Office of Advocate Defender of the Department of Human Services.

(m) The fact that a patient files a grievance shall not be considered in any administrative decision concerning the patient, nor shall any copy of the grievance reporting document be placed in the patient's case file or medical record. Patients who use the system shall not be treated in any different manner from any other patient.

SUBCHAPTER 3. PERSONAL RIGHTS

PART 1. PROPERTY

130:14-3-1. Mail, telephone, visitation

(a) Each inpatient is entitled to unimpeded, private, and uncensored communications with others by sealed mail and telephone and to visit with persons of the patient's choice, except as otherwise limited by this chapter or law. Toll charges for long distance telephone calls shall be the responsibility of the inpatient or the legal guardian.

(b) The right of an inpatient to communicate by mail, email, or telephone or to visit with persons of the inpatient's choice may be limited by staff if:

(1) the limitation is essential to prevent the inpatient from violating a law,

(2) the limitation is essential to prevent substantial and serious physical or mental harm to the inpatient,

(3) an individual has complained to the Center of previous telephone harassment by the inpatient and has requested that the inpatient be prevented from telephoning the individual in the future. In this instance, the limitation shall apply solely to telephoning the individual making the complaint.

(4) an inpatient's legal guardian has requested that the inpatient not be allowed to communicate with specific individual(s).

(5) a visitor's behavior is disruptive to the functioning of the Center, or

(6) the limitation has been ordered by the Department of Human Services.

(c) The Center shall not impose a limitation upon any patient regarding communications between the inpatient and the inpatient's attorney, physician clergy, official agencies and courts, except to the extent that reasonable times and places for use of telephones and visitation may be applied so long as they do not have the effect of making communications with these parties impracticable.

130:14-3-2. Patient money

(a) For the purposes of this rule, "money" includes any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

(b) An inpatient has the right to easy access to money in the inpatient's personal account at the Center and to spend or otherwise use the money as the inpatient chooses. Inpatients shall be allowed to carry up to $5.00 for therapeutic purposes. If indicated in the treatment plan. Amounts in excess of $5.00 shall be coordinated on a case-by-case basis with the treatment team and the Finance Office.

(c) All money which is on the person of an inpatient, which comes to an inpatient, or which the Center receives in place of the inpatient under a benefit arrangement or otherwise, shall be deposited with the Business Manager for safekeeping in a personal account in the inpatient's name. The money, and transactions affecting it, shall be accounted for in the name of the inpatient and recorded in the inpatient's account records. The Center shall be liable for any discrepancies or losses from the inpatient's account. The inpatient or the inpatient's legal guardian shall be provided a copy of the account and transactions on request.

~~(d) Money in an inpatient's personal account at the Center may be deposited with a financial institution at the request of the inpatient or the inpatient's legal guardian. Any earnings from the money so deposited shall be credited to the inpatient's account.~~

(~~e~~d) Nursing staff shall direct inpatients or legal guardians to the Finance Office upon discharge to collect all money including earnings in an inpatient's personal account.

(~~f~~e) The Center shall not withdraw funds from an inpatient's personal account to pay for services rendered by the Center.

130:14-3-4. Access to records

~~Access to medical or educational records shall be determined in accordance with Oklahoma law and these rules. [See 130:1-1-7 (relating to requests for information, 130:12-7-2 (relating to medical records) and 130:15-1-7 (relating to school records)].~~ Patients, or their legal representatives, shall have access to their own medical records in a manner that complies with all applicable state and federal law.

PART 3. SELF

130:14-3-12. Patient safety.

(a) The Center shall provide a safe and secure environment for patients. All persons shall comply with safety rules. Any one observed committing an unsafe act shall be reported to the Director, the Safety Officer, the Deputy Director ~~of Rehabilitative Services~~ or a department head.

(b) No person shall use or possess illegal drugs or intoxicating beverages on Center premises.

(c) All weapons of any kind are prohibited~~, including, but not limited to licenses concealed handguns, any other type of firearm or knife. This prohibition shall not apply to pocketknives.~~ on Center property except lawfully owned firearms stored in a locked vehicle on the Center's parking lot pursuant to 12O.S.Supp.2004, § 1289.7a. However, no firearms will be permitted in vehicles parked on the parking lot adjacent to the Education Building where elementary and secondary classes are held pursuant to 12 O.S.Supp.2003, § 1280. This prohibition shall not apply to private vehicles driven to the Education Building for the sole purpose of transporting students as long as the vehicles are not left unattended.

(d) Knives with blades of 3 inches or less shall not be considered weapons for the purpose of this section.

(~~d~~e) Questions concerning what constitutes an intoxicating beverages, weapons, or drugs should be directed to the Director the Deputy Director ~~of Rehabilitative Services~~ or the Personnel Officer.

SUBCHAPTER 5. MEDICAL RIGHTS

130:14-5-3. Least restrictive treatment

(a) Every effort shall be made to grant each patient the maximum amount of physical freedom within and outside the Center. Physical autonomy shall be limited only as necessary for the patient's safety or to facilitate or enhance the patient's medical or therapeutic treatment course. In situations where mechanisms are utilized for such purposes, the least restrictive means of intervention shall be imposed.

(b) The range of mechanisms utilized in the Center and scope of appropriate use are as follows:

(1) Manual powered wheelchairs.

(A) Both manual and powered wheelchairs are intended to improve a patient's mobility or for facilitating orthopedically functional seating and positioning. In ~~almost~~ all cases some type of safety restraining mechanism is ~~indicated~~ required, such as a seat belt, chest harness and wheelchair tray.

(B) Controlling the speed of a powered wheelchair or limiting a patient's independent mobility in a manual chair is ~~indicated~~ required when patient's safety or the safety of others in the area is a concern or when it is necessary to provide medical, therapeutic or educational intervention.

(2) Corner chairs, adapted desks with seat belts and other types of gross movement limiting seating systems with or without tray tops. These types of seating systems are appropriate for use in the therapeutic and classroom settings to facilitate rehabilitative treatment and educational intervention. They are also appropriate in certain situations to limit mobility if the patient is in a situation where injury may occur due to a failure to be aware of environmental hazards that cannot be mediated.

(3) ~~Four~~Three types of hospital bed (in order from least to restrictive in nature): Standard hospital bed with rail; Youth bed; Pediatric hospital crib~~;~~. ~~and Pediatric hospital crib with a plastic bubble or rail top.~~ The selection of the type of bed to be utilized by a particular patient shall be determined with specific regard to demonstrated safety needs, the patient's medical status and requirements, developmental and chronological age and physical size. These criteria are set forth to ensure that the patient is afforded the least restrictive sleeping environment in conjunction with the maintenance of good health and physical safety.

(4) Arm splints, padded gloves, helmets or related devices. Such devices shall be utilized either to facilitate a patient's medical, therapeutic or educational intervention or to prevent the patient from inflicting self-injury or to prevent accidental injury. The least restrictive intervention shall be considered when selecting these devices; however, ensuring the physical safety of the patient shall be the primary objective.

[OAR Docket #10-1061C; filed 6-24-10]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 15. EDUCATION [REVOKED]

[OAR Docket #10-1061D]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
130:15-1-1. Purpose [REVOKED]
130:15-1-2. Definitions [REVOKED]
130:15-1-3. Center's limited authority to assist in education [REVOKED]
130:15-1-6. IEP [REVOKED]
130:15-1-7. School records [REVOKED]
130:15-1-9. Therapy outside of school year [REVOKED]

AUTHORITY:
Cerebral Palsy Commission: 63 O.S. § 485.2; Administrative Procedures Act: 75 O.S. §§ 302, 305.

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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed rule revokes Chapter 15 in order to avoid confusion regarding the Center's role in educational services provided to inpatients. The Center is not a local educational authority and does not provide educational services. Educational services to inpatients are provided by Norman Public Schools.
CONTACT PERSON:
Grant Moak, Assistant Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105; tel. 405-522-0152.

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 25, 2010:

130:15-1-1. Purpose [REVOKED]

~~The rules in this chapter provide regulations relating to the operations of the Center with respect to assisting in the coordination of providing education to inpatients at the Center.~~

130:15-1-2. Definitions [REVOKED]

~~The following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~**"Center"** means the J.D. McCarty Center for Children with Developmental Disabilities.~~

~~**"IEP"** means the individualized education plan of an inpatient at the Center which is set by an LEA.~~

~~**"LEA"** means the local education agency of an inpatient at the Center.~~

130:15-1-3. Center's limited authority to assist in education [REVOKED]

~~Upon admission, the Center shall advise the legal guardian of an inpatient that the Center is not authorized by its enabling laws to provide education for school-age inpatients at the Center. However, the Center shall endeavor to coordinate with the LEA, the legal guardian, and the inpatient for the provision of education and shall take all legal steps to ensure that the LEA has access to the inpatient to provide an appropriate education.~~

130:15-1-6. IEP [REVOKED]

~~(a) The Center shall assist in the development, assessment and review of the IEP for each inpatient at the Center.~~
~~(b) The Center shall ensure participation from key individuals in the care and continuing treatment of the inpatient for the development, assessment and review of the IEP.~~
~~(c) The Center's involvement with IEPs shall be done with regard to the Center's prohibition from providing public education to inpatients at the Center.~~

130:15-1-7. School records [REVOKED]

~~(a) The Center shall keep all school records of inpatients at the Center confidential. All original inpatient school records shall be in a locked file. School records shall be made available only to authorized individuals.~~
~~(b) Educational records may be released (such as transcripts, IEPs and school summaries) to the receiving school, without a signed release. However this does not include all medical records. (Title 34,CFR part 99,CFR 300.10, 300.514) [See 130:12-7-2 (relating to medical records)].~~

130:15-1-9. Therapy outside of school year [REVOKED]

~~When school is not in session, Center inpatients will continue regularly scheduled therapies. In addition, the Recreation Department shall coordinate, plan and execute a range of recreational activities during the day.~~

[OAR Docket #10-1061D; filed 6-24-10]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #10-1060]

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PERMANENT final adoption.
RULES:
Subchapter 24. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]
135:10-24-1 [NEW]
135:10-24-2 [NEW]
135:10-24-3 [NEW]
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Commission on Children and Youth: 10 O.S., 2001, § 601.4(9); Administrative Procedures Act: 75 O.S.,§§ 302, 305.
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Subchapter 24. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]

135:10-24-1. Origin and authority [NEW]
135:10-24-2. Duties and responsibilities [NEW]
135:10-24-3. Certification process [NEW]

Gubernatorial approval:
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n/a

ANALYSIS:
The proposed new rules provide the manner in which the Commission will certify children's shelters operated by the Oklahoma Department of Human Services pursuant to 10 O.S. § 601.3 as amended by Laws 2009, HB 1734, c. 338, section 2.

CONTACT PERSON:
Grant Moak, Assistant Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105; tel. 405-522-0152.

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 25, 2010:

SUBCHAPTER 24. CERTIFICATION OF CHILDREN'S SHELTERS OPERATED BY THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

135:10-24-1. Origin and authority

(a) The legislature established the Oklahoma Commission on Children and Youth responsibilities for developing a certification program for the children's shelters managed and operated by the Oklahoma Department of Human Services in 10 O.S. §601.3(4).

(b) The Commission on Children and Youth shall have the authority:

(1) To establish a system of certification in accordance with the Oklahoma Child Care Facilities Licensing Act;

(2) To issue certifications based upon compliance with minimum requirements;

(3) To revoke certification based upon failure to meet minimum requirements.

135:10-24-2. Duties and responsibilities

The Commission on Children and Youth shall designate OCCY staff to perform the following duties:

(1) Provide continuing technical assistance and consultation to the shelters to obtain and maintain compliance with minimum requirements;

(2) Take corrective action based upon non-compliance with minimum requirements;

(3) Monitor shelter programs to maintain compliance with minimum requirements;

(4) Issue certifications based upon compliance with minimum requirements;

(5) Facilitate and perform training for shelter administration and staff;

(6) Maintain official certification records.

135:10-24-3. Certification process

(a) **Definitions.**

(1) **Commission** means the Oklahoma Commission on Children and Youth.

(2) **Manager or Operator** means the representative of the Department of Human Services who has been given authority to act on behalf of the state-operated children's shelter.

(3) **State-operated children's shelter** means the Laura Dester Shelter, the Pauline E. Mayer Shelter, the Pauline E. Mayer Annex, or any other shelter operated by the Oklahoma Department of Human Services.

(b) **Types of issuances.**

(1) **Six-month temporary certification.** State-operated children's shelters may be granted a six-month temporary certification if documentation does not show compliance with all critical certification requirements.

(2) **Certification.** State-operated children's shelters may be granted an operating certification that is valid for twelve months from the date of its issuance when certification staff determines that the shelter is operating in a compliance with its own policy and procedures and in compliance with current Oklahoma Department of Human Services Licensing Requirements for Residential Child Care Facilities and any additional Commission requirements.

(c) **Case Management.**

(1) **Periodic visits.**

(A) Certification staff annually shall conduct one unannounced visit to each state-operated children's shelter to document compliance with all certification requirements and at least two announced visits to monitor compliance with certification requirements.

(B) During each unannounced compliance visit, certification staff shall:

(i) Observe the entire facility, including outdoor play space and vehicles used for transportation, if available, and

(ii) Check resident files and staff files, insurance verifications, and fire and health inspections within the preceding twelve months for compliance with certification requirements.

(C) During each announced monitoring visit, certification staff shall:

(i) Provide technical assistance to facility personnel to meet and maintain certification requirements;

(ii) Consult with facility personnel to meet and maintain certification requirements and improve the quality of care at the facility.

(2) **Forms.** The OCCY Certification staff shall used standardized certification forms available for public inspection and copy at www.okkids.org.

(3) **Reports.** The OCCY Certification staff annually shall issue two monitoring reports and one compliance report..

(4) **Oklahoma Department of Human Services, Office of Client Advocacy Reports (OCA).** The OCCY Certification staff shall review all referrals to OCA that concern the state-operated children's shelters and all investigation reports issued by the OCA to ensure compliance by the state-operated children's shelters with certification requirements.

(d) **Non-compliance with requirements.**

(1) **Documentation of non-compliance.** The licensing staff shall document clearly and concisely on the monitoring reports and the compliance report areas of non-compliance and the discussion with the operator.

(A) A plan of correction, including an agreed-upon time period for correction of the non-compliance, shall be documented on the monitoring report for each area of non-compliance.

(B) Immediate correction shall be required when the non-compliance has a direct impact on the health, safety, or well-being of a child or children in care.

(C) The certification staff shall request that the operator sign the monitoring reports and the compliance report, explaining that the operator's signature indicates acknowledgment of information recorded.

(D) If the person in charge refuses to sign, the refusal shall be documented on the report.

(E) The operator shall be given a copy of the completed report.

(2) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, the certification staff shall request an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(3) **Case management responses to non-compliant facilities.** The responses in this subsection may be used when there is repeated, numerous, or serious non-compliance with certification requirements.

(A) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining certification requirements.

(B) **Follow-up phone call.** Phone calls are documented on OCCU standardized forms.

(C) **Non-compliance letter.** A non-compliance letter may be written to the operator. The certification staff shall send a copy of the report and the non-compliance letter to the operator's supervisor.

(D) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with certification requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaff after school or a lack of early morning supervision, the return visit shall be made at that approximate time.

(E) **Use of witnesses.** The certification staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious areas of non-compliance or if denial or revocation of the license is being considered. The witness may be an OCCY employee or representative from the health or fire department. The witness shall sign the monitoring report in the space provided.

(F) **Increased monitoring visits.** Certification staff may increase the frequency of monitoring when there have been numerous, repeated or serious areas of non-compliance or when the need for additional technical assistance is indicated.

(G) **Notice to comply.** The certification staff shall provide the facility with a notice to comply, and the facility shall document the plan of correction. Immediate correction may be required if the area of non-compliance places the health, safety, or well-being of a child or children in care at risk.

(i) If the plan submitted by the operator is unacceptable to the certification staff, the staff shall negotiate and document a revised plan.

(ii) If the operator does not submit a response within a reasonable time period, the certification staff shall contact the operator and document the conversation. If concerns exist or he operator is uncooperative, the certification staff shall send a letter stating that failure to respond may result in denial or revocation of certification.

(H) **Office conference.** The certification staff may schedule an office conference with the operator of the facility. Areas of non-compliance and progress toward meeting the plan(s) of correction shall be reviewed and technical assistance shall be offered. The conference shall be documented.

(I) **Consent agreement.** OCCY and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of certification denial or revocation.

(J) **Revocation.** The certification staff may recommend that the certification be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(4) **Case management responses when children are at risk.** If the certification staff documents a situation where children may be at imminent risk of harm, or if the Office of Juvenile System Oversight is investigating a complaint that children may be at imminent risk of harm, the certification staff may consider the following options:

(A) The operator shall be asked to immediately correct the situation where children may be at risk of harm.

(B) The operator may agree to enter into a consent agreement whereby the facility shall agree to specific conditions.

(C) The certification staff may recommend that the certification be denied or revoked when the operator fails to take necessary steps to eliminate the situation giving rise to the imminent risk of harm.

(e) **Denial or revocation process.**

(1) Certification staff shall submit recommendation to deny or revoke facility certifications to the OCCY Director or the OCCY Director designee.

(2) Facility operators shall submit responses to recommendations to deny or to revoke facility certifications to the OCCY Director or the OCCY Director designee.

(3) The OCCY Director or the OCCY Director designee shall be the final decision maker regarding recommendations to deny or to revoke facility certifications.

(4) Facility operator may appeal certification denial or certification revocation final decisions to the Commission.

(f) **Complaint procedure.** All complaints received by OCCY concerning the state-operated children's shelters shall be referred to the OCCY Office of Juvenile System Oversight.

(g) **Public inspection of certification files.**

(1) **Legal basis.** The Oklahoma Commission on Children and Youth (OCCY) is subject to the Oklahoma Open Records Act. Section 24A.1 et. seq. of Title 51 of the inspection unless they are required by law to be kept confidential.

(2) **Certification records.** All OCCY records of facilities required to be certified under Section 601.3 of Title 10 of the Oklahoma Statutes that are considered public records shall be open and available for public inspection during reasonable hours.

(3) **Location of case records.** Certification records shall be located in the OCCY office and shall be inspected at that location. Certification records shall be inspected in the presence of certification staff. The OCCY office is located at 500 N. Broadway Ave., Suite 300, Oklahoma City, Oklahoma.

(4) **Preparation of case files for inspection.** The certification staff carefully shall review the entire record and shall remove confidential information.

(5) **Release of confidential information.** Confidential information shall only be released as provided by statute.

[OAR Docket #10-1060; filed 6-23-10]

TITLE 155. OKLAHOMA CONSERVATION COMMISSION
CHAPTER 15. OKLAHOMA'S ABANDONED MINE LAND RECLAMATION PROGRAM

[OAR Docket #10-1057]

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RULES:
155:15-1-2 [AMENDED]
155:15-1-4 through 155:15-1-6 [AMENDED]
155:15-1-6.1 [NEW]
155:15-1-7 [AMENDED]
155:15-1-7.1 [NEW]
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155:15-1-14 [REVOKED]
155:15-1-15 through 155:15-1-16 [AMENDED]

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The Oklahoma Conservation Commission pursuant to the Oklahoma Abandoned Mine Reclamation Act contained in 45 O.S. 2001 §§ 740.1 et seq.; and the Oklahoma Conservation Commission pursuant to the Conservation District Act contained in 27A O.S. 2001 §§ 3-1-101 et seq.
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These proposed changes to rules are to assist in the implementation of the Oklahoma Abandoned Mine Land Reclamation Program contained in 45 O.S. 2001 §§ 740.1 et seq. The intent of this program is the protection of public health, safety, and property from adverse effects of past coal mining practices. These amendments to the rules establish eligible lands and water and the reclamation objectives and priorities of these lands and water. These amendments also establish the mechanism of program funding and the administration of funds. These changes to the rules are a result of Federal legislation (H.R. 6111, signed December 20, 2006) Surface Mining Control and Reclamation Act Amendments of 2006 (P.L. 109-432).
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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 AUGUST 2, 2010:

155:15-1-2. Definitions

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

"Abandoned Mine Reclamation Fund" means the fund established by the State for the purpose of accounting for moneys granted by the Director of the Office of Surface Mining under an approved State Abandoned Mine Land Reclamation Program and other moneys authorized by these rules to be deposited in the Abandoned Mine Reclamation Fund.

~~**"Act"** means the Surface Mining Control and Reclamation Act of 1977, known as Public Law 95-87.~~

"Certified in lieu funds" means moneys that the Office distributes to the Commission in lieu of moneys allocated to the Commission's State share of the Fund after October 1,

2007. Certified in lieu of funds come from general funds of the United States Treasury that are otherwise unappropriated.

"Code" means the Code of Federal Regulations (CFR).

"Commission" means the Oklahoma Conservation Commission as created by the Conservation District Act of 1971.

"Conservation District" means a governmental subdivision of this State, and a public body corporate and politic organized in accordance with the provisions of the Conservation District Act of 1971.

"Director" means the Director of the Office of Surface Mining, United States Department of the Interior.

"Eligible Land and Water" means those lands and waters that are eligible, under the criteria outlined in Section 155:15-1-5, for reclamation activities.

"Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"Extreme Danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"Fund" ~~or "**Oklahoma Abandoned Mine Land Reclamation Fund**" means a fund established by the State for the purpose of accounting for moneys granted by the Director of the Office of Surface Mining under an approved State Abandoned Mine Land Reclamation Program and other moneys authorized by these regulations to be deposited in the fund~~ means the Abandoned Mine Reclamation Fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Section 401 of the SMCRA.

"Historic coal funds" are moneys provided under Section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977 in which Oklahoma has an interest. The Office can reallocate historic coal funds from other states and tribes.

"Make up funds" are additional moneys the Office distributes each Federal fiscal year to the Commission to make up the difference between the total distribution of other funds and $3 million.

"Office" means the Office of Surface Mining of the United States Department of the Interior.

"Permanent facilities" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

"Plan" or **"State Abandoned Mine Land Reclamation Plan"** means the plan submitted by the ~~State~~ Commission to the Office for the reclamation of land and water adversely affected by past coal mining activities.

"Prior balance replacement funds" means moneys that the Office must distribute to the Commission instead of moneys the Office allocated to the Commission's State share of the Fund before October 1, 2007, but did not distribute to the Commission because Congress did not appropriate them. Prior balance replacement funds come from the U.S. Treasury that are otherwise unappropriated. Under section 411(h)(1) of the SMCRA, the Office distributes prior balance replacement funds to the Commission for seven years starting in the Federal fiscal year beginning October 1, 2008.

"Program" or **"Oklahoma Abandoned Mine Land Reclamation Program"** means the program established by the State for the reclamation of land and water adversely affected by past coal mining, operated under the provisions of the State Abandoned Mine Land Reclamation Plan including annual application for grants under the State Plan.

"Secretary" means the Secretary of the United States Department of the Interior.

"SMCRA" means the Surface Mining Control and Reclamation Act of 1977.

"State share funds" are moneys the Office distributes to the Commission from the State share of the Fund each Federal fiscal year under Section 402(g)(1)(A) of the SMCRA.

155:15-1-4. Oklahoma Abandoned Mine Land Reclamation ~~Fund~~ Funds

(a) Revenue to the Abandoned Mine Reclamation Fund shall include:

(1) Amounts granted to the State by the Office for the purpose of conducting the Program.

(2) Moneys collected by the State from charges for use of land acquired or reclaimed with moneys from the Fund.

(3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands that had been reclaimed with moneys from the Fund.

(4) Moneys recovered by the State from the sale of lands acquired with moneys from the Fund.

(5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the Program.

(b) **"Make up funds"** are additional moneys the Office distributes each Federal fiscal year to the Commission to make up the difference between the total distribution of other funds and $3 million. Make up funds may not be used by the Commission for Acid Mine Drainage set-asides, for water supply restoration under Section 403(b), for noncoal reclamation under Section 409(b), and for stand alone Priority 3 problems.

(c) **"Historic coal funds"** are moneys provided under Section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in Oklahoma in which Oklahoma has an interest, under the Surface Mining Control and Reclamation Act Amendments of 2006, that were enacted as Division C, Title II,, Subtitle A of P.L. 109-432, each year the Office allocates and distributes 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic funds to supplement grants to Oklahoma. Historic coal funds also include moneys reallocated by the Office under sections 401(f)(3)(A)(I), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including: the moneys the Office reallocates based on prior balance replacement funds distributed under the Code (30 CFR 872.29), that will be available to supplement grants beginning with Federal fiscal year 2023; and the moneys the Office reallocates based on certified in lieu funds distributed under the

Code (30 CFR 872.32), that will be available to supplement grants in Federal fiscal years 2009 through 2022.

(d) **"State share funds"** are moneys the Office distributes to the Commission from Oklahoma's share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Oklahoma's State share of the Fund is 50 percent of the reclamation fees the Office collected from within Oklahoma and allocated to the Oklahoma in the Fund for coal produced in the previous fiscal year.

(e) **"Prior balance replacement funds"** are moneys the Office must distribute to the Commission instead of the moneys the Office allocated to the Commission of the Fund before October 1, 2007, but did not distribute to the Commission because Congress did not appropriate them. They come from general funds of the United States Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, the Office distribute prior balance replacement funds to the Commission for seven years starting in October 1, 2008.

155:15-1-5. Eligible lands and water

(a) Coal mined lands and associated waters are eligible for reclamation activities if:

(1) They were mined or affected by mining processes before August 3, 1977; and

(2) They were left or abandoned either unreclaimed or inadequately reclaimed; and

(3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund ~~may be sought~~ or any prior balance replacement funds maybe used; and

(4) There is a continuing condition that substantially degrades the quality of the environment, prevents or damages the beneficial use of the land or water resources, or endangers the health or safety of the public.

(b) Notwithstanding subsection (a) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and ending

(A) on or before January 19, 1981, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(B) on November 5, 1990, and that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority one ~~by the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices or a priority~~ or two ~~site by the protection of public health, safety, and general welfare from adverse effects of coal mining practices~~ pursuant to section 403(a)(1) and (2) of SMCRA. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(c) If reclamation of a site covered by an interim or permanent program permit is carried out under the Program, the permittee of the site shall reimburse the Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the Commission performing reclamation under subsection (b) of this Section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of ~~the Act~~ SMCRA nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of ~~the Act~~ SMCRA.

(d) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of ~~the Act~~ SMCRA shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant, the Secretary shall immediately exercise his/her authority under Section 410 of ~~the Act~~ SMCRA.

(e) The Commission may expend funds made available under paragraphs 402(g)(1) and (5) of the SMCRA and prior balance replacement funds under section 411(h)(1) of the SMCRA for the reclamation and abatement of any site eligible under paragraph (b) of this Section, if the Commission, with the concurrence of the Secretary, makes the findings required in paragraph (b) of this Section and the Commission determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraph (a) of this Section that qualify as a Priority 1 of 2 site under section 403(a) of the SMCRA.

(f) With respect to lands eligible under paragraph (b) or (e) of this Section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

155:15-1-6. Reclamation objectives and priorities

Reclamation projects should be accomplished in accordance with the Office's "Final Guidelines for Reclamation Programs and Projects" as printed in Volume ~~45~~ 66 of the Federal Register ~~pages 14810-14819 on March 7, 1980.~~ page 31250, June 11, 2001 ~~Generally, projects lower than a priority~~

~~two should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority one or two site~~. Reclamation projects shall meet one or more of the objectives stated in this Section. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives. The following objectives are stated in the order of priority with the highest priority first:

~~(1) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.~~

~~(2) Protection of public health, safety, and general welfare from adverse effects of past coal mining practices that do not constitute an extreme danger.~~

~~(3) Restoration of eligible land and water and the environment degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife habitat, recreation resources, and agricultural productivity.~~

~~(4) Protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.~~

~~(5) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under this Program for recreation, historic and conservation purposes and open space benefits.~~

(1) **Priority 1.** The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) **Priority 2.** The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) **Priority 3.** The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with exiting or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(A) or (a)(2)(B) of this Section.

155:15-1-6.1. Water supply restoration

(a) Any State that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under the Code (30 CFR 872.16, 872.19, 872.23,and 872.31) for water supply restoration projects. For purposes of this section, "water supply restoration projects" are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State may expend up to thirty (30) percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in the Code (30 CFR 874.12(b)), if the Commission finds in writing, as part of its eligibility opinion, that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of SMCRA, the project shall remain eligible, notwithstanding the criteria specified in the Code (30 CFR 874.12(b)), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

155:15-1-7. Reclamation project evaluation

Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this Section. This evaluation will be undertaken by the Commission ~~and by the Conservation District in which the reclamation activity takes place~~. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives in terms of factors set forth below as a means of identifying conditions that should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

(1) The need for reclamation work to accomplish one or more specific reclamation objectives.

(2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

(3) The specific benefits to be considered when evaluating reclamation projects shall include but are not limited to~~:~~ the reclamation objectives and priorities in 155:15-1-6.

~~(A) Protection of human life, health, or safety.~~

~~(B) Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources and recreation resources.~~

~~(C) Protection of public or private property.~~

~~(D) Abatement of adverse social and economic impacts of past coal mining on persons or property including employment, income, and land values or uses, or assistance to persons disabled, displaced or dislocated by past coal mining practices.~~

~~(E) Improvement of environmental conditions may be considered to enhance the quality of human life.~~

~~(F) Improvement of the use of natural resources, including post reclamation land uses that:~~

~~(i) Increase the productive capability of the land to be reclaimed.~~

~~(ii) Enhance the use of surrounding lands consistent with existing land use plans.~~

~~(iii) Provide for construction or enhancement of public facilities.~~

~~(iv) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.~~

~~(G) Demonstration to the public and industry of methods and technologies that can be used to reclaim areas disturbed by coal mining.~~

(4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

(5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

(6) The availability of additional coal or other mineral or material resources within the project area that:

(A) Indicates a reasonable probability that the desired reclamation will be accomplished during the process of future mining.

(B) Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

(7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.

(8) The probability of post reclamation management, maintenance, and control of the area consistent with the reclamation completed.

155:15-1-7.1. Rights of entry

(a) **Criteria.** This Section establishes procedures for entry by the Commission or the Office for reclamation purposes. Under Section 410 of SMCRA, the Commission or the Office pursuant to an approved reclamation program, may use police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

(b) **Written consent for entry.** Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

(c) **Entry and consent to reclaim.** The Commission, the Office, or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained. If consent is not obtained, then, prior to entry under this section, the Commission or the Office shall find in writing, with supporting reasons that:

(1) Land or water resources have been or may be adversely affected by past coal mining practices.

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken.

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the Commission, the Office, or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(d) **Failure to Obtain Consent.** If consent is not obtained, the Commission or the Office shall give notice of its intent to enter for purposes of conducting reclamation at least thirty (30) days before entry upon the property. The following procedures should be conducted when providing notice:

(1) Notice to a known owner shall be in writing and mailed return receipt requested with an attached copy of the findings as required by this section.

(2) If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

(e) **Entry for emergency study or reclamation.** The Commission, the Office, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exits and on any other land to have access to the land where the

emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare. Entry requirements are as follows:

(1) Prior to entry under this section, the Office shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with section 410 of SMCRA; and

(2) The Office shall not be required to provide notice to the owner prior to entry for emergency reclamation. The Commission or the Office shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with this section.

155:15-1-8. Reclamation ~~of~~ on private lands

~~(a) **Criteria.** Reclamation activities may be carried out on private land if a consent to enter is obtained or if entry is required and made.~~

~~(b) **Rights of entry.** This subsection outlines the Commission's (or its agents, employees, or contractors) rights of entry for purposes of study and reclamation.~~

~~(1) **Consent to enter.** The Commission (or its agents, employees, or contractors) shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of entry for study or reclamation. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which that, at a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the land, and any special conditions for entry. This statement shall not include any commitment by the Commission to compensate the owner for entry or to perform reclamation work. The entry shall not be construed as an act of condemnation of property nor of trespass.~~

~~(2) **Non consent.** If the owner of the land to be entered under this subsection will not provide consent to entry, the Commission shall give notice in writing to the owner of its intent to enter for purposes of study or reclamation. The notice shall be sent by mail, certified, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.~~

~~(c) **Entry for studies or exploratory work.** The Commission (or its agents, employees, or contractors) shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Rights of entry for studies or exploratory work are governed by the provisions outlined in subsection (b) of this Section.~~

~~(d) **Entry for reclamation.**~~

~~(1) The Commission shall give notice of its intent to enter for the purpose of conducting reclamation at least 30 days before entry upon the property. Otherwise, rights of entry for reclamation shall be governed by the provisions of subsection (b) of this Section.~~

~~(2) Prior to entry under this subsection, when the landowner is not known or readily available or the landowner will not give permission for reclamation, the Commission shall find in writing with supporting reasons that:~~

~~(A) Land or water resources have been adversely affected by past coal mining practices.~~

~~(B) Adverse effects from past coal mining activities are at a stage where, in the interest of the public heath, safety, or the general welfare, action should be taken to restore, reclaim, abate, control or prevent these adverse conditions.~~

~~(e) **Entry for emergency study or reclamation**~~

~~(1) Emergency studies or reclamation can be performed with either State or Federal monies from the Fund. When Federal source monies are used, a declaration of an emergency must come from the Office. When the Office declares an emergency, the Commission may serve as the agent to perform emergency study or reclamation work.~~

~~(2) The Commission (or its agents, employees, or contractors) shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to study, investigate, restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.~~

~~(3) Notice to the owner shall not be required prior to entry for emergency studies or reclamation. The Commission shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be sent by mail, certified, return receipt requested, to the owner, if known, and shall include a copy of the findings required by paragraph (4) of this subsection. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this subsection may be inspected or obtained.~~

~~(4) Prior to entry for emergency reclamation, the Commission shall make a written finding with supporting reasons that:~~

~~(A) An emergency exists constituting a danger to the public health, safety, or general welfare.~~

~~(B) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary.~~

~~(C) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.~~

~~(5) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.~~ This section authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Commission.

(1~~f~~) **Appraisals.** When private land is to be reclaimed and is subject to a lien under ~~Subsection (g) of~~ this ~~Section~~ section, a notarized appraisal shall be obtained from an independent appraiser.

~~(1) The appraisal shall state:~~

~~(A) The estimated market value of the property in its unreclaimed condition, and~~

~~(B) The estimated market value of the property as reclaimed.~~

~~(2)~~ The appraisal shall be made prior to the start of reclamation work. The Commission shall furnish to the appraiser information of sufficient detail to make ~~such~~ the appraisals. The Commission shall provide ~~appraisal standards consistent with generally accepted appraisal practices.~~ the following:

(A) An appraisal standards consistent with generally accepted appraisal practices.

(B) When reclamation requires more than six (6) months to complete, an updated appraisal under (1) above of this section shall be made to determine if the increase in value as originally appraised has actually occurred.

(C) An updated appraisal shall not include any increase in value of land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien.

(2~~g~~) **Liens.**

~~(1) The Commission shall place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the pre- and post construction appraisals:~~

~~(A) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the coal mining operation which necessitated the reclamation work;~~

~~(B) The Commission shall waive the lien if the cost of filing it, including indirect costs, exceeds the increase in fair market value as a result of reclamation work; and~~

~~(C) The lien shall be waived if the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result is a significant increase in the market value of the land as it existed immediately before the occurrence.~~

~~(2) If a lien is to be filed, the Commission shall, within six months after completion of the reclamation work, file a statement in the County Clerk's office for the lands to be liened. Such statement shall consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded;~~

~~(3) Within 60 days after the lien is filed, the landowner may request a hearing before the Commission to determine the increase in the market value as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The increase in value shall constitute the amount of the lien and shall be recorded with the statement filed under paragraph (2) of this Subsection. Any party aggrieved by the decision may appeal as provided by law; and~~

~~(4) The Commission shall maintain or renew liens from time to time as may be required under State law.~~ The Commission has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value.

(A) Exceptions that apply are as follows:

(i) A lien must not be placed against the property of a surface owner who did not consent to, participate in or exercise control over the mining operation which necessitated the reclamation work.

(ii) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Commission pursuant to the Section 408 in SMCRA and consistent with Oklahoma laws governing liens.

(iii) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located, or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence.

(iv) The Commission may waive the lien if the cost of filing it, including indirect costs to the Commission exceeds the increase in fair market value as a result of reclamation activities.

(B) If a lien is to be filed, the Commission shall, within six (6) months after the completion of the reclamation work, file a statement in the County Clerk's office for the land to be liened. Such statement shall consist of notarized copies of the appraisals obtained under 155:15-1-10(a) and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in the County Clerk's office provided however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved. Within sixty (60) days after the lien is filed, the landowner may petition a hearing before the Commission to determine the increase in market value of the land as a result of the reclamation work. Any aggravated party may appeal as provided by law.

(3~~h~~) **Satisfaction of liens.** Liens placed on private property under ~~the provisions of Subsection (g) of~~ this ~~Section~~ section shall be satisfied in one of the following ways:

~~(1) at the time of transfer of ownership; or~~

~~(2) at any time the landowner chooses prior to transfer of ownership.~~

(A) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(B) When the Commission files a lien on private property it shall maintain or renew the lien from time to time as may be required by State or local law.

(C) Moneys derived from the satisfaction of liens established under this section shall be deposited in the appropriate abandoned mine reclamation fund account.

155:15-1-9. Acquisition of land and water for reclamation

(a) Land and/or water adversely affected by past coal mining practices may be acquired with moneys from the Fund if~~:~~ approved in advance by the Office. The Office shall find in writing that acquisition is necessary for successful reclamation and that the following conditions are met:

(1) The acquired land and/or water will serve recreation, historic, conservation, and reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(2) Permanent facilities~~, such as a mine drainage treatment plant or a relocated stream channel,~~ will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) ~~Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund if the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Program or if public ownership is desirable to meet an emergency situation and prevent reoccurrence of adverse effects of past coal mining practices.~~ The Commission, if approved in advance by the Office, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds.

(1) Before the approval of the acquisition, the Commission will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of the Commission's reclamation program.

(2) Where an emergency situation exists and a written finding as set out in 155:15-1-7.1(e) has been made, the Commission may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) ~~The Commission shall acquire only such interests in the land and/or water as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:~~

~~(1) Such interests are necessary to the reclamation work planned or the postreclamation use of the land.~~

~~(2) Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.~~ Land adversely affected by past coal mining practices may be acquired by the Commission if the acquisition is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

(d) The Commission when acquiring land shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(1) The customary practices and laws of Oklahoma in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the postconstruction use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

155:15-1-10. Procedures for acquisition

(a) An appraisal ~~of the fair market value~~ of all land or interest in land to be acquired shall be obtained by the Commission. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past ~~coal~~ mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) ~~Title to all interest in land acquired shall be in the name of the State and shall be recorded in accordance with applicable State law~~ The Commission when acquiring land or interests in land under this section, shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq., and 41 CFR part 114-50.

~~(e) Prior approval by the Director of the Office is required on lands acquired with Federal source monies from the Fund. Acquisition procedures shall follow all appropriate Federal requirements.~~

155:15-1-11. Acceptance of gifts of land

(a) The Commission under an approved reclamation plan may accept donations of title to land or ~~interest~~ interests in land ~~that is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the Program~~ if the land proposed for donation meets the requirements in 155:15-1-9.

(~~1~~b) Offers to make a gift of ~~such~~ land or interests in land shall be in writing and shall include:

(~~A~~1) A statement of the interest that is being offered.

(~~B~~2) A legal description of the land and a description of any improvements on it.

(~~C~~3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

(~~D~~4) A statement that:

(~~i~~A) The donor is the record owner of the interest being offered.

(~~ii~~B) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.

(~~iii~~ C) There are no adverse claims against the interest offered.

(~~iv~~ D) There are no unredeemed tax warrants outstanding against the interest offered.

(~~v~~E) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

(~~E~~5) An itemization of any unpaid taxes or assessments levied, assessed, or due which could operate as a lien an the interest offered.

(~~2~~c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Oklahoma Abandoned Mine Reclamation Act of 1981." Title to all donated land shall be in the name of the State of Oklahoma.

155:15-1-12. Management of acquired lands

(a) Land acquired under 155:15-1-9 and 155:15-1-11 may be used pending disposition under 155:15-1-13 for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.

(b) Any user of land acquired under Sections 155:15-1-9 and 155:15-1-11 shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the State for providing the benefit, whichever is appropriate. The Commission may waive the fee if found in writing that such a waiver is in the public interest.

(c) All ~~use~~ user fees collected shall be deposited in the Abandoned Mine Reclamation Fund, unless previously appropriated or otherwise authorized by the Legislature, for the specific purpose of operating and maintaining improvement of the land.

155:15-1-13. Disposition of lands

(a) ~~Disposition of lands acquired with Federal monies from the Fund by the Commission must receive prior approval from the Director of the Office. Disposition of lands acquired by the Commission with either State or Federal monies will be governed by subsections (b) through (f) of this Section.~~ Prior to the disposition of any land acquired under 155:15-1-9, the Commission shall publish a notice of proposed land disposition, hold public hearings, and make written findings in accordance with the authority contained in section 407(g)(2) of SMCRA.

(b) Prior to disposition of any acquired land the Commission shall:

(1) Publish a notice that describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least thirty (30) days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held.

(2) Schedule such hearings at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least thirty (30) days before the hearing.

(3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State, or Federal laws or regulations that apply.

(c) The Commission may transfer title or administrative responsibility for land acquired under this part to any agency or political subdivision of the State with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(1) The purposes for which the land may be used consistent with the authorization under which the land was acquired.

(2) The administrative responsibility for the land will revert to the Commission if, at any time in the future, the land is not used for the purpose specified.

(d) The Commission, with the approval of the Oklahoma Legislature, may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office, and maintain a preference right to the purchase of such land from the Office after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the Commission.

(e) The Commission may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by the State, or disposal under other paragraphs of this ~~Section~~ section, is not in the public interest. Disposal procedures will be in accordance with Section 407(g) of SMCRA and applicable State requirements.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding that includes at a minimum:

(A) Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants that will be a condition of the sale, and state the time and place of the sale.

(B) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(f) All moneys received from disposal of land under this ~~Section~~ section shall be deposited in the Fund.

155:15-1-14. Utilities and other facilities [REVOKED]

~~(a) If the Commission has not certified the completion of all coal-related reclamation under Section 411(a) of the Act, the Commission may expend up to 30 percent of the funds granted annually to the Commission, pursuant to the authority in Sections 402(g) (1) and (5) of the Act, for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.~~

~~(b) If the adverse effect on water supplies referred to in this Section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified under 155:15-1-5 (a) (1) and (2), if the Commission finds in writing, as part of its eligibility opinion, that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.~~

~~(c) If the adverse effect on water supplies referred to in this Section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified under 155:15-1-5 (a) (1) and (2), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.~~

~~(d) Enhancement of facilities or utilities under this Section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.~~

155:15-1-15. Future set-aside

~~This Section provides requirements for the award of grants to the Commission for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.~~

(~~1~~a) The Commission may receive and retain without regard to the three-year limitation referred to in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the ~~grant~~ funds ~~made~~ distributed annually to the Commission, pursuant to the authority in Sections 402(g)(1) and (5) of ~~the Act if such amounts are deposited into either of the following:~~ SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006.

~~(A) A special fund established under State or Indian tribal law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State or Indian tribe solely to achieve the priorities stated in Section 403(a) of the Act after September 30, 1995.~~

~~(B) An acid mine drainage abatement and treatment fund pursuant to 155:15-1-16.~~

~~(2) Prior to receiving a grant pursuant to this Section, the Commission must:~~

~~(A) Establish a special fund account providing for the earning of interest on fund balances.~~

~~(B) Specify that monies in the account may only be used after September 30, 1995, by the Commission to achieve the priorities stated in Section 403(a) of the Act.~~

~~(3) After the conditions specified in (1) and (2) of this Section are met, a grant may be approved and monies deposited into the special fund account. The monies so deposited, together with any interest earned, shall be considered State monies.~~

(b) The Commission must deposit all set-aside funds awarded into a special fund established under State law. The Commission must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(c) Moneys the Commission deposited in the special fund account, together with any interest earned, are considered State moneys.

155:15-1-16. Acid mine drainage treatment and abatement

In order to establish an Acid Mine Drainage Treatment and Abatement Program, the Commission must meet certain criteria to be eligible.

(1) Beginning December 20, 2006, ~~The~~ the Commission having an approved reclamation program may receive

and retain, without regard to the ~~three-year~~ limitation ~~set forth~~ in section 402(g)(1)~~(D)~~ of ~~the Act~~ SMCRA, up to ~~10~~ thirty (30) percent of the total of the ~~grants made under Section~~ funds distributed annually to the Commission under section 402(g)(1) ~~and (5)~~ of SMCRA (State share funds) and section 402(g)(5) of ~~the Act~~ SMCRA (Historic coal funds). For funds awarded before December 20, 2006, any uncertified State may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this Section must be deposited into an acid mine drainage abatement and treatment fund established under State law. ~~for the purpose of abandoned mine land reclamation if such amounts are deposited into either:~~

~~(A) A special fund established under State law pursuant to which such amounts (together with all interest earned) are expended by the Commission solely to achieve the priorities stated in Section 403(a) after September 30, 1995.~~

~~(B) An acid mine drainage abatement and treatment fund established under State law.~~

(2) ~~The Commission may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the Commission to implement, in consultation with the United States Department of Agriculture's Natural Resources Conservation Service, acid mine drainage abatement and treatment plans approved by the Director.~~ Before depositing funds under this section, the Commission must:

(A) Establish a special fund account providing for the earning of interest on fund balances.

(B) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

(3) ~~Acid Mine Drainage Abatement Plan shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The Acid Mine Drainage Abatement Plan shall include, but shall not be limited to, each of the following~~

~~(A) An identification of the qualified hydrologic unit.~~

~~(B) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.~~

~~(C) An identification of the sources of acid mine drainage within the hydrologic unit;~~

~~(D) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.~~

~~(E) The cost of undertaking the proposed abatement and treatment measures.~~

~~(F) An identification of existing and proposed sources of funding for such measures.~~

~~(G) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.~~ As used in this section, a "qualified hydrologic unit" means a hydrologic unit:

(A) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(B) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(4) After the conditions specified in paragraphs (1) and (2) of this section are met, the Office may approve a grant and the Commission may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State moneys.

[OAR Docket #10-1057; filed 6-21-10]

TITLE 155. OKLAHOMA CONSERVATION COMMISSION
CHAPTER 45. CONTROLLED BURN INDEMNITY FUND

[OAR Docket #10-1058]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
155:45-1-1 through 155:45-1-4 [NEW]
Subchapter 3. Pre-Qualifying Application Process [NEW]
155:45-3-1 through 155:45-3-2 [NEW]
Subchapter 5. Claims Process [NEW]
155:45-5-1 through 155:45-5-7 [NEW]
AUTHORITY:
The Oklahoma Conservation Commission pursuant to the Oklahoma Controlled Burn Indemnity Fund contained in 2 O.S. 2007 § 16-28.3; and the Oklahoma Conservation Commission and the Conservation District Act contained in 27A O.S. 2001 §§ 3-1-101 et seq.
DATES:
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ANALYSIS:
These rules are to assist in the implementation of the Oklahoma Controlled Burn Indemnity Fund Program contained at 2 O.S. 2007 § 16-28.3. The intent of this program is to provide landowners, who perform properly planned and executed controlled burns (prescribed fires), some limited coverage for property losses incurred from a fire beyond the control of the burner (agent/landowner). These rules allow the Indemnity Fund Program to organize and maintain itself by defining eligible parties, allowable costs and standards that will protect the health, safety and welfare of the state and its environment. These proposed rules also set out the procedures for speedy and timely reimbursement of allowable costs to eligible parties.
CONTACT PERSON:
Darrel Dominick, (405) 372-7102

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 AUGUST 2, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

155:45-1-1. Purpose and Authority

The rules in this Chapter are promulgated for the purpose of establishing and administering the Oklahoma Controlled Burn Indemnity Fund, pursuant 2 O.S. § 16-28.3. This program will provide landowners, who perform properly planned and executed controlled burns, compensation for eligible losses incurred from a fire that spreads beyond the control of the burner except for losses covered by insurance.

155:45-1-2. Program intent

Participation in this program is voluntary and does not in anyway preclude or prevent a person from conducting a lawful burn pursuant to 2 O.S. §§ 16-24.1 and 16-28.1. The intent of the program is to encourage the use of prescribed fire to manage grasslands for brush encroachment and maximum forage production in a manner and to a level of completion which will protect the public health, safety and welfare and minimize damage to the environment and property.

155:45-1-3. Definitions

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

"Applicant" means a person making an application.

"Application" means a petition or any written request for authority, approval, determination, permission, or other Commission action or relief pursuant to these rules. An application also includes the standard state form for applying for pre-qualification, including any supplemental materials, additions, revisions, or modifications to the forms.

"Claim" means a properly submitted petition or written request for the investigation, determination, verification, approval, or other Commission action for payment from the Fund to person's suffering losses determined eligible for payment pursuant to these rules. A claim includes the standard state form for payment from the Fund, and shall also include any supplemental materials, additions, revisions, attachments, or modifications.

"Commission" means the Oklahoma Conservation Commission.

"Controlled burn or burning" or "prescribed burn or fire" means the act of utilizing fire for land management purposes for which advance preparations are made to limit the spread of fire onto adjoining lands.

"Controlled Burn Plan" means a detailed document prepared with the assistance of the local conservation district and the NRCS based on NRCS guidelines for the purpose of planning the appropriate precautionary safety measures to insure that a controlled burn is contained to a predetermined area.

"Fund" means the Controlled Burn Indemnity Fund.

"Landowner" means any and all persons who holds title to the property on which a controlled burn is to be conducted. It also includes a consortium, a joint venture, a commercial entity, and the United State Government.

"NRCS" means the Natural Resource Conservation Service of the United states Department of Agriculture.

"Person" means any institution, individual, public or private corporation, partnership, proprietorship, association, firm, company, limited partnership, limited liability company, joint venture, public trust, joint-stock company, syndicate, trust, organization, estate, governmental entity, tribe, or any other legal entity or an agent, employee, representative, assignee or successor.

155:45-1-4. Informal complaint process

(a) Any person may complain to the Commission about any matter regarding this program under the Commission's authority. A complaint shall be in writing, and it shall include the following information:

(1) The name, address, and telephone number of the person making the complaint;

(2) The name, address, and telephone number of the organization the person represents, if applicable;

(3) The name, address, telephone number, and title of any representative of the person filing the complaint;

(4) A brief, clear description of each charge, problem, or issue that is the basis for the complaint including names, dates, places, and actions;

(5) The numbers and headings of the laws and rules that may apply;

(6) The remedy, if any, the person making the complaint seeks;

(7) The signature of the person making the complaint; and

(8) The date of the complaint.

(b) If the complaint is repetitive, concerns a matter that has already been resolved, or is a matter outside the Commission's

authority, the Executive Director or the Executive Director's designee may reject the complaint.

(c) The Executive Director or the Executive Director's designee may provide other affected persons with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response shall contain the following information:

(1) The name, address, and telephone number of the person responding;

(2) The name, address, and telephone number of the organization the person represents, if applicable;

(3) The name, address, telephone number, and title of any representative of the person responding;

(4) A specific admission, denial, or explanation of each charge;

(5) A brief, clear description of the facts including names, dates, places, and actions;

(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;

(7) The numbers and headings of the laws and rules that may apply;

(8) The signature of the person responding; and

(9) The date of the response.

(d) The Executive Director or the Executive Director's designee may refer complaints to informal procedures, including but not limited to telephone calls, letters, meetings, mediation, investigations, or other appropriate procedures.

(e) The Executive Director or the Executive Director's designee shall make a decision about a complaint within sixty (60) calendar days after its receipt, unless more time is required. In that case, the Commission shall notify in writing the person filing the complaint and persons filing any responses to the complaint informing the persons that additional time is needed to reach a decision.

SUBCHAPTER 3. PRE-QUALIFYING APPLICATION PROCESS

155:45-3-1. Application

(a) **Pre-qualification.** To pre-qualify for coverage under the Program an applicant must apply to the Program prior to performing the prescribed burn.

(b) **Obtaining an application.** An applicant may obtain an application from the Commission.

(c) **Contents.** Applications shall be submitted on a form provided or in a format designated by the Commission. The application shall contain, at a minimum, the following information:

(1) The name, address, and phone number of the applicant;

(2) A copy of the applicable controlled burn plan;

(3) Statement clarifying applicant's authority to apply a lawful burn to the property;

(4) A statement, signed by the title holder of the property, that acknowledges awareness of the controlled burn plan and applicant's intent to utilize fire on the property; and

(5) Any other records or documents requested by the Commission.

(d) **Fee.** The application shall be accompanied by payment of one hundred dollars ($100.00). The fee shall be paid by check, certified check, or United States Postal Money Order.

(e) **Application review.** The Commission shall provide applicants with the necessary forms and shall process applications within thirty (30) calendar days. If more time is needed to make a determination then the Commission shall notify an applicant of the need and indicate in writing the new estimated date for determination.

155:45-3-2. Commission action on applications

(a) **Approval.** When the Commission is satisfied that all requirements for pre-qualification have been met, then an approval letter shall be issued to the applicant.

(b) **Denial.** Any denial of an application shall be stated in a denial letter and provided to the applicant, along with the reasons that the application was denied. The denial letter shall also advise the applicant of their right of appeal.

(c) **Withdrawal**. Any application may be withdrawn by the applicant at any time by submitting a written request to the Commission. The applicant's application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this rule shall not be refunded to the applicant.

SUBCHAPTER 5. CLAIMS PROCESS

155:45-5-1. Qualification for claim coverage

(a) **Pre-approval.** The applicant must have received an approval letter from the Commission prior to conducting the prescribed burn.

(b) **Implementation of burn plan.** The applicant must have strictly adhered to the pre-approved controlled burn plan.

(c) **Losses.** Applicant must have unintentionally lost control of the fire resulting in losses to another person's property not already covered by insurance.

155:45-5-2. Claims

(a) **Obtaining a claim form.** Claimants may obtain a claim form from the Commission.

(b) **Contents.** Claims shall be submitted on a form provided or in a format designated by the Commission. The claim shall contain, at a minimum, the following information:

(1) Copy of the pre-approved Controlled Burn Plan with supporting documents and other information verifying compliance of the plan at the time of the controlled burn;

(2) Copy of the pre-qualification approval letter;

(3) Detailed description and summary of the burn event resulting in the filing of the claim;

(4) Non-Ownership/Participation Affidavit;

(5) Losses statement along with an itemized list of the losses;
(6) Any and all documentation and photos showing and verifying the losses;
(7) List of insurance policies or other financial mechanisms that could
(8) Information deemed by the Commission to substantiate a claim of a person suffering a loss other than the applicant/claimant; and
(9) Any other information requested by the Commission when deemed warranted supporting the verification of the claim.

(c) In those cases where an applicant has submitted an application, received a pre-qualification approval letter, and met the qualifications for claim coverage but is unavailable or unwilling to file a claim on behalf of a person suffering eligible loses due to the applicant's prescribed fire then the Director of the Conservation Programs Division of the Commission may execute a claim on that person's behalf.

155:45-5-3. Filing period

(a) **Time to file.** A claimant must submit the claim to the Commission within sixty (60) calendar days of the damage or loss. If the claim of loss is not presented within the time and in the manner required, the claim shall be forever barred and denied and the landowner shall forfeit all rights to remuneration or payment.

(b) **Extension request.** A claimant may request in writing an additional sixty (60) calendar day extension for filing the claim to the Commission. The extension request must be received by the Commission at least ten (10) calendar days before the end of the original sixty (60) days and it must show that the claimant was not provided notification and reasonable time to file the claim.

(c) **Extension request review.** Upon receipt of the extension request the Commission shall review the request and make a determination in writing as to its approval or denial within five (5) calendar days. Any denial of an extension request shall include the reasons that the request was denied.

(d) **Withdrawal**. Any claim may be withdrawn by a claimant at any time by submitting a written request to the Commission. The claim will be automatically withdrawn upon receipt of the request by the Commission.

155:45-5-4. Eligible losses

Eligible losses include but are not limited to the following:
(1) Vehicles and equipment;
(2) Buildings and structures;
(3) Personal Property;
(4) Crops;
(5) Pasture/grass;
(6) Animals (excluding wildlife);
(7) Hay;
(8) Fences;
(9) Other appurtenances;
(10) Veterinary bills for injury to animals; and
(11) Other losses as determined by the Commission.

155:45-5-5. Non-eligible losses

Non-eligible damages include but are not limited to the following:
(1) Controlled burns on state or federal lands or conducted by state or federal governments;
(2) Any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for losses claimed;
(3) Loss of time;
(4) Loss of business;
(5) Smoke damage;
(6) Loss of wildlife habitat;
(7) Injury to or loss of human life;
(8) Any damages or punitive damages awarded against claimant or applicant in any legal proceeding;
(9) Attorney or legal fees;
(10) Losses from an unapproved controlled burn; and
(11) Other losses as determined by the Commission.

155:45-5-6. Commission action on claims

(a) Upon receipt of a claim the Commission shall investigate and verify the claim using protocols established by or approved by the Commission and issue a determination in writing of the losses eligible for payment under the Fund within ninety (90) calendar days. If more time is needed to make a determination then the Commission shall notify a claimant of the need and indicate in writing the new estimated date for determination of the claim.

(b) The Commission shall pay from the Fund all persons suffering eligible losses as soon as practicable and not later than one (1) year following the date that the claim was filed.

(c) The price of losses per acre of land shall be established on the day of the loss and shall be for the full market value on that day.

(d) If there is an insufficient amount of funds in the Fund to cover all claims for a certain year, payments shall be made on a pro rata basis up to one hundred percent (100%) of the total loss to each person.
(1) If payment is not received in the amount of one hundred percent (100%) of total loss for a certain year, then additional amounts shall be paid as funds become available in succeeding years until repayment of one hundred percent (100%) of total loss is attained.
(2) If, at any time, a person receives payment totaling more than one hundred percent (100%) of total loss, the excess payment shall be returned to the Fund within thirty (30) days.
(3) Upon final payment of a claim from the Fund, the person receiving the payment shall subrogate the interest to the Conservation Commission in a cause of action against any and all parties, to the amount of loss that the person was reimbursed by the Fund.

(e) The Commission shall establish protocols and procedures for the issuance of payments from the Fund to person's suffering eligible and verified losses.

155:45-5-7. Withholding payment

The Commission may withhold payment from the Fund if any of the following apply:

(1) Offsetting charges;

(2) Conflicting, duplicate or unclear assignments;

(3) Subrogation of payments;

(4) Pending legal action pertaining to the payment of claims;

(5) Clarification of possible third party payors; or

(6) Investigation or pending investigation of suspected illegal or improper activity.

[OAR Docket #10-1058; filed 6-21-10]

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

[OAR Docket #10-1032]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [AMENDED]
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ANALYSIS:
The proposed rule change will clarify the exceptions and exemptions by which students may meet the graduation requirements for end-of-instruction exams to comply with the requirements set forth in 70 O. S. § 1210.523
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams

(a) **Definitions.** Words and terms in this section shall have the following meaning:

(1) **"Alternate method"** means demonstrating mastery of state curriculum standards through an End of Course Project designed and approved by the State Board of Education. An End of Course Project is a project integrating and applying the knowledge and skills gained throughout a course to address a practical, real world challenge.

(2) **"Alternate test"** means a state or national test approved by the Oklahoma State Board of Education for one or more of the subject areas assessed by an end-of-instruction exam, which equals or exceeds the rigor of the end-of-instruction exam.

(3) **"Extenuating Circumstances"** means circumstances which are unexpected, significantly disruptive, beyond a student's control, and which may have reasonably affected his/her academic performance.

(4) **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) In accordance with 70 O.S. § 1210.523 A-E, students may graduate from a public high school with a standard diploma by demonstrating mastery in the state academic content standards for Algebra I; English II; and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History by attaining at least a satisfactory or proficient score on the end-of-instruction exams or in the following way:

(1) Students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams in Algebra I, English II, and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History may be eligible to graduate with a standard diploma by completing steps below until a satisfactory or proficient score is attained and meeting all other graduation requirements:

(A) Step One: Students shall be provided one or more remediation opportunities and will either:

(i) Retake the end-of-instruction exam(s); or

(ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end-of-instruction exam.

(B) Step Two: Students who do not achieve a satisfactory or proficient score through step one shall continue to receive remediation opportunities and will either:

(i) Retake the end-of-instruction exam(s); or

(ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end-of-instruction exam; or

(iii) Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in (b)(2) of this section.

(C) Students who do not meet the graduation requirements through Step Two may repeat Step Two as necessary. School districts will only provide remediation for students while they are enrolled in public school.

(D) An alternate test may be used to meet the graduation requirements for more than one end-of-instruction exam. A student may take more than one alternate test to meet the graduation requirements.

(E) Remediation opportunities will be outlined in the local school district remediation plan (70 O.S. § 1210.523). School districts shall document a student's failure to participate in remediation including written acknowledgement of the graduation requirements by the student's parent or guardian.

(F) School districts shall document a student's failure to complete test retake opportunities including written acknowledgement by the student's parent or guardian of the graduation requirements related to end-of-instruction tests.

(2) Demonstration of mastery through an End of Course Project (Alternate Method).

(A) In order to demonstrate mastery and graduate through an alternate method on end of instruction exams, students must complete an End of Course Project for Algebra I, Algebra II, Biology I, English II, English III, Geometry, or United States History. End of Course Projects will be designed by the State Department of Education and approved by the State Board of Education.

(i) End of Course Projects for English II and English III must include a response to literature and a writing sample of comparable rigor to the end-of-instruction exams.

(ii) End of Course Projects for Biology I must include the process standards as assessed through laboratory experiments.

(B) School districts, shall submit completed student End of Course Project(s) to the State Department of Education by April 1, August 1, or November 1 of each year. Projects will be evaluated and returned within 45 business days. Subject to the availability of funds, the State Department of Education may contract with individuals, educational institutions, or companies to evaluate these End of Course Projects. Evaluators shall use rubrics approved by the State Board of Education for determining student mastery of state academic content standards through End of Course Projects. If funds are not available, End of Course Projects will be evaluated at the local school district level according to requirements of the State Board of Education.

(C) End of Course Projects must be retained for a minimum of 5 years from completion.

(3) The Oklahoma State Board of Education has the authority to waive one or more of the requirements in (b)(1) of this section for an individual student if the Board determines that extenuating circumstances justify the waiver for an end of instruction exam.

(4) Students who do not receive instruction in Oklahoma public schools may demonstrate mastery in required subjects by submitting documentation of proficiency on an equivalent state end-of-instruction exam(s) in the state in which instruction was received; attaining at least a satisfactory or proficient score (as defined by the Oklahoma State Board of Education) on the Oklahoma end-of-instruction exam(s); meeting the approved level of proficiency on an alternate test(s); demonstrating mastery through an End of Course Project(s) as described in (b)(1) and (b)(2) of this section.

(5) Students who do not have an opportunity to take required end-of-instruction exams without extending the date of graduation may demonstrate mastery in required subject areas by meeting the approved level of proficiency on an alternate test(s) or an End of Course Project(s).

(6) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) may demonstrate mastery of state academic content standards through a modified proficiency score on the state assessment(s) as established by the IEP Team. Any deviation from the standard conditions, accommodations, or proficiency score on the state assessment(s) must be established on the student's IEP, and shall be recorded on the student's cumulative record.

(7) Each year beginning with the 2011-2012 school year, school districts shall report to the State Department of Education through the School District Reporting Site, by school site, the number of students issued standard diplomas based on the exceptions and exemptions outlined in these rules, including the categories of exceptions and exemptions granted.

(c) Beginning with students entering the ninth grade in 2008-2009, in order to facilitate the monitoring of student progress toward meeting the graduation requirements of 70 O.S. § 1210.523, districts will maintain an Achieving Classroom Excellence (ACE) Demonstration of Mastery cumulative record for those students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams. All school districts in the state shall use this cumulative record uniform document, or all information required on the uniform document must be contained within the district's student information system. The State Department of Education

will provide an electronic version of this cumulative record to the districts. This cumulative record shall accompany the student when transferring to a new district. For each student who meets the graduation requirements, the student's transcript shall read, "The student has met the graduation requirement of demonstrating mastery in the state academic content standards."

[OAR Docket #10-1032; filed 6-15-10]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #10-1033]

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Subchapter 3. Priority Academic Student Skills
Part 11. Social Studies
210:15-3-100. Oklahoma history for high school [AMENDED]
210:15-3-102. United States History 1850 to the present for high school [AMENDED]
210:15-3-104. World History for high school [AMENDED]
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210: 15-3-102. United States History 1850 to the present for high school [AMENDED]
210: 15-3-104. World History for high school [AMENDED]
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The proposed rule amendments will revise the core curriculum *Priority Academic Students Skills* for Oklahoma History, United States History: 1850 to Present, and World History, to comply with the requirements set forth in 70 O. S. § 11-103.6(a).
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 11. SOCIAL STUDIES

210:15-3-100. Oklahoma history for high school

(a) **Standard.** The student will demonstrate process skills in social studies.

(1) Identify, analyze, and interpret primary and secondary sources (e.g., artifacts, diaries, letters, art, music, literature, photographs, documents, newspapers, and contemporary media).

(2) Identify, evaluate, and explain the relationships between the geography of Oklahoma and its historical development by using different kinds of maps, graphs, charts, diagrams, and other representations such as photographs, satellite-produced images, and computer-based technologies.

(3) Interpret information from a broad selection of research materials (e.g., encyclopedias, almanacs, dictionaries, atlases, and cartoons).

(4) Construct and examine timelines of Oklahoma history (e.g., removal and relocation of Native American groups, economic cycles, immigration patterns, and the results of redistricting and statewide elections).

(b) **Standard.** The student will describe both European and American exploration and claims the territory that would become Oklahoma.

(1) Explain the significance of early Spanish and French expeditions (e.g., Coronado, Oñate, and LaHarpe).

(2) Evaluate the lasting impact of American exploration, including the Pike, Wilkinson, and expeditions.

(3) Analyze the impact of territorial claims on the development of the state of Oklahoma, including the Louisiana Purchase and Adams-Onís Treaty.

(c) **Standard.** The student will evaluate the social, economic, and political development and contributions of Native Americans from prehistoric settlement through modern times.

(1) Identify and describe significant phases of prehistoric cultures, including the Paleo Indians (Clovis points), Archaic Indians (Folsom points), the Mound Builders, and the Plains Tribes.

(2) Trace the movement of other North American peoples into present-day Oklahoma, including the Five Tribes, Plains Tribes, and Eastern Tribes.

(3) Compare and contrast cultural perspectives (e.g., land ownership and use, agricultural, production and distribution of commodities, and trading practices) of Native Americans and European Americans.

(4) Identify significant historical and contemporary Native Americans (e.g., John Ross, Sequoyah, Quanah Parker, Jim Thorpe, Will Rogers, the Five Indian Ballerinas, the Kiowa Five, and Wilma Mankiller).

(d) **Standard.** The student will evaluate the major political and economic events prior to statehood.

(1) Analyze tribal alliances, river transportation, and the fur trade, and their relationship to early mercantile settlements (e.g., Fort Towson, Fort Gibson, Fort Coffee, Fort Washita, and Chouteau's Trading Post).

(2) Explain the significance of the Civil War in Indian Territory and the prominent figures and groups that fought in its battles (e.g., Stand Watie, General James Blunt, General Douglas Cooper, and the 1st Kansas Colored Regiment).

(3) Assess the impact of the cattle industry (e.g., cattle trails, railheads and cow towns in Kansas, and the location of railroad lines).

(4) Evaluate the impact and importance of the various means of distributing land in Oklahoma (e.g., allotments, land runs, lottery, and Supreme Court settlement).

(e) **Standard.** The student will describe the development of constitutional government in Oklahoma.

(1) Examine the work of the Dawes Commission and the distribution of lands to non-Native American settlers.

(2) Analyze the development of governments among the Native American tribes; the movement towards the all-Indian state of Sequoyah; the movement for single statehood; and the impact and influence of the Enabling Act and the Constitutional Convention.

(f) **Standard.** The student will investigate the geography and economic assets of Oklahoma and trace their effects on the history of the state.

(1) Locate the significant physical and human features of the state on a map (e.g., major waterways, cities, natural resources, military installations, major highways, and major landform regions).

(2) Examine how economic cycles (e.g., the Great Depression and the Dust Bowl, and oil boom and bust) have affected and continue to affect major sectors of state employment (e.g., fossil fuels, timber, mining, tourism, the military, and agriculture).

(g) **Standard.** The student will examine major cultural and ethnic groups represented in Oklahoma.

(1) Identify cultural and ethnic groups in Oklahoma (e.g., African Americans, Eastern Europeans, Italians, Germans, and Vietnamese) and explore the causes and effects of their immigration and settlement patterns.

(2) Trace the cultural, political, and economic contributions of these groups.

(h) **Standard.** The student will examine factors that contributed to the political, economic, and social history of Oklahoma during the twentieth century.

(1) Identify significant individuals and their contributions (e.g., Jerome Tiger, Frank Phillips, Kate Barnard, Angie Debo, Ada Lois Sipuel, Clara Luper, George Lynn Cross, Ralph Ellison, Robert S. Kerr, Henry Bellmon, and Reba McEntire).

(2) Analyze the impact of the Populist Movement, the Temperance Movement, the Dust Bowl, and political corruption (e.g., Ku Klux Klan activities; the prosecutions and convictions of Governor David Hall and the county commissioners) on Oklahoma history.

(3) Examine the historical evolution of race relations in Oklahoma (e.g., the significance of Jim Crow laws, the Tulsa Race Riot, and the contributions of Governor Raymond Gary to the peaceful integration of public facilities).

(4) Examine and evaluate the causes and effects of terrorism in Oklahoma, including the A. P. Murrah Federal Building bombing in Oklahoma City on April 19, 1995, the responses of Oklahomans to the event, and the creation of the Oklahoma City National Memorial.

210:15-3-102. United States History 1850 to the present for high school

(a) The focus of the course in United States History for Grades 9-12 is the immediate pre-Civil War era to the present (1850-present). However, for the high school ACE U.S. HISTORY examination, the time frame is approximately 1850-1975, or approximately from the Compromise of 1850 through the withdrawal of United States military and diplomatic personnel from Vietnam. NOTE: Standard 1 social studies process skills should be integrated throughout the content standards and used in teaching and assessing the course content at the classroom and district level. At the state level, Standard 1 social studies process skills will be measured and reported within each of the content standards (1, 2, 3, 4, 5, and 6). Process skill assessment items will be content-based and reported under each of the content standards. For assessment purposes, each standard will have items using primary and secondary source documents, timelines, maps, charts, graphs, pictures, photographs, and/or political cartoons. There will be a balance of graphic and textual stimulus materials within the various U.S. History test forms. At least 50 percent of the assessment items will have appropriate pictorial and graphical representations.

(b) In United States History, the student will describe and analyze the causes, events, and effects of the Civil War and Reconstruction era; examine the impact of immigration and the settlement of the American West on American society; and evaluate the economic effects of the industrialization and the changing role of the United States in world affairs at the turn of the twentieth century. He or she will also describe the social, cultural, and economic events between the World Wars; investigate and analyze the Great Depression, and the causes, events and effects of World War II; and assess the foreign and domestic policies of the United States since World War II. The student will continue to strengthen, expand, and put to use the full range of process and research skills in social studies.

(1) **Standard.** The student will demonstrate process skills in social studies.

(A) Identify, analyze, and interpret primary and secondary sources (e.g., artifacts, diaries, letters, photographs, documents, newspapers, media, and computer-based technologies).

(B) Recognize and explain how different points of view have been influenced by nationalism, racism, religion, culture and ethnicity.

(C) Distinguish between fact and opinion in examining documentary sources.

(D) Construct timelines of United States history (e.g., landmark dates of economic changes, social movements, military conflicts, constitutional amendments, and presidential elections).

(E) Explain the relationships between geography and the historical development of the United States by using maps, graphs, charts, visual images, and computer-based technologies.

(F) Develop discussion, debate, and persuasive writing and speaking skills, focusing on enduring issues (e.g., individual rights vs. the common good, and problems of intolerance toward cultural, ethnic, and religious groups), and demonstrating how divergent viewpoints have been and continue to be addressed and reconciled.

(2) **Standard.** The student will analyze causes, key events, and effects of the Civil War/Reconstruction era.

(A) Examine the economic and philosophical differences (e.g., sectionalism, popular sovereignty, states' rights debate, nullification, abolition, and tariffs) between the North and South, as articulated by Daniel Webster and John C. Calhoun.

(B) Trace the events leading to secession and war (e.g., the Compromise of 1850, the Fugitive Slave Act, the Kansas-Nebraska Act, "Bleeding Kansas," the Dred Scott case, John Brown's Raid on Harpers Ferry, 1860 presidential election, secession of South Carolina, and the attack on Fort Sumter).

(C) Identify political and military leaders of the war (e.g., Abraham Lincoln, Ulysses S. Grant, Jefferson Davis, Robert E. Lee, Frederick Douglass, and William Lloyd Garrison).

(D) Interpret the importance of critical developments in the war, including major battles (e.g., Fort Sumter, "Anaconda Plan," Bull Run, Gettysburg, Vicksburg, Antietam, battle of the Monitor and Merrimack, and the North's "total war strategy"), the Emancipation Proclamation, and Lee's surrender at Appomattox.

(E) Relate the basic provisions and postwar impact of the 13th, 14th, and 15th Amendments to the Constitution.

(F) Evaluate the continuing impact of Reconstruction policies on the South, including southern reaction (e.g., tenant farming, Freedmen's Bureau, sharecropping, Black Codes, Ku Klux Klan, Carpetbaggers, scalawags, Plessy v. Ferguson, and Jim Crow laws).

(3) **Standard.** The student will analyze the impact of immigration, the settlement of the American West, and industrialization on American society.

(A) Analyze the impact of immigration, migration and settlement patterns.

(i) Analyze immigration, including the reasons for immigration, employment, settlement patterns, and contributions of various immigrant, cultural, and ethnic groups (e.g., Irish, Chinese, Italians, Germans, Japanese, and Southeast/Central Europeans) from 1850-1930.

(ii) Examine ethnic conflict and discrimination.

(iii) Analyze changes in the domestic policies of the United States relating to immigration (e.g., the CHINESE EXCLUSION ACT, the rise of nativism, Ellis Island, and the "Gentlemen's Agreement") from 1850-1930.

(iv) Evaluate the significance of immigration on the labor supply and the movement to organize workers (e.g., growth of labor pool, rise of the labor movement, Pullman strikes, Haymarket Riot, Eugene V. Debs, Samuel Gompers, John L. Lewis, and the use of court injunctions to halt labor strikes).

(v) Compare and contrast social attitudes and federal policies toward Native American peoples (e.g., the Indian Wars of 1850-1890, establishment of reservations, attempts at assimilation, and the *DAWES ACT*, and the destruction of the bison herds) and actions of the United States Army, missionaries, and settlers during the settlement of the American West, 1850-1890.

(B) Evaluate the impact of industrialization on American society.

(i) Identify the impact of new inventions and industrial production methods, including new technologies in transportation and communication between 1850-1920 (e.g., Thomas Edison, Alexander G. Bell, Henry Ford, the Bessemer process, the Westinghouse Company, barbed wire, the western cattle drives).

(ii) Describe the effects of the "muckrakers" (e.g., Carey Nation, Susan B. Anthony, Elizabeth Cady Stanton, Alice Paul, Ida Tarbell, Upton Sinclair, and William Jennings Bryan) and reform movements (e.g., Women's Suffrage, Temperance, Populism, and the Grange Movement) that resulted in government policies affecting child labor, wages, working conditions, trade, monopolies, taxation and the money supply (e.g., Sherman Anti-trust Act and Triangle Shirtwaist Factory Fire).

(iii) Assess the impact of industrialization, the expansion of international markets, urbanization, and immigration on the economy.

(iv) Evaluate the rise of the Progressive Movement in relation to political changes at the national

and state levels (e.g., workplace protections, conservation of natural resources, increased political strength of third parties, the direct primary, initiative petition, referendum, and recall).

(v) Examine the causes of the money panics of 1873, 1893, and 1907, explaining how the establishment of the Federal Reserve System addressed the problems.

(4) **Standard.** The student will analyze the changing role of the United States in world affairs at the turn of the twentieth century.

(A) Evaluate the motivations and impact of American Imperialism on international relations.

(i) Identify the goals of and reasons for imperialism (e.g., Open Door Policy, annexation of Hawaii, influence of Admiral Alfred T. Mahan, and the concept of "white man's burden") explaining its impact on developed and developing nations (e.g., "banana republic").

(ii) Analyze the role of the Spanish-American War in the development of the United States as a world power (e.g., yellow journalism, Rough Riders, PLATT AMENDMENT, TELLER AMENDMENT, territorial acquisitions, and contributions of Admiral George Dewey).

(iii) Evaluate the reasons for United States involvement in locating a canal in Central America and the actions of President Theodore Roosevelt regarding the Panama Canal.

(iv) Compare and contrast the strengths and weaknesses of Theodore Roosevelt's foreign policy and other presidential foreign policies from 1890-1910, including "Big Stick Diplomacy," "Dollar Diplomacy," "Missionary Diplomacy," the Great White Fleet, ROOSEVELT COROLLARY, and interventionism.

(B) Evaluate the causes and effects of World War I on American politics, economy, and society.

(i) Analyze the factors leading to the involvement of the United States in World War I (e.g., the alliance systems, submarine warfare, and the Zimmerman Note) and the effects of the war on the United States (e.g., mobilization, propaganda, women in the workplace, and the First Red Scare).

(ii) Examine the reasons why the United States did not join the League of Nations and for the nation's return to isolationism (e.g., Wilson's Fourteen Points and the Treaty of Versailles).

(5) **Standard.** The student will describe the social; cultural; economic; and technological ideas and events in the United States in the era between the World Wars.

(A) Compare and contrast cultural, economic, and social events and trends between the World Wars.

(i) Evaluate literature, music, dance, and forms of entertainment of the 1920s and 1930s (e.g., the Harlem Renaissance, the Jazz Age, flappers, the "Lost Generation," and "talkies").

(ii) Investigate the long term effects of reform movements, such as the Women's Suffrage Movement, Temperance/Prohibition Movements (e.g., the 18th, 19th, and 21st Amendments to the Constitution), and the Early Civil Rights Movement and leaders (e.g., Booker T. Washington and W. E. B. Du Bois).

(iii) Analyze the impact of the automobile, aviation (e.g., Charles Lindbergh), electrification, and urbanization (e.g., the Great Migration) on American society.

(iv) Describe rising racial tensions and labor unrest common in the era (e.g., the Tulsa Race Riot, the resurgence of the Ku Klux Klan, the "Back to Africa" Movement and Marcus Garvey, the rise of industrial unions, and the labor sit-down strikes).

(B) Analyze the effects of the destabilization of the American economy.

(i) Examine the growing disparity between the wealth of corporate leaders and the incomes of small business owners, industrial workers, and farmers.

(ii) Identify causes contributing to an unstable economy (e.g., the increased reliance on installment buying, a greater willingness to speculate and buy on margin in the stock market, and government reluctance to interfere in the economy or laissez-faire policy).

(iii) Examine changes in the business cycle (e.g., the "Black Tuesday" Stock Market Crash and bank failures), weaknesses in key sectors of the economy (e.g., agriculture and manufacturing), and government economic policies in the late 1920s.

(iv) Analyze the effects of the Stock Market Crash between October 1929 and March 1933 (e.g., unemployment, the shrinking economy, Herbert Hoover's economic policies, the "Bonus Army," Securities and Exchange Commission, "Hoovervilles," and the presidential election of 1932).

(C) Analyze the Great Depression, the Dust Bowl, and the New Deal economic policies.

(i) Evaluate the impact of the Great Depression, the Dust Bowl (e.g., migration of the Okies and exodusters), and the New Deal economic policies on business and agriculture, as well as on the American people, their culture and political behavior. (e.g., FDR's court packing plan and the "fireside chats").

(ii) Assess the impact of the expanded role of government in the economy since the 1930s. (e.g., FDR's "New Deal," deficit spending and new federal agencies - Social Security Administration, FDIC, TVA, WPA, and CCC).

(iii) Identify the contributions of key individuals of the period between the wars (e.g.,

Will Rogers, Eleanor Roosevelt, Franklin Roosevelt, Huey Long, "The Brain Trust," and Woody Guthrie).

(6) **Standard.** The student will analyze the major causes, events, and effects of United States' involvement in World War II.

(A) Examine changes in American society and government policy as the nation prepared for and entered World War II.

(i) Relate the rise of totalitarian regimes in the Soviet Union, Germany, Italy, and Japan to the rise of communism, Nazism, and fascism in the 1930s and 1940s, and the response of the United States.

(ii) Describe the roles of appeasement and isolationism in the United States' reluctance to involve itself in world conflicts during 1937-1941 (e.g., the Lend-Lease Act, and the Neutrality Acts).

(iii) Evaluate the impact of preparation and mobilization for war, including the internment policies and their effects (e.g., internment of minority Americans, such as, Japanese, Germans, and Italians; Korematsu v. United States; rationing; role of women in the workforce and armed services; and discrimination and segregation at home and in the armed forces).

(B) Describe events affecting the outcome of World War II.

(i) Identify major battles, military turning points, and key strategic decisions in both the European and Pacific Theaters of operation (e.g., Pearl Harbor; Battle of Midway; the D-Day Invasion; Battle of the Bulge; the development and use of the atomic bomb; island-hopping strategy, such as Iwo Jima; and the Allied conferences, such as Yalta).

(ii) Analyze public and political reactions in the United States to the events of the Holocaust (e.g., Nuremburg War Trials).

(7) **Standard.** The student will analyze the foreign and domestic policies of the United States since World War II.

(A) Analyze the origins, international alliances, and efforts at containment of Communism.

(i) Identify the origins of the Cold War and its foreign and domestic consequences, including confrontations with the Soviet Union in Berlin and Cuba (e.g., the postwar division of Europe, the Warsaw Pact, the "Iron Curtain," the Marshall Plan, the Berlin Airlift, the Berlin Wall, the Bay of Pigs Invasion, and the Cuban Missile Crisis).

(ii) Evaluate the United States' attempts at the containment of Communism including the Truman Doctrine and the involvement of the United Nations in the Korean War.

(iii) Describe the fear of communist influence within the United States including the McCarthy hearings (e.g., the Second Red Scare and various congressional hearings).

(B) Describe events which changed domestic and foreign policies during the Cold War and its aftermath.

(i) Examine the proliferation of nuclear weapons and the arms race (e.g., Sputnik and the space race; development and effects of nuclear weapons; the Rosenbergs' spy trial; and the SALT treaties).

(ii) Describe the role of the United States in the formation of the United Nations, NATO, and SEATO.

(iii) Evaluate the causes and long term foreign and domestic consequences of United States' military commitments in Southeast Asia, including the Vietnam War (e.g., "Domino Theory;" the Tonkin Gulf Resolution; the Tet Offensive; the presidential elections of 1968 and 1972; student protests; expanded television coverage of the war; and the War Powers Act).

(iv) Examine the strategic and economic factors in the development of Middle East policy and relations with African nations, including South Africa.

(v) Analyze the reasons for the collapse of Communism in Eastern Europe and the Soviet Union, and relate the end of the Cold War to new challenges to the United States' leadership role in the world.

(C) Analyze the economic, social, and political transformation within the United States since World War II.

(i) Describe de jure and de facto segregation policies, attempts at desegregation and integration, and the impact of the Civil Rights Movement on society (e.g., Brown v. Board of Education of Topeka, Kansas, the Montgomery Bus Boycott, the lunch counter sit-down strikes in Oklahoma City and elsewhere, the Freedom Rides, integration of Little Rock Central High School, the Civil Rights Act of 1964, and the Voting Rights Act of 1965).

(ii) Evaluate the success of the Women's Liberation Movement (e.g., Equal Rights Amendment, Roe v. Wade, Betty Friedan, and NOW) and the changing roles of women during the 1950s through the mid-1970s.

(iii) Examine the technology revolution and its impact on communication, transportation, and industry.

(iv) Assess the impact of violent crime, and illegal drug use and trafficking.

(v) Explain the effects of increased immigration, the influx of political refugees, and the increasing number of undocumented aliens on society and the economy.

(vi) Identify the contributions of political leaders, political activists, civil rights leaders (e.g., Dr. Martin Luther King, Jr., Malcolm X, Thurgood Marshall, and César Chavez), major issues, and

scandals, including the Watergate Scandal, and major trends in national elections (e.g., differences between the two major political parties, and the rise of third party candidates).

(vii) Examine the postwar rise in the standard of living, the OPEC Oil Embargo, the inflation of the 1970s, and the federal budget deficit problems of the 1980s and early 1990s.

(viii) Evaluate the impact of political scandals (e.g., Iran-Contra, and the Clinton impeachment) on federal law, national policies, and political behavior.

(ix) Analyze how the principles and structures of the United States Constitution have changed through amendment and judicial interpretation (e.g., the 22nd and 25th Amendments, the Warren Court, Gideon v. Wainwright, and Miranda v. Arizona).

(x) Compare and contrast conservative and liberal economic strategies, including the positions of political parties and interest groups on major issues to the present.

(xi) Describe and evaluate the ongoing globalization of the United States' and the world's economic (e.g., creation of the European Union) and communication systems (e.g., the Internet and "instantaneous news").

(xii) Evaluate the rise of terrorism and its impact on the United States; the role and effects of the A. P. Murrah Federal Building bombing in Oklahoma City on April 19, 1995; the first attack on the World Trade Center Towers in New York City in 1993; the attacks on the World Trade Center Towers in New York City and the Pentagon in Washington, DC on September 11, 2001; and the policies and actions of the U. S. Government to respond to and counter terrorism (e.g., PATRIOT Act and the creation of the Department of Homeland Security).

(xiii) Compare and assess the causes, conduct, and consequences of the U.S.-led wars in Afghanistan and Iraq.

210:15-3-104. World History for high school

(a) **Standard.** The student will demonstrate social studies research skills.

(1) Identify, analyze, and interpret primary and secondary sources and artifacts.

(2) Validate sources as to their authenticity, authority, credibility, and possible bias.

(3) Construct timelines of key events, periods, and historically significant individuals.

(4) Identify and analyze the reasons for major shifts in national political boundaries.

(b) **Standard.** The student will describe early physical and cultural development of humankind from the Paleolithic Era to the emergence of agriculture.

(1) Describe the characteristics of hunter-gatherer societies, their use of fire and tools, and the impact of geography on these societies.

(2) Identify the technological and social advancements that gave rise to stable communities.

(c) **Standard.** The student will compare selected ancient river civilizations (e.g., Egypt, Mesopotamia, the Indus Valley, and Shang China), and other ancient civilizations (e.g., the Hebrew and Phoenician kingdoms, and the Persian Empire).

(1) Describe their location in time and place.

(2) Trace their development of cultural, political, and economic patterns.

(d) **Standard.** The student will describe and analyze ancient Greece (*circa* 2000 to 300 B.C.E.) and its impact on contemporary and future civilizations.

(1) Explain the influence of geography on Greek culture including the contributions of Greek playwrights, poets, historians, sculptors, architects, scientists, mathematicians, and philosophers, (e.g., Socrates, Plato, Aristotle, Sophocles, Pythagoras, Hippocrates, Herodotus, and Archimedes).

(2) Analyze the impact of Greek commerce and colonies on the Mediterranean region.

(3) Describe the social structure, significance of citizenship, and development of democracy in the city-state of Athens.

(4) Describe life in Athens during the Golden Age of Pericles.

(5) Evaluate the conquest of Greece by Macedonia, and the spread of Hellenistic culture by Alexander the Great.

(e) **Standard.** The student will describe and analyze ancient Rome (700 B.C.E. to 500 C.E.) and its impact on contemporary and future civilizations.

(1) Explain the influence of geography on Roman economic, social, and political development.

(2) Describe the social structure, the significance of citizenship, and the development of democratic features in the government of the Roman Republic.

(3) Analyze the Roman military domination of the Mediterranean basin and western Europe, and the spread of Roman culture in these areas.

(4) Describe the collapse of the Republic and the rise of imperial monarchs.

(5) Evaluate the economic, social, and political impact of the Pax Romana.

(6) Examine the origin, traditions, customs, beliefs, and spread of Judaism and Christianity.

(7) Describe the contributions in art, architecture, technology, science, literature, history, language, religion, and law.

(8) Explain the reasons for the decline and fall of the Roman Empire, (e.g., the invasions of the Visigoths and Vandals).

(f) **Standard.** The student will analyze the interactions and relationships between the Muslim world and Christendom from the seventh to the eleventh century C.E.

(1) Describe the origin, theological foundations, traditions, customs, beliefs, and spread of Islam.

(2) Identify religious, political, and economic influences in the Mediterranean region.

(g) **Standard.** The student will describe, compare and contrast selected civilizations in Asia, Africa, and the Americas.

(1) Analyze India's caste system, the traditions, customs, beliefs, and significance of Hinduism, and the conquest by Muslim Turks and Mongols.

(2) Describe China under the Qin, Han, T'ang, and Sung dynasties; the traditions, customs, beliefs, and significance of Buddhism; the impact of Confucianism and Taoism; and the construction of the Great Wall.

(3) Describe Japan's development, and the significance of Shintoism and Buddhism, and the influence of Chinese culture.

(4) Describe the kingdoms of Kush in eastern Africa and Ghana in western Africa.

(5) Describe the Olmec, Mayan, Aztec, and Inca civilizations.

(h) **Standard.** The student will describe and analyze the Byzantine Empire and Russia (*circa* 300 to 1400 C.E.) and their impact on contemporary and later civilizations.

(1) Explain the expansion of the Byzantine Empire and economy with the establishment of Constantinople.

(2) Describe the conflicts that led to the split between the Roman Catholic and Eastern Orthodox churches.

(3) Evaluate Byzantine influence on Kievan Russia and Eastern Europe.

(i) **Standard.** The student will describe and analyze the patterns of social, economic, and political change, and cultural achievement during the Middle Ages , *circa* 500 to 1500 C.E.

(1) Describe the structure of feudal society and its social, economic, and political effects.

(2) Examine the Age of Charlemagne and the revival of the idea of the Roman Empire.

(3) Trace the invasions and settlements of the Magyars in Eastern Europe, and the Vikings, Angles, and Saxons in Great Britain.

(4) Analyze the spread and influence of Christianity throughout Europe, and the secular roles of the Roman Catholic Church.

(5) Describe conflicts among Eurasian powers, such as the Crusades, the Mongol conquests, and the expansion of the Ottoman Turks.

(6) Compare and contrast the federal system in Asia (e.g., the society in Japan) with European federalism.

(j) **Standard.** The student will analyze the historical sources and developments of the Renaissance.

(1) Examine the economic foundations of the Renaissance, increased trade, role of the Medicis, and new economic practices, including the rise of Italian city-states.

(2) Describe artistic, literary, scientific, political, and intellectual creativity, (e.g., as reflected in the works of Leonardo da Vinci, Michelangelo, Machiavelli, Cervantes, and Shakespeare) as contrasted with the Middle Ages.

(k) **Standard.** The student will analyze the historical sources and developments of the Reformation.

(1) Evaluate the effects of the theological, political, and economic differences that emerged during the Reformation (e.g., the views and actions of Martin Luther, John Calvin, the Council of Trent and Henry VIII).

(2) Describe the influence of religious conflicts on government actions, (e.g., the Edict of Nantes in France, and the reign of Elizabeth I in England).

(l) **Standard.** The student will analyze the impact of European expansion into the Americas, Africa, and Asia.

(1) Describe the roles of explorers and conquistadors (e.g, Prince Henry the Navigator, Columbus, Magellan, and Cortés).

(2) Analyze migration, settlement patterns, and cultural diffusion, including the exchange of technology, ideas, and agricultural practices, the introduction of new diseases, and trade in slaves, gold, furs, and tobacco.

(3) Evaluate the economic and cultural transformations created by the emergence of plants (e.g., tobacco and corn) in new places and the arrival of the horse in the Americas.

(4) Describe the competition for resources and the rise of mercantilism, including the commercial and maritime growth of European nations, and the emergence of money and banking, global economics, and market systems.

(m) **Standard.** The student will analyze the scientific, political, and economic changes in Europe and North America in the sixteenth, seventeenth, and eighteenth centuries.

(1) Describe the establishment and authority of absolute monarchies (e.g., Louis XIV, Frederick the Great, and Peter the Great).

(2) Examine the Glorious Revolution in England and the French Revolution, including the ideas of significant individuals, (e.g., Hobbes, Locke, Montesquieu, Rousseau, Adam Smith, and Jefferson).

(3) Explain how the political and religious ideas of the Enlightenment affected the founders of the United States.

(4) Explain how new scientific theories (e.g., those of Newton, Kepler, Copernicus, Galileo, Harvey, and Franklin) and technological changes brought about social, political, and cultural changes.

(5) Describe how the arts, philosophy, and literature were influenced by significant individuals (e.g., Voltaire, Diderot, Rembrandt, Gainsborough, Bach, and Mozart).

(n) **Standard.** The student will describe nineteenth century political developments.

(1) Analyze the impact of the Congress of Vienna.

(2) Describe the expansion of democracy in Europe, the effects of urbanization, the revolutions of 1848, and British reform laws.

(3) Analyze the unification of Germany and of Italy.

(4) Evaluate the impact of the Meiji Restoration in Japan.

(o) **Standard.** The student will analyze and explain the effects of the Industrial Revolution.

(1) Describe the rise and impact of industrial economies.

(2) Describe the scientific and technological changes (e.g., the inventions of Watt, Bessemer, and Whitney) which brought about massive social and cultural change.

(3) Analyze the emergence of capitalism and free enterprise as a dominant economic pattern.

(4) Evaluate the responses to capitalism (e.g., utopianism, socialism, and communism), including the trade union movement.

(5) Explain how Asia, Africa, and South America were transformed by European commercial power.

(p) **Standard.** The student will analyze major twentieth century historical events through World War II.

(1) Evaluate the causes and effects of World War I (e.g., assassination of Archduke Ferdinand; Woodrow Wilson and the Fourteen Points; and the League of Nations).

(2) Describe the Bolshevik Revolution in Russia, and the creation of the Soviet Union.

(3) Examine the rise, aggression, and human costs of totalitarian regimes in the Soviet Union, Germany, Italy, and Japan.

(4) Examine the rise of nationalism, and the causes and effects of World War II (e.g., the Holocaust, economic and military power shifts since 1945, the founding of the United Nations, and the political partitioning of Europe, Africa, and Asia).

(5) Describe the revolutionary movements in Asia and their leaders (e.g., Mao Zedong and Ho Chi Minh).

(6) Examine African and Asian countries which achieved independence from European colonial rule (e.g., India under Mohandas Gandhi and Ghana under Kwame Nkrumah).

(q) **Standard.** The student will evaluate post-World War II global and contemporary events.

(1) Describe regional military and political conflicts, such as Korea and Vietnam.

(2) Evaluate the creation of the modern state of Israel, and the recurring conflicts between and among Israel and the Arab neighbors.

(3) Examine the beginning and end of the Cold War and the collapse of the Soviet Union.

(4) Describe the Chinese Cultural Revolution and the pro-democracy student demonstrations at Tiananmen Square in Beijing.

(5) Describe and evaluate the ongoing globalization of the world's economic (e.g., creation of the European Union) and communication systems (e.g., the Internet and "instantaneous news").

(6) Evaluate the rise of terrorism in the United States and around the world; the role and effects of the A. P. Murrah Federal Building bombing in Oklahoma City on April 19, 1995; the first attack on the World Trade Center Towers in New York City in 1993; and the attacks on the World Trade Center Towers in New York City and the Pentagon in Washington, DC on September 11, 2001; the train attacks in Madrid on March 11, 2004; the subway bombings in London on July 7, 2005; the attack in Mumbai, India on November 27, 2008; airplane and ship hijackings; and the policies and actions of the U.S. Government to respond to and counter terrorism (e.g., PATRIOT Act and the creation of the Department of Homeland Security).

(7) Compare and assess the causes, conduct, and consequences of the U.S.-led wars in Afghanistan and Iraq.

[OAR Docket #10-1033; filed 6-15-10]

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

[OAR Docket #10-1008]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
277:1-1-1 [NEW]
277:1-1-2 [NEW]
277:1-1-3 [NEW]
AUTHORITY:
Forensic Review Board; 22 O.S. § 1161.
DATES:
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277:1-1-1 [NEW]
277:1-1-2 [NEW]
277:1-1-3 [NEW]
Gubernatorial approval:
February 4, 2010
Register publication:
27 Ok Reg 695
Docket number:
10-216
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rules implement 22 O.S. § 1161, which authorizes the Forensic Review Board upon delegation by the Governor, to determine which individuals confined with the Department of Mental Health and Substance Abuse Services, pursuant to a finding of "not guilty by reason of insanity", are eligible for therapeutic visits, conditional release or discharge and whether the Board wishes to make such a recommendation to the court of the county where the individual was found not guilty by reason of insanity.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, (405) 522-3871 or skennedy@odmhsas.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 25, 2010:

277:1-1-1. Applicability

(a) This Subchapter is applicable to the Oklahoma Forensic Review Board pursuant to Title 22 O.S. § 1161.

(b) Each person ordered to the custody of the Oklahoma Department of Mental Health and Substance Abuse Services through a "not guilty by reason of insanity" verdict shall receive an annual review of his or her case and clinical status by the Forensic Review Board.

277:1-1-2. Definitions

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

"Conditional Release" is a court approved release for those adjudicated not guilty by reason of insanity who are not believed to be presently dangerous to the public peace or safety, from the physical custody of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Forensic Review Board" or **"Review Board"** is the board appointed by the Governor to review the cases of persons ordered to the custody of the Oklahoma Department of Mental Health and Substance Abuse Services through a "not guilty by reason of insanity" verdict.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"OFC" means the Oklahoma Forensic Center

"Therapeutic visits" mean any supervised time spent off the campus of the Oklahoma Forensic Center or any other ODMHSAS operated facility to which the individual may be committed. The degree and manner of supervision will be determined by the Review Board. Therapeutic visits include the following types of off-campus time:

(A) **Day passes** mean off-ground passes for a period of time not to exceed 8 hours between the hours of 8 a.m. and 8 p.m. Before being considered for day passes the consumer must have been successful in maintaining compliance with his/her treatment plan at the Oklahoma Forensic Center for a minimum of six (6) months and shall not have exhibited any episodes of aggressive/violent behavior during this time.

(B) **Routine therapeutic visits** mean off-ground visits to a specified residential care facility or to a family member who is approved by the Review Board for a designated period of time.

(i) Consumers who are classified by OFC as a low to moderate risk and whose offenses are of a non-violent nature, as defined by 57 O.S. §571(2), may be considered for therapeutic visits to a community residential care facility or to a family member who is approved by the Review Board, with supervision by the appropriate community mental health center and family member.

(ii) Consumers who are classified by OFC as a high risk and whose offenses are of a violent nature toward others, as defined by 57 O.S. §571(2), may be considered for therapeutic visits to a community residential care facility, but will be supervised by both the community mental health center and a forensic case manager.

(iii) Before being eligible for consideration for routine therapeutic visits the consumer must have been successful in managing three months of weekly day passes and must have had no episodes of aggressive behavior in the twelve (12) months preceding the recommended passes, and must not be considered an elopement risk.

(C) **Emergency visits** mean an unforeseen situation such as critical illness or death that arises in the consumer's family that may require them to leave the grounds of OFC under approved supervision.

277:1-1-3. Composition, powers and duties

(a) **Meetings.** The Review Board shall meet at the Oklahoma Forensic Center or by videoconference at least quarterly.

(1) A quorum shall consist of four (4) members who are present either physically or via teleconference.

(2) The agenda and materials for review shall be sent to all Board members in advance of the meeting. Review materials pertinent to each case may include, but are not limited to:

(A) Risk assessment of the consumer:

(B) Recommendation and other relevant information from the consumer's treatment team which includes input as to whether the consumer can safely engage in a therapeutic visit or conditional release program, and in the event a recommendation is made for a therapeutic visit, the team should include information regarding:

(i) The conditions under which each therapeutic visit should occur;

(ii) The structure needed in a community setting for a conditional release program.

(iii) Under what conditions the individual may be a danger to self or others if placed in a community setting.

(iv) If neither program is recommended, the treatment team should note the reasons why the consumer should remain at the Oklahoma Forensic Center.

(C) Progress notes for the previous three (3) months relevant to any critical incident report or any inappropriate behavior that occurred within the previous twelve (12) months;

(D) Lab testing for medication compliance;

(E) Lab results for drug/alcohol screens upon return from previous visits, if any;

(F) Any critical incident forms involving the consumer during the previous twelve months;

(G) Input from family members or others involved in the plans for the Therapeutic Visit; and

(H) Other information the Review Board deems necessary.

(3) The person whose case is under review shall be given an opportunity to provide input via written documentation and in person. If the person chooses, he or she may have a representative accompany him or her to the Review Board meeting.

(4) These meetings shall not be considered open to the public. Other than the Forensic Review Board members, the following individuals shall be permitted to attend the meetings and ask questions of the consumer whose case is being reviewed, the treatment team or any other person appearing before the Forensic Review Board:

(A) ODMHSAS Commissioner or designee;

(B) ODMHSAS Advocate General or designee;

(C) Oklahoma Forensic Center's Executive Director or designee;

(D) ODMHSAS General Counsel or designee;

(E) ODMHSAS Deputy Commissioner for Mental Health Services or designee; and

(F) ODMHSAS Medical Director.

(G) Any other persons wishing to attend the meeting must first obtain approval by the Forensic Review Board's Chairperson.

(b) **Reviews.** Following the review of the information submitted the Review Board shall render a determination at the conclusion of each meeting based upon a majority vote of Review Board members present. The determination for each case is limited to the following:

(1) Whether therapeutic visits will be recommended to the court;

(2) If a therapeutic visit is recommended, the location of the visit;

(3) The date and time the visit will begin and the duration of the visit;

(4) The entity or person to provide supervision of the consumer during the visit;

(5) Any other parameters to be recommended to the court reviewing the recommendation for a therapeutic visit;

(6) If a conditional release will be recommended to the court;

(7) If a conditional release is recommended to the court, the Forensic Review Board shall make recommendations regarding the plan for continued outpatient services and any other terms of the conditional release;

(8) If a discharge from a conditional release will be recommended to the court; and

(9) Formal Risk Assessments completed by staff at the Oklahoma Forensic Center will be considered in the overall context of evaluating suitability for conditional release/therapeutic visit and recommended discharges.

(c) All consumers returning from any therapeutic visit shall be searched for contraband and shall be subject to drug testing.

(d) Suspension of Therapeutic Visit: In the event the Executive Director of OFC determines that the consumer is not compliant with the conditions of the therapeutic visit, the consumer will be notified the visit is suspended and instructed to report immediately to the Oklahoma Forensic Center. The Executive Director or Designee shall notify the chair of the Forensic Review Board of the suspension. The suspension will remain in effect until the facts surrounding the suspension are reviewed and a decision is reached by the Forensic Review Board at its next meeting.

(e) In the case of a family emergency an emergency visit may be granted upon recommendation of the Executive Director of the Oklahoma Forensic Center with approval of the Forensic Review Board chair and the committing court.

(f) The Review Board shall apprise the consumer whose case was reviewed, the ODMHSAS Commissioner or designee, the Oklahoma Forensic Center Executive Director, and the Consumer Advocate General of each determination made.

(g) ODMHSAS shall provide support services to the Review Board and its Chair.

[OAR Docket #10-1008; filed 6-10-10]

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

[OAR Docket #10-1031]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 21. Rules of Procedure Governing Individual Proceedings [AMENDED]
Subchapter 23. Requests for Declaratory Relief and Rulemaking [NEW]
Subchapter 25. Discovery [AMENDED]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. § 1-104 and 75 O.S. § 302.

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Comment Period:
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SUPERSEDED EMERGENCY ACTIONS:
"n/a"

INCORPORATION BY REFERENCE:
"n/a"

ANALYSIS:
The proposal modifies Subchapter 21 in a variety of ways to improve the efficiency and effectiveness of the Agency's hearing process. In this regard, changes to Subchapter 21 include: the addition of specific language establishing a written prescribed procedure for granting summary adjudication and resolution of any issue or issues in an administrative proceeding where it is demonstrated to the decision maker's satisfaction that there is no material question of fact in dispute; the establishment of time computation guidelines

for computing periods of time prescribed or allowed that create deadline responsibilities during the administrative proceedings for parties and the effect that the use of mail has upon these time limits; the establishment of requirements upon Respondents to respond to petitions filed by the Agency; the establishment of requirements upon the parties to disclose without awaiting discovery request, an initial disclosure statement describing the party's position, legal issues, factual issues, persons likely to have discoverable information, and a list of documents in the party's possession that may be used to support its claims or defenses; the modification of the procedure for motion practice to include any written submission for purposes of application to the time responses are due; the modification of procedures for conducting pretrial conferences and the establishment of a final pretrial conference procedure that uses the pretrial conference order provided in Rule 5 of the Rules for District Courts and special sanctions that may be imposed upon a party for failing to cooperate in procedures for conducting pretrial conferences; the establishment of procedures for conducting hearings using video-teleconferencing technology; the establishment of procedures for filing documents with the Office of Administrative Hearings using facsimile or electronic transmission; the establishment of procedures for the entry of protective orders that limit access to private or sensitive information consistent with rules and statutes establishing confidentiality or providing guidelines that protect access to certain personal information; the establishment of procedures for reconsideration of an informal agency action; the establishment of procedures for reconsideration by the Agency to the Commissioner of Health or his designee from a decision of the Administrative Law Judge; and, the establishment of procedures to request the transmission of the administrative record to District Court.

The proposal also creates a new Subchapter (Subchapter 23) that restores adjudication procedures for controversies, contests, or individual proceedings that involve declaratory relief or action that is declaratory in nature and a process for requesting rulemaking. The proposal also modifies Subchapter 25 in a variety of ways to improve the Agency's hearing process as it relates to discovery. In this regard, changes to Subchapter 25 include the following: the modification of time limitations for answers or objections to discovery requests and the establishment of time computation guidelines for computing periods of time prescribed or allowed that create deadline responsibilities relating to discovery for parties and the effect that the use of mail has upon these time limits; modify the requirements for parties resolving discovery disputes and special sanctions that may be imposed upon a party for failing to cooperate in procedures for conducting discovery conferences; and, the establishment of procedures for the entry of protective orders that limit access to private or sensitive information consistent with rules and statutes establishing confidentiality or providing guidelines that protect access to certain personal information.

The amendments to subchapter 21 and 25 are needed to improve the efficiency of the hearing process by improving the clarity and consistency of procedures for parties appearing before the agency. The proposal is intended to achieve a just balance between the due process rights of the parties and protecting the health, safety and welfare of the public. The establishment of subchapter 23 is needed to restore proceedings for declaratory relief or action that is declaratory in nature and a process for requesting rulemaking.

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 25, 2010:

SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL PROCEEDINGS

310:2-21-6. Responsive pleadings

~~A Respondent may file, and the assigned administrative law judge may direct a Respondent to file, a responsive pleading to the petition or order that initiated the action.~~ Any party served with a petition, an application for an administrative fine, an administrative order or other instrument providing notice of a claim or defense to a claim initiating an individual proceeding before the Department shall file a written response or answer within twenty (20) days of receipt of the petition, application, order or other instrument initiating an individual proceeding. The original of the response must be filed with the Hearing Clerk of the Office of Administrative Hearings and a copy must be delivered or mailed to all other parties by 5:00 p.m. on the 20th day. Delivery to other parties must be made in person, by process server, or may be sent by certified mail, return receipt requested, restricted delivery. Every defense, in law or fact, to a claim for relief in any petition, application or administrative order initiating an administrative proceeding shall be asserted in the responsive pleading.

310:2-21-10. Pre-hearing ~~conferences~~procedure

(a) **Purpose.** All matters pending before the Office of Administrative Hearings are subject to pre-hearing procedures determined by the assigned administrative law judge to be appropriate for a prompt and efficient resolution to matter. ~~In any matter set for hearing on the merits, the Chief Administrative Law Judge may order that a pre-hearing conference be held. The purpose of the pre-hearing conference is to provide the parties an opportunity to clarify and isolate the issues of fact and law which will be decided at the hearing, and to dispose of pending motions and procedural matters.~~ ~~A~~At least one pre-hearing conference will routinely be ordered unless the ~~Chief~~assigned ~~Administrative~~administrative ~~Law~~law ~~Judge~~judge determines the same to be unnecessary.

(b) ~~**Party responsibility**~~**Initial Disclosure Statement.** ~~Each party or the party's counsel shall be present, on time and prepared. At least five (5)~~Within thirty (30) days ~~prior to the pre-hearing conference,~~after the filing of an answer, each party shall file the following ~~with the Office of Administrative Hearings~~information, and shall provide copies to the assigned administrative law judge and all parties:

(1) A brief statement of the case, together with a list of stipulations to which the party will agree, and requested remedies;

(2) A list of all known witnesses who have knowledge of the facts surrounding the issues of the case and who ~~are~~ may be expected to be called at the hearing. The list shall include a brief summary of the expected testimony of each witness;

(3) A list of any known documents or other exhibits together with the original or a copy of each document or exhibit ~~to be~~ that may be offered into evidence at the hearing. Non-documentary exhibits shall be described and a date given when they can be made available to the opposing party for inspection;

~~(4) A list of any witnesses for whom a subpoena will be required. The list shall include each witness's name, address, and a brief statement of the testimony to be offered~~

~~by each witness. The Department will not issue subpoenas without this information. Amendment of this list may be granted within three (3) days of the hearing date if the witness could not be identified or was otherwise unavailable at an earlier date despite the due diligence of the party or attorney;~~

~~(5) A statement as to whether discovery is complete or ongoing. If ongoing, the party must state with specificity what elements of discovery remain to be completed, and the date of expected completion.~~

(c) **Pre-hearing Conference procedure.** The assigned administrative law judge shall provide notice to the parties of the date, time, and place of ~~the~~ any pre-hearing conference at least ten (10) days prior to the scheduled date. The conference shall be informal, structured by the assigned administrative law judge, and not open to the public. If a record is deemed advisable by the assigned administrative law judge or requested by the parties, the conference may be recorded by audio tape and/or transcribed by a court reporter at the requesting party's expense. The pre-hearing conference shall be used to resolve any dispute or matter the resolution of which would promote the orderly and prompt conduct of the pre-hearing process or the hearing on the merits. The administrative law judge shall issue an order reciting any agreements made by the parties as to any matter considered. No witnesses shall appear or present evidence. ~~Dispositive motions and briefs shall be filed no later than ten (10) days prior to the pre-hearing conference, unless otherwise provided in a scheduling order.~~ The assigned administrative law judge may convert a pre-hearing conference into a scheduling conference, which may be held telephonically.

(d) **Final Pre-hearing Conference.** The assigned administrative law judge may hold more than one pre-hearing conferences or a final pre-hearing conference to formulate the final plan to streamline the hearing on the merits. If a final pre-hearing conference is ordered, the attorneys and any unrepresented parties shall confer prior to the final pre-hearing conference and prepare a single suggested Pre-hearing Conference Order for use during the conference and the hearing on the merits. Any party unable to secure the cooperation of another party may submit their own Proposed Final Pre-hearing Conference Order and, if the other party's cooperation is shown to be without cause, request that the other party's Proposed Final Pre-hearing Conference Order be stricken. The Final Pre-hearing Conference Order may follow substantially the form provided in Rule 5 of the Rules for District Court, 12, O.S., Ch.2, App. Such order, when entered, controls the subsequent course of the proceeding, unless modified to prevent manifest injustice. The assigned administrative law judge may waive the requirement of a pre-hearing conference order unless such order is requested by a party.

310:2-21-16. Signatures upon documents filed or submitted

(a) Any document, correspondence or order submitted to the Office of Administrative Hearings, or to any administrative law judge, shall be typed or printed legibly and shall bear the typed or printed name and the signature of the person who prepared the document or correspondence; the firm name if applicable; the complete mailing and office address, including the zip code; the telephone number, including the area code; and the assigned case number. If the document or correspondence has been prepared by an attorney, the attorney's Oklahoma Bar Association number shall also be listed.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the form, motion or other paper has been read;

(2) that to the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(3) that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) Any document or correspondence submitted to the tribunal shall include a certificate of ~~mailing~~ service to all parties.

310:2-21-17. Motions, applications and other written submissions ~~and Briefs~~

(a) **Margins and page length.** All ~~briefs and other~~ written submissions shall be typewritten in clear type not less than 12-point, with single spaced lines of quoted matter and double spaced lines of unquoted matter. The margins of the printed page shall be one and one-quarter ($1\frac{1}{4}$) inches on the left side and one (1) inch on the other three sides.

(b) **Accompanied by proposed order.** Motions and applications are to be accompanied by a proposed order.

(c) **Length.** All motions, applications and responses thereto, including briefs, shall not exceed ten (10) pages in length, excluding exhibits, without prior permission of the assigned administrative law judge. A request for enlargement of page length may accompany the written instrument filed. Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, if used, index, appendix, signature line and accompanying information identifying attorneys and parties, and certificate of service. No further briefs shall be filed without prior permission of the assigned administrative law judge. Exceptions to this requirement are not favored.

(d) **When responses are due.** Unless otherwise ordered by the assigned administrative law judge, ~~Objections~~ objections to motions or responses to written submissions ~~and replies to objections~~ are due within ~~ten (10)~~fifteen (15) ~~and five (5)~~ days of receipt~~, respectively~~. Replies to objections or to responses to written submissions are due within ten (10) days of receipt. Exceptions to this requirement may be granted upon application and for good cause shown.

(e) **Hearings upon motions or applications.** The assigned administrative law judge shall decide any motion or application without hearing ~~and~~ based upon the written submissions of the parties unless the assigned administrative law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

(f) **Disposition of unopposed motions.** Dispositive motions that are unopposed may be deemed to be confessed and, where appropriate, may result in the summary disposition of a claim or defense as applicable.

(g) **Motions filed close to hearing.** Motions may not be filed within ten (10) days of hearing unless based upon a sudden emergency of facts that could not have been previously known. Copies of such motions must be hand delivered to all parties of record.

(h) **Motions will not stay discovery.** Motions to Dismiss or for Summary Judgment will not stay any discovery deadline unless by a written agreement of the parties that has been communicated to the assigned administrative law judge.

(i) **Citations of authority.** Legal citations are to be made in accordance with subsections c,d and e of Rule 1.200 the Oklahoma Supreme Court Rules. If an unpublished case or a case cited by a special reporter is cited as persuasive authority a copy must be attached to the document citing the case.

310:2-21-25. Time

(a) **Computation.** In computing any period of time prescribed or allowed by this Subchapter or by order of an administrative law judge made pursuant to this Subchapter, the day of the act, event, or default 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 legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the offices of the Department do not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day when the office of the Department does not remain open for public business until the regularly scheduled closing time. When the period of time prescribed or allowed is less than then (10) days, intermediate legal holidays and any other day when the offices of the Department does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation. The assigned administrative law judge may at any time in its discretion alter any period of prescribed or allowed time with prior notice to the parties.

(b) **Use of Mail.** When a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or third-party commercial carrier or like means, three (3) days shall be added to the prescribed period.

310:2-21-26. Protective orders

At the time that a matter has been filed with the Office of Administrative Hearings all personal health information of any party or witness that comes into the possession of a party to pending matter is subject to an automatic protective order. The automatic protective order generally limits any party in possession of such information from publishing the information to any third party without first making application to the assigned administrative law judge supported by good cause. Third parties shall not include any person employed or affiliated with an attorney or his office who is representing a party to the individual proceeding.

310:2-21-27. Filing by electronic means

(a) **General requirements.** Documents may be filed by facsimile or other electronic mail transmission ("e-mail") directly to the Clerk of the Office of Administrative Hearings. Litigants are encouraged to limit the use of facsimile or e-mail filings to those of a time-critical nature only. The e-mail address or facsimile number may be obtained from the Clerk. Filing by facsimile or e-mail does not relieve a party from providing a copy of the filing to all other parties in the case. Filing with the Office of Administrative Hearings does not constitute notice to the Oklahoma State Department of Health Office of General Counsel or any other party. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.

(b) **Use of facsimile transmission.** Facsimile transmissions are limited to not more than ten (10) pages. A single document may not be split into multiple facsimile transmissions to avoid the page limitation. Each facsimile transmission sent shall be accompanied by a Facsimile Transmission Cover Sheet. The cover sheet shall be the first page transmitted, followed by any special processing instructions. A cover sheet is required for each fax and is NOT considered part of the ten (10) page limitation. The cover sheet must contain the name, mailing address, telephone number and return fax number for the transmitting party. Reference must be made to the identity of the case by number and/or names of parties. The number of pages being transmitted MUST be on the cover sheet. The submission must include a visible hand-written signature on the document to be filed.

(c) **Use of electronic mail.** Filings by e-mail must be made as an attachment to the e-mail and not contained in the body of the e-mail. They must be in an electronic format compatible with Microsoft Word or PDF. The name, mailing address, e-mail address and telephone number of the person filing must be on the document filed. The subject description of the e-mail must include a reference to the case by case number. The submission must include a visible hand-written signature or the signature line must show a signature in electronic form as follows: /s/ First and Last Name. Electronic signatures shall be deemed authentic and be considered the signature of the person filing the document.

(d) **Other considerations.** Filing a document by facsimile or e-mail constitutes implied consent for the Office of Administrative Hearings and other parties in the case to notify and deliver documents to that party by facsimile or e-mail. A party who files by fax or e-mail shall retain the original source document in his or her possession or control during the pendency of the action in exactly the same format and content as transmitted and shall produce such document upon request by the assigned administrative law judge or any party to the action. Upon failure to produce the original source document when requested, the assigned administrative law judge may refuse to consider the fax or e-mail as a properly filed instrument. The quality of the original document transmitted shall be clear and

dark enough to be transmitted legibly. The Department will not be responsible for events that disrupt or render impossible the receipt of documents transmitted electronically.

310:2-21-28. Video-teleconference hearings

(a) **General.** Any hearing may be held using video-teleconference technology using the capability provided for such transmissions at qualified local county health department locations. The proceedings will be conducted in a manner that is similar to those conducted when all parties are in the same room. Participants will be required to sit in front of a television monitor and can see the parties at the other locations.

(b) **Procedure.** The opposing party witnesses are required to arrive at the designated video-teleconference venue at least twenty (20) minutes prior to the time of hearing. At the commencement of a video-teleconference the presiding administrative law judge, hearing clerk or video coordinator will check that the link has been established. The administrative law judge will confirm that the participants at the remote location can be seen and heard clearly and in like manner insure that the participants at the remote venue can clearly see and hear the participants and administrative law judge at the hearing venue. The assigned administrative law judge will decide and explain the procedure for the video-teleconference prior to testimony being taken. Identification for each participant, such as a driver's license or photo I.D., may be required. At the beginning of the docket, each case will be called and the parties will be given the number in which their case will be heard. Only the case being heard by the presiding administrative law judge will be in video contact with the tribunal. Parties are to remain at the video-teleconference location until their case is called and their hearing has been conducted. The administrative law judge may dismiss witnesses prior to conclusion of the hearing.

(c) **Seating and configuration of the participants.** The Department's representative and witnesses will sit on the **right** side of the table as they are facing the tribunal. The opposing party and witnesses will sit on the **left** side of the table as they are facing the tribunal. Depending upon the arrangement of the particular room at the remote venue, seating arrangements may change. All persons present will use good manners and maintain a civil attitude. All persons present will dress and act appropriately as conduct themselves as if they were in a formal courtroom, including turning off or silencing all cell phones or other electronic devices. No hats will be worn in either venue. Once a hearing begins, all video-teleconference participants at all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.

(d) **Hearing procedure.** The administrative law judge will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using both audio and video means. Only one person shall talk at a time as directed by the administrative law judge.

(e) **Recesses.** If a recess is taken, the administrative law judge will indicate for the record when it starts and stops and when the record is to continue. The administrative law judge will also note the presence or absence of those attending and previously identified prior to the recess.

(f) **Exhibits.** All exhibits that a party intends to present at a hearing must be submitted to the administrative hearing clerk and opposing party/counsel at least five (5) days prior to the hearing. All exhibits must be identified numerically and indicate if the exhibit is by petitioner or respondent. (Example: Respondent's Exhibit 1). If the author of a document is not present to provide a foundation for admission, and the document does not otherwise qualify for an exception, it may be denied admission into evidence unless the administrative law judge determines it has probative value to the issues of the case. Other than a request for a hearing letters to the tribunal or letters to the Department are not part of the evidence unless offered by one of the parties and admitted.

(g) **Witnesses.** In some cases, witnesses may be required to wait outside the hearing room at a remote venue because of limitations on space or because of a procedural requirement. In most cases, all witnesses will be sworn in at the beginning of the hearing and admonished not to discuss their testimony with other witnesses.

(h) **Continuances.** A request to continue a video-teleconference hearing must be made no later than five (5) days before the hearing unless there is a showing of good cause. The request must be in writing and either mailed, faxed or emailed to the hearing clerk within the time specified. The request must explain why a continuance is necessary, must indicate the person requesting the continuance, and must indicate if the opposing counsel has been contacted and whether opposing counsel objects to the continuance request. If the hearing is continued, it will be scheduled on the next available docket.

(j) **Technical difficulties.** If a video link is interrupted or cannot be established, the hearing may be postponed or proceed as a telephone hearing at the discretion of the tribunal.

310:2-21-29. Reconsideration of long-standing interpretations by the Department and final orders

(a) **Long-standing interpretations.** If the Department certifies that an interlocutory decision made by an assigned administrative law judge reverses or materially alters a long-standing interpretation of a rule or statute that is within the administrative or regulatory purview of the Department and that such interpretation would materially affect the outcome of a proceeding, upon request by the Department, the administrative law judge shall grant the Department an evidentiary hearing to demonstrate the longevity and appropriateness of the long-standing interpretation before pronouncing the interlocutory decision. The interlocutory decision shall uphold the Department's long-standing interpretation if the Department successfully demonstrates that the interpretation has been adhered to for at least the last five (5) years, or since the statute or rule was passed or last amended if less than five (5) years since enactment, and that the Department's interpretation is reasonably based upon the language of the statute or rule at issue. Each party may file a Memorandum of Law not to exceed five (5) pages in length regarding the matter in dispute within five (5) days of the assigned administrative

law judge's initial, disputed ruling. The Memoranda shall be submitted simultaneously and no reply or response will be permitted. The administrative law judge shall render a decision on the matter within five (5) days of submission of the Memoranda or the evidentiary hearing, whichever is later.

(b) **Final decisions.** If the Department is aggrieved by a final agency order the Department may request reconsideration of the decision to the Commissioner of Health. The Commissioner of Health, or his designee, shall receive an Application for Reconsideration with a brief in support that complies with section 310:2-21-17 within ten (10) days of the entry of the final agency order. Any party opposing the application may file a response and brief in support that complies with section 310:2-21-17 within ten (10) days of the date the application is filed. The grounds for such application shall be governed by 75 O.S. § 317. The Commissioner of Health may hold a hearing on the matter and shall render a decision on the application within twenty (20) days of its submission and the decision rendered by the Commissioner of Health shall be considered the final agency order in the proceeding before the Department.

310:2-21-30. Requirements of parties filing petitions for judicial review

Any party appealing a final agency decision of an administrative law judge or the Commissioner of Health must promptly file a file-stamped copy of the Petition For Judicial Review or other document initiating appellate review with the Hearing Clerk of the Office of Administrative Hearings in order to provide sufficient notice to prepare and transfer the record to the reviewing court in compliance with 75 O.S. § 320. Any party may submit by electronic means in PDF compatible format to the Office of Administrative Hearings and the opposing counsel a suggested Index of Record of Proceedings to be used by the Hearing Clerk in preparing the record for transmittal to the district court. If part of the administrative record is subject to a protective order, or includes a stipulation by the parties to limit the administrative record for purposes of judicial review, the suggested Index of Record must specifically describe any part of the record subject to the protective order or to the stipulation. Electronic recordings of an individual proceeding will be submitted to the reviewing court without transcription, unless otherwise required by the reviewing court; in such case, the expense of transcription shall be taxed and assessed pursuant to Article II of the Oklahoma Administrative Procedures Act.

310:2-21-31. Summary adjudication and resolution

(a) **General.** The tribunal may resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. A final agency order rendered as a result of this section must contain findings of fact and conclusions of law as required by 75 O.S.§ 312 and include special findings of fact supporting the tribunal's determination that there is no reasonable dispute as to a material fact, the reasonable inferences that may be drawn from the material facts, or if only questions of law are involved. If the tribunal's summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.

(b) **Procedure.** The motion for summary adjudication and resolution may be filed by Respondent at any time after commencement of the action and by Petitioner at any time after twenty (20) days have passed from commencement of the action or after Respondent serves a motion for summary adjudication and resolution. The motion may be filed with or without supporting affidavits or other admissible evidence on all or part of the claims or defenses at issue in the proceeding. The motion must be served on the opposing party at least ten (10) days before the day set for the hearing on the merits. An opposing party may serve opposing affidavits or other admissible evidence before the hearing day. The facts and issues determined by the tribunal to not be at issue and resolved by a summary decision must be treated as established in the action.

(c) **Affidavits and testimony.** A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible into evidence according to 75 O.S. § 310, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The tribunal may permit an affidavit to be supplemented or opposed by admissions, depositions, answers to interrogatories, or additional affidavits. When a motion for summary adjudication and resolution is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleadings; rather, its response must, by affidavits or as otherwise provided in this rule, set out specific facts showing a genuine issue for hearing or further proceeding. If the opposing party does not so respond, a summary decision should, if appropriate, be entered against that party.

(d) **When affidavits are unavailable.** If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the tribunal may deny the motion, order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken or issue any other just order.

SUBCHAPTER 23. REQUESTS FOR DECLARATORY RELIEF AND RULEMAKING

310:2-23-1. Purpose and scope

This Subchapter shall govern the procedure for requesting declaratory relief or rulemaking action by the Department. These rules are promulgated to provide due process to parties appearing before the Department and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

310:2-23-2. Rules of procedure generally applicable

Unless expressly provided otherwise in this Subchapter, the rules of procedure set forth in Subchapter 21 shall be generally applicable to all actions before the Department where declaratory relief has been requested.

310:2-23-3. Initiating a proceeding for declaratory ruling

Proceedings for declaratory ruling upon the applicability of any rule or order of the agency may be initiated before the Department by filing with the Office of Administrative Hearings a Petition which seeks relief authorized by 75 O.S. § 307. Each petition shall be styled "In re the request of _____, Petitioner, for a declaratory ruling." The person or entity filing the Petition shall be denominated the Petitioner and the Department shall be denominated the Respondent. The petition shall include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the rules or orders involved, a short and plain statement of the matters asserted giving a right to relief and the relief requested.

310:2-23-4. Initiating a proceeding seeking rulemaking

(a) **General.** Proceedings seeking rulemaking by the Department may be initiated before the Department by filing with the Office of Administrative Hearings a Petition which seeks relief authorized by 75 O.S.§ 305. Each petition shall be styled "In re the request of _____, Petitioner, for adoption, amendment or repeal of a rule." The person or entity filing the Petition shall be denominated the Petitioner and the Department shall be denominated the Respondent.

(b) **Contents of the petition.** The petition shall include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, a short and plain statement of the rule language the Petitioner seeks to add, amend or delete.

(c) **Emergency rulemaking.** A petition seeking or requesting an emergency rule must include a separate statement describing the circumstances or conditions constituting an imminent peril threatening the preservation of the public health, safety, or welfare, or a compelling public interest requiring the adoption of an emergency rule, or the amendment or repeal of an existing rule.

(d) **Notice of hearing.** If the Department determines that the petitioner's request will proceed to hearing notice shall be issued to the petitioner and any other person who may have requested notice regarding said petition.

(e) **Denial.** *If the Department fails to initiate rulemaking proceedings in accordance with the Oklahoma Administrative Procedures Act within thirty (30) calendar days after the filing of a petition, the petition shall be deemed to have been denied.* [75 O.S. § 305.]

SUBCHAPTER 25. DISCOVERY

310:2-25-1. Purpose and scope

(a) This Subchapter shall govern the procedure for discovery in matters before the Department to provide for the just, speedy and inexpensive determination of actions. Each party shall participate in the discovery process, to the maximum extent possible, without intervention by the Office of Administrative Hearings. If a dispute over discovery should arise between the parties, the parties shall in good faith attempt to resolve their differences informally, without resort to motion or request filed with the Department. Subsequent to such attempt, any request or motion to compel discovery must be accompanied by a verified affidavit from ~~both parties or their attorneys~~ the party seeking discovery, stating that informal conference did not resolve the dispute, and the reasons why such resolution was not achieved.

(b) Discovery may be obtained by interrogatories (written questions), requests for production of documents or entry on land for inspection and other purposes, requests for admission, and depositions. Discovery may be obtained on any matter, not privileged, which is relevant to the subject matter involved in the pending case, and which is reasonably calculated to lead to the disclosure of admissible evidence. It is not a ground for objection that an answer relates to an ultimate fact in the case or the application of law to fact.

(c) A request, response or objection to discovery shall be signed by the party or the party's attorney. A party responding to a request that was complete when it was made shall supplement the response if and when it is discovered that the response was incorrect when made, or that the response is no longer true.

(d) An evasive or incomplete answer to a discovery request may be treated as a failure to answer. If a party or his or her attorney knowingly fails to obey an order to provide or permit discovery, the assigned administrative law judge may issue such order(s) which are just and will remediate the failure to obey, including an order that the party or other person failing to act pay reasonable discovery fees and costs, including attorney fees. Failure to act as described in this section may not be excused on the ground that the discovery sought was objectionable.

310:2-25-3. Discovery conference

A discovery conference may be ordered and conducted by the assigned administrative law judge or the Chief Administrative Law Judge. Special ~~Protective~~ protective orders may be entered if deemed advisable, which may limit the information sought and/or the manner in which it will be provided.

310:2-25-4. Methods of discovery

(a) **Interrogatories.** A party may serve on any other party written questions not to exceed 20 in number, including discrete subparts. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. Each question shall be answered separately and fully in writing or shall be objected to by the person making

the answer. If objected to, the reasons shall be stated. Answers or objections shall be made within twenty ~~10~~(20) calendar days after service unless a shorter or longer time is ordered or agreed upon by the parties. Where the answer to a question may be obtained from the records kept by a party, it is a sufficient answer to specify the records from which the answer may be obtained. The answer shall afford the party making the request an opportunity to examine, audit or inspect such records.

(b) **Requests for Production or entry upon land.** A party may serve on any other party a request to produce, inspect and copy any designated documents not confidential or privileged; or to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. A request shall describe with particularity the items to be produced or inspected and shall indicate a reasonable time, place and manner of making the inspection and performing any related acts. A written response to each item or category shall be made within twenty ~~10~~(20) calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. The response shall either state that the production or inspection will be permitted, or if objected to, the reasons shall be stated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) **Requests for Admission.** A party may serve on any other party written requests for admissions, not to exceed 20 in number, regarding the truth of any matters that relate to statements or opinions of fact or of the application of law to fact. This includes the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have otherwise been furnished or made available for inspection and copying. Each matter for which an admission is requested shall be answered separately. The answer shall admit or deny the matter or state why the answering party can not admit or deny the matter. A written response shall be made within twenty ~~10~~(20) calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. If an objection is made the reasons shall be stated. Any matter admitted is established unless withdrawal or amendment of the admission is permitted by the assigned administrative law judge.

(d) **Depositions.** A party may ask questions of any other party or person, under oath, before a person authorized to administer such oath. A written transcript shall be made by the person seeking the deposition and that person shall provide a copy to the other party or person. The requirements for conduct of depositions set forth in 12 O.S. § 3230 shall be applicable to depositions in cases before the Department, unless such would conflict with the Administrative Procedures Act, or these rules. At the discretion of the assigned administrative law judge, depositions may be taken by videoconference and/or recorded on videotape or other electronic medium. Depositions so taken shall also be transcribed by stenographic means. The admissibility of video deposition evidence shall be at the discretion of the assigned administrative law judge. Video depositions for purposes of submission as testimony at the hearing, where the witness is unavailable, may be permitted on a case by case basis, subject to approval of the assigned administrative law judge.

310:2-25-5. Enforcement of discovery rules and orders

The sanctions available in OAC ~~310:2-21-25~~310:2-25-24 are applicable to this Subchapter, and failure or refusal to comply with a discovery order may result in the imposition of one or more sanctions against the offending party. In addition, the Department may seek enforcement by District Court order if deemed necessary for the proper and just disposition of the case.

310:2-25-6. Time

Unless expressly provided otherwise in this Subchapter, the computation of time provisions in OAC 310:2-21-25 are applicable to this Subchapter.

310:2-25-7. Protected health information

Discovery requests for medical records or other records containing protected health information of a party or a person who is not a party to a proceeding, shall be subject to the following requirements:

(1) Information contained in party's medical records shall be disclosed only to counsel of record in this action or only to individuals certified by such counsel as employed by or assisting counsel in preparation for, or at the trial of this action. For the purposes of compliance with this rule, medical records shall mean any note, memorandum, or any other form of information, including information in electronic form, that is covered by the HIPAA Privacy Rule, 45 CFR § 164.xx, et seq.

(2) Any such documents or information obtained shall be used only for the purpose of litigation before the Department in the case in which the information was collected.

(3) The production of such documents or information concerning a resident's medical records shall not constitute a waiver of any privilege or other claim or right of withholding or confidentiality which resident may have.

(4) It shall be the responsibility of the parties to maintain all confidential information in a secure place designed to prevent any third party from access.

(5) Copies of all documents containing such information should reflect that they are protected, privileged or confidential within the spirit of this Order, including any portion of a hearing transcript, exhibit, brief or other document containing such information, and shall be filed and transmitted using sealed envelopes or other appropriate containers clearly marked as being confidential and protected.

(6) To the extent possible, all pleadings and other documents used in an administrative hearing shall be redacted

to exclude the name of a patient. For the purpose of clarity in hearings, parties may file a letter with the Office of Administrative Hearings identifying any redacted party. Upon conclusion of the case, the letter shall be placed in a sealed envelope and kept with the tribunal file.

[OAR Docket #10-1031; filed 6-14-10]

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

[OAR Docket #10-1022]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:9-1-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. § 1-104; 63 O.S. Supp. 1998, Sections 1-118C2c and 1-118G; 310:109-5-2-1a
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SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
This rule change sets charges for the cost of data preparation for information and for the dissemination of the data with the funds to be deposited in the Oklahoma Health Care Information System Revolving Funds Account per 63 O.S. § 1-118.
CONTACT PERSON:
Kelly Baker, Director, Center for Health Statistics, (405) 271-6225

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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:9-1-3. Fees and charges

(a) The fee for special reports shall be $50.00 per staff hour for creating or generating reports.

(b) The fee for Public Use Data Files shall be as follows:

(1) *Most Current Two (2) Years/each*:

(A) Participating Hospitals $ 0.00 - 1st copy at no charge

(B) Non-Profit/Research $ 50.00

(C) For Profit/Commercial $7,500.00 full data year or $0.030/rec + $50/hr for custom datasets

(2) *Earlier Years/each:*

(A) Participating Hospitals $ 0.00 - 1st copy at no charge

(B) Non-Profit/Research $50.00

(C) For Profit/Commercial $3,750.00 full data year or $0.015/rec + $50/hr for custom datasets

(~~b~~c) The Department will accept cash, checks, or money orders for payment of fees. The check or money order must be made payable to the Oklahoma State Department of Health.

[OAR Docket #10-1022; filed 6-14-10]

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

[OAR Docket #10-1023]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
310:96-1-1. Purpose [NEW]
310:96-1-2. Definitions [NEW]
310:96-1-3. Fees [RESERVED]
Subchapter 3. Submission Requirments [NEW]
310:96-3-1. Advance Directive Forms [NEW]
310:96-3-2. Document format [NEW]
Subchapter 5. Release of Advance Directives [NEW]
310:96-5-1. Release of Advance Directives [NEW]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. § 1-104; 63 O.S. Supp. 2009 § 3102.1.
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INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
These rules establish and implement the Advance Directive Registry pursuant to Senate Bill 346, OK Sessions 2009. These rules include a statement of purpose, definitions, fees, requirements for submission and release of an advance directive.
CONTACT PERSON:
Kelly Baker, Director of the Center for Health Statistics: telephone 405-271-4040 facsimile: 405-271-4026; email: KellyB@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:96-1-1. Purpose

The purpose of this Chapter is to establish and maintain the Advance Directives Registry which shall be accessible through the OSDH website for the purpose of storing Advance Directives of individuals and regulating access to the Registry.

310:96-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Registry" means the Oklahoma Advance Directive Registry

310:96-1-3. Fees [RESERVED]

SUBCHAPTER 3. SUBMISSION REQUIRMENTS

310:96-3-1. Advance Directive Forms

The Advance Directive Form submitted for initial filing or amendment in the Registry may be substantially in the format contained in Title 63 O.S. §3101.4 or in the format available on the Oklahoma State Department of Health Website.

310:96-3-2. Document format

The Advance Directive forms submitted for filing in the Registry shall be in a PDF (Portable Document Format) document.

SUBCHAPTER 5. RELEASE OF ADVANCE DIRECTIVES

310:96-5-1. Release of Advance Directives

Release of the Advance Directive form on file with the Registry shall be limited to the subject of the record or an individual authorized by the subject of the record as identified in the Registry or a health care provider treating the subject of the record.

[OAR Docket #10-1023; filed 6-14-10]

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

[OAR Docket #10-1024]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. § 1-104; 21 O.S. Section 842.1 et seq.
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
This rulemaking action updates requirements for tattooing and body piercing in Oklahoma and establishes uniform health and safety standards. The fee change address a disincentive to compliance for those entities and individuals seeking a temporary license for short term public tattooing and body piercing events. The rule change places greater emphasis on the licensed entity for compliance by the entity's temporary artists not currently licensed in the State of Oklahoma. The current regulatory scheme impairs the Department's ability to protect the public from exposure to bloodborne diseases resulting from unsanitary practices by unidentified unlicensed individual artists at temporary events. This proposal modifies definitions,

amends permit and license requirements for artists and establishments for temporary license events and removes requirements for a surety bonds. The surety bond statute received a Declaratory Judgment and permanent injunction on May 1, 2007 by the District Court of Oklahoma County, Case No. CJ 2007-988.

CONTACT PERSON:

Tressa Madden, Director, Consumer Health Division, Protective Health Services, Oklahoma State Department of Health (405) 271-5243

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 25, 2010:

SUBCHAPTER 3. BODY PIERCING ARTIST AND TATTOO ARTIST REQUIREMENTS AND PROFESSIONAL STANDARDS

310:233-3-2. Prohibited acts

(a) It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

(b) Eating or drinking by anyone is prohibited in the area where body piercing or tattooing is performed by the licensed artist in a licensed body piercing or tattoo establishment. Smoking is prohibited in any licensed establishment.

(c) No person under eighteen (18) years of age shall be allowed to receive a tattoo. No person under eighteen (18) years of age shall be allowed to receive a body piercing procedure unless the legal parent or legal guardian of such a child gives written consent for the procedure and the legal parent or legal guardian of the child is present during the procedure [21:842.1(A)].

(d) No person with an exposed infectious sore shall work in any area of a body piercing or tattoo establishment where there is a likelihood that they could contaminate body piercing or tattoo instruments, supplies or procedure surfaces with body substances or pathogenic organisms.

(e) No animals of any kind shall be allowed in a body piercing or tattoo establishment except service animals used by persons with disabilities or as allowed in 310:233-7-1.

(f) A person shall not perform body piercing or tattoo upon another person if the other person is under the influence of alcohol or a controlled substance.

(g) An ear piercing gun shall not be used on any body part other than the ear lobe, which does not contain cartilage. This device must be autoclave sterilized between clients after each use or be single use and disposable.

(h) No person shall be allowed to purchase or possess tattoo equipment or supplies without being licensed either as an Oklahoma Medical Micropigmentologist or as an Oklahoma tattoo artist [21:842.1(A)].

(i) All body piercing operators, tattoo operators and artists shall be prohibited from performing body piercing or tattooing unless licensed in the appropriate category by the Department [21:842.3(A)].

~~(j) The State Department of Health shall not grant or issue a license to a body piercing or tattoo operator if the place of business of the body piercing or tattoo operator is within one thousand (1,000) feet of a church, school, or playground [21:842.3(C)] except as provided in [21:842.3(C)(2)].~~

310:233-3-3. Standards

(a) The artist shall maintain a high degree of personal cleanliness, conform to hygienic practices and wear clean clothes, including closed-toed shoes, when performing body piercing or tattoo procedures. Before performing body piercing or tattoo procedures, the artist must thoroughly wash their hands in hot running water (with a minimum temperature of 100° F) with germicidal soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants. At a minimum this includes:

(1) Immediately prior to donning gloves to perform a body piercing or tattoo procedure;

(2) Immediately after removing gloves at the conclusion of a body piercing procedure or tattoo procedure;

(3) When leaving the work area;

(4) As soon as feasibly possible after potential contact with contaminated surface(s) has occurred; and

(5) Before and after eating, drinking or smoking.

(b) In performing body piercing or tattoo procedures, the artist shall wear disposable exam gloves ~~and surgical mask~~ to minimize the possibility of transmitting infection to the client being pierced or tattooed. Exam gloves must be changed in accordance with aseptic technique. Under no circumstances shall a single pair of exam gloves be used during the entire piercing or tattoo procedure. The use of disposable exam gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program. A minimum of one pair of exam gloves should be used for each stage of piercing or tattooing to include:

(1) Hard surface disinfection;

(2) Setup of instruments used for body piercing or tattooing;

(3) Preparation of the body art area; and

(4) The body piercing or tattoo procedure.

(c) If, while performing a body piercing or tattoo procedure, the artist's glove is pierced or torn, the contaminated gloves shall be discarded immediately and the hands washed thoroughly before a fresh pair of exam gloves are applied. Any item or instrument that has come into contact with a surface other than the procedure surface or the client during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument before the procedure resumes.

(d) All procedure surfaces must be disinfected with a germicidal solution immediately after completing a body piercing or tattoo procedure.

(e) Contaminated waste which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled shall be placed in a biohazard bag or container which is properly labeled. Sharps ready for disposal shall be placed in an approved sharps container. Contaminated waste which may release blood, body fluids, dried blood or

dried body fluids and sharps must be disposed of consistent with OAC 252:515. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal disposal methods.

SUBCHAPTER 7. REQUIREMENTS FOR PREMISES

310:233-7-2. Location requirements and limitations

~~(a) The Department shall not approve an initial license to perform body piercing, tattooing, or both to be issued to a facility or place of business that is located *within one thousand (1,000) feet from a church, school or playground* [21:842.3(C)(1)].~~

~~(b) The distance required to be met by subsection (a) of this section shall begin at any entry or exit into or from the facility, or any place on the property of the facility where body piercing or tattooing may be observed, which ever is closer, and be measured to the nearest property line of the church, school or playground.~~

~~(c)~~ A mobile unit, including, but not limited to, a mobile home, recreational vehicle, cargo trailer or any other non-permanent facility, shall not be used as a permanent body piercing or tattoo establishment.

SUBCHAPTER 9. LICENSE REQUIREMENTS

310:233-9-1. Body piercing or tattoo license

(a) No person, firm, partnership, joint venture, association, business trust, corporation, legal entity or any organized group of persons shall operate a body piercing or tattoo establishment unless it has received a body piercing or tattoo establishment license from the Department.

(b) A license for a body piercing or tattoo establishment shall be issued for the physical location of the body piercing or tattoo establishment and shall not be transferable. A license for a body piercing or tattoo establishment shall be valid from the date of issuance and shall expire one (1) year from the date of issuance.

(c) A current body piercing or tattoo establishment license shall be posted in a prominent and conspicuous area where clients may readily observe it.

(d) Temporary body piercing or tattoo establishment licenses may be issued for body piercing or tattoo procedures provided outside of the physical site of a licensed facility for the purposes of product demonstration, industry trade shows or for educational reasons. A temporary body piercing or tattoo establishment license may be issued for body piercing or tattooing services provided outside of the physical site of a licensed facility for the purpose of body piercing or tattooing in a fixed location at which an individual body piercing or tattoo operator performs body piercing or tattooing for a specified period of not more than ~~seven (7)~~ <u>three (3)</u> days in conjunction with a single event or celebration, where the primary function of the event or celebration is body piercing or tattooing and the location does not otherwise violate the provisions of 310:233-7-2. A temporary license may be issued if the applicant satisfies the following:

(1) The applicant shall be affiliated with a body piercing or tattoo establishment that has a current license;

(2) The temporary body piercing or tattoo establishment meets the requirements outlined in OAC 310:233-7-1 and 2;

(3) The applicant's establishment is inspected and approved by the Department prior to issuance of the temporary license;

(4) The applicant submits to the Department a request for a temporary demonstration license in writing at least thirty (30) days before the event. The request shall specify:

(A) The purpose for which the license is requested;

(B) The period of time for which the license is requested;

(C) The location where the temporary demonstration license shall be used; and

(D) Names and license numbers if applicable of the artists participating.

(e) The applicant's temporary establishment shall be contained in a completely enclosed, non-mobile facility.

(f) The applicant shall provide facilities to properly sterilize instruments or shall use only single use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.

(g) Temporary licenses are not transferable from one special event to another.

(h) License fees shall be as follows:

(1) $1,000.00 for an initial license for tattoo establishments;

(2) $500.00 for a renewal tattoo license; and

(3) $750.00 for late renewal when the tattoo license is not renewed within thirty (30) days after expiration.

(4) $500.00 for an initial license for body piercing establishments;

(5) $250.00 for a renewal body piercing license;

(6) $350.00 for late renewal when the body piercing license is not renewed within thirty (30) days after expiration;

(7) $250.00 for a temporary license for body piercing establishments; and

(8) $250.00 $500.00 for a temporary license for tattooing establishments.

(i) The certification fee required by 21 O.S. 842.3(D) shall be paid before an application for license is processed.

(j) Proof of publication evidence compliant with 21 O.S. 842.3(E) shall be filed before an application for license is processed.

310:233-9-2. Artist license

(a) The artist must be a minimum of eighteen (18) years of age to be eligible for a license.

(b) No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.

(c) The artist license shall be valid from the date of issuance and shall automatically expire one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.

(d) The application for an artist license shall include:

(1) Name;

(2) Date of birth;

(3) Sex;

(4) Residence address;

(5) Mailing address;

(6) Telephone number;

(7) Place(s) and licensed license number of employment as an artist;

(8) Proof of training and experience which shall include one of the following;

(A) Two (2) years license from another state; or

(B) Proof of a completed approved apprentice program, that has been accepted by the Department;

(9) Current bloodborne pathogen certification recognized from a nationally accredited program; and

(10) Current first aid certification; and

(11) Current CPR certification.

(e) Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.

(f) Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.

(g) License fees shall be as follows:

(1) $250.00 for an initial license;

(2) $250.00 for a renewal license;

(3) $350.00 for late renewal when the license is not renewed within thirty (30) days after expiration; and

(4) $250.00 $50.00 temporary artist license, not to exceed 30 7 days.

(h) A person who has acceptable experience as stated in 310:233-9-2(d)(8)(A and B) in performing tattooing may be deemed to have met the Department approved preparedness requirements status as per ~~310:233-9-2(8)(A and B)~~ 310:233-9-2(d)(8)(A and B). A candidate shall have a minimum passing score of 70% on the written examination that will include:

(1) Knowledge of Anatomy, Physiology, and Disease;

(2) Theory and application of ink;

(3) Safety and Aseptic Technique;

(4) Professionalism; and

(5) Client Consultation Services.

(i) A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:

(1) Notarized copy of the applicant's certificate of birth;

(2) Notarized copy of the applicant's driver's license or other similar photo identification;

(3) Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and

(4) Proof of experience as required in 310:233-9-2(d)(8)(A and B).

(j) The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.

(k) The Department shall notify the applicant in writing of its decision to approve or disapprove within 30 days after receipt of a completed application. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.

(l) Upon completion of the testing process, the applicant is eligible to apply for ~~a Tattoo~~ an Artist license. In order to apply for a license, the candidate must submit the following to the Department:

(1) Completed application as specified in 310:233-9-2(i)(1-4); and

(2) Completed Testing Verification Form provided by the Department which includes:

(A) Skills evaluation information; and

(B) Written certification examination records.

(m) Bloodborne training certification shall contain at a minimum the following elements:

(1) A general explanation of the epidemiology and symptoms of bloodborne diseases;

(2) An explanation of the modes of transmission of bloodborne pathogens;

(3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

(4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

(5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;

(6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;

(7) An explanation of the basis for selection of personal protective equipment;

(8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;

(9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

(10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting

the incident and the medical follow-up that will be made available;

(11) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident; and

(12) An explanation of the signs and labels and/or color coding required.

(n) First aid certification shall include instruction in:

(1) Injury and acute illness as a health problem;

(2) Interactions with the local emergency medical services system;

(3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;

(4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and

(5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:

(A) The meaning of universal precautions;

(B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;

(C) The value of universal precautions for infectious diseases;

(D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and

(E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.

(o) CPR training certification shall include instruction in:

(1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;

(2) The presence of any bleeding, establishing and maintaining adult airway patency;

(3) Performing adult breathing resuscitation; and

(4) Performing choking assessments and appropriate first aid intervention.

310:233-9-4. Body piercing or tattoo operators surety bond [REVOKED]

~~All body piercing and tattoo operators shall have a *surety bond in the principal sum of One Hundred Thousand Dollars ($100,000.00) to be in a form approved by the Attorney General and filed in the Office of the Secretary of State for all body piercing or tattoo operators* [63:842,3(A)(14)].~~

[OAR Docket #10-1024; filed 6-14-10]

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

[OAR Docket #10-1025]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Standards for Medical Micropigmentation
310:234-9-2 Prohibited acts [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. § 1-104; and Title 63 O.S. §§ 1-1450 et seq.
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed rulemaking action changes the requirement that authorizes who may give an injection of local anesthesia to a person receiving Medical Micropigmentation. The rule change specifies the injection of local anesthesia shall only be performed by a certified micropigmentologist who is licensed and authorized under the applicable practice act for nurses, physician assistants, and dental hygienist. The current rule may authorize the certified micropigmentologist to engage in practices not authorized under the respective practice acts. This change is sought at the request of Department General Counsel and the Board of Medical Licensure and Supervision to avoid conflict with the applicable practice acts.
CONTACT PERSON:
Tressa Madden, Director, Consumer Protection Division, Consumer Health Services, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; Telephone 405-271-5243; email: tressam@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 9. STANDARDS FOR MEDICAL MICROPIGMENTATION

310:234-9-2. Prohibited acts

(a) Performing medical micropigmentation outside the confines of a physician's office.

(b) Performing medical micropigmentation without a current certification or current licensure as a physician.

(c) Smoking, eating, or drinking by anyone is prohibited in the area where medical micropigmentation is performed.

(d) No person affected with an infectious disease shall work in any area where medical micropigmentation is performed if there is likelihood that they could contaminate equipment, supplies or working surfaces with body substances or pathogenic organisms.

(e) Injection of ~~Local~~ local anesthesia shall only be administrated by a certified micropigmentologist who is currently licensed as a nurse, a physician assistant or dental hygienist. The certified micropigmentologist not recognized by law to provide local anesthesia by other regulatory boards shall only administer infiltration by topical local anesthesia. These specified individuals may administer local anesthesia as allowed by their respective certified boards under which they practice.

[OAR Docket #10-1025; filed 6-14-10]

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

[OAR Docket #10-1026]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Use of X-Rays in the Healing Arts and Veterinary Medicine
310:281-11-13. Fluoroscopic x-ray systems and spot-film devices except radiation therapy simulators [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-104 and 63 O.S. 1-1501.1 et seq.
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ANALYSIS:
In a review of the regulations it was noted that this section differed from the Federal Guidelines for Diagnostic X-Ray machines. There is a difference in the maximum allowable exposure rates for fluoroscopic x-ray machines in automatic exposure control (AEC) mode of operation and there is no maximum for machines equipped with high boost modes operation. The changes would increase the maximum exposure from 5 Rems (radiation equivalent man) to 10 Rems for machines in the AEC mode and establish a maximum exposure limit of 20 Rems for fluoroscopic units when operated in a high boost mode. There will be no change in the maximum exposure rate for fluoroscopic x-ray machines when operated in the manual mode. These changes will help the department be in line with the federal guidelines during inspections.
CONTACT PERSON:
Tressa Madden, Director, Consumer Protection Division, Consumer Health Services, Protective Health Services, Oklahoma State Department of Health, (405) 271-5243.

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 25, 2010:

SUBCHAPTER 11. USE OF X-RAYS IN THE HEALING ARTS AND VETERINARY MEDICINE

310:281-11-13. Fluoroscopic x-ray systems and spot-film devices except radiation therapy simulators

(a) **Limitation of useful beam.**

(1) **Primary barrier.**

(A) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any source-to-image receptor distance (SID).

(B) The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the useful beam and the imaging device is in place and operable.

(2) **X-Ray field.**

(A) Means shall be provided for step less (continuous) adjustment of the field size.

(B) The minimum field size at the greatest SID shall be equal to or less than 5 centimeters by 5 centimeters.

(C) Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(D) Spot-film devices shall meet the following additional requirements:

(i) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot-film selector.

(ii) Such adjustment shall be automatically accomplished except when the x-ray field size in the

plane of the film is smaller than that of the selected portion of the film.

(iii) The total misalignment of the edges of the x-ray field with the respective edges of the selected portion of the image receptor along the length or width dimensions of the x-ray field in the plane of the image receptor shall not exceed 3 percent of the SID when adjusted for full coverage of the selected portion of the image receptor.

(iv) The sum, without regard to sign of the misalignment along any 2 orthogonal dimensions, shall not exceed 4 percent of the SID.

(v) The center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within 2 percent of the SID.

(E) Compliance with 310:281-11-13(a)(2) shall be determined with the beam axis perpendicular to the plane of the image receptor.

(b) **Activation of the fluoroscopic tube.** X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of the exposure (dead-man switch). When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposures at any time, but means may be provided to permit completion of any single exposure of the series in process.

(c) **Exposure rate limits:**

~~(1) For fluoroscopic x-ray systems without high level controls, the exposure rate measured (determined) at the point where the center of the useful beam enters the patient shall not exceed 10 roentgens per minute, except during recording of fluoroscopic images. Compliance shall be determined with the beam blocked by at least 3 millimeters of lead (without full backscatter in the beam).~~

~~(2) For fluoroscopic x-ray systems with high level controls, the system shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 5 roentgens per minute at the point where the center of the useful beam enters the patient unless the high level control is activated.~~

~~(A) Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator.~~

~~(B) A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.~~

~~(3) Compliance with the requirements of 310:281-11-13(c) shall be determined as follows:~~

~~(A) Movable grids and compression devices shall be removed from the useful beam during the measurement.~~

~~(B) If the source is below the table, exposure rate shall be expressed for the center of the useful beam 1 centimeter above the tabletop or cradle.~~

~~(C) If the source is above the table, the exposure rate shall be measured at 30 centimeters above the tabletop with the end of the beam limiting device or spacer positioned as closely as possible to the point of measurement.~~

~~(D) In a C-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly with the source at its closest possible position of operation.~~

~~(E) In a lateral fluoroscope, the exposure rate shall be measured 15 centimeters from the centerline of the table in the direction of the source with the tabletop shifted toward the source to the limit of its travel and the source at its closest possible position of operation.~~

~~(4) Periodic measurement of entrance exposure rate shall be performed as follows:~~

~~(A) Such measurements shall be made annually and after any maintenance of the system which might affect the exposure rate.~~

~~(B) Results of these measurements shall be posted where any fluoroscopist may have ready access to such results while using the fluoroscope and in the record required in 310:281-11-4. The measurement results shall be stated in roentgens per minute and include the technique factors used in determining such results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results.~~

~~(C) Conditions of periodic measurements of entrance exposure rate are as follows:~~

~~(i) the measurement shall be made under the conditions that satisfy the requirements of 310:281-11-13(c)(3)(C).~~

~~(ii) fluoroscopic x-ray systems that do not incorporate an automatic exposure control shall utilize a kVp typical of the clinical use of the fluoroscopic x-ray system.~~

~~(iii) fluoroscopic x-ray systems that incorporate an automatic exposure control shall have sufficient material placed in the useful beam to produce a milliamperage and kVp typical of the use of the fluoroscopic x-ray system.~~

~~(iv) fluoroscopic x-ray systems that do not incorporate an automatic exposure control shall utilize a milliamperage typical of the clinical use of the fluoroscopic x-ray system.~~

(1) **Entrance Exposure Rate Allowable Limits.**

(A) Fluoroscopic equipment provided with automatic exposure rate control mode (no manual mode) shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images; or

(ii) When an optional high level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current which will result in an exposure rate

in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(B) Fluoroscopic equipment (manual mode only) not provided with automatic exposure rate control shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images; or

(ii) When an optional high level control is activated. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(C) Fluoroscopic equipment, provided with both automatic exposure rate control and manual modes, shall not be operable at any combination of tube potential and current that shall result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute in either mode at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images; or

(ii) When the mode or modes have an optional high level control, in which case the mode or modes shall not be operable at any combination of tube potential and current which shall result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(D) Any fluoroscopic equipment manufactured after May 19, 1995 which can exceed 1.3 mC\kg (5 roentgens) per minute shall be equipped with an automatic exposure rate control. All entrance exposure rate limits shall be 2.6 mc/kg (10 roentgens) per minute with an upper limit of 5.2 mC/kg (20 roentgens) per minute when the high level control is activated.

(E) Compliance with the requirements of OAC 310:281-11-13 shall be determined as follows:

(i) If the source is below the x-ray table, the exposure rate shall be measured 1 centimeter above the tabletop or cradle:

(ii) If the source is above the x-ray table, the exposure rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(iii) For a c-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly;

(iv) For a lateral type fluoroscope, the exposure rate shall be measured at a point 15 centimeters for the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters to the centerline of the x-ray table.

(2) **Periodic Measurements.** Periodic measurements of the entrance exposure rate shall be performed by a qualified expert for both typical and maximum values as follows (Materials should be placed in the useful beam to protect the imaging system when conducting these periodic measurements.):

(A) Such measurements shall be made annually or after any maintenance of the system which might affect the exposure rate;

(B) Results of these measurements shall be kept where any fluoroscopist may have ready access to such results while using the fluoroscope. The measurement results shall be stated in coulombs per kilogram (roentgens) per minute and include the technique factors used in determining such results. The name of the individual performing the measurements and the date the measurements were performed shall be included in results;

(C) Conditions of periodic measurement of typical entrance exposure rate are as follows:

(i) The measurements shall be made under the conditions that satisfy the conditions of OAC 310:281-11-13(c)(1)(E);

(ii) The kVp, mA, and/or other selectable parameters shall be adjusted to those settings typical of clinical use on a 23 cm thick abdominal patient;

(iii) The x-ray system that incorporates automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce a milliamperage and/or kilovoltage to satisfy the conditions of OAC 310:281-11-13(c)(2)(C)(ii);

(D) Conditions of periodic measurement of maximum entrance exposure rate are as follows:

(i) The measurement shall be made under the conditions that satisfy 310:281-11-13(c)(1)(E);

(ii) The kVp, mA and/or other selectable parameters shall be adjusted to those settings which give the maximum entrance exposure rate;

(iii)The x-ray system(s) that incorporates automatic exposure control shall have sufficient attenuative material placed in the useful beam to produce the maximum entrance exposure rate of the system.

(d) **Barrier transmitted radiation rate limits.**

(1) **Primary barrier transmission.** The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam combined with radiation from the image intensifier shall not exceed 2 milliroentgens per hour for each roentgen per minute exposure rate. Measurements shall be made at 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor.

(2) **Measuring compliance of barrier transmission.**

(A) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(B) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters above the tabletop.

(C) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters.

(D) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(E) The attenuation block shall be positioned in the useful beam 10 centimeters from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

(F) The collimator shall be fully open when the measurement is made.

(e) **Indication of potential and current.** During fluoroscopy and cinefluorography, the kV and the mA shall be continuously indicated at the control panel and/or the fluoroscopist's position.

(f) **Source-to-Skin distance.** The SSD shall not be less than:

(1) 38 centimeters on all stationary fluoroscopes,

(2) 30 centimeters on all mobile fluoroscopes, and

(3) 20 centimeters for image intensified fluoroscopes used for specific surgical application.

(g) **Fluoroscopic timer.**

(1) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting.

(2) A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while x-rays are produced until the timing device is reset.

(h) **Radiation therapy simulation systems.** Radiation therapy simulation systems shall be exempt from all the requirements of 310:281-11-13(a), (c), (d), and (g) provided that:

(1) such systems are designed and used in such a manner that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(2) systems which do not meet the requirements of 310:281-11-13(g) are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require in such cases that the timer be reset between examinations.

[OAR Docket #10-1026; filed 6-14-10]

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

[OAR Docket #10-1027]

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Subchapter 13. Fees
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ANALYSIS:
310:400-7-2 - The current Rule requires the licensure application to be notarized. This proposal relinquishes that requirement to allow the Department to facilitate the acceptance of on-line licensure applications. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications. The effect of this Rule will be an increased convenience and the reduction in travel and reductions in other transaction costs that would otherwise be borne by persons submitting licensure applications to the Department using traditional submission methods.
310:400-13-4 - The current Rule allows payment of fees to be made in the form of cash, check, money order or cashier's check. This proposal allows the Department to accept credit card payments and other electronic payments for application and renewal fees. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications and license renewals. The effect of this Rule will be an increased convenience and the reduction in travel, payment of late fees and other reductions in transaction costs that would otherwise be borne by persons submitting licensure applications and license renewals to the Department using traditional payment methods.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:400-7-2. Application procedures

(a) **General.**
(1) The purpose of this section is to insure that all applicants meet those requirements specified in Section 1925.6 of the Act.
(2) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Department forms.
(3) The Department will not consider an application as officially submitted until receipt of the Application, application fee, official graduate transcripts, three (3) Document of Recommendation Forms, Internship/Practicum Documentation Form, and completed criminal background check. The fee must accompany the Application Form.
(4) The Department must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

(b) **Application materials.** The purpose of this section is to list the materials required in the application process. All forms must be completed in full by the applicant, as per the instructions on the following individual forms:
(1) Application form.
(2) Official graduate transcript.
(3) Documents of recommendation.
(4) Internship/practicum documentation form.
(5) Two (2) classifiable sets of fingerprints.
(6) Fees.

(c) **Application forms**
(1) Application form - identifying information; graduate education and course work; possession of other credentials; professional ethics and conduct~~; notarization~~.
(2) Internship/Practicum Documentation form - identifying information; time, place, location of practicum
(3) Document of Recommendation - identifying information; ratings of ethical and professional characteristics; circumstances and time period submitter has know applicant
(4) Supervision Agreement - supervisor and supervisee agree to terms set forth for the accrual of supervised experience; a reproduction of the regulation regarding supervised experience
(5) Evaluation of Supervised Experience document - identifying information; time, place and duration of supervised experience; number of hours of direct client contact with different populations; supervisor's rating of professional activity; supervisor's comment section, and record of supervised experience.
(6) On-Site Supervisor Verification form - identifying information; name of applicant; place of employment; on-site supervisor information; a reproduction of the regulation regarding supervision accrued in a private setting.
(7) Two (2) classifiable sets of fingerprints.

(d) **Negative references.** The Advisory Board may ask any applicant for licensure as an LMFT, whose file contains negative references of substance, to come before the Advisory Board for an interview before the licensure designation process may proceed.

SUBCHAPTER 13. FEES

310:400-13-4. Method of payment

Any remittance submitted to the Department in payment of a required fee may be in the form of a ~~cashiers~~cashier's check, money order, personal check or cash. Payment of fees may be made by credit card or other electronic means, if acceptable by the Department. Any check returned to the Department for non-payment may result in expiration or suspension of license.

[OAR Docket #10-1027; filed 6-14-10]

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

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Subchapter 17. Fees
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310:403-5-2 - The current Rule requires the licensure application to be notarized. This proposal relinquishes that requirement to allow the Department to facilitate the acceptance of on-line licensure applications. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications. The effect of this Rule will be an increased convenience and the reduction in travel and reductions in other transaction costs that would otherwise be borne by persons submitting licensure applications to the Department using traditional submission methods.
310:403-17-2 - The current Rule allows payment of fees to be made in the form of cash, check, money order or cashier's check. This proposal allows the Department to accept credit card payments and other electronic payments for application and renewal fees. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications and license renewals. The effect of this Rule will be an increased convenience and the reduction in travel, payment of late fees and other reductions in transaction costs that would otherwise be borne by persons submitting licensure applications and license renewals to the Department using traditional payment methods.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 5. FORMS

310:403-5-2. Description of forms

(a) The Application Form requires the following:
(1) Identifying information of applicant;
(2) Possession of other credentials;
(3) Previous misconduct;
(4) Education;
(5) References; and
(6) Proposed professional Practice~~; and,~~
~~(7) Notarization~~.

(b) The Internship/Practicum Documentation Form requires the following:
(1) Identifying information of applicant;
(2) Place, time, duration and nature of supervised experience;
(3) School arranging supervision and name of supervisor; and,
(4) Signature and title of supervisor.

(c) The Document of Recommendation requires the following:
(1) Identifying information of applicant;
(2) Scale of performance rating personal character and professional skills;
(3) Circumstances and time period rater has known applicant;
(4) Space for rater's comments;
(5) Identifying information of rater.

(d) The Statement of Professional Disclosure is composed of alternative forms depending on the status of the applicant, as follows.
(1) The LBP Candidate's Statement of Professional Disclosure requires the following:
(A) Explanation of LBP Candidate's responsibilities;
(B) Name and contact information for person who will be responsible for the client's records in the event of the LBP Candidate's infirmity or death;
(C) Supervisor's identifying information;
(D) Address and phone number of the Department; and,
(E) Signatures of client and LBP Candidate.
(2) The LBP's Statement of Professional Disclosure requires the following:
(A) Explanation of the LBP's responsibilities;
(B) Name and contact information for person who will be responsible for the client's records in the event of the LBP's infirmity or death;
(C) Address and phone number of the Department; and,
(D) Signatures of client and LBP.

(e) The Supervision Agreement requires the following:
(1) Statement of agreement to fulfill Subchapter 15 and consequences of violation; and
(2) Identifying information and signatures of supervisee and supervisor.

(f) The On-Site Supervisor Verification Form requires the following identifying information:
(1) Name of applicant;
(2) Place of employment;

(3) On-Site Supervisor Information;

(4) A reproduction of the regulation regarding supervision accrued in a private setting.

(g) The Evaluation of Supervised Experience Form requires the following:

(1) Names of supervisee and supervisor;

(2) Name and location of supervision site;

(3) Duration of work experience and supervision;

(4) Types of professional activities and clients seen;

(5) Rating of quality of professional activities;

(6) Supervisor and supervisee comments; and

(7) Signatures of supervisee and supervisor.

(h) The Continuing Education Roster requires the following:

(1) LBP's name and license number;

(2) Total number of hours accrued and LBP's signature and signature date of licensee;

(3) Listing of workshops, sponsor, content and date of continuing education experience.

(i) The Licensure Verification Request Form requires the following information:

(1) Name of licensee;

(2) Licensee license number; and

(3) Licensee license type.

(j) The Out-of-State Licensure Verification Form requires the following information:

(1) Identifying information;

(2) Type of credential held in other state;

(3) License number;

(4) Issue and expiration date of license;

(5) Current standing of license;

(6) Past complaints or sanctions;

(7)Exam information;

(8) Supervision information;

(9) Graduate education;

(10) Internship documentation;

(11) Signature and identifying information of person verifying from out-of-state.

(k) The Mailing Addresses Request/Order Form requires the following information:

(1) Type of licensure list requested;

(2) Format requested;

(3) Identifying information of person making request.

(l) The Licensure Reactivation Request Form requires the following information:

(1) Licensure type;

(2) Identifying information;

(3) Employment information;

(4) Graduate education;

(5) License type and number;

(6) Dates of inactivation and reactivation of license.

SUBCHAPTER 17. FEES

310:403-17-2. Method of payment

Payment of all fees shall be by personal check, cashier's check, money order or cash. Payment of fees may be made by credit card or other electronic means, if acceptable by the Department. Any check returned to the Department for non-payment may result in expiration or suspension of license.

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

[OAR Docket #10-1029]

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310:405-7-2 - The current Rule requires the licensure application to be notarized. This proposal relinquishes that requirement to allow the Department to facilitate the acceptance of on-line licensure applications. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications. The effect of this Rule will be an increased convenience and the reduction in travel and reductions in other transaction costs that would otherwise be borne by persons submitting licensure applications to the Department using traditional submission methods.

310:405-13-4 - The current Rule allows payment of fees to be made in the form of cash, check, money order or cashier's check. This proposal allows the Department to accept credit card payments and other electronic payments for application and renewal fees. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications and license renewals. The effect of this Rule will be an increased convenience and the reduction in travel, payment of late fees and other reductions in transaction costs that would otherwise be borne by persons submitting licensure applications and license renewals to the Department using traditional payment methods.

CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 7. APPLICATION PROCEDURES

310:405-7-2. Application materials and forms

(a) Each application shall include the following documents:
(1) Application form,
(2) Official transcript, mailed from the university or college,
(3) Three (3) Document of recommendation forms,
(4) Practicum documentation form,
(5) Two (2) classifiable sets of fingerprints, and
(6) Fees.

(b) The Application Form requires the following:
(1) Identifying information;
(2) Possession of other credentials;
(3) Previous misconduct;
(4) Education;
(5) References; <u>and</u>
(6) Proposed professional practice~~; and~~
~~(7) Notarization~~.

(c) The Internship/Practicum Documentation form requires the following:
(1) Identifying information; and
(2) Time, place, location of practicum.

(d) The Document of Recommendation requires the following:
(1) Identifying information;
(2) Ratings of ethical and professional characteristics; and
(3) Circumstances and time period submitter has known applicant.

(e) The Statement of Professional Disclosure requires the following:
(1) Statement providing for the applicant's disclosure of professional standing; and
(2) Statement providing for making contact with OSDH for further information.

(f) The Supervision Agreement requires identifying information of supervisee and supervisor.

(g) The On-Site Supervisor Verification Form requires identifying information as follows:
(1) Name of applicant;
(2) Place of employment;
(3) On-Site Supervisor information;
(4) A reproduction of the regulation regarding supervision accrued in a private setting.

(h) The Licensure Verification Request Form requires the following information:
(1) Name of licensee;
(2) Licensee license number; and
(3) Licensee license type.

(i) The Out-of-State Licensure Verification Form requires the following information:
(1) Identifying information;
(2) Type of credential held in other state;
(3) License number;
(4) Issue and expiration date of license;
(5) Current standing of license;
(6) Past complaints or sanctions;
(7) Exam information;
(8) Supervision information;
(9) Graduate education;
(10) Internship documentation; and
(11) Signature and identifying information of person verifying from out-of-state.

(j) The Mailing Addresses Request/Order Form requires the following information:
(1) Type of licensure list requested;
(2) Format requested; and
(3) Identifying information of person making request.

(k) The Licensure Reactivation Request Form requires the following information:
(1) Licensure type;
(2) Identifying information;
(3) Employment information;
(4) Graduate education;
(5) License type and number; and
(6) Dates of inactivation and reactivation of license.

(l) The LPC Continuing Education Approval Application Form requires the following information:
(1) name of workshop;
(2) program context;
(3) program knowledge area;
(4) name of presenter;
(5) presenter qualifications;
(6) number of hours requested;
(8) sponsoring agency;
(9) name of contact;
(10) phone number of contact;
(11) signature and signature date of contact;
(12) program content in relation to counseling ethics;
(13) program content in relation to counseling supervision;
(14) number of hours requested for counseling ethics; and
(15) number of hour requested for counseling supervision.

(m) The Continuing Education Rosters for LPC Approved Supervisors require the following information:
(1) name of licensee;
(2) signature and signature date of licensee;
(3) total clock hours of workshop(s);
(4) name of counseling supervision workshop;
(5) sponsoring agency of workshop(s); and

(6) date of workshop(s), and number of hours of each workshop.

SUBCHAPTER 13. FEES

310:405-13-4. Method of payment

Payment of fees shall be by personal check, cashier's check, money order or cash. Payment of fees may be made by credit card or other electronic means, if acceptable by the Department. Any check returned to the Department for non-payment will result in suspension of license.

[OAR Docket #10-1029; filed 6-14-10]

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

[OAR Docket #10-1030]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 59 O.S. Section 1905(A)
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INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
310:406-7-2 - The current Rule requires the licensure application to be notarized. This proposal relinquishes that requirement to allow the Department to facilitate the acceptance of on-line licensure applications. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications. The effect of this Rule will be an increased convenience and the reduction in travel and reductions in other transaction costs that would otherwise be borne by persons submitting licensure applications to the Department using traditional submission methods.

310:406-15-2 - The current Rule allows payment of fees to be made in the form of cash, check, money order or cashier's check. This proposal allows the Department to accept credit card payments and other electronic payments for application and renewal fees. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line licensure applications and license renewals. The effect of this Rule will be an increased convenience and the reduction in travel, payment of late fees and other reductions in transaction costs that would otherwise be borne by persons submitting licensure applications and license renewals to the Department using traditional payment methods.

310:406-17-3 - The current Rule requires ten hours of continuing education to be approved by the American Board of Genetic Counselors (ABGC). This proposal relinquishes that requirement because ABGC no longer approves the continuing education for genetic counselors. This change is necessary because the current Rule is unenforceable. The effect of this Rule will be the ability for licensees to accrue continuing education from qualified sources and the ability to renew licenses in compliance with the Rule.

310:406-17-4 - The current Rule requires licensees to submit individual verification of attendance documents of continuing education to renew the license. This proposal relinquishes that requirement to allow the Department to facilitate the acceptance of on-line license renewals. This change is necessary for the Department to be in compliance with Title 62 O.S., Section 41.5p-1 requiring state agencies to accept on-line license renewals. The effect of this Rule will be an increased convenience and the reduction in travel and reductions in other transaction costs that would otherwise be borne by persons submitting license renewals to the Department using traditional submission methods.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:406-7-2. Application materials and forms

(a) Each application shall include the following documents:
(1) Application form,
(2) Official transcript, mailed from a genetic counseling training program accredited by the ABGC or ABMG,
(3) Verification of certification by the ABGC or ABMG, or verification of active candidate status conferred by the ABGC, ABMG, or an equivalent acceptable entity.
(4) Two (2) classifiable sets of fingerprints, and
(5) Fees.

(b) The application form requires the following:
(1) Identifying information;
(2) Possession of other credentials;
(3) Previous misconduct (if applicable);
(4) Education;
(5) References; and
(6) Proposed professional practice~~; and~~

~~(7) Notarization~~.

SUBCHAPTER 15. FEES

310:406-15-2. Method of payment.

Payment of all fees shall be by personal check, cashier's check, money order, or cash. Payment of fees may be made by credit card or other electronic means, if acceptable by the Department. Any check returned to the Department for non-payment may result in expiration or suspension of license.

SUBCHAPTER 17. CONTINUNG EDUCATION REQUIREMENTS

310:406-17-3. Acceptable continuing education

Continuing education must be ~~ABGC approved~~ appropriate for maintenance of certification for at least 10 of the ~~continuing education~~ 30 clock hours. The remaining twenty hours ~~of continuing education may consist of medical continuing education in the LGC's area of employment~~ may consist of professional continuing education.

310:406-17-4. Submission of continuing education roster

LGCs shall submit a continuing education roster~~, along with individual verification of attendance documents~~ with the license renewal fee. Rosters must include the identity and license number of the LGC receiving continuing education, the date name, and location of the conference, the number of hours awarded, and the entity or organization sponsoring the conference. Only continuing education accrued in the preceding license renewal period can be used to satisfy the continuing education requirement for renewal.

[OAR Docket #10-1030; filed 6-14-10]

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

[OAR Docket #10-1014]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Specimen
310:512-3-6. [NEW]
310:512-3-7. [NEW]
AUTHORITY:
Oklahoma State Board of Health §63-1-114.1
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposal amends subchapter 3 to permit the collection of a fee for blood lead sample collection and analysis, and for environmental investigations conducted by the Oklahoma State Department of Health. The rule is necessary to enable the Department to collect funds to reimburse its costs to perform these services, particularly from persons who have the ability to pay. The proposal would expand the Department's ability to conduct blood lead testing in Oklahoma. The proposal is necessary to offset a projected cessation of federal grant funds due to end on June 30, 2011.
CONTACT PERSON:
Cheryl Barr, MPH, Program Coordinator, Child Lead Poisoning Prevention Program, Screening and Special Services, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; Telephone: (405) 271-6617; e-mail: cherylb@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 3. SPECIMEN

310:512-3-6. Fees

The county health department may collect a fee for a blood lead laboratory sample analysis, a fee for collection of a blood lead sample, or a fee for an environmental investigation, as may be indicated. Any fee collected shall not exceed the reasonable cost of providing the service or the Medicaid reimbursement rate allowed for the service, whichever is lower. Any individual consenting to a blood lead test shall be informed of the specific fee prior to the collection of the laboratory specimen.

310:512-3-7. Inability to pay

Persons requesting blood lead level testing will not be denied a blood lead sample analysis or, if indicated, an environmental investigation because of the inability to pay.

[OAR Docket #10-1014; filed 6-14-10]

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

[OAR Docket #10-1015]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Disease and Injury Reporting Requirements
310:515-1-1.1 Definitions [AMENDED]
310:515-1-2 Diseases to be reported [AMENDED]
310:515-1-3 Diseases to be reported immediately [AMENDED]
310:515-1-4 Additional diseases, conditions, and injuries to be reported [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. Section 1-104; 63 O.S., Section 1-503.
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ANALYSIS:
The proposal updates the existing rules in accordance with recommendations from the Council of State and Territorial Epidemiologists, the Centers for Disease Control and Prevention, and local public and private health partners pertaining to reportable diseases. The proposal amends definitions describing outbreaks and unusual diseases and the lists of reportable diseases, in order to clarify those conditions and diseases that are required to be reported to the Department. The proposal is needed because under the current rules, toxins and other harmful agents that are responsible for, or may be contributing to, a disease outbreak are not being reported. The proposal narrows the definition of a cluster by specifying the conditions that would prompt disease reporting. The proposal also refines requirements for reporting negative results in certain conditions which might involve an unknown organism. With these changes the Department will receive more precise information and thereby be better equipped to respond quickly and effectively to disease outbreaks or unusual or uncommon adverse health conditions.
CONTACT PERSON:
Lauri Smithee, M.E.S., M.S., Chief, Acute Disease Service, Oklahoma State Department of Health, 1000 NE 10th, Oklahoma City, OK 73117-1299, ph (405) 271-4060, fax (405) 271-6680, or e-mail LauriS@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-1.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"AIDS" means Acquired Immunodeficiency Syndrome.

"Anti-HAV-IgM+" means a positive test result for the hepatitis A virus immunglobulin M antibody.

"Anti-HBc-IgM+" means a positive test result for the hepatitis B core immunglobulin M antibody.

"CD4" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"Department" or **"OSDH"** means the Oklahoma State Department of Health.

"*E. coli*" means *Escherichia coli*.

"EIA" means enzyme immunoassay.

"HBeAg+" means a positive test result for the hepatitis B "e" antigen.

"HBsAg+" means a positive test result for the hepatitis B surface antigen.

"HBV DNA+" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"HIV" means Human Immunodeficiency Virus.

"PHIDDO" or **"PHIDDO system"** means Public Health Investigation and Disease Detection of Oklahoma system.

"NAT for HCV RNA+" means a nucleic acid amplification test with a positive test result for hepatitis C virus ribonucleic acid.

"Outbreak of ~~an apparent infectious~~ disease" means ~~a cluster of~~ two or more cases residing in ~~from~~ different households that have a similar clinical syndrome of a potentially infectious disease, toxin, or agent of known or unknown etiology. ~~The cases would have a similar clinical syndrome if laboratory testing is pending or inconclusive. Examples of such outbreaks include but are not limited to a cluster of cases of gastrointestinal illness, respiratory illness, or rash illness of unknown etiology.~~

"RIBA" means recombinant immunoblot assay.

"S/co" means the signal-to-cut-off-ratio.

"Spp." is an abbreviation referring to the term "species," and is used to broaden the anteceding term in order to include all organisms that may be found or described within a given genus.

"Unusual disease or syndrome" means a case of ~~a~~ an ~~rare~~uncommon, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive, or if testing for common etiologies is negative. Such cases of disease may not normally be endemic to Oklahoma, may be an emerging or re-emerging disease, and/or represent diseases for which a public health intervention may be needed. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory

distress syndrome, ~~hemorrhagic fever, vesicular~~ rash illness with atypical presentation, or an illness ~~associated~~ occurring along with an unusual pattern of illness or death among animals.

"VISA" means vancomycin intermediate *Staphylococcus aureus*.

"VRSA" means vancomycin resistant *Staphylococcus aureus*.

310:515-1-2. Diseases to be reported

The diseases listed in this Chapter must be reported, along with patient identifiers, demographics, and contact information, to the Department upon discovery as dictated in sections OAC 310:515-1-3 and OAC 310:515-1-4. The current ~~OSDH~~ "Oklahoma Disease Reporting Manual" shall serve as the ~~reference~~standard for disease-specific diagnostic test results to be reported. Ancillary laboratory test results, signs, and symptoms must be reported upon request. The current edition of the "Oklahoma Disease Reporting Manual" may be accessed from the Acute Disease Service disease reporting and alerts web page of the OSDH web site at http://IDReportingAndAlerts.health.ok.gov. Laboratories having greater than 400 positive tests performed on-site per year for reportable diseases described in 310:515-1-3, 310:515-1-4(1) and 310:515-1-4(2), or as may be otherwise required to be reported by OSDH, shall begin reporting no later than August 30, 2010 using secure electronic data transmission.

310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system or by telephone (405-271-4060 or 800-234-5963) immediately upon suspicion, diagnosis, or testing as specified in the ~~OSDH~~ "Oklahoma Disease Reporting Manual".

(1) Anthrax (*Bacillus anthracis*).
(2) Bioterrorism - suspected disease.
(3) Botulism (*Clostridium botulinum*).
(4) Diphtheria (*Corynebacterium diphtheriae*).
(5) *Haemophilus influenzae* invasive disease.
(6) Hepatitis A (Anti-HAV-IgM+).
(7) Hepatitis B during pregnancy (HBsAg+).
(8) Measles (Rubeola).
(9) Meningococcal invasive disease (*Neisseria meningitidis*).
(10) Outbreaks of apparent infectious disease.
(11) Plague (*Yersinia pestis*).
(12) Poliomyelitis.
(13) Rabies.
(14) Smallpox.
(15) Tularemia (*Francisella tularensis*).
(16) Typhoid fever (*Salmonella Typhi*).
(17) Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, faxed, or submitted via secure electronic data transmission to the OSDH within one (1) business day of diagnosis or positive test as specified in the ~~OSDH~~ "Oklahoma Disease Reporting Manual".

(A) Acid Fast Bacillus (AFB) positive smear.
(B) AIDS (Acquired Immunodeficiency Syndrome).
(C) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus).
(D) Brucellosis (*Brucella* spp.).
(E) Campylobacteriosis (*Campylobacter* spp.).
(F) Congenital rubella syndrome.
(G) Cryptosporidiosis (*Cryptosporidium* spp.).
~~(H) Cyclosporiasis (*Cyclospora cayetanensis*).~~
(~~I~~H) Dengue Fever.
(~~J~~I) *E. coli O157, O157:H7,* or a Shiga toxin producing *E. coli* (STEC infections).
(~~K~~J) Ehrlichiosis (*Ehrlichia* or *Anaplasma* spp.).
~~(L) Giardiasis (*Giardia lamblia*).~~
(~~M~~K) Hantavirus pulmonary syndrome.
(~~N~~L) Hemolytic uremic syndrome, postdiarrheal.
(~~O~~M) Hepatitis B. If HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+ then report results of the entire hepatitis panel.
(~~P~~N) Hepatitis C in persons < or = 40 years or in persons having jaundice or ALT > or = 400 regardless of age with laboratory confirmation. If hepatitis C EIA is confirmed by RIBA or NAT for HCV RNA, or signal-to-cut-off (s/co) ratio or index is predictive of a true positive then report results of the entire hepatitis panel.
(~~Q~~O) Human Immunodeficiency Virus (HIV) infection.
(~~R~~P) Influenza associated pediatric mortality.
(~~S~~Q) Legionellosis (*Legionella* spp.).
(~~T~~R) Leptospirosis (*Leptospira interrogans)*.
(~~U~~S) Listeriosis (*Listeria monocytogenes*).
(~~V~~T) Lyme disease (*Borrelia burgdorferi*.
(~~W~~U) Malaria (*Plasmodium* spp.).
(~~X~~V) Mumps.
(~~Y~~W) Pertussis (*Bordetella pertussis*).
(~~Z~~X) Psittacosis (*Chlamydophila psittaci*).
(~~AA~~Y) Q Fever (*Coxiella ~~burnetti~~ burnettii*).
(~~BB~~Z) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
(~~CC~~AA) Rubella.
(~~DD~~BB) Salmonellosis (*Salmonella* spp.).

(~~EE~~CC) Shigellosis (*Shigella* spp.).
(~~FF~~DD) *Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).
~~(GG) *Streptococcus*, group A invasive disease.~~
(~~HH~~EE) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
(~~II~~FF) Syphilis (*Treponema pallidum*).
(~~JJ~~GG) Tetanus (*Clostridium tetani*).
(~~KK~~HH) Trichinellosis (*Trichinella spiralis*).
(~~LL~~II) Tuberculosis (*Mycobacterium tuberculosis*).
(~~MM~~JJ) Unusual disease or syndrome.
(~~NN~~KK) *Vibrio* spp. infections including cholera.
(~~OO~~LL) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

(A) CD4 cell count < 500 with corresponding CD4 cell count percentage of total (by laboratories only).
(B) Chlamydia infections (*Chlamydia trachomatis*).
(C) Creutzfeldt-Jakob disease.
(D) Gonorrhea (*Neisseria gonorrhoeae*).
(E) HIV viral load.
(F) Pelvic inflammatory disease (PID).

(3) **Occupational or Environmental diseases.** Laboratories must report blood lead level results greater than 10 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month. Health care providers must report blood lead level results 20 ug/dL or greater within twenty-four (24) hours and results 10-19 ug/dL within one (1) week.

(4) **Injuries (hospitalized and fatal cases only).**

(A) Burns.
(B) Drownings and Near Drownings.
(C) Traumatic Brain Injuries.
(D) Traumatic Spinal Cord Injuries.

[OAR Docket #10-1015; filed 6-14-10]

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

[OAR Docket #10-1016]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:526-1-3. Definitions [AMENDED]
Subchapter 3. Oklahoma Dental Loan Repayment Program
310:526-3-2. Description and operation of the Program [AMENDED]
310:526-3-3. Eligibility to participate in the Program [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. Section 1-104; 63 O.S. Section 1-2710 et seq.
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ANALYSIS:
This proposal amends the existing rule providing definitions and requirements of the Oklahoma Dental Loan Repayment Program (Program). This proposal will (1) change the definition of "new dental school graduate" from a dentist who has graduated during the last three years to a dentist who has graduated during the last five years, (2) provide an option for the Advisory Committee and Department to designate full time equivalent positions when warranted, and (3) add additional considerations to the participant selection process.
CONTACT PERSON:
Susan L. Potter, Dental Health Service, Oklahoma State Department of Health, 405-271-5502

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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:526-1-3. Definitions

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

"Advisory Committee" means a committee utilized during an Oklahoma Dental Loan Repayment Program (ODLRP) selection process whose responsibilities and makeup are described in these Rules.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health or his/her designee.

"Contract" means a written agreement between the participating dentist and the Oklahoma State Department of Health upon the dentist's acceptance into the Oklahoma Dental Loan Repayment Program (ODLRP.)

"Dental Health Professional Shortage Area" or **"DHPSA"** means a location in Oklahoma that has been officially designated, on or about January 1 of each year, as experiencing special dental health problems and dentist practice patterns that limit access to dental care.

"Dental Service" means the Dental Program of the Oklahoma State Department of Health.

"Dental services" means the provision of diagnostic, preventive, restorative, emergency and palliative services provided by licensed general or pediatric dentists. The provision of dental services includes a reasonable amount of time for performing tasks related to the service, such as record-keeping.

"Dentist" means a person who is licensed to practice dentistry by the Oklahoma Board of Dentistry.

"Dentistry" means the practice of dentistry by a dentist as defined in the latest editions of the Oklahoma State Dental Act and the Oklahoma Board of Dentistry Rules and Regulations.

"Department" means the Oklahoma State Department of Health.

"Educational expenses" means all or part of the principal and interest of an educational loan which has been taken out by an individual that meets eligibility criteria for the Program.

"Medicaid dental provider" means a dentist who has fulfilled the Oklahoma Health Care Authority requirements to be reimbursed fees for services provided to the Title XIX Medicaid population.

"Medicaid patient" means a patient enrolled, at the time of dental treatment, in the State Title XIX Medicaid Program as administered by the Oklahoma Health Care Authority.

"New dental school graduate" means a dentist who has graduated from an accredited U.S. dental school during the last ~~three~~ five years prior to the effective funding cycle for which applicant is submitting an application for the ODLRA Program.

"ODLRA" means the Oklahoma Dental Loan Repayment Act.

"ODLRP" means the Oklahoma Dental Loan Repayment Program.

"Oklahoma Health Care Authority" or **"OHCA"** means the state agency responsible for the Title XIX Medicaid Program in Oklahoma.

"Participating dentist" or **"participant"** means a dentist selected to participate in the Program and who has an effective ODLRP contract with the Department.

"Patient" means the individuals treated at an approved practice site.

"Program" means the Oklahoma Dental Loan Repayment Program.

"Service obligation" means the terms established by the contract as defined by the Department and may include options to renew for up to a total participation in the Program of five (5) years.

SUBCHAPTER 3. OKLAHOMA DENTAL LOAN REPAYMENT PROGRAM

310:526-3-2. Description and operation of the Program

(a) **Department's equal opportunity policies applicable.** The Department's Dental Service will administer the Oklahoma Dental Loan Repayment Program in accordance with the Department's policies governing equal opportunity and access to programs, services and activities.

(b) **General operation of the Program.** The Program will provide educational loan repayment assistance to as many as ~~four (4)~~ five (5) Oklahoma licensed full time (or full time equivalent, or as designated by Advisory Committee or Department) dentists ~~and one full time equivalent faculty dentist~~ per year for a 2 to 5 year period per dentist. The Program will provide prorated educational loan repayment assistance based upon the percentage of time worked up to four full time equivalent dentists working in a designated dental health professional shortage area and one dentist full time equivalent entering or participating in the Program each year agreeing to teach at the University of Oklahoma College of Dentistry if applicable faculty positions are available.

(c) **Determining individual awards.** The amount of award, not to exceed $25,000 per year for each participating full time equivalent dentist, shall be determined by the Department annually based upon the amount of funds appropriated to the Department. If the participating dentist's eligible loans are less than the cumulative repayment assistance total available over 5 years, that participating dentist shall be in the Program no longer than required to pay off the total eligible loans and shall not receive more funding assistance than the total eligible indebtedness.

(d) **Distributing the awards.** Each award shall be distributed to the participating dentist by two-party drafts made payable to the dentist and the appropriate loan agency in equal monthly disbursements throughout the service obligation.

(e) **Default.** If the participating dentist does not fulfill the terms of the service obligation, the Department may collect from the participant the entire amount of loan repayment assistance extended to the participant under the Program, plus interest.

310:526-3-3. Eligibility to participate in the Program

(a) **Eligibility requirements common to both non-faculty and faculty participants.** Eligibility for repayment assistance for non-faculty and faculty participants requires compliance with the following requirements:

(1) receipt or award of a dental degree from an accredited United States dental school within the previous ~~three (3)~~ five (5) years;

(2) completion of all requirements to receive or be awarded an active unrestricted license to practice dentistry in the State of Oklahoma at the time the service obligation begins; and,

(3) a financial need with outstanding eligible dental school loans.

(b) **Additional eligibility requirements for non-faculty participants.** Eligibility for repayment assistance for non-faculty participants requires compliance with the following additional requirements:

(1) an established general or pediatric dental practice, or the commitment to establish such a practice, located in an Oklahoma DHPSA;

(2) fulfillment of all applicable requirements of the Oklahoma Health Care Authority to qualify as a Medicaid Dental Provider at the time the service obligation begins; and,

(3) agree that during the service obligation/contract period, a minimum 30% of patients treated are Medicaid recipients at the time of treatment, or 30% of patient visits are by Medicaid recipients~~; and,~~.

(4) maintain a full time general or pediatric dental practice at the established practice described in the service contract

(c) **Additional eligibility requirements for faculty participants.** Eligibility for repayment assistance for faculty participants requires compliance with the additional requirement of abiding by the rules and regulations for a faculty member, and the job duties assigned by the Dean of the University of Oklahoma College of Dentistry.

(d) **Limitations upon eligibility common to both non-faculty and faculty participants.** A non-faculty or faculty participant's eligibility may be rescinded or terminated if any of the following conditions occur:

(1) a breach of an obligation for service to a federal, state, or local government entity;

(2) an obligation for service to a federal, state, or local government entity that will interfere with the fulfillment of the requirements of the Program that remains unsatisfied; or,

(3) default or material breach of an agreement to repay a higher education loan or borrowing agreement.

(e) **Additional considerations.**

(1) Preference will be given to graduates of the University of Oklahoma College of Dentistry.

(2) Preference will be given to eligible practice sites that are not Medicaid/SoonerCare specific.

(3) Geographic diversity of the participants is an objective of the Program.

(~~2~~4) An eligible practice site is a solo, group, or incorporated private practice, and any federal, state, local, or private for-profit or nonprofit dental facility.

(~~3~~5) To qualify for the 30% minimum Medicaid recipient requirement the participant must use an unduplicated count of the patients treated or a count of patient visits during the service obligation. The 30% requirement will be monitored monthly, but the participant will be deemed to be compliant if the yearly average is 30% or greater.

(f) **Eligible loans.** Loans eligible for repayment assistance are any loans for educational expenses while attending dental school from a college, university, government, commercial source, or an organization, institution, association, society, or corporation that is exempt from taxation under 501(c)(3) or (4) of the Internal Revenue Code of 1986. The ODLRP participant must be able to provide, upon request, documentation that commercial loans were used for payment of educational expenses.

[OAR Docket #10-1016; filed 6-14-10]

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

[OAR Docket #10-1017]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provision
310:531-1-1 [AMENDED]
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 [NEW]
310:531-9-1 [NEW]
310:531-9-2 [NEW]

AUTHORITY:
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ANALYSIS:
The proposed amendments to the rule clarify qualifications for initial approval and renewal of vision screening providers, trainers of vision screening providers and trainers of vision screening trainers. The proposed amendments to the rule clarify grounds for discipline, complaint investigation, summary removal, appearance before the Advisory Committee, right to a hearing and hearing procedure and decisions for vision screening providers and trainers. The proposed amendments will also clarify the role of the Committee in serving as a resource for sports eye safety; making available educational materials to Oklahoma K-12 public school districts and non-profit community sports organizations detailing the risk of eye injuries associated with sports activities and education about the availability of protective eyewear that reduces the risk of sports related eye injuries.

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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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:531-1-1. Purpose

This subchapter identifies the authority and provides definitions for vision screening services provided to elementary school age children by ~~qualified~~ approved vision ~~screeners~~screening providers.

310:531-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Advisory Committee" means the Oklahoma Vision Screening Advisory Committee for Children.

"Board" means the State Board of Health.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health.

"Comprehensive Eye Exam" means a clinical assessment and tests administered by a licensed optometrist or ophthalmologist to assess a person's level of vision as well as detect any abnormality or diseases.

"Department" means the Oklahoma State Department of Health.

"HOTV Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) letters~~,~~: H, O, T and V.

"Lea Symbol Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) symbols~~,~~: circle, square, house, and apple.

"Ophthalmologist" means a person licensed by the state of Oklahoma to practice medicine who has a specialty in ophthalmology.

"Optometrist" means a person licensed by the state of Oklahoma to practice optometry.

"Random Dot E Stereo Test" means a vision screening test that determines relative stereo acuity or depth perception.

"Professional Examination" means a diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual.

"Referral" means parent/guardian notification that the student's screening results indicate a need for a professional examination by an ophthalmologist or optometrist.

"Snellen Letter Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart consisting of eight (8) or more rows of progressively smaller block type letters.

"Vision Screening Provider" means ~~an individual who is engaged in providing vision screening as defined in this section~~ a person who has successfully completed vision screening training using curricula approved by the Advisory Committee, submitted an application to the Advisory Committee, and has been approved by the Advisory Committee as being a vision screening provider.

"Vision Screening" means the process or system used to identify children in grades K, 1 and 3 who may be at risk of having or developing visual problems that may adversely affect their ability to acquire knowledge, skill or learning, for the purpose of recommending further evaluation by an ~~eye care professional~~ optometrist or ophthalmologist.

"Vision Screening Trainer" is a person who has been approved as a vision screening provider and completed additional training approved by the Advisory Committee to provide training to potential vision screening providers.

"Vision Screening Trainer of Trainers" is a person who has been approved as a vision screening provider and vision screening trainer and completed additional education and practicum approved by the Advisory Committee to become a vision screening trainer of trainers.

"Vision Screening Registry" is a system for collecting and maintaining in a structured manner the names of individuals that have been approved by the Advisory Committee as vision screening providers.

"Background Check" is the process of looking up and compiling criminal records of an individual.

SUBCHAPTER 5. VISION SCREENING STANDARDS FOR CHILDREN

310:531-5-1. Purpose

This subchapter identifies those children to be screened and standards for vision screening tools, ~~and~~ vision screening providers and vision screening trainers.

310:531-5-2. Oklahoma Vision Screening Standards

(a) Parents or guardians of any child subject to the Oklahoma School Code shall provide certification of vision screening for any child who is:

(1) in Kindergarten, and the vision screening shall be completed within the previous twelve (12) months or during the school year;

(2) in the First grade, and the vision screening shall be completed within the previous (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year; and

(3) in the Third grade, and the vision screening shall be completed within the previous twelve (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year.

(b) Vision screening must, at a minimum, utilize the following vision screening tests using standard screening procedures:

(1) For relative distance acuity, the Snellen Letter Chart, HOTV Chart, or Lea Symbol Chart, at a distance of ten (10) feet; and,

(2) For stereo acuity, the Random Dot E Stereo Test, at a distance according to the calibration of the manufacturer.

(c) The following visual criteria shall be used as a basis for referring a child for further evaluation by an ~~eye care professional~~ optometrist or ophthalmologist:

(1) For relative distance acuity, worse than 20/40 in either or both eyes for children below the First Grade, or worse than 20/30 in either or both eyes for children in the First grade or above, and for all children, a two or more line difference between either eye; and,

(2) For relative stereo acuity, a child identifies the E correctly in less than four (4) consecutive responses out of ten (10) attempts.

310:531-5-3. Approval of Vision Screening Providers ~~Provider Standards and Procedures~~

(a) In order to ~~To~~ become an approved ~~qualified vision screener~~ vision screening provider, an individual must make application to the Advisory Committee and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;

(2) the screening process;

(3) required screening tools;

(4) screening special populations; and,

(5) basic anatomy and physiology of the eye.

(b) The Advisory Committee will review and submit, a minimum of one time annually, a list of ~~qualified~~approved vision screening providers to the Department.

(c) The vision screening provider approval will be valid from the date of approval by the Advisory Committee and ends three years from the most recently approved training.

(~~c~~d) All approved vision screening providers will be added to the statewide registry on the Internet website maintained by the Department.

(~~d~~e) Unless otherwise provided by law, no person shall engage in vision screening as provided in 70 O.S. § 1210.284 without first being listed on the vision screening registry maintained by the Department.

310:531-5-5. Re-approval of vision screening providers

A vision screening provider currently approved by the Advisory Committee may renew his or her application by submitting documentation of successful completion of training, conducted by an approved trainer, using an approved curricula, prior to the end of his or her third year.

310:531-5-6. Approval of trainers of vision screening providers

(a) In order to become an approved trainer of vision screening providers an individual must be an approved vision screening provider and make application to the Advisory Committee and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;

(2) the screening process;

(3) required screening tools;

(4) screening special populations;

(5) basic anatomy and physiology of the eye; and,

(6) techniques for effective training of vision screening providers.

(b) The applicant must provide to the Advisory Committee documentation of successful completion of training, which is administered by a trainer of trainers approved by the Advisory Committee using training curricula for trainers approved by the Advisory Committee.

(c) The Advisory Committee will review, approve and submit to the Department, at a minimum of one time annually, a list of qualified trainers of vision screening providers and the approved curricula used for training vision screening providers.

(d) The approval of a trainer of vision screening providers ends three years from the most recently approved training.

310:531-5-7. Re-approval of trainers of vision screeningtrainers providers

A trainer of vision screening providers currently approved by the Advisory Committee may renew his or her application by submitting documentation of successful completion of training, conducted by an approved trainer of trainers, using an approved curricula, prior to the end of his or her third year.

310:531-5-8. Approval of trainers of vision screening trainers

(a) In order to become an approved trainer of vision screening trainers, an individual must be an approved vision screening provider, an approved trainer of vision screening providers and make application to the Advisory Committee and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;

(2) the screening process;

(3) required screening tools;

(4) screening special populations;

(5) basic anatomy and physiology of the eye;

(6) techniques for effective training of vision screening providers; and,

(7) techniques for effective training of trainers of vision screening trainers.

(b) The applicant must provide to the Advisory Committee documentation of successful completion of training, which: is administered by a trainer of trainers approved by the Advisory

Committee using training curricula for trainers approved by the Advisory Committee.

(c) The Advisory Committee will review, approve and submit to the Department, at a minimum of one time annually, a list of qualified trainers of vision screening trainers and the approved curricula used for training vision screening trainers.

(d) The approval of a trainer of vision screening trainers ends three years from most recently approved training.

310:531-5-9. Re-approval of trainers of vision screening trainers

A trainer of vision screening trainers currently approved by the Advisory Committee may renew his or her application by submitting documentation of successful completion of training conducted by an approved trainer and use of an approved curriculum prior to the end of his or her third year.

SUBCHAPTER 7. REGISTRY ENFORCMENT FOR VISION SCREENING

310:531-7-1. Purpose

The purpose of this subchapter is to establish procedures for the investigation of complaints against ~~persons~~ vision screening providers or trainers engaged in vision screening or training and where evidence from an investigation is sufficient, provide for hearings pursuant to the Oklahoma Administrative Procedures Act and OAC 310:2-1-1 *et seq*. Disciplinary sanctions may be imposed upon ~~a person~~vision screening providers or trainers engaged in vision screening or training including monetary penalties, removal from the vision screening registry for five (5) years or less, or summary removal from the registry pending a hearing for removal.

310:531-7-2. Grounds for discipline

(a) An approval of a vision ~~screener~~ screening provider may be modified, suspended, or terminated for one or more of the following reasons:

(1) ~~Repeated failure~~ Failure to conduct vision screenings according to the procedures and referral criteria approved by the Advisory Committee, including but not limited to, deletion of one or more portions of the process outlined in the screening ~~guidelines~~ standards and training curriculum, or addition of one or more procedures not contained in the screening ~~guidelines~~ standards and training curriculum, in sections 310:531-5-2 and 310:531-5-3, respectively~~.~~;

(2) Making ~~repeated~~ referrals for professional examinations that indicate a conflict of interest, financial or otherwise~~.~~;

(3) Failure to participate in a training curricula approved by the Advisory Committee upon expiration of his or her three year approval;

(~~3~~4) ~~Repeated violations~~ Violations of ~~the~~ a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §§1232~~,~~ *et seq*. and the rules promulgated thereunder;~~.~~ and

(~~4~~5) Any ~~other~~ act ~~prohibited by law~~ that harms, or threatens harm to, a child.

(b) An approval of a trainer of vision screening providers may be modified, suspended, or terminated for one or more of the following reasons:

(1) Failure to conduct training workshops for vision screening providers utilizing curricula and/or procedures approved by the Advisory Committee;

(2) Failure to participate in a training curricula approved by the Advisory Committee upon expiration of the three year approval;

(3) Violations of a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §1232 *et seq*. and the rules promulgated thereunder; and

(4) Any act that harms, or threatens to harm, a child.

(c) An approval of a trainer of trainers of vision screening providers may be modified, suspended, or terminated for one or more of the following reasons:

(1) Failure to conduct training workshops for trainers of vision screening trainers utilizing curricula and/or procedures approved by the Advisory Committee;

(2) Failure to participate in a training curricula approved by the Advisory Committee upon expiration of the three year approval;

(3) Violations of a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §§ 1232 *et seq*. and the rules promulgated thereunder; and

(4) Any act that harms, or threatens harm to, a child.

310:531-7-3. Complaint investigation

(a) **Reporting complaints.** Any person may report to the Department any complaint or allegations of non-compliance with 70 O.S. § 1210.284 or this Chapter by a vision screening provider or trainer by submitting the following:

(1) the name, address, and telephone number, if known, of the vision screening provider~~(s)~~ or trainer who is the subject of the complaint;

(2) the location(s) where the alleged non-compliance occurred;

(3) the date(s) of non-compliance;

(4) the reporting party's name, address and telephone number; and,

(5) the specific allegations against the vision screening provider or trainer, including but not limited to references to, or a copy of supporting documentation regarding, or any witnesses to, the alleged non-compliance.

(b) **Process.** Upon receipt of a complaint against a vision screening provider or trainer alleging non-compliance with 70 O.S. § 1210.284 or this Chapter, the Department shall conduct an investigation. Upon completion of the investigation, a written report will be prepared and presented to the Advisory Committee for recommendation. If sufficient evidence exists

to initiate an individual proceeding, the Advisory Committee shall recommend that the Department initiate disciplinary proceedings.

310:531-7-4. Summary removal ~~from registry~~

(a) If in the course of an investigation the Department determines that a vision screening provider has engaged in conduct of a nature that is, or is likely to be detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent such harm, the Commissioner may order summary removal of the name of the vision screening provider from the registry for vision screening maintained by the Department pending the Department filing a petition to remove the name of the vision screening provider from the registry following an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 309 *et seq*. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a vision screening provider has harmed, or threatened harm to, a child while providing vision screening services. The order of summary removal from the registry must include the specific grounds for the summary removal, a citation of the statute or law allegedly violated, and inform the vision-screening provider of the process to request a hearing to contest the summary action.

(b) Any vision screening provider whose name has been summarily removed from the registry for vision screening may request a hearing to contest such summary action. The Department shall have the initial burden of persuasion to show that the provider has engaged in conduct that has caused, or is likely to cause, harm to a child. If the Department meets this burden of persuasion, the vision-screening provider has the burden to prove that the conduct of the provider in providing vision-screening services would not harm a child.

(c) If in the course of an investigation the Department determines that a vision screening trainer has engaged in conduct of a nature that is, or is likely to be detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent such harm, the Commissioner may order summary removal of the name of the vision screening provider from the list for vision screening trainers maintained by the Department pending the Department filing a petition to remove the name of the vision screening trainer from the list following an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 309 *et seq*. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a vision screening trainer has harmed, or threatened harm to, a child while providing vision screening services. The order of summary removal from the list must include the specific grounds for the summary removal, a citation of the statute or law allegedly violated, and inform the vision screening trainer of the process to request a hearing to contest the summary action.

(d) Any vision screening trainer whose name has been summarily removed from the list for vision screening trainers may request a hearing to contest such summary action. The Department shall have the initial burden of persuasion to show that the trainer has engaged in conduct that has caused, or is likely to cause, harm to a child. If the Department meets this burden of persuasion, the vision screening trainer has the burden to prove that the conduct of the trainer in providing vision screening services would not harm a child.

310:531-7-5. Appearance before the Advisory Committee

Except as provided for in section ~~310:531-7-3~~ 310:531-7-4, if the Advisory Committee recommends that the status of a vision ~~screener~~ screening provider or trainer be modified, suspended, or terminated by these provisions the Committee shall first give a vision ~~screener~~ screening provider, or trainer, or applicant an opportunity to appear before the Advisory Committee at the next regularly scheduled meeting by providing written notice at least thirty (30) days in advance of the meeting. The vision ~~screener~~ screening provider, trainer, or applicant must advise in writing at least ten (10) days in advance of the next scheduled Advisory Committee meeting by postmarked notification to the Committee of his or her request to appear before the Committee. Failure to so notify may be deemed a waiver of the right to appear before the Advisory Committee.

310:531-7-6. Right to a hearing

Except as provided for in section ~~310:531-7-3~~ 310:531-7-4, the name of a vision screening provider or trainer may not be removed from the vision screening registry or vision screening trainer's list until the Department provides notice to the vision screening provider or trainer and an opportunity for a hearing to contest the Department's allegations. The notice to the vision screening provider or trainer must comply with 75 O.S. § 309. The vision screening provider or trainer must request a hearing within twenty (20)days of receiving the notice from the Department or the sanction may be imposed by default.

310:531-7-7. Hearing procedure and decisions

(a) **Delegation.** The Commissioner of Health may delegate the authority to issue a final decision in these matters as specified in 75 O.S. Section 311.1 and OAC 310:002. The Administrative Law Judge shall issue a decision within fifteen (15) working days following the close of the hearing record. The decision shall include Findings of Fact and Conclusions of Law separately stated.

(b) **Procedure.** The hearing shall be conducted in accord with the Oklahoma Administrative Procedures Act and Chapter 2 of this Title.

(c) **Final order.** The final order resulting from a hearing shall comply with the requirements of, and be served upon each party and attorney pursuant to, 75 O.S. § 312. The Department shall transmit a copy of the Final Order to the Vision Screening Registry when the Order is mailed.

(d) **Appeal.** An appeal of the Final Order shall be perfected pursuant to 75 O.S. Section 318 of the Administrative Procedures Act.

SUBCHAPTER 9. SPORTS EYE SAFETY RESOURCE

310:531-9-1. Purpose

This subchapter identifies the role of the Advisory Committee in serving as a resource for sports eye safety.

310:531-9-2. Eye safety resource

(a) The Advisory Committee may serve as a sports eye safety resource for Oklahoma public school districts and nonprofit community sports organizations by:

(1) Developing and providing educational materials to reduce eye injuries associated with various sporting activities; and

(2) Developing and providing educational materials on the use of protective eyewear that reduces the risk of sports related eye injuries.

[OAR Docket #10-1017; filed 6-14-10]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 535. IMMUNIZATION REGULATIONS

[OAR Docket #10-1018]

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Subchapter 1. Childhood Immunizations
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Oklahoma State Board of Health, 63 O.S. § 1-104; 63 O.S. 2001, § 1-502; 70 O.S. 2001, §§ 1210.191 et seq.; 10 O.S. 2001, § 412;
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ANALYSIS:
This rule change adds a requirement for one dose of Tdap vaccine for students entering the seventh grade in the fall semester of 2011 and extends the requirement up one grade level each school year until all students in grades seventh through twelfth are included in the requirement
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 25, 2010:

SUBCHAPTER 1. CHILDHOOD IMMUNIZATIONS

310:535-1-2. Criteria for immunizations required

(a) Each child shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to any public, private, or parochial school.

(b) Certification shall include the following:

(1) Diphtheria, Tetanus and Pertussis (DTP/DTaP) vaccine in five doses unless the fourth dose is received on or after the fourth birthday in which case only four doses are required. If the doses are not completed by the seventh birthday, the series must be completed with Adult Td vaccine and/or Tdap vaccine based on the individual's age at the time the first dose was received and age at the time the series is completed and beginning with the fall 2011-12 school year one dose of Tdap vaccine for students entering the seventh grade. Each year following the 2011-12 school year, the Tdap requirement shall be extended one grade level so that in the 2016-17 school year and all subsequent school years, students in grades seven through twelve shall be required to have received one dose of Tdap vaccine.

(2) Poliomyelitis vaccine in four doses unless the last dose is on or after the fourth birthday in which case only three doses are required. If the doses are not started or completed by the eighteenth birthday, no additional doses are required.

(3) Measles, Mumps and Rubella (MMR) vaccine with the first dose on or after the first birthday and the second dose at least twenty-eight days thereafter for children in grades kindergarten through eighth grade in the school year beginning in 1998. In the school year beginning in 1999, this requirement shall apply to the children through the ninth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in all grades shall be required to have the second dose of vaccine.

(4) Hepatitis B vaccine in three doses for students of any age or two doses for students eleven through fifteen years of age who complete the alternative dosage schedule providing that the alternative schedule is fully documented. Such documentation must include the name

of the vaccine and the dosage received for each dose of that vaccine:

(A) before entering seventh and eighth grades in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh through ninth grades. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in grades seven through twelve shall be required to have the three doses of the vaccine.

(B) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the three doses of the vaccine.

(5) Hepatitis A vaccine in two doses with the first dose on or after the first birthday and the second dose six to eighteen calendar months later:

(A) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the two doses of the vaccine.

(B) before entering grade seven in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh and eighth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2003, children in grades seven through twelve shall be required to have the two doses of the vaccine.

(6) Varicella (chickenpox) vaccine in one dose on or after the first birthday: before entering kindergarten in 1998. In lieu of vaccination, a parent's statement of a history of the disease chickenpox will be accepted. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2010, all children entering school shall be required to have the vaccine or a parent's statement of a history of the disease chickenpox.

(c) The minimum intervals between doses and minimum ages for doses shall be as follows:

(1) DTP/DTaP:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 months

(D) Fourth and fifth dose - 6 months

(E) For all fifth doses given after January 1, 2003 the minimum age for the fifth dose is 4 years of age

(2) Polio:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 weeks

(3) MMR: First and second dose - 4 weeks

(4) Hepatitis B 3-dose series:

(A) First and second dose - 1 month (4 weeks)

(B) Second and third dose - 2 months (8 weeks), and the third dose at least 4 months (16 weeks) after first dose, and the third dose not before 24 weeks of age

(5) Hepatitis B 2-dose series: First and second dose - 4 months

(6) Hepatitis A: First and second dose -- 6 months and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months

(7) Four day grace period: Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(d) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the school. The school shall maintain a copy of the application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.

(e) A child participating in a pre-kindergarten school program shall have received or be in the process of receiving the appropriate immunization for the listed diseases based on the child's age.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases,

(2) A history of having had polio, pertussis, rubella, mumps, hepatitis B, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases,

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles,

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(g) Haemophilus influenzae type B (Hib) vaccine is not a requirement for children attending pre-kindergarten, kindergarten, or school.

(h) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative schedules may be used to meet the requirements only when the alternative schedule is fully documented. Such documentation must include the name of the vaccine and dosage received for each dose of that vaccine.

[OAR Docket #10-1018; filed 6-14-10]

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

[OAR Docket #10-1019]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. § 1-270.2
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310:551-5-2 [NEW]
310:551-5-3 [NEW]
310:551-5-4 [NEW]
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26 Ok Reg 3019
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09-1210
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The proposed rule will make permanent sections of the rules that are currently implemented by emergency rule. These rules will enable the State Health Department to implement the reporting process for stem cell research studies as specified in 63 O.S. Supp 2008, § 1-270.2.

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 25, 2010:

SUBCHAPTER 3. REQUIRED INFORMATION FOR REPORTING

310:551-3-2. Data files

(a) When a data file is received from an information provider, the Department will notify the information provider acknowledging receipt of the data.

(b) Every data file received by the Department will be processed and checked for errors. This process will include error checking for out of range, or invalid data elements as specified in Section 310:551-3-1. Upon processing the submitted data file, the Department will send the information provider:

(1) An acknowledgement that the report appears to be without any apparent error, or,

(2) A list of errors in that information provider's data file along with a request to correct the listed errors within 30 days of receipt of the notice.

310:551-3-3. Periodic schedule for submission of information

(a) Information providers must submit their data files to the Department within thirty (30) days of beginning the research, thirty (30) days of completion of the research, or by October 1, whichever is soonest.

(b) The Department may grant an extension of the reporting deadline upon written request from the information provider made at least ten (10) days prior to the deadline and supported by substantial cause.

SUBCHAPTER 5. CONFIDENTIALITY OF INFORMATION AND RESPONSIBILITIES OF INFORMATION PROVIDERS

310:551-5-1. Confidentiality

(a) All information collected from any source will remain confidential in accordance with 51 O.S. § 24A.19, and will not be deemed or treated as a public record as otherwise defined in the Open Records Act. Under no circumstances shall information submitted to the Department pursuant to this Chapter be used for any purpose other than the compilation of data

to be transmitted to the Governor, Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate. The information collected pursuant to this Chapter may not be released voluntarily or in response to any legal process unless the Department is directed to release it by a court of competent jurisdiction, granted after application showing good cause.

(b) The Department will develop internal procedures to ensure that the collection, maintenance and dissemination of the information collected is in compliance with all provisions of state and federal laws and regulations, including this Chapter.

310:551-5-2. Release and dissemination of information upon request

After approval by the Department, aggregate compilations prepared for release or dissemination from the data collected shall be public record. However, reports prepared at the request of an individual information provider containing information concerning only its transactions, shall not be public record.

310:551-5-3. Responsibilities of information providers

Information providers shall be responsible to insure that the information required by this Chapter to be reported to the Department is timely collected and reported to the Department and that the data reported is accurate and complete. The obligation to report may be satisfied by the IRB or Stem Cell Research Oversight Committee of the person or entity conducting stem cell research.

310:551-5-4. Reporting safety and ethical violations

It shall be the obligation of the IRB or Stem Cell Research Oversight Committee to report any violation of a safety or ethical standard that has not be corrected within thirty (30) days. The report of an uncorrected violation of a safety or ethical standard must be made to the Department within (60) days of occurrence or by October 1, whichever is sooner.

[OAR Docket #10-1019; filed 6-14-10]

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

[OAR Docket #10-1020]

RULEMAKING ACTION:
PERMANENT final adoption
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]

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; Title 63 O.S. Section 1-106.1(E); and Title 63 O.S. Sections 2662 and 2666
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ANALYSIS:

310:615-1-2.2 - This new rule language describes the requirements of the license application process for new and renewing ambulatory surgical centers which has not been well defined previously. The proposed rule also establishes an initial license fee for new ambulatory surgical centers of two thousand dollars ($2,000.00) and a renewal license fee for existing ambulatory surgical centers of five hundred dollars ($500.00). Title 63 O.S., Section 1-106(E) authorizes the State Board of Health to establish a system of fees in the issuance and renewal of licenses through the rulemaking process within specified ranges. The license fee currently in place for ambulatory surgical centers was established in statute in 1976 in the amount of one hundred dollars ($100.00) and has not been changed since. These proposed amendments related to the licensure process are necessary in order to provide clarity for providers of ambulatory surgical center services and to establish a well defined, transparent and predictable application process for licensure of these facilities. The increased fee for initial licensure and renewal is necessary to partially offset the cost of providing administrative licensure services and regulatory oversight for these facilities.

310:615-1-3.1 and 310:615-1-3.2 - The current rule does not address procedures or fees for the submission of design and construction documents for Department staff review prior to the start of any new construction or significant renovation of existing licensed ambulatory surgical center space. The proposal establishes procedures and sets a review fee that ranges from two hundred fifty dollars ($250.00) up to two thousand dollars ($2000.00) on a sliding scale based on the cost of the design and construction of the specific project to be reviewed. These proposed amendments related to plan submission and review are necessary in order to provide clarity for providers of ambulatory surgical center services and to establish a well defined, transparent and predictable plan review process for these facilities. The new fee for review of construction documents for new ambulatory surgical centers and renovated spaces of existing ambulatory surgical centers is necessary to partially offset the cost of providing plan review and construction inspection services and related regulatory oversight for these facilities.

310:615-3-8 - The existing rule language contains an incorrect reference to the Oklahoma Administrative Code related to the standards for hospital licensure. The language incorrectly references Chapter 655. This proposed rule corrects the reference to the current chapter of rule as Chapter 667 Hospital Standards. This correction is necessary so that the requirements in the hospital standards related to the performance of the consultant pharmacist can be applied to licensed ambulatory surgical centers.

310:615-5-1 - The current rule language requires ambulatory surgical centers to have a formal transfer agreement with a general hospital located not more than a twenty (20) minute travel distance from the center. The proposed amendments offer ambulatory surgical centers the option of not entering into such an agreement if all physicians performing surgery in the center have

admitting privileges at such a hospital. This proposed change is necessary to conform with a statutory change effected by HB 1375 effective November 1, 2007 and codified in Title 63 O.S., Section 2666 and is consistent with the federal Medicare Conditions for Coverage for ambulatory surgical centers.

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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:615-1-2.2. Licensure

(a) **Application for licensure.**

(1) No person or entity shall operate an ambulatory surgical center without first obtaining a license from the Department. The license is not transferable or assignable.

(2) Any person, corporation, partnership, association or other legal entity desiring to obtain a license to establish, or to obtain a renewal license to operate, an ambulatory surgical center in this State shall make application to the State Department of Health in such form and accompanied by such information and fee as the State Commissioner of Health shall prescribe.

(3) An application is not considered to be filed unless it is accompanied by the application fee.

(b) **Licensure fees.**

(1) An application for an initial license to establish or operate a new ambulatory surgical center shall be accompanied by a nonrefundable application fee of two thousand dollars ($2,000.00).

(2) A renewal application for an existing ambulatory surgical center shall be accompanied by a nonrefundable licensing fee of five hundred dollars ($500.00).

(c) **Application filing.** An initial license application or renewal application shall be filed as follows:

(1) The application for an initial license for a new ambulatory surgical center shall be filed prior to or at the time final drawings for construction are submitted to the Department for review which shall be at least thirty (30) days before a ambulatory surgical center begins operation.

(2) The application for an initial license for a change of ownership or operation, shall be filed at least thirty (30) days before the transfer. The sale of stock of a corporate licensee is not considered a change of ownership or operation. The sale or merger of a corporation that owns an operating corporation that is the licensed entity shall not be considered a change of ownership unless a majority of the governing body is replaced.

(3) The application for renewal of a license of an existing ambulatory surgical center shall be filed at least thirty (30) days before the expiration date of the current license.

(d) **Where to file.** The application and the license fee shall be delivered or sent to the Oklahoma State Department of Health. The date of filing of the application shall be recorded as the date the application and fee are received.

(e) **Duration and posting.** A license shall be valid for a period of twelve (12) months from the date of issue and shall expire on the last day of the month of issue twelve (12) months hence.

310:615-1-3.1. Submission of plans and specifications

(a) Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the Oklahoma State Department of Health for review and approval.

(b) Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Review fees are as follows:

(1) Project cost less than $10,000.00: $250.00 Fee

(2) Project cost $10,000.00 to $50,000.00: $500.00 Fee

(3) Project cost $50,000.00 to $250,000.00: $1000.00 Fee

(4) Project cost $250,000.00 to $1,000,000.00: $1500.00 Fee

(5) Project cost greater than $1,000,0000.00: $2000.00 Fee

(c) The review fee shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee based on the cost of the project shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) All construction project submittals shall be reviewed within 45 calendar days of receipt by the Oklahoma State Department of Health.

310:615-1-3.2. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information to establish the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for proposed contract purposes. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) **Fast-track projects.** Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(A) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.

(B) Complete architectural plans and specifications.

(C) All mechanical, electrical, and plumbing plans and specifications.

(D) Equipment and furnishings.

(2) **Automatic sprinkler-systems.** At least two (2) sets of sprinkler-system show drawings, specifications, and calculations (if applicable), prepared by the installer, shall be submitted to the Office of the State Fire Marshal for review and approval prior to installation of the proposed system in the project.

(3) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of patients, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Oklahoma State Department of Health prior to installation of the equipment.

SUBCHAPTER 3. ADMINISTRATION AND ORGANIZATION

310:615-3-8. Medications

(a) Medications shall be administered only on the order of any person authorized by state law to so prescribe [Nurse Practice Act 59 O.S. 1981 §567.3a].

(b) The center shall provide proper storage, safeguarding, preparation, and dispensing of medications in a pharmacy or medication room which is under the supervision of a registered pharmacist who is either an employee of the center or serves as a consultant pharmacist in the same manner as required of hospitals in Chapter ~~655~~ 667 of this Title.

SUBCHAPTER 5. MINIMUM STANDARDS

310:615-5-1. Administration and public areas

(a) **Entrance.** A covered entrance will be located at grade level, sheltered from the weather and accessible to the handicapped.

(b) **Public services.** Public services shall include:

(1) Accessible wheelchair storage.

(2) Reception and information center.

(3) Waiting space. When pediatric services are provided, provisions shall be made for separation of pediatric and adult patients.

(4) Accessible rest rooms.

(5) Accessible public telephone.

(6) Accessible drinking fountain(s).

(c) **Interview space(s).** The center shall provide interview spaces for private interviews relating to social service, credit, and admissions.

(d) **General or individual office(s).** The center shall provide general and individual offices for business transactions, records, and administrative and professional staffs.

(e) **Medical records room.** The center shall have a medical records room which is equipped for dictating, recording, security and retrieval.

(f) **Special storage.** The center shall have special storage which includes locking drawers or cabinets for staff personal effects.

(g) **General storage facilities.** The center shall have general storage facilities for office supplies, sterile supplies, pharmaceutical supplies, and housekeeping supplies and equipment.

(h) **Transfer agreement.** A formal transfer agreement must be in effect between the ambulatory surgical center and a general hospital located not more than a twenty minute travel distance from the center, or all physicians performing surgery in the ambulatory surgical center must have admitting privileges at such a hospital.

[OAR Docket #10-1020; filed 6-14-10]

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

[OAR Docket #10-1021]

RULEMAKING ACTION:
Permanent adoption

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]

AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-2512.1 as created by Section 8 of Enrolled Senate Bill No. 1918 of the 2nd Session of the 51st Oklahoma Legislature, effective November 1, 2008.

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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]
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INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The proposed rulemaking action implements new requirements in Title 63 O.S. Section 1-2512.1 as created by Section 8 of Enrolled Senate Bill No. 1918 of the 2nd Session of the 51st Oklahoma Legislature, effective November 1, 2008.

The proposed rules implement a formula and procedure for distribution of the Oklahoma Emergency Response Systems Stabilization and Improvement revolving funds. The Board has already approved a resolution on the urgent needs of the emergency response system, particularly in the rural parts of the state.
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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 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:642-1-1. Purpose

The rules in this chapter are promulgated to:

(1) Define the process for appropriate distribution of the Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund (OERSSIRF) pursuant to 63 O.S. 2008, § 1-2512.1.

(2) Provide standards for monitoring and enforcement of the provisions of the statute and these rules.

310:642-1-2. Program Description

The Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund program is authorized by 63 O.S. 2008, § 1-2512.1. This law authorizes the Department to distribute funds for specified purposes. This Chapter interprets and implements the law authorizing the expenditure and distribution of funds by the Department. The Department's rules applicable to OERSSIRF expenditures shall be construed so as to consider only the OERSSIRF expenditures program administered by the Department.

310:642-1-3. Definitions

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

"Applicant" means a qualified entity that submits a proposal for OERSSIRF funds.

"Department" means the Oklahoma State Department of Health.

"Emergency Medical Services System" means the network of emergency medical dispatchers (EMDs), certified emergency medical responders (EMRs), licensed emergency medical technicians (EMTs), certified emergency medical response agencies (EMRAs), licensed ambulance services, EMS medical directors, recognized training institutions, and communications centers that work together to deliver prompt, effective pre-hospital emergency medical care to the citizens of Oklahoma.

"Qualified entity" means any person or organization licensed, certified or approved by the Department as part of the EMS system, such as EMS personnel, certified emergency medical response agencies, licensed ambulance services, approved training institutions, approved emergency medical dispatch agencies, approved medical directors or any combination thereof, or their associations or sponsoring organizations, such as EMS districts, cities or counties that operate certified emergency response agencies or licensed ambulance services, or education systems operating EMS training institutions.

SUBCHAPTER 3. PROPOSALS

310:642-3-1. Proposal review and disposition

(a) **General procedures.** The general procedure to be followed in the funding proposal, review and consideration process for financial assistance under the OERSSIRF program shall be as follows:

(1) **Pre-proposal conference.**

(A) All potential applicants are encouraged to participate in a pre-proposal conference. The Department shall summarize available funding, areas of need identified by any state assessment, and the status of previous OERSSIRF-funded projects.

(B) At the pre-proposal conference, preliminary matters may be generally discussed to familiarize all concerned parties with the proposal period, requirements and procedures.

(2) **Proposal.** An applicant shall initiate proposal review and consideration by submission to the Department of applicant's proposal for financial assistance. A proposal shall be submitted by the qualified entity using forms described in 310:642-7-1 (relating to content of application), within the application period specified in OAC 310:642-3-2 (relating to deadlines for filing.)

(3) **Scoring and selection.** Eligible proposals shall be scored by the following process.

(A) A public meeting shall be scheduled for the purpose of scoring the eligible OERSSIRF proposals and awarding the funds that have been identified by the Department as the balance available for distribution on the last day of the preceding calendar year.

(i) A nine (9) person review panel shall be selected by lot each year from volunteers present at the awards meeting.

(ii) Each panel member so selected will sign an attestation stating the volunteer has no financial or other direct personal interest in any of the project proposals before the Department.

(iii) Only a single representative from a professional or business entity may serve on the review panel at the same time.

(iv) If a selected volunteer is determined by Department staff to have any such interest in the selection, the volunteer will be disqualified and another name shall be selected by the same method, until nine members are empanelled.

(B) The panel shall be seated and the reviews will begin under the direction of Department staff.

(i) Department staff will distribute proposals and scoring tools, collect the completed scoring tools for each proposal from the panelists, and tally the scores for each proposal at the end of the process.

(ii) The tallied scores shall be posted as soon as the totals are computed.

(C) The project with the highest score of total points shall be selected for funding, and the projected cost of the project deducted from the balance of the fund.

(D) The project with the next highest score of total points shall be selected for funding, and the cost deducted from the balance of the fund and continuing in like manner until insufficient funds remain to fund the next highest-scoring project.

(E) Any remaining funding shall be retained by the fund and distributed the next year.

(b) **Criteria applicability.**

(1) The criteria set forth in subsections (c) and (d) of this Section shall constitute guidelines and standards for proposal review and consideration by the Department.

(2) The criteria and standards set forth in subsections (c) and (d) of this Section shall be applied to each proposal without exception.

(c) **General approval standards and criteria.** The Department shall be under a continuing obligation to ensure the following standards and criteria are satisfied before any proposal is approved for funding and may determine compliance with these standards and criteria during preliminary review, scoring and selection or during a post selection review:

(1) **Compliance with applicable law.** The proposed project must be found to be in compliance with 63 O.S. § 1-2512.1, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be a qualified entity and the proposed project must be for a qualified purpose as defined in 63 O.S. § 1-2512.1.

(3) **Local need, support and priority.** The applicant shall demonstrate that the project is needed in the area to be served and is sufficient, as proposed, to serve such needs. Applicant shall demonstrate local support, interest and commitment in and to the proposed project.

(4) **Availability of other assistance.** Applicant shall demonstrate appropriate due diligence to ensure no alternative sources of revenue could be obtained and utilized for project financing.

(5) **Economic feasibility.** The applicant shall demonstrate the overall economic viability and feasibility of the project.

(6) **Project feasibility.** The applicant shall demonstrate that the project is feasible and cost effective.

(7) **Statewide needs and public interest.** The applicant shall demonstrate the relationship between the proposed project and the overall EMS development needs within the State of Oklahoma and show that proposed project will serve the public interest and welfare.

(d) **Criteria for denying a proposal.** The Department may deny a proposal for OERSSIRF funding for any of the following reasons:

(1) The applicant is not an eligible entity.

(2) The project does not serve the goals of 63 O.S. § 1-2512.1.

(3) Insufficient availability of funding.

(4) The proposal is received after the deadline.

(e) **Department action.**

(1) After reviewing and considering the submitted proposal, the Department may take one of the following actions:

(A) The Department may approve and fund the proposal as submitted.

(B) The Department may reject and deny the proposal based upon any applicable criteria described in subsection (d) of this Section.

(2) Upon approval of a proposal, the Department may authorize the execution of all necessary funding documents and instruments, and may accordingly authorize

and provide for disbursements and such further or additional action as may be necessary to complete and implement the approved transaction.

310:642-3-2. Applicable law, deadline for proposals, eligible project costs, maximum award

(a) The Department shall administer proposals for OERSSIRF funds in accordance with any provisions of law applicable to such proposals and OERSSIRF funds.

(b) To be considered for and receive funding from funds available for OERSSIRF in any given fiscal year, an application must be completed in accordance with this Chapter and filed by the applicant and received by the Department on or before the thirtieth (30) calendar day after the issuance of the Request for Proposals (RFP). Any application not properly completed and filed shall not be considered for or funded from funds that may become available during that fiscal year.

(c) The Department shall issue a Request for Proposals (RFP) for the OERSSIRF each year. The submission period, including time for questions, shall not be less than thirty (30) calendar days. The Department shall identify qualified staff to ensure questions received through the RFP process are answered and posted appropriately.

(d) An OERSSIRF proposal submitted for consideration in a prior fiscal year that was not approved for funding in that prior fiscal year may be submitted again in any year.

(e) For purposes of evaluating, approving and funding proposals for OERSSIRF funds, categories of project costs which are eligible for assistance shall include those project costs described in 63 O.S. § 1-2512.1:

(1) Funding assessment activities,

(2) Stabilization and/or reorganization of at-risk emergency medical services,

(3) Development of regional emergency medical services,

(4) Training for emergency medical directors,

(5) Access to training front line emergency medical services personnel,

(6) Capital and equipment needs.

(f) No qualified entity shall receive more than $500,000 in OERSSIF funding assistance in any twelve (12) month period, or for any single project.

SUBCHAPTER 5. SCORING

310:642-5-1. OERSSIRF funding priority point system

Proposals shall be ranked based on the total number of points awarded by the Department consistent with this Chapter.

(1) The following formula shall be used to rank funding proposals: T = S + M + D + H + E + AR + PM + PG + PE, where:

(A) T = Total points

(B) S = Statutory purposes

(C) M = Multiple jurisdictions

(D) D = Population density

(E) H = Distance to the nearest level I or II trauma center

(F) E = Number of project-area EMTs

(G) AR = Amount of funding requested

(H) PM = Project matching

(I) PG = Previous funding assistance

(J) PE = Previous funding evaluation

(2) Points may be awarded as described below:

(A) **Statutory purposes (S):** Points shall be awarded for each of the relevant statutory purposes of the proposal as follows:

(i) Funding assessment activities: 50 points

(ii) Stabilization and/or reorganization of at-risk emergency medical services: 100 points

(iii) Development of regional EMS: 50 points

(iv) Training for emergency medical directors: 50 points

(v) Access to training front line emergency medical services personnel: 100 points

(vi) Capital and equipment needs: 50 points

(B) **Multiple jurisdictions (M):** Points shall be awarded for projects addressing the EMS needs of multiple jurisdictions, as follows:

(i) Two cities or towns: 25 points

(ii) Three cities or towns: 50 points

(iii) County wide: 100 points

(iv) Multi-county: 150 points

(v) State wide: 200 points

(C) **Population density (D):** Points shall be awarded for projects encompassing areas of lowest per-mile population density as recorded by the United States Census Bureau, as follows:

(i) 5,000.0 to 8,968.1: 0 points

(ii) 1,000.0 to 4,999.9: 10 points

(iii) 200.0 to 999.9: 20 points

(iv) 79.6 to 199.9: 30 points

(v) 30.0 to 79.5: 40 points

(vi) 10.0 to 29.9: 50 points

(vii) Less than 10.0: 100 points

(D) **Distance to trauma center (H):** Points shall be awarded for project areas where the average distance between the furthest and closest points within the project area to a trauma center classified by the State of Oklahoma or the American College of Surgeons as level I or II, as follows:

(i) 0-25 miles: 0 points

(ii) 25-49 miles: 10 points

(iii) 50-74 miles: 20 points

(iv) 75-99 miles: 30 points

(v) 100-124 miles: 40 points

(vi) 125-149 miles: 50 points

(vii) 150 miles and over: 100 points

(E) **EMTs (E):** Points shall be awarded for proposals encompassing project areas with fewer resident licensed EMTs at any level of licensure as recorded by the Department as follows:

(i) 100 or more resident EMTs: 0 points

(ii) 50-99 resident EMTs: 20 points

(iii) 25-49 resident EMTs: 40 points
(iv) 0-24 resident EMTs: 60 points

(F) **Amount of funding requested (AR):** Points under this category for amount of funding requested are determined as follows:
(i) $400,001 to $500,000: -50 points
(ii) $300,001 to $400,000: -40 points
(iii) $200,001 to $300,000: -30 points
(iv) $100,001 to $200,000: -20 points
(v) $80,000 to $100,000: 10 points
(vi) $60,000 to $79,999: 20 points
(vii) $40,000 to $59,999: 30 points
(viii) $20,000 to $39,999: 50 points
(ix) Any AR greater than $500,000 shall be denied

(G) **Project matching (PM).** If the proposal proposes the use of matching funds, points shall be awarded consistent with the following formula:
(i) 90% of the requested funds: 90 points
(ii) 80% of the requested funds: 80 points
(iii) 70% of the requested funds: 70 points
(iv) 60% of the requested funds: 60 points
(v) 50% of the requested funds: 50 points
(vi) 40% of the requested funds: 40 points
(vii) 30% of the requested funds: 30 points
(viii) 20% of the requested funds: 20 points
(ix) 10% of the requested funds: 10 points

(H) **Previous funding assistance (PG).** If a qualified entity has been approved for one (1) or more OERSSIF proposals from the Department for projects awarded in the past, points shall be deducted from the proposal according to all of the following provisions that apply unless the previous proposal was for an assessment of the need for the establishment of EMS or stabilization of an at-risk EMS:
(i) One (1) funded project in the preceding twelve (12) month period: - 80 points.
(ii) More than one (1) OERSSIRF project in the preceding twelve (12) month period: -100 points.
(iii) One (1) OERSSIRF funded project more than twelve (12) months in the past: -50 points.
(iv) Two (2) OERSSIRF funded projects more than twelve (12) months in the past: -80 points.
(v) Three (3) OERSSIRF funded projects more than twelve (12) months in the past: -100 points.
(vi) Four (4) OERSSIRF funded projects more than twelve (12) months in the past: -150 points.
(vii) Five (5) or more OERSSIRF funded projects more than twelve (12) months in the past: -175 points.
(viii) If the qualified entity has received a previous OERSSIRF funding for a project that remains un-evaluated or for which any refund has not been paid as of August 31st of the year following the approved completion date of the project, the proposal will be given -50 points for each such funded project.

(I) **Previous funding evaluation (PE).** The project score established through the Department's evaluation required by OAC 642-9-1(a) for each previously completed OERSSIRF project shall earn the following points:
(i) Significantly Improved: 100 points
(ii) Improved: 50 points
(iii) Not Improved: -50 points
(iv) Worsened: -100 points

SUBCHAPTER 7. DISBURSEMENT

310:642-7-1. Content of proposal

(a) The proposal shall be submitted using the forms provided by the Department. The proposal form shall include the following sections:
(1) Proposal Information, including the name of the contact person, mailing address, e-mail address, phone number and type of qualifying applicant entity.
(2) Instructions, including an outline of the legal requirements and the priority point system.
(3) A section requiring a narrative description of the proposed project.
(4) A section enumerating the requirements of the OERSSIRF statute, requiring a description of the proposed project's compliance with each section.
(5) A section requiring a narrative description of the proposed project's compliance with each of the priority point criteria.
(6) A checklist allowing evaluation of compliance with solicitation requirements.

(b) Each proposal shall include a section setting forth the criteria that will be used to evaluate the success of the project. The criteria shall include:
(1) Specific, objective metrics for evaluation of the project. For example: a percentage decline in response time or improvement in the number of available EMTs within a region, measured against the same metric at the start of the project.
(2) A clear methodology and a description of data sources for computing the performance measures proposed in the project plan, for example, comparing responder response times or the total number of EMTs in a region against the same metric at the end of the project.
(3) Benchmark measures for each of the following assessment levels:
(A) Significantly improved.
(B) Improved.
(C) Not Improved.
(D) Worsened.

310:642-7-2. Disbursement of funds

(a) **Action following Department approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an OERSSIRF proposal, the Department shall furnish to the applicant a written notice of approval. The notice shall advise the applicant that the funds approved shall be made available to the applicant by the Department for such purposes and upon conditions as provided in paragraph (2) of this subsection (relating to additional conditions prior to disbursement of funds).

(2) **Additional conditions prior to disbursement of funds.**

(A) Applicant shall establish a special and separate federally insured fund or account within applicant's accounting system in and through which the proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Department, applicant shall submit to the Department all plans, specifications and benchmark completion reports for the project for Department approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Department with a written and verified statement setting forth:

(i) The amount of funds necessary for release and disbursement at closing needed for commencement of the project, and

(ii) The reasonable availability of all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Department, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a vendor agreement.

(3) **Department action on request for withdrawal of funding.** If, prior to disbursement of the monies to the applicant, the project bids exceed the estimates or it otherwise develops that the OERSSIRF proposal amount approved by the Department, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request to decline funding and withdraw its proposal for the current fiscal year.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time of and upon compliance by the applicant with the applicable requirements in subsection (a) of this Section, the Department shall disburse the approved amount of OERSSIRF funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** Funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during, or upon, completion of the project, all as deemed appropriate by the Department under the project circumstances presented. The Department shall conduct on-site inspections to confirm completion of benchmarks described in the project plan.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the monies to the applicant it develops that the applicant needs more money for the project than the OERSSIRF amount disbursed by the Department, the Department may evaluate remaining funds and at its discretion may increase funding no more than 10% over the original proposed amount.

(4) **Post-disbursement action regarding unexpended funding.** If following completion of the project the applicant needed less money for the project than disbursed by the Department, the applicant shall return the unexpended amount to the Department. Unused funding shall be returned to the fund and made available during the next funding year.

(5) **Reports.** The Department may require quarterly or biannual progress reports and may at any time perform on-site inspections.

(A) Applicants shall provide all requested documents at the time of the inspection, or as required by the Department.

(B) Department staff shall report any suspected misappropriation of funds to the appropriate law enforcement authority.

SUBCHAPTER 9. EVALUATION

310:642-9-1. Evaluation of Projects

The Department shall perform an evaluation of the project within six (6) months of its completion, summarizing its effectiveness using benchmark measures identified in the proposal as required by 310:642-7-1(b)(3)(relating to content of proposals).

[OAR Docket #10-1021; filed 6-14-10]

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

[OAR Docket #10-1009]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Administration, Records and Policies
310:663-19-4 Policies [NEW]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-890 et seq.
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July 25, 2010
SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The proposed rule changes address abuse, neglect and the misappropriation of resident's property by requiring written policy statements to include investigation protocol and actions to be taken when incidents of abuse, neglect and misappropriation of resident's property occur and the amendment further addresses training criteria and timeframes for staff.

Section 310:663-19-4, Policies. There is no rule that addresses the prevention and mitigation of abuse, neglect and the misappropriation of resident's property. This proposal promulgates procedures for addressing abuse, neglect and the misappropriation of resident's property by requiring written policy statements and sets training criteria and timeframes for staff. This change is necessary because no current rule defines the facility's responsibility to identify, investigate and take protective measures to ensure residents are free from abuse and neglect. The effect of the rule change will be that actions are taken to prevent and mitigate abuse, neglect and the misappropriation of resident's property.
CONTACT PERSON:
James Buck, Assistant Chief, Long Term Care Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1207; telephone: 405-271-6868; electronic mail: jimob@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-4. Policies

(a) Each assisted living center shall have a written policy statement that expressly prohibits the abuse or neglect of residents or misappropriation of resident property it serves. The policy shall include the facility's investigative procedures and actions to be taken when incidents of abuse or neglect of residents or misappropriation of resident's property occur.

(b) The administrator of the assisted living center who becomes aware of abuse or neglect of a resident or misappropriation of a resident's property shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department.

(c) The assisted living center shall provide staff, within ninety (90) days of employment, training in the identification of abuse and neglect of residents and misappropriation of resident property and the facility's policies and procedures concerning the same. Verification of the provision of training shall be written, signed by staff attending and retained in the personnel files.

[OAR Docket #10-1009; filed 6-14-10]

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

[OAR Docket #10-1010]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 59. Classification of Hospital Emergency Services
310:667-59-20. Classification of emergency stroke services [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Sections 1-705, and 1-707.
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The existing rule language specifies the requirements a licensed hospital must meet in order to be classified as a Primary Stroke Center or a Secondary Stroke Facility. The proposed amendments to the rules for the classification of emergency stroke services remove certain requirements for some nonessential supplies, medications, and equipment that have become a barrier to certain hospitals classifying at a specific level for emergency stroke services that otherwise would meet the classification requirements. The deleted elements duplicate requirements that are included in other sections of the rule that describe the classification of emergency neurology services. Removal of these requirements in the stroke section does not adversely impact the intent of the rule which is to improve access to peripheral thrombolytic therapy for patients suffering from acute onset of ischemic stroke. Removal of these nonessential requirements may allow several additional licensed hospitals to classify as Primary Stroke Centers thereby improving the availability of peripheral thrombolytic therapy for the citizens of Oklahoma.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities Service, Protective Health Services, Oklahoma State Department of Health, 1000 Northeast 10th

Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: tomw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES

310:667-59-20. Classification of emergency stroke services

(a) **Secondary Stroke Facility.** A Secondary Stroke Facility shall provide services with at least a licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician on site twenty-four (24) hours a day. A hospital shall be classified as a Secondary Stroke Facility if it meets the following requirements:

(1) **Clinical services and resources.** No diagnostic, surgical, or medical specialty services are required.

(2) **Personnel.** A physician, licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician shall be on site twenty-four (24) hours a day. In the absence of a physician, licensed independent practitioner, registered nurse, or paramedic level emergency medical technician, at least one of the practitioners on duty shall have received training in advanced life support techniques and be deemed competent to initiate treatment of the emergency stroke patient.

(A) If the facility is licensed as a General-Medical Surgical Hospital it shall also meet the personnel and staffing requirements at OAC 310:667-29-1 (relating to emergency service or department) and any other applicable parts of this Chapter.

(B) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Psychiatric, it shall also meet the personnel and staffing requirements at OAC 310:667-33-2 (relating to services) and any other applicable parts of this Chapter.

(C) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Rehabilitation, it shall also meet the personnel and staffing requirements at OAC 310:667-35-3 (relating to specialized requirements - policy and personnel) and any other applicable parts of this Chapter.

(D) If the facility provides emergency medical services and is licensed as a Critical Access Hospital, it shall also meet the personnel and staffing requirements at OAC 310:667-39-14 (relating to emergency services) and any other applicable parts of this Chapter.

(3) **Supplies and equipment.** ~~In addition to~~The hospital shall also have the equipment and supplies required ~~the requirements~~ at OAC 310:667-59-9(a)(3) (relating to classification of trauma and emergency operative services at Level IV), ~~the hospital shall have the following equipment and supplies~~ on site, functional, and immediately available~~:~~.

~~(A) Seizure control agents;~~

~~(B) Thiamine and glucose for intravenous administration; and~~

~~(C) Antipyretics and procedures for reducing body temperature when necessary.~~

(4) **Agreements and policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) The facility shall have a written agreement with a hospital classified as a Primary Stroke Center, or with a board certified, board eligible, or residency trained neurologist, or group of neurologists to provide immediate consultative services for stroke patients twenty-four (24) hours a day. Such services shall include providing instructions for the initiation of appropriate therapy and/or patient transfer.

(b) **Primary Stroke Center.** A Primary Stroke Center shall provide emergency medical services with an organized emergency department. A physician shall be on call and immediately available to respond to the emergency department and nursing staff with special capability in emergent stroke care shall be on site twenty-four (24) hours a day. A hospital shall be classified as a Primary Stroke Center if it meets the following requirements:

(1) **Clinical services and resources.**

(A) **Emergency services.** A physician deemed competent in the care of the emergent stroke patient and credentialed by the hospital to provide emergency medical services shall be on call and immediately available to respond to the emergency department. Nursing personnel with special capability in emergent stroke care shall be on site twenty-four (24) hours a day.

(i) For a hospital licensed as a general medical surgical hospital or specialty hospital, emergency services shall also comply with the requirements of OAC 310:667-29-1 through OAC 310:667-29-2 (relating to emergency service or department and patient transfers.)

(ii) For a hospital licensed as a critical access hospital, emergency services shall also comply with OAC 310:667-39-14 (relating to emergency services.)

(B) **Stroke Team.** A stroke team shall be identified in writing and shall be on site or immediately available to respond to the emergency department:

(i) Stroke team members shall have at least annual training in the care of the stroke patient;

(ii) Response time standards for the stroke team shall be established and monitored;

(iii) Standard practice protocols for the care of the stroke patient shall be in place, including appropriate administration of an FDA-approved thrombolytic agent within sixty (60) minutes of the arrival of the patient at the emergency department.

(C) **Diagnostic imaging.** The hospital shall have diagnostic x-ray and computerized tomography services available twenty-four (24) hours a day. A radiologic technologist and computerized tomography technologist shall be on duty or on call and immediately available twenty-four (24) hours a day. A single technologist designated as qualified in both diagnostic x-ray and computerized tomography procedures by the radiologist may be used to meet this requirement if an on call schedule of additional diagnostic imaging personnel is maintained.

(i) For a hospital licensed as a general medical surgical hospital or specialty hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 23 of this Chapter (relating to diagnostic and treatment services.)

(ii) For a hospital licensed as a critical access hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 39 of this Chapter (relating to critical access hospitals.)

(D) **Clinical laboratory service.** The hospital shall have clinical laboratory services available twenty-four (24) hours a day. All or part of these services may be provided by arrangements with certified reference laboratories provided these services are available on an emergency basis twenty-four (24) hours a day. At least the following shall be available:

(i) Standard analysis of blood, urine, and other body fluids to include routine chemistry and hematology testing;

~~(ii) Cerebrospinal fluid, cell count, white blood cell differential, protein, glucose, Gram stain, and antigen testing when appropriate;~~

(~~iii~~ii) Coagulation studies;

(~~iv~~iii) Blood gas/pH analysis; and

(~~v~~iv) Drug and alcohol screening.

(~~vi~~v) For a hospital licensed as a general medical surgical hospital or specialty hospital, clinical laboratory services shall also comply with the applicable requirements in Subchapter 23 of this Chapter (relating to diagnostic and treatment services.)

(vi) For a hospital licensed as a critical access hospital, clinical laboratory services shall also comply with the applicable requirements in Subchapter 39 of this Chapter (relating to critical access hospitals.)

(2) **Personnel.**

(A) **Emergency services director.** The medical staff shall designate a physician credentialed to provide emergency medical care as emergency services director.

(B) **Neurologist.** A physician board certified, board eligible, or residency trained, in neurology shall be available for consultation on site or immediately available by telephone or other electronic means twenty-four (24) hours a day.

(3) **Supplies and equipment.** In addition to the requirements at OAC 310:667-59-9(a)(3) (relating to classification of trauma and emergency operative services at Level IV), the hospital shall have ~~the following equipment and supplies~~an FDA-approved thrombolytic agent on site~~, functional,~~ and immediately available~~:~~ for treatment of acute nonhemorrhagic stroke.

~~(A) Seizure control agents;~~

~~(B) Thiamine and glucose for intravenous administration;~~

~~(C) Antipyretics and procedures for reducing body temperature when necessary;~~

~~(D) Sterile procedure trays for lumbar puncture and measurement of intracranial pressure; and~~

~~(E) Thrombolytic agents for treatment of acute nonhemorrhagic stroke.~~

(4) **Agreements and policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients, which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) If the facility does not have a neurologist, either board certified, board eligible, or residency trained, or group of neurologists similarly qualified, on staff to provide immediate consultative services for emergent stroke patients twenty-four (24) hours a day, the facility shall have a written agreement with a hospital, or a neurologist, either board certified, board eligible, or residency trained, or group of neurologists similarly qualified, to provide such services for emergent stroke patients on a twenty-four (24) hour basis. Such services shall include providing instructions for the initiation of appropriate therapy and/or patient transfer.

(5) **Quality Improvement.** The hospital shall ensure an appropriate quality improvement process is in place to monitor and evaluate the care provided to the critically ill stroke patient, and to provide regular feedback to emergency medical service agencies and referring hospitals on the optimal care of the critically ill stroke patient.

[OAR Docket #10-1010; filed 6-14-10]

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

[OAR Docket #10-1011]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General provisions
310:669-1-3 [AMENDED]
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Oklahoma State Board of Health; Title 63 O.S. § 1-104; and Title 63 O.S. §§ 1-2530.1 et seq.
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310:669-1-3 [AMENDED]
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26 Ok Reg 1759
Docket number:
09-967
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The purpose of the proposed amendment is to delete language specifying the manner that distribution calculations of the pro rata share are computed. The change will help to ensure that smaller, primarily rural, distribution entities are not excluded from participation in the fund. The proposal deletes rounding language that requires calculations to be rounded to the third decimal place. The analysis conducted upon the release of the final report by the OSDH Internal Auditing Division on April 9, 2009 revealed that if the rule language at 310:669-1-3 is strictly interpreted, all licensed ground ambulance services in the state of Oklahoma, with the exception of two urban and one rural services, would be excluded from participation in the fund and many rural hospitals would also be excluded. Removal of this restrictive language is critical to the successful application of the Trauma Care Assistance Revolving Fund to develop and support a sustainable trauma system in Oklahoma.
CONTACT PERSON:
Patrice Greenawalt, Assistant Chief of Medical Facilities, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-4027; electronic mail: patriceg@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

310:669-1-3. Rounding of numbers

The Department shall~~:~~

~~(1)~~ ~~Take~~ take the pro rata distributions to the second decimal point or hundredths place (.00) by rounding back from the third or thousandths place (.000); and

~~(2) Take the fraction for distribution calculations to the third decimal point or thousandths place (.000) by rounding back from the fourth or ten-thousandths place (.0000).~~

[OAR Docket #10-1011; filed 6-14-10]

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

[OAR Docket #10-1012]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Resident care services
310:675-9-5.1. Resident assessment [AMENDED]
Subchapter 13. Nursing service
310:675-13-5. Inservice [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. § 1-104; and Title 63 O.S. Section 1-1901 et seq.
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INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The proposed rule changes address inservice training intervals for pain screening, management and assessment for direct care staff in the areas of pain screening, management and assessment; amends the requirement for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) to use a minimum data set (MDS) form for resident assessments.

Section 310:675-9-5.1.(E), Resident Assessment. The current Rule provides for the procedures and terms of resident assessments that shall include a minimum data set (MDS) in the form required under 42 CFR 483.20. This proposal establishes exclusion of the requirement for ICF/MR to use a MDS for resident assessment. This change is necessary because the MDS was federally designed for use in nursing facilities but not intended for assessment of the developmentally disabled. The effect of the Rule change will be the removal of the requirement for ICF/MRs to use a MDS form for resident assessments and will allow facilities to align resources in addressing the active treatment needs of residents.

Section 310-675-13-5(i), Inservice. The current Rule sets forth inservice training intervals for pain screening, management and assessment. The proposal establishes an annual requirement for facilities to provide all direct care staff with two hours of inservice training in addition to training in orientation. The effect of the Rule change will be assurance of a competent workforce through incorporation of a diverse curriculum in patient care.

CONTACT PERSON:

James Buck, Assistant Chief, Long Term Care Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1207; telephone: 405-271-6868; electronic mail: jimob@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-5.1. Assessment and care plans

(a) A resident assessment and an individual care plan shall be completed and implemented for each resident. The care plan shall indicate the resident's current status and accurately identify the resident's needs.

(b) The written resident assessment and care plan shall be reviewed and updated, at least quarterly, and as needed when the resident's condition indicates.

(c) Efforts shall be made to include the resident and resident's representative in development and implementation of the care planning process.

(1) **Resident assessment**

(A) The facility shall conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment for each resident's functional capacity.

(B) Each resident shall have an assessment coordinated or conducted by a registered nurse.

(C) Each individual completing a portion of the assessment shall sign, date, and certify the accuracy of that portion.

(D) An assessment shall be completed within fourteen days after admission of the resident.

(E) The resident assessment shall include a minimum data set (MDS) in the form required under 42 CFR 483.20. Each facility, with the exception of Intermediate Care Facilities for the Mentally Retarded (ICF/MR), accurately shall complete the MDS for each resident in the facility, regardless of age, diagnosis, length of stay or payment category.

(F) The MDS form shall require the following, as applicable:

(i) Admission assessment;

(ii) Annual assessment;

(iii) Significant change in status assessment;

(iv) Significant correction of prior full assessment;

(v) Significant correction of prior quarterly assessment;

(vi) Quarterly review; and

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(2) **Resident pain assessment**

(A) Residents shall be screened for the presence of pain at least once every 30 days and whenever vital signs are taken.

(i) Licensed nursing staff shall perform the screening at least once every 30 days. Certified nurse aides may perform the screening more frequently as needed.

(ii) The screening instrument shall grade the intensity and severity of pain using a resident-specific pain scale;

(B) An individualized pain assessment shall be conducted by a registered nurse for each resident:

(i) In conjunction with the admission, quarterly and annual assessments required at OAC 310:675-9-5.1.(c)(1)(F); and

(ii) With onset of pain not previously addressed in a care plan or physician's orders.

(C) The goal is to alleviate or minimize pain while assisting the resident to maintain as high a level of functioning as possible. The pain assessment shall include, but not be limited to:

(i) A statement of how the resident describes the pain;

(ii) Intensity and severity of pain graded using a resident-specific pain scale;

(iii) Recent changes in pain;

(iv) Location(s);

(v) Onset and duration of pain, such as new pain within the last 3 days, recent pain within the last 3 months, or more distant pain greater than 3 months;

(vi) Type of pain reported or represented by resident, such as constant or intermittent, and duration or frequency of pain;

(vii) Current pain measured at its least and greatest levels;

(viii) Aggravating and relieving factors;

(ix) Treatment including a review of all therapies, including medication, and the regimen used to minimize pain;

(x) Effects of pain and effectiveness of therapy on physical and social functions;

(xi) Resident's treatment preferences and emotional responses to pain, including resident's

expectations and how resident coped with pain; and

(xii) If applicable, refer to pain assessment tool for the cognitively impaired.

(D) Results shall be recorded in the resident's clinical record showing changes in pain scale and changes in level of functioning. The physician shall be contacted as necessary.

(E) Pain shall be treated promptly, effectively and for as long as necessary.

(3) **Individual care plan**

(A) An individual care plan shall be developed and implemented for each resident to reflect the resident's needs.

(B) The care plan shall be developed by an interdisciplinary team that includes a registered nurse with responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs.

(C) The care plan shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs identified in the assessment.

(D) The care plan shall be available to appropriate personnel providing care for the resident.

(E) An initial care plan shall be completed at the time of admission. The individualized care plan shall be completed within twenty-one days after admission.

(F) A care plan shall be completed within seven calendar days after the completion of the assessment.

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-5. Nursing service

(a) **General.** The nursing facility shall be organized, staffed, and equipped to provide nursing and health related services to all residents on a continuous basis.

(b) **Licenses.** All licensed nurses shall hold a current license issued by the Oklahoma Board of Nursing.

(c) **Director of nursing**

(1) A registered nurse or licensed practical nurse shall be designated as the director of nursing.

(2) The director of nursing shall be on duty on the day shift and be responsible for all resident care including, but not limited to, the physical, mental, and psycho-social needs. The director of nursing or designee shall be available by telephone when needed by facility staff.

(3) When necessary, the director of nursing may work other than the day shift but for no more than three shifts a week. This exception shall not exceed three consecutive weeks in a three month period.

(d) **Licensed nurses**

(1) The facility shall employ licensed nurses for a sufficient number of hours to meet the residents' needs.

(2) A licensed nurse shall supervise direct care staff and shall direct nursing care for the residents.

(3) The facility shall use licensed practical nurses only for the medical procedures for which they are trained.

(e) **Consultant registered nurse**

(1) If the director of nurses is a licensed practical nurse, a registered nurse shall be employed for at least eight hours per week as a consultant.

(2) A consultant registered nurse shall evaluate and consult with the director of nursing concerning residents' needs and shall coordinate the assessment and care plan of each resident.

(3) A consultant registered nurse's visit shall document the date and the hours spent in consultation. The documentation shall be signed and reviewed by the director of nursing.

(f) **Certified medication aide**

(1) Each medication aide shall be a certified nurse aide who has passed a Department approved medication administration program.

(2) A graduate nurse or a graduate practical nurse, who has not yet been licensed, may administer medications if the nurse has passed an approved competency test for medication administration.

(3) A certified medication aide may administer physician ordered medications and treatments under the direction of a licensed nurse.

(4) The facility shall have a licensed nurse or physician on-call to handle medical emergencies. The charge person shall notify the designated person when a medical emergency arises.

(5) A certified medication aide shall complete eight hours of continuing education a year that is approved by the Department.

(g) **Nurse aide**

(1) No facility shall use, on a full-time basis, any person as a nurse aide for more than 120 days unless that person is enrolled in a training program.

(2) No facility shall use, on a temporary, per diem, or other basis, any person as a nurse aide unless the individual is listed on the Department's nurse aide registry.

(3) The facility shall contact the Department's nurse aide registry prior to employing a nurse aide to determine if the person is listed on the registry, and if there is any record of abuse, neglect, or misappropriation of resident property.

(h) **Nursing students.** Facilities participating in a state approved nursing education program may allow nursing students to administer medications to residents. The facility shall have a written agreement with the nursing education program. The agreement shall specify the scope of activities, education level, and required supervision. The facility shall maintain a current roster of nursing students in the program. Details about the program and its operation within the facility shall be included in the facility's policy and procedure manual.

(i) **Inservice.** The facility shall provide all direct care staff with two hours of inservice training specific to their job assignment per month. This training shall include, at least, the following:

(1) Fire safety and first aid classes semi-annually.

(2) Resident rights and resident adjustment to institutional life annually.

(3) Cardiopulmonary resuscitation and Heimlich maneuver procedures annually.

(4) All supervisory staff shall receive training in regards to applicable local, state, and federal regulations governing the facility.

(5) Each staff person shall be provided training in pain recognition at the time of orientation and at least once a year thereafter.

(6) Each certified nurse aide shall be provided training in pain screening at the time of orientation and at least once every ~~six months~~ year thereafter.

(7) Each licensed practical nurse shall be provided training in pain screening and pain management at the time of orientation and at least once every ~~six months~~ year thereafter.

(8) Each registered nurse shall be provided training in pain assessment and pain management at the time of orientation and at least once every ~~six months~~ year thereafter.

[OAR Docket #10-1012; filed 6-14-10]

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

[OAR Docket #10-1013]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensure Requirements
310:680-3-6. Records and reports [AMENDED]
310:680-3-14. Appropriate occupancy [NEW]
Subchapter 9. Dietary Requirements
310:680-9-1. Food service [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-819 et seq.
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January 4, 2010 through February 3, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2010
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SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
The proposed rule changes address a requirement for licensed facilities to comply with the definition of "Residential Care"; reference to OAC 310:257 (food service establishment rules) as it pertains to the storage, preparation and serving of food; clarifies the term "critical" incidents as it relates to incidents reportable to the Department.

Section 310:680-3-6(d), Records and reports, address incidents reportable to the Department. This change is necessary because the current rule is unclear as to the criteria pertaining to incidents reportable to the Department. Added detail is provided to clarify incidents that result in fractures, head injuries or require treatment at a hospital as being reportable. The proposal will allow for incidents that result in serious injuries to be more accurately quantified.

Section 310:680-9-1(j), Food Service. The current rule provides for the procedures and terms a licensed facility shall be in compliance with regarding food service. This proposal establishes OAC 310:257 (food service establishment rules) as the governing regulation pertaining to the storage, preparation and serving of food. This change is necessary because current rule requires compliance with obsolete versions of the food service establishment rules and the milk and milk product regulations. The effect of the rule change will be the effectuation of the current food service establishment rules with a direct benefit to residents by reducing the potential for foodborne illnesses through safe food practices.

Section 310:680-3-14, Appropriate Occupancy, promulgates rules to provide for the procedures and terms of appropriate placement. The proposal establishes the requirement that licensed facilities comply with the definition of "Residential Care" as defined in statute at, 63 O.S. § 1-820. The change is necessary because no rule has been promulgated that provides for the appropriate placement of residents. The effect of the rule will be the Department's ability to ensure a safe and healthy environment is provided and maintained for individual residing in these entities. The proposal will make certain that residents are appropriately placed thereby receiving appropriate care.
CONTACT PERSON:
James Buck, Assistant Chief, Long Term Care Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1207; telephone: 405-271-6868; electronic mail: jimob@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 3. LICENSURE REQUIREMENTS

310:680-3-6. Records and reports

(a) Every residential care home shall conspicuously post in an area of its offices accessible to residents, employees, and visitors, the following:

(1) Its current license.

(2) The name of the current administrator and their certificate posted.

(3) A copy of Residents' Rights.

(4) Complaint procedure, established by the Nursing Home Care Act and provided by the Department which includes name, address, and telephone number of a person within the Department who is authorized to receive complaints.

(5) A copy of any order pertaining to the facility issued by the Department or a court, which is currently in effect.

(b) Every residential care home shall retain the following for public inspection:

(1) A complete copy of every inspection report of the residential care home received from the Department during the past three (3) years.
(2) A copy of every order pertaining to the residential care home issued by the Department or a court during the past three (3) years.
(3) A description of the services provided by the residential care home, the rates charged for those services, and items for which a resident may be separately charged.
(4) A copy of the statement of ownership.
(5) A list of personnel who are licensed, certified, or registered and employed or retained by the residential care home, including area in which individual is credentialed.
(6) If source of payment for resident's care is from public funds, the contract with the agency providing the funds.

(c) Reports of communicable disease shall be made in accordance with 63 O.S. 1971 1-501, et seq.

(d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or utilities failure for more than four (4) hours, and ~~other critical~~ incidents that result in fractures, head injuries or require treatment at a hospital. Notice shall be made no later than the next working day.

(e) An evacuation plan shall be developed and permanently displayed in the hallways and sitting room. Fire drills shall be conducted at least quarterly.

(f) Facility shall have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation and/or other natural disasters that may render the home unsuitable.

310:680-3-14. Appropriate occupancy

A residential care home shall not admit or provide services to a resident who is not *ambulatory and essentially capable of participating in their own activities of daily living*. Residents *shall not routinely require nursing services* [63 O.S. Section 1-820(a)].

SUBCHAPTER 9. DIETARY REQUIREMENTS

310:680-9-1. Food service

(a) A residential care home shall have available a minimum of three (3) meals per day, constituting a palatable, nutritionally adequate general diet and should include the basic four (4) food groups in the recommended amounts.

(b) There shall be no more than fourteen (14) hours between the substantial evening meal and the following morning meal. Between meal snacks shall not replace regular meals.

(c) Fresh drinking water shall be available and easily accessible to the residents. Ice from an approved source shall be available.

(d) Menus shall be planned, dated, and posted at least one (1) week in advance. Menus are to be retained in the home for one (1) year.

(e) Three (3) days supply of food shall be in the home at all times, including cold storage.

(f) Dining room seating capacity shall be a minimum of 15 square feet per resident.

(g) A residential care home having residents requiring special diet(s) prescribed by a physician shall contract with a consulting registered/licensed dietitian to provide services to institute and monitor these special diets. Special diet menus shall be approved and signed by a registered/licensed dietitian.

(h) A residential care home licensed for twenty (20) beds or more, and/or having residents who require special diets, shall designate an employee who is properly trained to supervise menu planning, food preparation, food inventory, food distribution, and health issues related to diet.

(i) A residential care home providing special diets shall ensure that each resident is offered the correct diet.

(j) A residential care home shall be ~~licensed~~ in ~~accordance~~ compliance with ~~the Chapter~~ Chapter 257 of this Title, ~~"Rules and Regulations for Food Service Establishments"~~ regarding storage, preparation, and serving of food (including milk and ice). A residential care home may use residential equipment provided that the equipment must maintain hot and cold temperatures as required in OAC 310:257.

[OAR Docket #10-1013; filed 6-14-10]

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

[OAR Docket #10-1002]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:10-1-5 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311(B)(2) and 70 O.S., Section 3311, et seq.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Amendments are non-substantial and necessary to clarify the certification process.
CONTACT PERSON:
Kimberly Richey, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5114.

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 25, 2010:

390:10-1-5. Requirements for certification

(a) No person may be certified as a peace officer under the laws and the rules of this chapter until the following requirements have been met.

(1) The agency employing an officer seeking certification, or in the case of an elected official, the elected official himself must certify to CLEET that the employment standards set forth in 70 O.S. Section 3311 (E)(F)(G)(J) have been met. This certification shall be in a format accepted by CLEET.

(2) Having met the employment standards set forth herein, an officer must certify to CLEET that he or she is physically able to fully participate in and complete all phases of the CLEET Basic Peace Officer Certification Academy. This certification shall be in writing on forms to be provided by CLEET. CLEET shall reserve the right to refuse training to persons found to be physically unable to complete all phases of basic certification training.

(3) The head of the agency employing an officer enrolling in a CLEET Basic Certification Academy, shall first certify to CLEET that the officers's employing agency will fully assume all medical expenses incurred by said officers as a result of any injury or illness incurred during basic certification training.

(4) Any officer seeking peace officer certification must successfully complete all phases of a CLEET Basic Certification Academy, or a CLEET - approved basic certification academy.

~~(5) Every full-time peace officer, certified by the Council, who has been inactive for five or more years, upon re-entry to full-time status, must complete refresher training as prescribed by CLEET and successfully pass a written examination as prescribed by the Council, within one (1) year of employment.~~

~~(A) Trainees must achieve a passing score as determined by CLEET on the examination.~~

~~(B) Any trainee that fails the examination will be permitted to retake that examination within five (5) business days of the first examination.~~

~~(C) If the trainee fails the retake examination, the trainee's agency head must petition the Director in writing, to receive additional training and examination opportunities.~~

(b) The Council on Law Enforcement Education and Training, pursuant to relevant provisions of the Americans With Disabilities Act, will not discriminate against persons capable of performing essential functions required in peace officer training programs with or without reasonable accommodation.

[OAR Docket #10-1002; filed 6-10-10]

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

[OAR Docket #10-1003]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
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ANALYSIS:
Amendments will allow Curriculum Review Board, which was statutorily created to establish curriculum, to adjust curriculum through the implementation of internal policy directives. Amended rule reflects recent statutory changes, which nullify the physical testing requirement set forth in this rule. The current rules are confusing and the amendments would simplify and clarify the testing process and procedure. The rules in this section relate to personal trainee conduct, trainee dress code requirements, academic study assignments, academy training hours, general academy equipment, and academy clothing requirements. All of these polices, which are being revoked, would be implemented as internal academy policy to provide CLEET the flexibility to modify and adjust academy requirements in a thorough and responsive manner.

CONTACT PERSON:
Kimberly Richey, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5114.

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 25, 2010:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-2. Curriculum and courses of study

(a) The Council shall formulate and promulgate a program of instruction for peace officer certification, comprised of fundamental law enforcement skills and knowledge, which shall be designated as the Basic Peace Officer Certification Academy, known herein as the Basic Academy.

~~(b) Major block curriculum changes, and/or changes in the total number of hours of the Basic Academy, shall only be made upon the consideration of public input, CLEET's constituency's opinion or by state statute. CLEET shall seek constituency opinion for major block changes, and/or changes in the total number of Basic Academy hours by requesting input from the Council via an agenda item at a regular or special Council meeting and through one or more of the following: 1) written or oral communication requesting input from local law enforcement chiefs, sheriffs, and agency heads; 2) requesting input from local law enforcement chiefs, sheriffs, and agency heads, at CLEET Regional Meetings; 3) requesting input from the Advisory Council to the Council on Law Enforcement Education and Training via an agenda item at a regular or special meeting~~.

(b ~~c~~) The curriculum of the Basic Academy ~~was~~is established by the Curriculum Review Board. ~~upon a job task analysis conducted in 1987 as a joint project of CLEET and the University of Oklahoma. The curriculum shall include functional areas as prescribed by the Council~~. The curriculum shall include functional areas as prescribed by the Council through the Cirriculum Review Board. Functional areas ~~shall~~may include, but shall not be limited to the following:

(1) Orientation/Legal Matters
(2) First Aid
(3) Firearms
(4) Criminal Investigation
(5) Custody Control and Arrest
(6) Traffic
(7) Patrol
(8) Community Relations
(9) Law Enforcement Driver Training
(10) DWI Detection and Standardized Field Sobriety Testing (SFST)
(11) Radar
(12) Ethics

(c ~~d~~) The Basic Academy shall meet the hourly ~~and course of study~~ requirements as provided by O.S. 70 Section 3311 et seq.

~~(e) Each topic of instruction to be taught as a separate unit within the functional area shall have specifically defined performance objectives. A performance objective shall be defined as a task to be performed, or knowledge to be gained, by a trainee as part of the training process. Performance objectives shall serve as a foundation for student performance expectations and shall be the primary gauge against which the progress and achievement of each trainee is measured and tested.~~

(d ~~f~~) Additional hours of ~~independent~~ study and/or CLEET approved activity may be required to fulfill Basic Academy requirements. ~~one or more functional area requirements.~~

(e ~~g~~) Approved academy entities must meet instructional objectives established by CLEET but they may establish an hourly schedule that meets their needs.

390:15-1-6. Basic Academy participation

(a) All trainees shall be capable of full participation in all Basic Academy activities.

(b) All trainees shall be required to score a minimum of seventy percent (70 %) on a reading, writing and comprehension examination pursuant to 70 O.S. 3311.11.

(c) All trainees shall be required to score a minimum of seventy percent (70%) on a physical assessment test pursuant to 70 O.S. 3311.11.

(d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11.

(e) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

~~(b) Until implementation of the pre-academy physical training assessment as provided in paragraph (e) of this section, trainees will be administered a physical training assessment by CLEET staff during the Basic Academy at the agency administrator's request.~~

~~(c) The physical training assessment will be used to compile statistical data indicating the level of general fitness required to satisfy the physical demands of the Academy without undo risk of injury.~~

~~(d) Upon request, an employing agency will be provided information as to whether or not the trainee participated in the voluntary physical training assessment and the results of the assessment~~.

~~(e) Beginning July 1, 2006, or as soon thereafter as CLEET occupies the training facility in Ada, Oklahoma, every candidate for the Basic Academy must participate in a pre-academy physical training assessment.~~

~~(1) The pre-academy physical training assessment will be conducted by CLEET staff, or their designee, at the CLEET training facility in Ada, Oklahoma prior to admission in the Basic Academy. Provided, entities authorized by the Council to provide Peace Officer Certification training pursuant to OAC 390:15-1-19 shall complete the requirements of this section through use of their own personnel and at a location of their choosing. The results of all physical training assessments conducted by approved academy entities shall be reported to CLEET.~~

~~(2) No candidate will be permitted to attend the Basic Academy without first participating in the pre-academy physical training assessment.~~

~~(3) No candidate will be denied admittance to the Basic Academy based upon performance in the pre-academy physical training assessment, except for failure or refusal to participate in the pre-academy physical training assessment.~~

~~(4) Prior to participation in the pre-academy physical training assessment, the candidate and the employing agency head or a licensed physician must submit a statement in writing that the candidate is capable of safe participation in pre-academy physical training assessment.~~

~~(5) The results of each candidates' participation in the pre-academy physical training assessment shall be reported by CLEET to the employing agency or governing body, together with suggestions for general fitness improvement, if indicated by the results.~~

~~(6) The pre-academy physical training assessment will be used to compile statistical data indicating the level of general fitness required to satisfy the physical demands of the Academy without undo risk of injury, while optimizing training retention.~~

390:15-1-11. General rules of Academy conduct [REVOKED]

~~(a) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.~~

~~(b) Trainees shall conscientiously, and in a timely manner, carry out all proper and lawful instructions of authorized personnel while enrolled in the Basic Academy. Violations of any general rules of academy conduct or basic academy rules may result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1~~

~~(c) Trainees shall bring no firearms or ammunition into the basic training facility or its associated parts, unless directed by the instructional staff.~~

~~(d) Reckless handling, unauthorized brandishing, or other unauthorized display of any firearms will not be tolerated.~~

~~(e) Trainees who are lodging or visiting facilities owned, operated, or rented by CLEET may not use or bring any alcoholic beverages, intoxicants, or any controlled dangerous substances, onto the property, grounds, or into the facilities.~~

~~(1) It shall be prohibited for any trainee to attend any training session while under the influence of any of the above named substances.~~

~~(2) Trainees who arrive at lodging, eating, classroom, or training facilities, who appear impaired, may be subject to standard field sobriety testing, or other tests, and to disciplinary action. Refusal to submit to any such tests requested by CLEET staff shall result in disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1~~

~~(f) Trainees who are taking medications or controlled substances as prescribed by a physician shall advise the Basic Academy Coordinator immediately as to the type of medication, the prescribing physician, and purpose of the medication. All such substances shall be kept in the prescribed container. Trainees who appear to be impaired by prescribed substances may be subject to disciplinary action as outlined in OAC 390:15-1-18 and OAC 390:15-1-18.1~~

~~(g) The use of tobacco in any form shall be in accordance with State law, local rules, facility rules or as directed by CLEET staff.~~

~~(h) Trainees shall avoid the excessive use of profanity.~~

~~(i) Trainees shall not gamble in or around training, housing, or eating facilities provided by CLEET.~~

~~(j) Trainees shall avoid intentionally marking, defacing, or damaging any state property, the property of the owner of any state-provided facility, or the property of another.~~

~~(k) Trainees shall avoid the continual disruption of instructional activities, by conversation or otherwise, in and around any training classroom or facility.~~

~~(l) Cheating on examinations, or any other manner of dishonest conduct will not be tolerated.~~

~~(m) Trainees will exhibit behavior which is in keeping with the Law Enforcement Code of Ethics, CLEET guidelines and departmental guidelines when working with and socializing with officers of the same or opposite gender. Situations involving issues of moral turpitude may result in administrative discipline.~~

~~(n) Trainees shall avoid any disruptive behavior at any CLEET provided facility that may be injurious or distracting to other trainees or people in close proximity.~~

~~(o) The Council on Law Enforcement Education and Training will not tolerate harassment of students, trainees, staff or participants, on the basis of race, color, creed, national origin, or gender.~~

~~(p) Approved academy entities shall establish their own rules of academy conduct.~~

390:15-1-12. Dress code [REVOKED]

~~(a) Trainees will dress in accordance with CLEET guidelines.~~

~~(b) Exceptions to the dress code may be addressed by petitioning the Director for a waiver. In the petition, the agency head should state the circumstances that justify an exception, and explain what alternative mode of apparel is being requested.~~

390:15-1-13. Academic requirements

(a) In order to successfully complete the basic academy program, trainees must achieve a minimum passing score as designated by CLEET or a higher standard if so required by an approved academy entity.

(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within a time frame established by CLEET.

~~(c) If the trainee fails the retake examination the trainee will be required to repeat the entire block of instruction and pass the block examination (third test).~~

(~~d~~c) If the trainee fails the block examination a ~~third~~second time, the trainee's agency head may ~~petition the Director to~~ request that the trainee repeat the block of instruction ~~for a third time~~ and take the examination for a ~~fourth~~third time.

~~(e) If a trainee successfully completes all academic blocks but still needs to complete a proficiency block, the trainee may take the certification examination. However, the examination~~

~~will be maintained in CLEET files until the required proficiency blocks are successfully completed.~~

(~~f~~d) If a trainee fails to complete ~~an~~ any ~~academic~~ block of instruction the trainee will not be allowed to take the certification examination.~~until the academic block is successfully completed.~~

(~~g~~e) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) business days. ~~If a trainee fails the certification examination a second time, the trainee's agency head must petition the Director in writing, to request a third attempt.~~ A ~~third~~ second failure will necessitate reenrollment into a basic academy.

(~~h~~f) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training courses at a later time. If the trainee does not successfully complete remedial training, no further testing will be allowed.~~the trainee's agency head must petition the Director in writing, to request any further training.~~

~~(i) Petitions for further remedial testing or training, except for the Firearms Block, shall be made immediately upon notification by CLEET of the trainee's academic or proficiency failure. Such petitions should be addressed to the CLEET Director and should articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.~~

(~~j~~g) If the trainee fails a proficiency test in the Firearms Block, and cannot be remediated within that academy, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, in writing, notify the Director of CLEET that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. If the trainee does not successfully complete additional training, no further testing will be allowed. ~~Should the trainee not attain the required proficiency, the employing agency administrator must, within fifteen (15) business days of such failure, petition the Director of CLEET for further testing or training. Such petitions must articulate the reasons for allowing the trainee to continue. Should the Director deny such a petition, the trainee's agency head may similarly petition the Council to request further testing or training for the trainee.~~

(~~k~~h) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(~~l~~i) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed, the impact upon the instructional staff and class to remediate the trainee, and options for the student to make up the missed time. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc.

(~~m~~j) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Unexcused absences or repeated tardiness ~~may require~~ requires makeup work during a current or future academy, and may result in administrative discipline. Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

~~(n) Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.~~

(~~o~~k) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

~~(p) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Lost time due to unexcused tardiness or absenteeism must be made up in a subsequent academy to complete the requirements for certification.~~

(~~q~~l) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed ~~and notarized~~ release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(~~r~~m) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited. ~~In that event, peace officer certification will not be granted until such time that the trainee is physically or medically able to satisfy all certification requirements.~~

~~(s) Extensions of time to complete the requirements for certification may be granted at the Director or designee's discretion.~~

(~~t~~n) Approved academy entities shall establish their own requirements for academy testing, retesting, and attendance except that no academic standards shall be less than those established by CLEET in 390:15-1-13.

390:15-1-14. Study assignments [REVOKED]

~~(a) Trainees will be provided certain study materials. Material should be read during free time and prior to the class to which the material is relevant.~~

~~(b) Extra assignments that might be given during the academy must be completed by the prescribed deadline.~~

390:15-1-15. Training hours [REVOKED]

~~(a) In order to complete certain necessary administrative functions, the first day of class will begin at a time designated by CLEET.~~

~~(b) Training hours, as established by CLEET, will be adjusted to accommodate the training schedule.~~

390:15-1-16. Equipment required [REVOKED]

~~(a) All trainees will be provided with a list of equipment which trainees are required to furnish in order to complete the CLEET Basic Academy.~~

~~(b) The weapons and related leather gear which trainees are required to bring, will be inspected by a staff armorer prior to their use. Weapons must meet factory and safety specifications to ensure against shooting accidents.~~

390:15-1-17. Clothing [REVOKED]

~~(a) Recommendations for physical fitness training will be provided in order to help trainees prepare for the Self Defense/Custody Control block. Trainees must bring a hoodless sweat suit, jogging suit, or other acceptable work out clothing. Do not bring clothing that bears unprofessional slogans, images, logos, or designs, because such clothing will not be permitted.~~

~~(b) A good quality, comfortable running shoe is also necessary.~~

~~(c) For outdoor exercises, trainees are urged to bring clothing to protect against cold weather and rainy weather.~~

~~(d) "Blue jeans" are not acceptable for physical training or defensive tactics.~~

[OAR Docket #10-1003; filed 6-10-10]

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

[OAR Docket #10-1004]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Council on Law Enforcement Education and Training; 11 O.S. , Section 34-101, 70 O. S., Section 3311 (A), 70 O.S., Section (E)(2)(6), and 70 O.S., Section 3311, et seq.
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ANALYSIS:
Language would be amended to correct a conflict in the rules relating to reserve/peace officer employment. Amendments would enable CLEET to schedule Reserve Academies more efficiently and effectively. Changes were made to reflect current CLEET procedure and policy.
CONTACT PERSON:
Kimberly Richey, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5114.

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 25, 2010:

390:20-1-3. Reserve peace officer certification training

(a) The Council shall formulate a program of instruction for reserve peace officer certification, which shall be based on the Basic Peace Officer Academy, and which shall be known herein as the Reserve Academy.

(b) The lesson plans of each Reserve Academy shall be based upon the functional areas of the CLEET Reserve Academy curriculum. The total number of hours for all functional areas combined shall meet or exceed the number of hours required by 70 O.S., Section 3311 (E)(2) for Reserve certification.

(c) Trainee attendance is critical. One-hundred percent (100%) attendance is required in all blocks of instruction.

(d) Remedial training may be accomplished under the following conditions:

(1) The trainee attends remedial training taught by the same instructor who taught the original academy class.

(2) The training is conducted in an academy setting and monitored by the academy coordinator.

(3) Trainees failing to successfully complete remedial training in the original academy shall be required to successfully complete remedial training in another academy in a time frame established by CLEET.

(e) Trainees must successfully complete required classroom and/or skills proficiency testing prior to being administered the required progress or certification examinations.

(f) Trainees who fail to successfully complete any skills proficiency portion(s) of the academy may be administered progress and certification examinations, however, certification will be withheld until all requirements have been fulfilled.

(g) Any officer seeking Oklahoma Reserve Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a **full-time** peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain reserve certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law.

(2) The officer must have been employed as a full time peace officer for at least three (3) months within the two (2) year period immediately preceding the request for Oklahoma Reserve Peace Officer Certification.

(3) The officer must attend the Legal Matters block of instruction and successfully pass all Progress and Certification examinations at a standard prescribed by the Council. Skills training functional areas shall not be tested. Officers may have one retest for each functional examination which they fail.

(4) If an officer fails both a test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Reserve Academy, to include successfully passing the functional area examination(s).

390:20-1-4. Application to conduct Reserve Peace Officer Academy

Reserve Academies shall be sponsored by the heads of law enforcement agencies. Requests to conduct Reserve Academies shall be in letter form, on the appropriate agency letterhead. Such request must be made not less than ninety (90) ~~forty-five (45)~~ days prior to the proposed opening date of the Basic Reserve Peace Officer Academy.

(1) **Justification.** Agencies making application must demonstrate to the Council that there is a significant need to conduct a Basic Reserve Peace Officer Academy and that a minimum of ten (10) trainees will be enrolled.

(2) **Employment standards.** Agencies having trainees enrolled in the Basic Reserve Peace Officer Academy must, in conjunction with the Reserve Academy Coordinator, ensure that the trainee satisfactorily meets the peace officer employment standards set forth in 70 O. S. 3311 and rules established by the Council.

390:20-1-8. Request for lesson plans

(a) Upon receiving approval to proceed with a Reserve Academy, the Reserve Academy Coordinator shall request Reserve Academy Lesson Plans from CLEET. ~~Within ten (10) days of receipt of the lesson plans, the Reserve Academy Coordinator shall reconcile the CLEET Lesson Plans with his Lesson Plans for correctness and completeness, and shall so notify CLEET.~~

(b) The Reserve Academy Coordinator may increase the hours or curriculum content of the Reserve Academy as an enhancement to the academy. Such increase shall be documented on forms provided for that purpose and submitted to the CLEET Standards Division prior to the opening of the academy.

390:20-1-11. Notice of compliance with employment standards

(a) A properly completed CLEET Reserve Academy Student Enrollment Packet must be submitted prior to admission to an Academy.~~being administered the first progress examination~~.

(b) Credit for CLEET Reserve Academy Training shall be given only to bonafide properly appointed, properly enrolled reserve peace officers.

390:20-1-12. Materials returned to CLEET

The Reserve Academy Coordinator shall submit the following to a CLEET representative on the date of the Reserve Officer Certification Examination:

(1) Master Grade Sheet, showing the actual grades scored by each trainee, for each examination given;

(2) List of CLEET certified firearms instructors, record of inspection of all firearms used by trainees for firearms qualification and record of all firearms scores, including handgun and shotgun.

(3) Master Attendance Rosters, showing actual attendance of each trainee during each class conducted;

~~(4) All CLEET Lesson Plans; and~~

(~~5~~4) All audio visual aids, and other material on loan from CLEET.

[OAR Docket #10-1004; filed 6-10-10]

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

[OAR Docket #10-1005]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. License Requirements
390:35-5-13 [AMENDED]
Subchapter 9. Violations and Investigations
390:35-9-4 [AMENDED]
Appendix A. Disqualifying Convictions [REVOKED]
Appendix A. Disqualifying Convictions [NEW]
AUTHORITY:
Council on Law Enforcement Education and Training; 59 O.S., Section 1750.3(B)(1); 59 O.S., Section 1750.1 et seq.
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ANALYSIS:
Amendment clarifies that private security guards and private investigators must notify CLEET of any name change and submit documentation which reflects the change of name. For example, when a licensee marries or otherwise legally changes their name, the agency must update license records and issue an updated license. Amendments would require licensees to report whether a Victim's Protective Order (VPO) has been initiated against the licensee. Amendment would also clarify that all criminal proceedings must be reported upon the discover of the filing or upon arrest. Amendment would reclassify an existing potential disqualifying conviction and adds an additional crime that may disqualify a person from obtaining or holding an armed or unarmed security guard license pursuant to 59 O.S. Section 1750.1, et seq.
CONTACT PERSON:
Kimberly Richey, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5114.

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 25, 2010:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-13. Notification of change of name or address or telephone number

(a) Private investigators, armed security guards, and unarmed security guards shall maintain, with the Council, current residential addresses and shall notify in writing the Council of any change of name. Notification of change of name shall include copies of any marriage license or court document which reflects the change of name. Notice of change of address or telephone number must be made within ten (10) days of the effected change. Notices will not be accepted over the phone.
(b) The Agency owner or branch manager (in the instances of national corporations) shall notify the Council of changes in the business address and/or telephone number within 10 days of the effective date of the change. Notices will not be accepted over the phone.
(c) Failure to notify the Council of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation.
(d) If failure to comply with this Chapter results in Council Action, the use of "lack of notice" shall not be deemed as a valid defense in any proceeding.

SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS

390:35-9-4. Notification of legal proceedings against licensee

(a) All criminal proceedings initiated against a licensee shall be reported by the affected licensee to CLEET immediately, upon arrest or discovery of the filing of such proceeding. All licensees shall be required to report when a Victim's Protective Order has been issued against the licensee, including such orders issued on an emergency basis and all Final Orders of Protection.
(b) All civil proceedings initiated against a licensee related to matters under the purview of the Act shall be reported to CLEET no later than ten (10) days after the licensee is served with notice of said proceeding.
(c) This notification shall provide the following information:
(1) Nature of the proceeding;
(2) Court in which proceeding has been filed;
(3) Docket or case number; and
(4) Parties to the proceeding.
(d) Failure to give notice pursuant to the rules of this Chapter may be cause to initiate an action against the licensee, by CLEET.
(e) Private Security Agencies shall be responsible to ensure that licensed employees comply with the provisions of the Act, and the rules of this Chapter, and the laws of the United States, the State of Oklahoma, and political subdivisions therein. Violations of the Act and/or the rules of this Chapter, committed by any employee or a private security agency, shall be cause to initiate an action against said agency's license, by CLEET, if said violation or offense occurred within the course and scope of employment with said agency.

APPENDIX A. DISQUALIFYING CONVICTIONS [REVOKED]

APPENDIX A. DISQUALIFYING CONVICTIONS [NEW]

In addition to those crimes specified in 59 O.S., Section 1750.1, et seq., the following is a list of additional crimes which may disqualify a person from obtaining or holding an unarmed or armed security guard license, or a private investigator license:

1. Assault and Battery
2. Theft (Petty or Grand)
3. Larceny (Petty or Grand)
4. Any sex offense - including pornography
5. Any offense involving Controlled Dangerous Substances
6. Fraud
7. Extortion
8. Treason
9. Murder
10. Manslaughter
11. Shoplifting
12. Forgery
13. Arson
14. Kidnapping
15. Perjury
16. Tax Evasion
17. Unauthorized use of a Motor Vehicle
18. Conspiracy to commit any of offenses listed herein
19. Accessory after the fact to any offenses listed herein
20. Hijacking
21. Receiving or Possession of Stolen Property
22. Burglary
23. Tax Fraud
24. Swindling
25. Inciting or being involved with a riot
26. Any conviction of a civil rights violation
27. Desertion
28. Escape from jail, prison, or custody
29. Resisting Arrest
30. Assault and Battery upon Police Officer
31. False and Bogus Checks
32. Terrorist Activities
33. Assist in Suicide
34. Bigamy
35. An attempt to commit one of the above offenses.
36. Entry of a Final Order of Protection against an applicant or licensee.

[OAR Docket #10-1005; filed 6-10-10]

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

[OAR Docket #10-1006]

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PERMANENT final adoption
RULES:
390:50-1-5 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 20 O. S., Section 1313.2, 70 O.S. 3311 et seq.
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ANALYSIS:
This amendment will clarify conflicting rules and will enable CLEET to make adjustments to correct errors in amounts on court reports of up to $1.00, as reflected in Rule 390:50-1-3. Allowing the $1.00 adjustment should have a negligible effect on collections as both positive and negative errors occur and they should offset each other over time.
CONTACT PERSON:
Kimberly Richey, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5114.

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 25, 2010:

390:50-1-5. Adjustments

(a) Additional monies owed due to calculation errors, checks written for the wrong amount, transposed numbers, etc., will be payable by the court upon notice from CLEET of an error.
(b) Credit amounts as a result of the same type of errors outlined in (a) will be applied to the next reporting period unless a written request for a refund is requested by the court.
(c) ~~Amounts of $ 0.25 or less~~ Rounding adjustments defined in 390:50-1-3 will be adjusted off as rounding errors and not carried forward as a credit or debit.

[OAR Docket #10-1006; filed 6-10-10]

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

[OAR Docket #10-1007]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 20. The Permanent Regulations Governing The Coal Reclamation Act of 1979 [AMENDED]
AUTHORITY:
45 O.S. Section 1.5, and 45 O.S. Section 789, Oklahoma Mining Commission
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ANALYSIS:
The majority of these amendments are changes to regulations pertaining to the Applicant Violator System (AVS) and are required our federal oversight agency, The Office of Surface Mining. Due to federal law changes resulting from federal litigation, court decisions and settlements Oklahoma's regulations must be more stringent when determining an Owner and Control of a coal mining permit, a Willful Violator, and what information is entered into AVS. Changes to the legal appeals remedies for being entered and for removal from AVS, assessment of civil penalties for violations and Individual Civil Penalties were also mandated. Subchapter 43 was amended to clarify that the alternatives, for surface drainage siltation, included in Section 460:20-43-11 could also be used pursuant to those in Section 460:20-43-12 (b)(2).
CONTACT PERSON:
Cathy Frank, Legal Officer, Department Of Mines Wagoner Field Office, 1102 Cherokee Street, Ste. D., Wagoner, OK, 74467, (918)485-3999

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 25, 2010:

SUBCHAPTER 3. PERMANENT REGULATORY PROGRAM

460:20-3-5. Definitions

As used in this Subchapter, the following terms have these specified meanings, except where otherwise indicated:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Affected area" means any land or water surface which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, calm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(A) was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(B) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and

(C) there is substantial (more than incidental) public use.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Department under this Chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Applicant/Violator System (AVS)" means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Department has determined that they comply with Sections 460:20-43-14, 460:20-43-15, and 460:20-43-51 or 460:20-45-14, 460:20-45-15, and 460:20-45-51.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Auger" mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(A) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and

(B) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques

which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Subchapters 43 and 45 of this Chapter. Within the constraints of the permanent program, the Department shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this Chapter.

"Coal exploration" means the field gathering of

(A) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(B) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Chapter.

"Coal mine waste" means coal processing waste and underground development

waste.

"Coal preparation" means chemical or physical processing and the cleaning,

concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain all information required under the Act and this Chapter.

"Control or controller" means when used in Subchapter 17, Subchapter 21, and Subchapter 23 of this Chapter, refers to:

(A) A permittee of a surface coal mining operation;

(B) An operator of a surface coal mining operation; or

(C) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(A) the proposed operation,

(B) all existing operations,

(C) any operation for which a permit application has been submitted to the Department and

(D) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by this Chapter is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial, or industrial enterprises are not included except to the extent the water is used for direct human consumption, human sanitation, or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with

Sections 460:20-43-38(d) and 460:20-45-38(d) of this Chapter in non-steep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program.

"Federal program" means a program established by the Secretary pursuant to Section 504 of the Federal Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with P.L. 95-87 and this Chapter.

(A) Complete Federal program means a program established by the Secretary pursuant to Section 504 of the Federal Act before June 3, 1980 or upon the complete withdrawal of the Oklahoma program after June 3, 1980 by which the Director of OSM regulates all coal exploration and surface coal mining and reclamation operations.

(B) Partial Federal program means a program established by the Secretary pursuant to Sections 102, 201 and 504 of the Federal Act upon the partial withdrawal of the Oklahoma program by which the Director of OSM may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel down gradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on site, expressed as a percentage of the total area of measurement.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed over burden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Historically used for cropland" means:

(A) Lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(B) Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(C) Lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" ~~means~~ means:

(A) A stream or reach of a stream that drains a watershed of at least one square mile, or

(B) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, the regulatory program, or this Chapter, that cannot be corrected by actions of the applicant.

"Knowing or knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department.

(A) Cropland. Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(B) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(C) Grazingland. Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(D) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(E) Residential. Land used for single-and multiple-family housing, mobile home parks, or other residential lodgings.

(F) Industrial/Commercial. Land used for:

(i) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(ii) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(G) Recreation. Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(H) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(I) Developed water resources. Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(J) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under 45 O.S., Section 740.0, namely lands:

(A) Which were mined for coal or affected by such mining or other coal mining processes; and

(B) Which were abandoned or left in inadequate reclamation status prior to August 3, 1977; and

(C) For which there is no continuing reclamation responsibility under state of other federal laws; or

(D) Which were mined for coal or affected by such mining or other coal mining processes; and

(E) Which were left or abandoned in an inadequate reclamation status between August 4, 1977, and January 19, 1981; and

(F) For which any funds for reclamation or abatement available pursuant to a bond or other form of financial guarantee or from any other sources are not sufficient to provide for adequate reclamation or abatement; or

(G) Which were mined for coal or affected by such mining or other coal mining processes; and

(H) Which were which were left or abandoned in an inadequate reclamation status between August 4, 1977, and November 5, 1990; and

(I) For which the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement.

"Material damage" means any functional impairment of surface lands, features, structures or facilities. The material damage threshold includes:

(A) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(B) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition; or

(C) Any situation in which an imminent danger to a person would be created.

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105° C.

"MSHA" means the Mine Safety and Health Administration.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Non-Commercial building" means any building other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in section 460:20-7-3 of this Chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious plants" means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

"Occupied residential dwelling and structures" means for purposes of 460:20-31-13 and 460:20-45-47, any building or other structure that, at the time the subsidence occurs, issued either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes:

(A) Any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling.

(B) Examples of such structures include, but are not limited to:

(i) garages;
(ii) storage sheds or barns;
(iii) greenhouses and other related buildings;
(iv) utilities and cables;
(v) fences and other enclosures;
(vi) retaining walls;
(vii) paved or improved patios;
(viii) walks and driveways;
(ix) septic sewage treatment facilities; and
(x) ~~and~~ lot drainage and lawn and garden irrigation systems.

(C) Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifier or precipitators, that have a point source discharge and are utilized:

(A) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(B) To comply with all applicable State and Federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Own, owner, or ownership" means as used in Subchapter 17, Subchapter 21, and Subchapter 23 of this chapter (except when used in the context of ownership of real property), being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this Chapter, the State program, and the requirements of the permit and reclamation plan.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which is approved by the Department for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the Department pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the Department under a cooperative agreement or by OSM where there is no cooperative agreement.

"Permit area" means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas.

"Permittee" means a person holding or required by the Act or this Chapter to hold a permit to conduct surface coal mining and reclamation operations issued by the State Department of Mines pursuant to the Oklahoma program, or where a cooperative agreement pursuant to 45 O.S. Section 784.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in this Chapter, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

"Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of OAC 460, Chapter 20.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock~~.~~"

"Property to be mined" means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and

shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this Chapter to a postmining land use approved by the Department.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 6-hour precipitation event would be that 6-hour precipitation event expected to occur on the average once in 10 years. **"Reference area"** means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(A) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(B) If the affected water supply was not needed for the land use in existence at the time of the loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasiblely be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Significant, imminent environmental harm to land, air or water resources" means:

(A) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(B) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) Is causing such harm; or,

(ii) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 777 of the Act.

(C) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"Soil Horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(A) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(B) E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from

an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of theses properties.

(C) B horizon. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(D) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in Section 460:20-33-1(c)(1)of this Chapter.

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State program" means a program established by a State and approved by the Secretary pursuant to Section 503 of the Federal Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within that State, according to the requirements of the Act and in this Chapter. If a cooperative agreement has been entered into, a State program may apply to Federal lands, in accordance with the terms of the cooperative agreement.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Department after consideration of soil, climate, and other characteristics of a region or State.

"Substantially disturb" means, for the purpose of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Department to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the Department to remain as part of the approved postmining land use.

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change of a permittee.

"Unanticipated event or condition" means, as used in 460:20-15-6, an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and which was not contemplated by the applicable permit.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

(A) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(B) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Undeveloped rangeland" means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

"Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as

well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation" when used in the context of the permit application information or permit eligibility requirements of Sections 45 O.S. 745.8 and 45 O.S. 745.9 of the Act and related regulations means:

(A) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(B) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program:

(i) A notice of violation under Section 460:20-59-4 of this chapter.

(ii) A cessation order under Section 460:20-59-3 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Subchapter 61 or Subchapter 63 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under Subchapter 15 of this chapter.

(v) A notice of bond forfeiture under Section 460:20-37-16 of this chapter when:

(I) One or more violations upon which the forfeiture was based have not been abated or corrected;

(II) The amount forfeited and collected is insufficient for full reclamation under Section 460:20-37-16(d)(1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(III) The site is covered by an alternative bonding system approved under Section 460:20-37(e)(4) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

"Violation, failure or refusal," for purposes of Subchapters 61 and 63 of this chapter, means:

(A) A failure to comply with a condition of a permit that the Department Of Mines has issued; or

(B) A failure or refusal to comply with any order issued under section 776 of the Act, or any order incorporated in a final decision issued by the Department under the Act, except an order incorporated in a decision issued under Section 769 of the Act.

"Violation notice", means any written notification from a government entity of a violation of law, whether by letter, memorandum; legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful or willfully" means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(A) Intentionally, voluntarily, or consciously; and

(B) With intentional disregard or plain indifference to legal requirements.

"Willful violation" means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition committed by a person who intends the result which actually occurs.

SUBCHAPTER 15. REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

460:20-15-2. Definitions [REVOKED]

~~For the purposes of this section: Owned or controlled and owns or controls mean any one or a combination of the relations specified in (1) and (2) of this Section:~~

~~(1)~~

~~(A) Being a permittee of a surface coal mining operation;~~

~~(B) Based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or~~

~~(C) Having any other relationship which gives one person authority directly or indirectly to determiner the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.~~

~~(2) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted;~~

~~(A) Being an officer or director of an entity;~~

~~(B) Being the operator of a surface coal mining operation;~~

~~(C) Having the ability to commit the financial or real property assets or working resources of an entity;~~

~~(D) Being a general partner in a partnership;~~

~~(E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or~~

~~(F) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person conducts a surface coal operation.~~

460:20-15-6. Review of permit applications [REVOKED]

~~(a) **General.**~~

~~(1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Department, either granting, requiring notification of, or denying the application. If an informal conference is held under Section 460:20-15(c), the decision shall be made within 60 days of the close of the conference unless a later time is necessary to provide an opportunity for a hearing under (b)(2) of this Section.~~

~~(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.~~

~~(b) **Review of violations.**~~

~~(1) The Department shall make a finding any surface coal mining and reclamation operation owned or controlled by the applicant or any person who owns or controls the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water protection. If such filing cannot be made the Department shall require the applicant or any person who owns or controls the applicant, before the issuance of the permit, to either:~~

~~(A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or~~

~~(B) Establish for the Department that the applicant, or any other person owned or controlled by the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under Section 460:20-19-3 either denies a stay applied for in the appeal or affirms the violation, then the applicant shall promptly within 30 days of the judicial action submit the proof required under (b)(1)(A) of this Section.~~

~~(2) The Department shall issue a conditional permit for any permit that is issued on the basis of proof submitted under (b)(1)(A) of this Section that a violation is in the process of being corrected, or pending the out come of an appeal described in (b)(1)(B) of this Section.~~

~~(3) If the Department makes a finding that the applicant or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in Section 460:20-19-2 of this Chapter.~~

~~(4) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this Section regarding the issuance of a new permit shall not apply to any violation that:~~

~~(A) Occurs after that date;~~

~~(B) Is unabated; and~~

~~(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:~~

~~(i) Issued before September 30, 2004, or any renewals thereof; and~~

~~(ii) Held by the person making application for the new permit;~~

~~(5) For permits issued under Section 460:20-33-12 of this Chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:~~

~~(A) Arose after permit issuance;~~

~~(B) Was related to prior mining; and~~

~~(C) Was not identified in the permit.~~

~~(c) **Written findings for permit application approval.** No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:~~

~~(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.~~

~~(2) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.~~

~~(3) The proposed permit area is:~~

~~(A) Not within an area under study or administrative proceedings under a petition, filed pursuant to Subchapter 11 of this Chapter, to have an area designated as unstable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he had made substantial legal and financial commitments in relation to the operation covered by the permit application; or~~

~~(B) Not within an area designated as unsuitable for mining pursuant to Subchapters 9, and 11 of this Chapter or subject to the prohibitions or limitations of Sections 460:20-7-4 and 460:20-7-5 of this Chapter.~~

~~(4) For mining operations where the private mineral estate to be mined has been severed to the Department the~~

~~documentation required under Section 460:20-23-4(b) of this Chapter.~~

~~(5) The Department has made an assessment of the probably cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.~~

~~(6) The applicant has demonstrated that any existing structure will comply with Section 460:20-3-6(d) and the applicable performance standards of the initial regulatory program or of this Chapter.~~

~~(7) The applicant has paid all required reclamation fees from previous and existing operations.~~

~~(8) The applicant has satisfied the applicable requirements of Subchapter 33 of this Chapter.~~

~~(9) The applicant has, if applicable , satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Sections 460:20-43-43(d) or 460:20-45-43(d).~~

~~(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species act of 1973 (16U.S.C. 1531 et seq.).~~

~~(11) The department has taken into account the effect of the proposed mining action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional protection measures are necessary.~~

~~(12) For a proposed mining operation where the applicant intends to reclaim in accordance with the requirements of Sections 460:43-41 or 460:20-45-41 of this Chapter, the site of the operation is a previously mined area as defined in Section 460:20-3-5 of this Chapter.~~

~~(13) For permits to be issued under Section 460:20-33-12 of this Chapter, the permit application must contain:~~

~~(A) Lands eligible for remining;~~

~~(B) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and~~

~~(C) Mitigation plans to sufficiently address these potential environmental and safety problems that reclamation as required by the applicable requirements of the regulatory program can be accomplished.~~

~~(d) **Performance bond submittal.** If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued in accordance with the provisions of Subchapter 37 of this Chapter.~~

~~(e) **Final compliance review.** After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by (b)(1) of this Section in light of any new information submitted under Sections 460:20-23-2(i) and 460:20-23-3(d) of this Chapter.~~

460:20-15-6.1. Review of permit applications

(a) The Department will review an application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Department, either granting, requiring modification of, or denying the application. If an informal conference is held under 460:20-15-5(c), the decision will be made within 60 days of the close of the conference.

(b) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

460:20-15-6.2. General provisions for review of permit application information and entry of information into AVS

(a) Based on an administratively complete application, the Department shall undertake the reviews required under Sections 460:20-15-6.3 through 460:20-15-6.5 of this Subchapter.

(b) The Department will enter into AVS:

(1) The information required under Sections 460:20-23-2.2 through 20-23-2.4 of this Chapter.

(2) The information required under Section 460:20-15-6.8 of this Subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

(c) The Department must update the information referred to in paragraph (b) of this Section in AVS upon our verification of any additional information submitted or discovered during the permit application review.

460:20-15-6.3. Review of applicant, operator, and ownership and control information

(a) The Department will rely upon the information that the applicant is required to submit under Section 460:20-15-6.5, information from AVS, and any other available information, to review the applicant's and its operator's organizational structure and ownership or control relationships.

(b) The Department must conduct the review required under paragraph (a) of this Section before making a permit eligibility determination under 460:20-15-6.6 of this Subchapter.

460:20-15-6.4. Review of permit history

(a) The Department will rely upon the permit history information the applicant submits under Section 460:20-15-6.6, information from AVS, and any other available information to review the applicant's and its operator's permit histories. The Department must conduct this review before making a permit eligibility determination under 460:20-15-6.6 of this Subchapter.

(b) The Department will also determine if the applicant or its operator have previous mining experience.

(c) If the applicant or its operator does not have any previous mining experience, the Department may conduct an additional review under Section 460:20-17-2.1(f) of this Chapter. The purpose of this review is to determine if someone else with mining experience controls the mining operation.

460:20-15-6.5. Review of compliance history

(a) The Department will rely upon the violation information supplied by the applicant under Section 460:20-15-6.8 of this Subchapter, a report from AVS, and any other available information to review histories of compliance with the Act or the applicable Department regulations, and any other applicable air or water quality laws, for:

(1) The applicant;

(2) Its operator;

(3) Operations owned or controlled by the Applicant; and

(4) Operations owner or controlled by the Applicant's operator.

(b) The Department must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under Section 460:20-15-6.6 of this Subchapter.

460:20-15-6.6. Permit eligibility determination

Based on the reviews required under Sections 460:20-15-6.3 through 460:20-15-6.5, of this Subchapter, the Department will determine whether the applicant is eligible for a permit under Section 745.9 of the Act.

(1) Except as provided in Sections 460:20-15-6.7 and 460:20-15-6.8 of this Subchapter, the Applicant is not eligible for a permit if the Department finds that any surface coal mining operation in which:

(A) The Applicant directly owns or controls has an unabated or uncorrected violation; or

(B) The Applicant indirectly controls has an unabated or uncorrected violation, and the Applicant's control was established, or the violation was cited after November 2, 1988.

(C) The Applicant's Operator indirectly controls has an unabated or uncorrected violation, and the Applicant's control was established, or the violation was cited after November 2, 1988.

(2) The Department will not issue the Applicant a permit if the Applicant or its Operator is permanently ineligible to receive a permit Section 460:20-15-6.5 of this Subchapter.

(3) After the Department approves a permit under Section 460:20-15-6.9 of this Subchapter, the Department will not issue the permit until Applicant complies with the information update and certification requirement of Section 460:20-23-2.1 of this Chapter. After the Applicant completes that requirement, the Department will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect Applicant's permit eligibility under paragraphs (a) and (b) of this section. The Department will request this report no more than five business days before permit issuance under Section 460:20-15-8, of this Subchapter.

(4) If the Applicant is ineligible for a permit under this section, the Department will notify the Applicant in writing of its decision. The notice will tell the Applicant why it is ineligible and include notice of its right to administrative review under Subchapter 460:20-19, of this Chapter and OAC 460:2, the Department's Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.

460:20-15-6.7. Unanticipated events or conditions at remining sites

(a) The applicant is eligible for a permit under OAC 460:20-15-6.6 if an unabated violation:

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was:

(A) Issued before September 30, 2004, including subsequent renewals; and

(B) Held by the applicant.

(b) For permits issued under OAC 460:20-33-12, an event or condition is presumed to be unanticipated for the purpose of this section if it:

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application.

460:20-15-6.8. Eligibility for provisionally issued permits

(a) This section applies to the Applicant which owns or controls a surface coal mining and reclamation operation with:

(1) A notice of violation issued under OAC 460:20-59-4 of this Chapter for which the abatement period has not yet expired; or

(2) A violation that is unabated or uncorrected beyond the abatement or correction period.

(b) The Department will find the Applicant eligible for a provisionally issued permit under this section if Applicant demonstrates that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this Section:

(1) For violations meeting the criteria of paragraph (a)(1) of this Section, Applicant certifies that the violation is being abated to the satisfaction of the Department, and the Department possesses no evidence to the contrary.

(2) As applicable, the Applicant, its Operator, and operations that the Applicant or its Operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the regulatory agency with jurisdiction over the violation.

(3) The Applicant is pursuing a good faith:

(A) Challenge to all pertinent ownership or control listings or findings under Sections 460:20-15-10.2 through 460:20-15-14.1 of this Subchapter; or

(B) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) The Department will consider a provisionally issued permit to be improvidently issued, and must immediately initiate procedures under Sections 460:20-15-9.2 and 460:20-15-10.1 of this Subchapter, to suspend or rescind that permit, if:

(1) Violations included in paragraph (b)(1) of this Section are not abated within the specified abatement period;

(2) The Applicant, its Operator, or operations that the Applicant or its Operator owns or controls does not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b)(2) of this Section;

(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b)(3) or (4) of this Section affirms the validity of the violation or the ownership or control listing or finding; or

(4) The initial judicial review decision referenced in paragraph (b)(3)(B) or (4) of this Section affirms the validity of the violation or the ownership or control listing or finding.

460:20-15-6.9. Written findings for permit application approval

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the Applicant has complied with all requirements of the Act and this Chapter.

(2) The Applicant has demonstrated that reclamation as required by the Act and this Chapter can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is:

(A) Not within an area under study or administrative proceedings under a petition, filed pursuant to Subchapter 11 of this Chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, it has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(B) Not within an area designated as unsuitable for mining pursuant to Subchapters 9, and 11 of this Chapter or subject to the prohibitions or limitations of Sections 460:20-7-4 and 460:20-7-5 of this Chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under Section 460:20-23-4(b) of this Chapter.

(5) The Department has made an assessment of the probably cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The Applicant has demonstrated that any existing structure will comply with Section 460:20-3-6(d) and the applicable performance standards of the initial regulatory program or of this Chapter.

(7) The Applicant has paid all required reclamation fees from previous and existing operations.

(8) The Applicant has satisfied the applicable requirements of Subchapter 33 of this Chapter.

(9) The Applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Sections 460:20-43-43(d) or 460:20-45-43(d) of this Chapter.

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(11) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional protection measures are necessary.

(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of Sections 460:20-43-41 or 460:20-45-41 of this Chapter, the site of the operation is a previously mined area as defined in Section 460:20-3-5 of this Chapter. (13) For permits to be issued under Section 460:20-33-12 of this Chapter, the permit application must contain:

(A) Lands eligible for remining;

(B) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(C) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

460:20-15-6.10. Performance bond submittal

If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued

in accordance with the provisions of Subchapter 37 of this Chapter.

460:20-15-9. Improvidently issued permits: General procedures [REVOKED]

~~(a) **Permit Review.** The Department, when it has reason to believe that it improvidently issued a surface coal mining and reclamation permit, shall review the circumstances under which the permit was issued, using the criteria in Subsection (b) of this Section. When the Department finds that the permit was improvidently issued, it shall comply with Subsection (c) of this Section.~~

~~(b) **Review criteria.** The Department shall find a surface coal mining and reclamation permit was improvidently issued if:~~

~~(1) Under the violations review criteria of the regulatory program at the time the permit was issued:~~

~~(A) The Department should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or~~

~~(B) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and~~

~~(2) The violation, penalty or fee:~~

~~(A) Remains unabated or delinquent; and~~

~~(B) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and~~

~~(3) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty of fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty of fee.~~

~~(c) **Remedial measures.** When the Department under Subchapter (b) of this Section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued shall use one or more of the following remedial measures:~~

~~(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty of fee;~~

~~(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;~~

~~(3) Suspend the permit until the violation is abated or the penalty of fee is paid; or~~

~~(4) Rescind the permit under Section 460:20-15-10 of this Subchapter.~~

460:20-15-9.1. Initial review and finding requirements for improvidently issued permits

(a) If the Department has reason to believe that it improvidently issued a permit to the permittee, the Department must review the circumstances under which the permit was issued. The Department will make a preliminary finding that the permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing Section 745.9 of the Act in effect at the time of permit issuance, the permit should not have been issued because permittee or its operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(b) The Department will make a finding under paragraph (a) of this Section only if the permittee or its operator:

(1) Continue to own or control the operation with the unabated or uncorrected violation;

(2) The violation remains unabated or uncorrected; and

(3) The violation would cause permittee to be ineligible under the permit eligibility criteria in the current regulations.

(c) When the Department makes a preliminary finding under paragraph (a) of this Section, it must serve permittee with a written notice of the preliminary finding, which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

(d) Within 30 days of receiving a notice under paragraph (c) of this Section, the permittee may challenge the preliminary finding by providing the Department with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this Section.

(e) The provisions of Sections 460:20-15-10.2 through 460:20-15-14.1 of this Chapter, apply when a challenge under paragraph (d) of this Section concerns a preliminary finding under paragraphs (a) and (b)(1) of this Section that permittee or its operator currently own or control, or owned or controlled, a surface coal mining operation.

460:20-15-9.2. Notice requirements for improvidently issued permits

(a) The Department must serve the permittee with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension of rescission, if:

(1) After considering any evidence submitted under OAC 460:20-15-9.1(d), the Department finds that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of 460:20-15-9.1 of the Section; or

(2) The permit was provisionally issued under 460:20-15-6.8(b) of this Subchapter part and one or more of the conditions in 460:20-15-6.8(c)(1) through (c)(4) exists;

(b) If the Department proposes to suspend the permit, it will provide 60 days notice;

(c) If the Department proposes to rescind the permit, it will provide 120 days notice;

(d) If the Permittee wishes to appeal the notice, it must do so in accordance with the OAC 460:2, the Department's Rules

of Practice And Procedure For The Coal Reclamation Act Of 1979;

(e) After the Department serves the Permittee with a notice of proposed suspension or rescission under this Section, it will take action under Section 460:20-15-10.1 of this Subchapter;

(f) The regulations for service in Section 460:20-59-6 of this Chapter will govern service;

(g) The times specified in paragraphs (b) and (c) of this section will apply unless the Permittee obtains temporary relief under Chapter 2, Rules Of Practice And Procedures For The Coal Reclamation Act Of 1979.

460:20-15-10. Improvidently issued permits: Rescission procedures [REVOKED]

~~When the Department, under Section 460:20-15-9 (c)(4) of this Subchapter, elects to rescind an improvidently issued permit shall serve on the permittee a notice of proposed suspension and recession which includes the reasons for the finding of the Department under Section 460:20-15-9(b) of this Subchapter and states that;~~

~~(1) **Automatic suspension and recession.** After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the Department finds, that;~~

~~(A) The findings of the Department under Section 460:20-15-9(b) of this Subchapter was erroneous;~~

~~(B) The permitee or other person responsible has abated the violation on which the finding was based ,or paid the penalty or fee, to the satisfaction of the responsible agency;~~

~~(C) The violation, penalty, or fee is the subject of a good faith appeal or of an abatement plan or payment schedule with which the permitee or other person responsible is complying to the satisfaction of the responsible agency; or~~

~~(D) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;~~

~~(2) **Cessation of operations.** After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Department; and~~

~~(3) **Right to appeal.** The permittee may file an appeal for administrative review of the notice to the Department of Mines in accordance with Rules of Practice and Procedure.~~

460:20-15-10.1. Suspension or rescission requirements for improvidently issued permits

(a) Except as provided in paragraph (b) of this Section, the Department must suspend or rescind the permit upon expiration of the time specified in Section 460:20-15-9.2(b) or (c) in this Subchapter unless permittee submits evidence and the Department finds that:

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) The permittee or its operator no longer owns or controls the relevant operation;

(3) The Department's finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If the permittee has requested administrative review of a notice of proposed suspension or rescission under Section 460:20-15-9.2(e) of this Subchapter, the Department will not suspend or rescind the permit unless and until the Department's Decision that the permit was improvidently issued is affirmed.

(c) When the Department suspends or rescinds the permit under this section, it must issue permittee a written notice requiring it to cease all surface coal mining operations under the permit;

(d) If the Department suspends or rescinds the permit under this section, the Applicant or Operator may request administrative review of the notice under the procedures of 460:2, the Rules of Practice and Procedure for the Coal Reclamation Act of 1979, if the proposed notice to suspend or rescind the permit issued under Section 460:20-15-9.2 of this Subchapter has not been the subject of an administrative proceeding.

460:20-15-10.2. Who may challenge ownership or control listings and findings

A listing or finding of ownership or control may be challenged using the provisions under Sections 460:20-15-13.1 and 460:20-15-14.1, of this Subchapter if the challenger is:

(1) Listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

(2) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Sections 460:20-15-9.1 or 460:20-17-2.1; of this Chapter or

(3) An Applicant or Permittee affected by an ownership or control listing or finding.

460:20-15-13. Procedures for challenging ownership or control links shown in AVS [REVOKED]

~~(a) **Challenges.** Any applicant or other person shown in AVS in an ownership or control link to any person cited in~~

~~state violation notice may challenge the status of the violation covered by such notice in accordance with the provision of paragraphs (b) through (d) of this section and Section 460:20-15-14 of this Subchapter, unless such applicant or other person is bound by prior administrative or judicial determination concerning the status of the violation.~~

~~(b) **Challenge basis.** Any applicant or other person who wishes to change the status of a state violation, and who is eligible to do so under the provision of paragraph (a) of this section, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents to Oklahoma Department of Mines 4040 N. Lincoln, suite 107, Oklahoma City, OK 73105ATTN: Director;~~

~~(c) **Information review.** The Department shall review any information submitted under paragraph (b) of this section and shall make a written decision whether or not the ownership or control link has been shown to be:~~

~~(1) erroneous; or~~

~~(2) has been rebutted; and/or~~

~~(3) whether the violation covered by the notice remains:~~

~~(A) Outstanding;~~

~~(B) Has been corrected;~~

~~(C) Is in the process of being corrected ; or~~

~~(D) Is the subject of a good faith appeal within the meaning of 460:20-15-6 (b)(1) of this Subchapter.~~

~~(d) **Review determination.** The Department's review determinations are to be as follows:~~

~~(1) If, as a result of the decision reached under paragraph (c) of this section, the Department determines that the ownership or control link has been shown to be erroneous or has been rebutted and/or that the violation covered by the notice has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, the Department shall so notify the applicant or other person and, if the application is pending, the reviewing authority and shall correct the information in AVS.~~

~~(2) If, as a result of the decision reached under paragraph (c)of this section, the Department determines that the ownership or control link has not been shown to be erroneous and has not been rebutted and that the violation covered by the notice has not been corrected, is in the process of being corrected, or is the subject of a good faith appeal, the Department shall so notify the applicant or other person and, pending application authority, and shall update the information in AVS, if necessary. Notification shall be in the following manner:~~

~~(A) The Department shall serve a copy of the decision on the applicant or other person by certified mail, or by any means consistent with the rules governing service and complaint under Chapter 2, Rules of Practice and Procedure. Service shall be complete upon tender of the notice or of the mail and shall not be deemed incomplete because of a refusal to accept.~~

~~(B) The applicant or other person may appeal a decision of the Department to formal review to the Department's Legal Division for hearing and appeal within 30 days of service of the decision in accordance with Chapter 20, The Coal Reclamation Act of 1979 and Chapter 2, Rules of Practice and Procedure for the Coal Reclamation Act of 1979. The Department's decision shall remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with Chapter 20, Chapter 2, and the Oklahoma Statutes Title 45.~~

460:20-15-13.1. How to challenge an owner and controller listing or finding

This Section applies to any person challenging an ownership or control listing or finding.

(1) To challenge an ownership or control listing or finding, a person must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials it wishes to provide under 460:20-15-14.1(b) of this Subchapter as follows:

(A) If the challenge concerns a federal block in the AVS, the permittee submits the written explanation to OSM;

(B) If the challenge concerns a state block in the AVS not generated by the Department, then the permittee submits the written explanation to the state regulatory authority generating the block;

(C) If the challenge concerns a block in the AVS generated by the Department, the Permittee submits the written explanation to the Department.

(2) The provisions of this Section and the Sections of 460:20-15-14.1 and 460:20-15-14.2 of this Subchapter apply only to challenges to ownership or control listings or findings. The Permittee may not use these provisions to challenge its liability or responsibility under any other provision of the Act or its implementing regulations.

(3) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(4) The Department, if responsible for deciding a challenge under paragraph (a) of this section, may request an investigation by the AVS Office.

(5) At any time, the permittee or a person listed in AVS as an owner or controller of a surface coal mining operation by OSM, may request an informal explanation from the OSM AVS Office as to the reason it is shown in OSM AVS in an ownership or control capacity. Within 14 days of the request, the OSM AVS Office will provide a response describing why the person challenging is listed in OSM AVS.

460:20-15-14. Standards for challenging ownership or control links and the status of violations. [REVOKED]

~~(a) **Applications.** The provisions of this section shall apply whenever a person has and exercises a right, under the provision of Sections 460:20-15-9, 460:20-15-10, 460-15-12, or 460:20-15-13 of this Subchapter or under the provision of Subchapter 19 of this Chapter, to challenge:~~

~~(1) An ownership or control link to any person; and/or~~

~~(2) The status of any violation covered by a notice.~~

~~(b) **Responsibility.** It is the responsibility of the Department of Mines to undertake the following duties pursuant to ownership and/or control relationships:~~

~~(1) Except as provided in paragraph (b)(2) of this Section, the Department is responsible for:~~

~~(A) The Department has the responsibility for making decisions with respect to ownership or control relationships of all pending applications.~~

~~(B) Upon permit issuance, the Department is responsible for making all decisions with respect to the ownership or control relationships of the permit.~~

~~(C) The Department shall have the responsibility for making all decisions with respect to the ownership or control relationships of all violations contained in notice of violations issued by the Department.~~

~~(D) The Department upon issuance of a notice of violation shall have the responsibility for making decision concerning the status of the violation covered by the notice of violation. (i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 460:20-15-6(b)(1) of this Subchapter.)~~

~~(2) The Office of Surface Mining shall have responsibility for making decisions with respect to ownership of control relationships of a federal notice of violation.~~

~~(c) **Evidentiary standards.** The Department shall conduct formal and informal reviews in the following manner:~~

~~(1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the Department shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the violation shall have the burden by a preponderance of the evidence, with respect to any relevant time period the following:~~

~~(A) That the fact relied upon by the Department to establish ownership or control under the definition of "owned and controlled" or owns and controls in Section 460:20-15-2 of this Subchapter do not or did not exist; or~~

~~(B) That the facts relied upon by the Department to establish a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Section 460:20-15-2 of this Subchapter, do not or did not exist;~~

~~(C) That a person subject to a presumption of ownership or control under definition of " owned or control" or "owns or controls" in Section 460:20-15-2 of this Subchapter, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or:~~

~~(D) That the violation covered by the violation notice did not exist, has been corrected, or is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 460:20-15-6 (b)(1) of this Subchapter; provided that the existence of the violation at the time it was cited may not be challenged under provisions of Section 460:20-15-13 of this Subchapter:~~

~~(i) By a permittee, unless such challenge is made by the permittee within the context of Sections 460:20-15-9 through 460:20-15-10 of this Subchapter;~~

~~(ii) By any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or~~

~~(iii) By any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.~~

~~(2) In meeting the burden of proof set forth in paragraph (c)(1) of this section, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include:~~

~~(A) Before the Department:~~

~~(i) Affidavits setting forth specific facts concerning the scope of responsibility and actual duties performed of the various owners or controllers of an applicant, permittee, or any other person cited in a violation notice; and the nature and details of any transactions creating or severing an ownership or control link; or specific facts concerning the status of the violation, along with the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee or person cited in a violation notice;~~

~~(ii) If certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreement, leases. Correspondence, or other relevant company records;~~

~~(iii) If certified, copies of documents filed with issued by any State, Municipal, or Federal governmental agency.~~

~~(iv) An opinion of counsel, when supported by:~~

~~(I) evidentiary materials;~~

~~(II) a statement by counsel that he or she is qualified to render the opinion; and~~

~~(III) a statement that counsel has personally and diligently investigated the facts of the matter; or,~~

~~(IV) where counsel has not investigated the facts, a statement that such opinion is based~~

~~upon information which has been supplied to counsel and which is assumed to be true.~~

~~(B) Before any administrative or judicial tribunal reviewing the decision of the Department, any evidence admissible under the rules of such tribunal.~~

~~(d) **After departmental determination.** Following any determination by the Department or other state agency, or any decision by an administrative or judicial tribunal reviewing such determination, the Department shall review the information in AVS to determine if it is insistent with the determination or decision. If it is not, the Department shall promptly inform the Office of Surface Mining and request that the AVS information be revised to reflect the determination or decision.~~

460:20-15-14.1. Burden of proof for ownership or control challenges

This Section applies to any person who challenges an ownership or control listing or finding.

(1) When challenging a listing of ownership or control, or a finding of ownership or control made under Section 460:20-17-2.1(f) of this Chapter, the person challenging must prove by a preponderance of the evidence that either:

(A) It does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(B) It did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(2) In meeting the burden of proof, reliable, credible, and substantial evidence and any explanatory materials must be submitted to the Department. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or other public file. If requested, the Department will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under Section 460:20-57-7 of this Chapter.

(3) Materials submitted in response to the requirements of paragraph (2) of this Section include, but are not limited to:

(A) Notarized affidavits containing specific facts concerning the duties that the person challenging performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation.

(B) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records

(C) Certified copies of documents filed with or issued by any State, Municipal,or Federal governmental agency.

(D) An opinion of counsel, when supported by:

(i) Evidentiary materials;

(ii) A statement by counsel that he or she is qualified to render the opinion; and

(iii) A statement that counsel has personally and diligently investigated the facts of the matter.

460:20-15-14.2. Written agency decision on challenges to ownership or control listings or findings

(a) Within 60 days of receipt of a challenge under 460:20-15-13.1(a) of this Subchapter, the Department will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision must state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) The Department will promptly provide the challenger with a copy of its decision by either:

(1) Certified mail, return receipt requested; or

(2) Any means consistent with the rules governing service of a summons and complaint under Oklahoma law.

(c) Service of the decision is complete upon delivery and is not incomplete if delivery is refused.

(d) The Department will post all decisions made under this section on AVS.

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under Chapter 2, the Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.

(f) Following the written decision or any decision by a reviewing administrative or judicial tribunal, the Department must review the information in AVS to determine if it is consistent with the decision. If it is not, the Department must promptly revise the information in AVS to reflect the decision.

SUBCHAPTER 17. REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

460:20-17-1. Scope and purpose [REVOKED]

~~This Subchapter provides requirements or revision; renewal; and transfer, assignment, or sale of permit rights.~~

460:20-17-1.1. Scope and purpose

This section provides the requirements for the revision; renewal; transfer, assignment, or sale of permit rights; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.

460:20-17-2.1. Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information

(a) For the purposes of future permit eligibility determinations and enforcement actions, the Department must enter into AVS the following:

(1) Permit records within 30 days after the permit is issued or subsequent changes are made.

(2) Unabated or uncorrected violations within 30 days after the abatement or correction period for a violation expires

(3) Changes to information initially required to be provided by an applicant under460: 20-23-2.2 of this Chapter within 30 days after receiving notice of a change.

(4) Changes in violation status within 30 days after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, the Department discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Department will determine whether enforcement action is appropriate under Subchapters 59 and 61 of this Chapter. The Department must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) The Department must serve a preliminary finding of permanent permit ineligibility under Section 745.9 of the Act on an Applicant or Operator, if the criteria in paragraphs (c)(1) and (c) (2) are met. In making a finding under this paragraph, the Department will only consider control relationships and violations which would make, or would have made, an applicant or operator ineligible for a permit under OAC 460:20-15-6.6 of this Chapter The Department must make a preliminary finding of permanent permit ineligibility if it finds that:

(1) An Applicant or Operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 745.9 of the Act; and

(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the Applicant's or Operator's intent not to comply with the Act, its implementing regulations, this Chapter, or the Applicant's or Operator's permit.

(d) The Applicant or Operator may request a hearing on a preliminary finding of permanent permit ineligibility under Chapter 2, Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.

(e) Entry into the applicant violator system (AVS).

(1) If no hearing is requested, and the time for seeking a hearing has expired, the Department will enter the finding into AVS.

(2) If a hearing is requested, the Department will enter the finding into AVS only if that finding is upheld on administrative appeal.

(f) At any time, the Department may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the Department identifies such a person, it must issue a written preliminary finding to the person and the Applicant or Permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(g) After the Department issues a written preliminary finding under paragraph (f) of this section, the Department will allow the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate the lack of ownership or control. If, after reviewing any information submitted, the Department is persuaded that the Applicant or Operator is not an owner or controller, the Department will serve the Applicant or Operator a written notice to that effect. If, after reviewing any information submitted, the Department still finds that the person subject to the preliminary finding is an owner or controller, or if no information is submitted not within the 30-day period, the Department will issue a written finding and enter its finding into AVS.

(h) If the Applicant or Operator is identified as an owner or controller under paragraph (g) of this Section, a challenge to the finding, using the provisions of 460:20-15-20.2, 460:20-15-13.1, and 460:20-15-14.1 of this Chapter may be made.

460:20-17-2.2. Post-permit issuance information requirements for permittees

(a) Within 30 days after the issuance of a cessation order under Section 460:20-59-3, the Permittee must provide or update all the information required under 460:20-23-2.2 of this Chapter.

(b) No information is required under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(c) Within 60 days of any addition, departure, or change in position of any person identified in OAC 460:20-23-2.2 of this Chapter, the Permittee must provide:

(1) The information required under OAC 460:20-23-2.2; and

(2) The date of any departure, addition or change.

460:20-17-5. Transfer, assignment, or sale of permit rights

(a) **General.** No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the Department. At its discretion, the Department may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the Department that sufficient bond coverage will remain in place.

(b) **Application requirements.** An applicant for approval of the transfer, assignment, or sale of permit rights shall~~-~~ :

(1) Provide the Department with an application for approval of the proposed transfer, assignment, or sale including~~-~~ :

(A) The name and address of the existing permittee and permit number or other identifier;

(B) A brief description of the proposed action requiring approval; and

(C) The legal, financial, compliance, and related information required by Subchapter 23 of this Chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations.

(c) **Public participation.** Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Department within a time specified by the Department.

(d) **Criteria for approval.** The Department may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor~~-~~ :

(1) Is eligible to receive a permit in accordance with Section~~s~~ ~~460:20-15-6(b) and~~ ~~(c)~~ 460:20-15-6.9 of this Chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee.

(3) Meets any other requirements specified by the Department.

(e) **Notification.**

(1) The Department shall notify the permittee, the successor, commentors, and OSM of its findings.

(2) The successor shall immediately provide notice to the Department of the consummation of the transfer, assignment, or sale of permit rights.

(f) **Continued operation under existing permit.** The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit.

SUBCHAPTER 23. PERMIT APPLICATIONS: MINIUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

460:20-23-2. Identification of interests [REVOKED]

~~An application shall contain the following:~~

~~(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other entity.~~

~~(2) The name, address, telephone number and as applicable. Social security number and employer identification number of the:~~

~~(A) Applicant;~~

~~(B) Applicant's resident agent; and~~

~~(C) Person who will pay the abandoned mine land reclamation fee.~~

~~(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Section 460:20-15-2 of this Chapter, as applicable:~~

~~(A) The person's name, address, social security number and employer identification number;~~

~~(B) The person's ownership or control relationship to the applicant including percentage of ownership and location in organization structure;~~

~~(C) The title of the person 's position, date position was assumed, and when submitted under Section 460:20-15-7 (h) of this Chapter, date of departure from position;~~

~~(D) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the fives years proceeding the date of the application; and~~

~~(E) The application number or other identifier of, and the Department for, any other pending surface coal mining operation permit application filed by the person in any State in the United States~~

~~(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Section 460:20-15-2 of the Chapter, the operation's~~

~~(A) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, date of issuance of the MSHA number and the Department; and~~

~~(B) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.~~

~~(5) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.~~

~~(6) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.~~

~~(7) The Mine Safety and Health Administration (MSHA) numbers for all mine - associated structures that require MSHA approval.~~

~~(8) A statement of all lands, interest in lands, options or pending bids on interests held or made by the applicant for lands contiguous to an area described in the permit application. If requested by the applicant, any information required by this Subsection which is not on public file pursuant to State aw shall be held in confidence by the Department, as provided under Section 460:20-15-5(d)(3)(B) of this Chapter.~~

~~(9) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Subsection (a) through (d) of this section.~~

~~(10) The applicant shall submit the information required by this section and by Section 460:20-23-3 of this Subchapter in any prescribed ODM format that is used.~~

460:20-23-2.1. Certifying and updating existing permit application information

(a) If the Applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as follows:

(1) If all or part of the information already in AVS is accurate and complete, then the Applicant may certify that the relevant information in AVS is accurate, complete, and up to date by so swearing or affirming to the Department under oath and in writing.

(2) If part of the information in AVS is missing or incorrect, the Applicant must submit to the Department the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete.

(3) If the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections, the applicant must include in its permit application the information required under this part.

(b) The applicant must swear or affirm, under oath and in writing, that all information provided provide in an application is accurate and complete.

(c) The Department may establish a central file to house applicant's identity information, rather than place duplicate information in each permit application files. The Department will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and 460:20-23-2.2 through 460:20-23-3.1 of this Subchapter.

460:20-23-2.2. Providing applicant and operator information

(a) The Applicant, must provide in the permit application:

(1) A statement indicating whether it and its operator are corporations, limited liability companies, partnerships, associations, sole proprietorships, or other business entities;

(2) Taxpayer identification numbers for applicant and its operator.

(b) The Applicant must provide the name, address, and telephone number for:

(1) The Applicant.

(2) Its resident agent who will accept service of process.

(3) Any Operator, if different from the Applicant.

(4) Each business entity in the Applicant's and Operator's organizational structure, up to and including the ultimate parent entity of the applicant and its operator; for every such business entity; Applicant must also provide the required information for every President, Chief Executive Officer, and Director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity.

(c) The Applicant and its Operator must provide the information required by paragraph (d) of this section for every:

(1) Officer.

(2) Partner.

(3) Limited liability company manager.

(4) Member.

(5) Director.

(6) Person performing a function similar to a director.

(7) Person who owns, of record, 10 percent or more of the Applicant or Operator.

(d) The Applicant must provide the following information for each person listed in paragraph (c) of this section:

(1) The person's name, address, and telephone number.

(2) The person's position title and relationship to applicant, including percentage of ownership and location in the organizational structure.

(3) The date the person began functioning in that position.

(e) The Department need not make a finding as provided for under Section 460:20-17-2.1of this subchapter before entering into AVS the information required to be disclosed under this section; however, the mere listing in AVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

460:20-23-2.3. Providing permit history information

(a) The Applicant must provide a list of all names under which it or its partners or principal shareholders, and its operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.

(b) For the Applicant and its Operator, the Applicant must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.

(c) For any surface coal mining operations the Applicant or its Operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation Applicant or its Operator own or control on that date, Applicant must provide the following:

(1) Permittee's and Operator's name and address;

(2) Permittee's and Operator's taxpayer identification numbers;

(3) Federal or State permit number and corresponding MSHA number;

(4) Regulatory authority with jurisdiction over the permit; and

(5) Permittee's and Operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

460:20-23-2.4. Providing property interest information

The applicant must provide in the permit application all of the following information for the property to be mined:

(1) The name and address of:

(A) Each legal or equitable owner(s) of record of the surface and mineral.

(B) The holder(s) of record of any leasehold interest.

(C) Any purchaser(s) of record under a real estate contract.

(2) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(3) A statement of all interests, options, or pending bids the applicant holds or has made for lands contiguous to the proposed permit area. If applicant requests in writing, the Department will hold as confidential, under Section 460:20-15(d)(3)(B) of this Chapter, any information required to be submitted under this paragraph which is not on public file under State law.

(4) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.

460:20-23-3. Violation information [REVOKED]

~~Each application shall contain the following information:~~

~~(1) A statement of whether the application the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the application has:~~

~~(A) Had a Federal or State coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or~~

~~(B) Forfeited a performance bond or similar security deposited in lieu of bond.~~

~~(2) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referring to in (1)(A) and (B) of this Section has occurred, including~~

~~(A) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;~~

~~(B) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;~~

~~(C) The current status of the permit, bond, or similar security involved;~~

~~(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and~~

~~(E) The current status of the proceedings.~~

~~(3) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three years period proceeding the application date, and list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by the surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the list shall include the following information, as applicable:~~

~~(A) Any identifying numbers for the operation, including the Federal and State Permit number and MSHA number, the dates of issuances of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency.~~

~~(B) A brief description of the violation alleged in the notice;~~

~~(C) The date, location, and type of administrative or judicial proceedings initiated concerning the violation, including but not limited to, proceedings initiated by any person identified in Paragraph 3 of this Section to obtain administrative or judicial review of the violation;~~

~~(D) The current status of the proceedings and the violation notice; and~~

~~(E) The actions, if any, taken by the person identified in Paragraph 3 of this Section to abate the violation.~~

~~(4) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable update, correct or indicate that no change has occurred in the information previously submitted under this section.~~

460:20-23-3.1. Providing violation information

(a) The Applicant must state in its permit application, whether the Applicant or its Operator, or any subsidiary, affiliate, or entity which the Applicant or the Applicant's Operator owns or controls or which is under common control with the applicant or its you operator, has:

(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), Applicant must provide a brief explanation of the facts involved, including the information:

(1) Permit number;

(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited;

(3) Regulatory authority which suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(4) Current status of the permit, bond, or similar security involved;

(5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.

(c) A list of all violation notices the applicant or its operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition, the Applicant must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or its operator owns or controls on that date. For each violation notice reported, the applicant must include the following information, when applicable:

(1) The permit number and associated MSHA number;

(2) The issue date, identification number, and current status of the violation notice;

(3) The name of the person to whom the violation notice was issued;

(4) The name of the regulatory authority or agency which issued the violation notice;

(5) A brief description of the violation alleged in the notice;

(6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice;

(7) If the abatement period for a violation in a notice of violation issued under Section 460:20-59-4 of this chapter, or any State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(8) For all violations not covered by paragraph(c)(7) of this section, the actions taken to abate or correct the violation.

460:20-23-10. Facilities or structures used in common

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Subchapter 37 of this Chapter, each Permittee shall bond the facility or structure unless the Permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this Chapter for the facility or structure will be met.

SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

460:20-43-12. Hydrologic balance: siltation structures

(a) **Definitions.** For the purpose of this Section only disturbed area shall not include those areas:

(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Subchapter; and

(2) For which the upstream area is not otherwise disturbed by the operator.

(b) **General requirements.**

(1) Additional contributions of suspended solids sediment to stream flow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be ~~passed through a siltation structure before leaving the permit area, except as provided in (b)(5) or (e) of this Section.~~ controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in Section 460:20-43-11 of this Chapter before leaving the permit area.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer or registered professional land surveyor to be constructed as designed and as approved in the reclamation plan. The certifying engineer or land surveyor shall have experience in pond construction.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with Section 460:20-43-14 of this Chapter.

(5) Siltation structures shall be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Sections 460:20-43-43, through 460:20-43-46 of this Chapter. Sedimentation ponds approved by the Department for retention as permanent impoundments may be exempted from this requirement.

(c) **Sedimentation ponds.**

(1) When used, sedimentation ponds shall:

(A) Be used individually or in series;

(B) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Department, and

(C) Be designed, constructed, and maintained to:

(i) Provide adequate sediment storage volume per acre of disturbed area draining into the structure;

(ii) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;

(iii) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of Section 460:20-43-9 will be met;

(iv) Provide a non-clogging dewatering device adequate to maintain the detention time required under (c)(1)(C)(ii) of this Section;

(v) Minimize, to the extent possible short circuiting;

(vi) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(vii) Ensure against excessive settlement;

(viii) Be free of sod, large roots, frozen soil, and acid-or toxic-forming coal processing waste; and

(ix) Be compacted properly;

(2) **Spillways.** A sedimentation pond shall include a combination of principal and emergency spillways or a single spillway configured as specified in (c)(2)(A) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in (c)(2)(B) of this section, except as set forth in (c)(2)(C) of this section.

(A) The Department may approve a single open channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2)(C) of this Section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of (c)(2) of this Section is:

(i) For a sedimentation pond meeting the size or other criteria of 30 CFR Section 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(ii) For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the Department.

(C) In lieu of meeting the requirements in (c)(2)(A) of this Section, the Department may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where;

(i) In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department; or

(ii) In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a) it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

(d) **Other treatment facilities.**

(1) Other treatment facilities shall be designed to treat 10-year, 24-hour precipitation event unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of Section 460:20-43-9 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of Subsection (c) of this Section.

(e) **Exemptions.** Exemptions to the requirements of this Section may be granted if:

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under Section 460:20-45-9 and the applicable State and Federal water quality standards for the receiving waters.

(f) **Performance standards.**

(1) **General requirements.** Sedimentation ponds shall be used individually or in series and shall:

(A) Be constructed before any disturbance of the undisturbed areas to be drained into the pond;

(B) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Department;

(C) Meet all the criteria of this Section.

(2) Sediment ponds shall provide adequate sediment storage per acre of disturbance draining into the structure.

(3) **Detention time.** Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(4) **Dewatering.** The water storage resulting from inflow shall be removed by a non-clogging dewatering device or a conduit spillway approved by the Department.

(5) Each operator who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the operator

from compliance with applicable effluent limitations as contained in Section 460:20-43-9.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in Section 460:20-43-9(c)(2) shall be provided to safely discharge the runoff from a 25-year, 6-hour precipitation event, or large event specified by the Department. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Department.

(9) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times including the period after settlement.

(10) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the Department that the material used and the design will ensure against all settlement.

(11) The minimum top width of the embankment shall not be less than the quotient of (h+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(12) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5H, with neither slope steeper than1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(13) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(14) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and in no case shall coal-processing waste be used.

(15) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the Department.

(16) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met;

(A) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in Section 460:20-43-9(c)(2) shall be provided to discharge safely the runoff resulting from a 100-year, 6-hour precipitation event, or a larger event specified by the Department.

(B) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(C) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(17) Each pond shall be designed and inspected during construction under the supervision of and certified after construction by a qualified registered professional engineer.

(18) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Section 460:20-43-41.

(19) All ponds including those not meeting the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion and other hazardous conditions and reports and modifications shall be made to the Department in accordance with 30 CFR 77.216-3. With the approval of the Department, dams not meeting these criteria [77.216(a)] shall be examined four times per year.

(20) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the revegetation requirements of Section 460:20-43-43 through 460:20-43-46 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 460:20-43-37, through 460:20-43-41, and 460:20-43-43, through 460:20-43-46, unless the pond has been approved by the Department for retention as being compatible with the approved postmining land use under Section 460:20-43-51. If the Department approves retention, the sedimentation pond shall meet all requirements for permanent impoundments of Sections 460:20-43-14 and 460:20-43-15.

SUBCHAPTER 59. STATE ENFORECMENT

460:20-59-2. Definitions.

As used in this Subchapter, the following ~~terms~~ term have these specified meanings:

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

~~**"Willfull violation"** means an act or omission which violates the Act, these Regulations, the applicable program, or any permit condition required by the Act, these Regulations, or the applicable program, committed by a person who intends the result which actually occurs.~~

460:20-59-3. Cessation orders.

(a) **An order of cessation:**

(1) The Director or his or her authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any inspection, any condition or practice, or any violation of the Act, ~~these Regulations~~ this Chapter , any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or ~~these Regulations~~ this Chapter which:

(A) Creates an imminent danger to the health or safety of the public; or

(B) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

(A) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(B) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Director his or her authorized representative, shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b) **A notice of violation.**

(1) When a notice of violation has been issued under Section 460:20-59-4(a) of this Subchapter and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Department shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this Subsection shall require the permittee to take all steps the authorized representative of the Department deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this Section shall be in writing, signed by the Director or his or her authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation;

(2) The remedial action or affirmative obligation required, If any, including interim steps, if appropriate;

(3) The time established for abatement if appropriate; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by the Director or his or her authorized representative, or until the order expires pursuant to 45 O.S. Section 779 and ~~OAC~~ Section 460:20-59-7 of this Subchapter.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) The Director or his or her authorized representative may modify, terminate, or vacate a
cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) The Director or ~~his~~ an authorized representative shall ~~notify owners and controllers within 60 days of a cessation order~~ terminate a cessation order by written notice to the permittee, when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under Section 460:20-64-4 of this Chapter.

(g) Within 60 days after issuing a cessation order, the Department will notify in writing the Permittee, the Operator, and any person who has been listed or identified by the Applicant, Permittee, or the Department as an owner or controller of the operation, as defined in Section 460:20-3-5 of this Chapter.

SUBCHAPTER 63. INDIVIDUAL CIVIL PENALTIES

460:20-63-2. Definitions [REVOKED]

~~For the purpose of this Subchapter:~~

~~**"Knowingly"** means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.~~

~~**"Violation, failure or refusal"** means:~~

~~(A) A violation of a condition of a permit issued pursuant to the approved State program.~~

~~(B) A failure or refusal to comply with any order issued under the Act, or any order incorporated in a final decision issued by the Director under the Act.~~

~~**"Willfully"** means that an individual acted~~

~~(A) either intentionally, voluntarily or consciously, and~~

~~(B) with intentional disregard or plain indifference to legal requirements in authoring, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.~~

SUBCHAPTER 64. ALTERNATIVE ENFORCEMENT

460:20-64-1. Scope

This part governs the use of measures provided in sections 769(G) and (I), and 780 of the Act for criminal penalties and civil actions to compel compliance with provisions of the Act.

460:20-64-2. General provisions

(a) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Department must update AVS to reflect the judgment or conviction.

(b) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

(c) Nothing in this part eliminates or limits any additional enforcement rights or procedures available the Department under other State law.

460:20-64-3. Criminal penalties

Under sections 769(G) and (I) of the Act, the Department, may request the Oklahoma Attorney General to pursue criminal penalties against any person who:

(1) Willfully and knowingly violates a condition of the permit;

(2) Willfully and knowingly fails or refuses to comply with:

(A) Any order issued under section 780 of the Act; or

(B) Any order incorporated into a final decision issued by the Secretary under the Act, except for those orders specifically excluded under section 780 of the Act;

(3) Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Chapter or any order or decision issued by the Director under the Act.

460:20-64-4. Civil actions for relief

(a) Under Section 780 of the Act, the Department may request the Oklahoma Attorney General to institute a civil action for relief whenever the Applicant or its Agent:

(1) Violates or fails or refuses to comply with any order or decision that the Department issues under the Act or this Chapter;

(2) Interferes with, hinders, or delays the Department in carrying out the provisions of the Act or its implementing regulations;

(3) Refuses to admit authorized representatives onto the site of a surface coal mining and reclamation operation;

(4) Refuses to allow authorized representatives to inspect a surface coal mining and reclamation operation;

(5) Refuses to furnish any information or report that the Department requests under the Act or regulatory program; or

(6) Refuses to allow access to, or copying of, those records that the Department determines necessary to carry out the provisions of the Act and its implementing regulations.

(b) A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the Applicant has its principal office.

[OAR Docket #10-1007; filed 6-10-10]

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

[OAR Docket #10-999]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Title 74. Chapter 47C - Oklahoma Tourism, Parks and Recreation Enhancement Act, Section 2204 - Oklahoma Tourism and Recreation Commission - Powers, Rights, and Duties

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ANALYSIS:
The rule revocations remove items that are a duplicate of statute and the amended sections have been revised at the request of the Office of the Attorney General or are amended to provide updated contact information.
CONTACT PERSON:
The contact person is Kathy Hehnly, of the Oklahoma Tourism and Recreation Department. Ms. Hehnly can be reached at kathy.hehnly@oklatourism.gov, 405-230-8308 (phone) or 405-230-8508 (fax). The Oklahoma Tourism and Recreation Department is located at 120 N. Robinson, Suite 600, Oklahoma City, OK 73102.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FOURTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 29. OKLAHOMA TODAY MAGAZINE

PART 1. GENERAL PROVISIONS

725:15-29-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to establish rules that apply specifically to the operation of Oklahoma Today magazine.~~

725:15-29-2. Fee authority [REVOKED]

~~Fees described in this Subchapter will be approved by the Oklahoma Tourism and Recreation Commission ("the Commission"). The Commission shall prescribe rates, fees, tolls or charges for the services, facilities and commodities rendered by all property of the Commission. [74:2220(A)].~~

725:15-29-3. Refunds [REVOKED]

~~Refunds for fees described in this Subchapter may be made in accordance with OAC 725:15-31, Part 9.~~

725:15-29-4. Promotional discounts [REVOKED]

~~Magazine sales and other ancillary merchandise items may be complimentary or a discount may be offered when it is determined by the publisher of Oklahoma Today magazine that such action is in tandem with the marketing program and is likely to result in improved financial condition for the magazine.~~

PART 3. MAGAZINE SALES

725:15-29-10. Establishing rates [REVOKED]

~~(a) The Executive Director and the publisher of Oklahoma Today magazine shall periodically review the rates for the magazine.~~
~~(b) Such rates will be based upon the following:~~
~~(1) The amount determined that will result in improved financial condition of Oklahoma Today magazine; and,~~
~~(2) The price prevailing for similar regional magazines.~~
~~(c) Oklahoma Today magazine will maintain printed rate information to be made available upon request. Requests may be made as follows:~~
~~(1) Telephone requests may be made by calling 405.230.8452.~~
~~(2) Written requests may be mailed to Oklahoma Today magazine, P.O. Box 53384, Oklahoma City, Oklahoma, 73152-9971.~~

725:15-29-11. Application of rates and discounts

Every person shall be charged the same rate for single issue or subscription purchases of Oklahoma Today magazine except:
(1) when discounted for promotional purposes ~~as outlined in OAC 725:15-29-4 and in accordance with 74 O.S., Section 2230(A)(11)~~ or,
(2) when specifically directed by legislative action.

PART 5. RESALE MERCHANDISE

725:15-29-20. Establishing prices [REVOKED]

~~(a) The Executive Director and the publisher of Oklahoma Today magazine shall periodically review the prices for all resale items regularly advertised in the magazine.~~
~~(b) Such rates will be based upon the following:~~
~~(1) The amount determined that will result in improved financial condition of Oklahoma Today magazine; and,~~
~~(2) The price prevailing for similar products in the State of Oklahoma.~~
~~(c) Oklahoma Today magazine will maintain printed rate information to be made available upon request. Requests may be made as follows:~~
~~(1) Telephone requests may be made by calling 405.230.8452.~~
~~(2) Written requests may be mailed to Oklahoma Today magazine, P.O. Box 53384, Oklahoma City, Oklahoma, 73152-9971.~~

725:15-29-21. Application of prices, discounts and specials [REVOKED]

~~Every person shall be charged the same price for single issue or subscription purchases of Oklahoma Today magazine except:~~
~~(1) when discounted for promotional purposes as outlined in OAC 725:15-29-4 and in accordance with 74 O.S., Section 2230(A)(11); or,~~
~~(2) when specifically directed by legislative action; or,~~

~~(3) when it is determined by the publisher of Oklahoma Today magazine that discounts should be offered to allow for the liquidation of seasonal items in a timely manner.~~

PART 7. CREDIT

725:15-29-30. Credit for magazine or resale merchandise purchases

Purchases by individuals for magazines or resale merchandise may be made with a valid credit card that is accepted by Oklahoma Today magazine. However, credit will not be extended in any other manner to individuals for magazine or resale merchandise purchases ~~unless specifically authorized by the Executive Director or the Chief Financial Officer.~~

725:15-29-32. Terms and payment of credit accounts

(a) Terms and payments for entities, individuals and/or businesses purchasing advertising space in Oklahoma Today magazine will be made using one of the following methods:

(1) Payments will be made as described in the billing schedule published in Oklahoma Today magazine's media guide. A copy of the media guide may be requested as follows:

(A) Telephone requests may be made by calling 405.230.845~~2~~0.

(B) Written requests may be mailed to Oklahoma Today magazine, P.O. Box ~~53384~~ 1468, Oklahoma City, Oklahoma, ~~73152-9971~~ 73101-1468.

(2) Payment for purchase of advertising on credit must be paid in full ~~within 90 days of~~ upon publishing ~~date unless the publisher of Oklahoma Today magazine or the Chief Financial Officer authorizes special terms~~.

(b) Failure to pay credit accounts in full in accordance with approved terms will result in revocation of the credit account. No further credit will be approved unless specifically authorized by the Executive Director.

[OAR Docket #10-999; filed 6-10-10]

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

[OAR Docket #10-1001]

RULEMAKING ACTION:
PERMANENT final adoption
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. Vehicle and Traffic Safety
725:30-26-14. Off-road vehicles [AMENDED]
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The Department changed Subchapter 2: General Provisions, to allow added flexibility in cases of prohibited facility use. The Department added definitions of "Department" and "Visitor" which are beneficial to rule understanding. In addition, the Department made a modification for closure and curfews at parks which clarifies that Commission approval is needed for such recommendations and clarifies how public notice will be provided. Signs are clarified to include use of international symbols.

The Department changed Subchapter 4: Public Use and Recreation, to allow the park manager and the Director to issue metal or mineral detector permits. The Department has made a modification to the weapons language

which accommodates current concealed weapon law [(725:30-4-2(b), and 725:30-4-2(b)]; modifies language regarding audio disturbance; provides for trash-in and trash-out programs in parks; adds language to accommodate the law regarding certified hay; and clarifies that no-smoking designations may include lodge rooms. The Department further changed rules to allow prohibition of alcoholic beverages in park and may include 3.2% alcohol products and the Memorialization section was re-written to clarify the approvals needed for installation of items in state parks.

The Department changed Subchapter 6: Fees, Discounts and Waivers, which amend the rules to coincide with state law.

The Department changed Subchapter 8: Camping and Day Use, to clarify the definition of "Camping/sleeping unit", to adjust the check-out time for a campsite and clarify what a "family unit" is for certain purposes and provides the park manager with discretion. The Department also changed time limits and extension of stay during the camping season.

The Department changed Subchapter 12: Reservations and Use of Cabins, Group Camps, Shelters, Reserved/Assigned Camping, Facilities, Amphitheaters, Community Buildings and Meeting Rooms, to include a modification of the definition of "Daily" to provide a revised check-out time. The Department changed Group Camps to delete the ability to make reservations in the Oklahoma City administrative offices and check-out time was modified. The Department changed rules on Shelters to eliminate use without a reservation. The Department changed an adjustment to group camping reservations which clarifies cancellation processes and provides for a transaction fee and some manager discretion.

The Department changed Subchapter 18: Special Use Areas, clarifying trails use issues.

The Department changed Subchapter 20: Volunteers, to modify the language which prohibits person convicted of serious offenses including sexual offenses from being volunteers.

The Department changed Subchapter 22: Concession Leases, to clarify the publication of advertising for solicitation of proposals and defines employee participation in bid opening for lease proposals. In addition, unnecessary words were eliminated without change in application in the grievance process section.

The Department changed Subchapter 26: Vehicles and Traffic Safety, in the category of off-road vehicles which exempts Lake Murray from the requirement of having whips on vehicles.

CONTACT PERSON:

The contact person is Kathy Hehnly, of the Oklahoma Tourism and Recreation Department. Ms. Hehnly can be reached at kathy.hehnly@oklatourism.gov, 405-230-8308 (phone) or 405-230-8508 (fax). The Oklahoma Tourism and Recreation Department is located at 120 N. Robinson, Suite 600, Oklahoma City, OK 73102.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FOURTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 2. GENERAL PURPOSE

725:30-2-3. Penalties

(a) Any person found violating any rule contained in this chapter defined as prohibited shall be subject to revocation of visitation privileges and may be removed from park property by any commissioned park ranger for any period of time ~~not to exceed 30 calendar days~~ that is reasonable and appropriate.

(b) Such persons shall be provided reasonable time to locate and secure all personal property and equipment prior to such removal.

(c) In addition to the penalties prescribed in (a) of this section, other penalties may be imposed as prescribed and defined by state law or federal regulation.

(d) Nothing shall preclude the application of community service work in any state park in whole or as part of a sentence, for persons convicted of crimes committed in the State Park System as prescribed by any duly appointed or elected official having jurisdiction over such matters.

725:30-2-4. Definitions

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

"Abandonment" means the voluntary relinquishment of property with no intent to retain possession.

"Administrative activities" means those activities conducted under the authority of the Division of State Parks for the purpose of safeguarding persons or property, implementing management plans and conducting general repair and maintenance of facilities.

"Aircraft" means a device that is used or intended to be used for human flight in the air, including powerless flight.

"Archaeological resources" means material remains of past human life or activities that are of archaeological interest and are at least fifty (50) years of age. This term includes, but shall not be limited to, objects made and used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, pit houses, rock paintings and carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by the Division of State Parks or an emergency vehicle as defined by state law.

"Authorized person" means an employee or agent of the Oklahoma Tourism and Recreation Department, Division of State Parks with delegated authority to enforce the provisions of this chapter.

"Bicycle" means every device propelled solely by human power upon which a person or persons may ride on land, have one, two, or more wheels, except a manual wheelchair.

"Boundary" means a delineation of state interest on a map filed or recorded by the state or political subdivision in accordance with applicable law.

"Camping" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring a vessel for the apparent purpose of remaining overnight.

"Carry" means to wear, bear, or have on or about the person.

"Commission" means the Oklahoma Tourism and Recreation Department Commission which is a public body with the authority to establish policy, and carry out the duties of the Oklahoma Tourism and Recreation Act.

"Controlled substance" means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV or V of Article II of Uniform Controlled Dangerous Substances Act [63:2-201-2-212].

"Cultural resources" means material remains of past human life or activities that are of archaeological interest and

are at least fifty (50) years of age. This term includes, but shall not be limited to, objects made and used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, pit houses, rock paintings and carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

"Curfew" means a restriction established by the park manager whereby specific areas within a park or a park unit may be closed or restricted to activities during designated periods.

"Department" means the Oklahoma Tourism and Recreation Department.

"Developed area" means roads, parking areas, day use areas, picnic areas, campgrounds, or other structures, facilities or lands located within development zones depicted on use maps.

"Director" means the Director of the Division of State Parks.

"Employee" means any paid employee of the Oklahoma Tourism and Recreation Department, Division of State Parks regardless of classification status.

"Executive Director" means the director of the Oklahoma Tourism and Recreation Department.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to expel a projectile by the use of a propellant.

"Fish" means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes families.

"Fishing" means taking or attempting to take fish.

"Hunting" means taking or attempting to take wildlife, except trappings.

"Manual wheelchair" means a device that is propelled by human power, designed for and use by a mobility impaired person.

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water except a motorized wheelchair.

"Motorcycle" means every motor vehicle having a seat for the use of the rider designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

"Motorized wheelchair" means a self-propelled wheeled device, designed solely for and used by a mobility impaired person.

"Natural resources" means any plant, animal, or any natural object or material which has been produced by nature and is located within a park unit.

"Non-developed area" means all lands and waters within park areas which are not developed.

"Operator" means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

"Park area" means lands and waters controlled or administered by the Oklahoma Tourism and Recreation Department, Division of State Parks.

"Park Manager" means the official in charge of a park area or an authorized representative thereof.

"Park Ranger" means a commissioned law enforcement official of the Oklahoma Tourism and Recreation Department, Division of State Parks with authority to enforce park rules and state laws. This includes reserve rangers.

"Park road" means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Oklahoma Tourism and Recreation Department, Division of State Parks.

"Permit" means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, and regulated or beyond the normal scope of recreational activities for a state park unit.

"Person" means an individual, firm, corporation, society, association, partnership, or private or public body.

"Pet" means a dog, cat or any animal that has been domesticated.

"Possession" means exercising direct physical control or dominion, with or without ownership, over property, or archaeological or natural resources.

"Primitive" means an undeveloped area which does not provide any developed facilities including sanitation facilities or services.

"Public use limit" means the number of persons; number and types of animals; size and types of equipment, vehicles or property allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

"Refuse" means trash, garbage, rubbish, waste, bottles or cans, debris, litter, liquid waste, or other discarded materials.

"Regional Manager" means the official in charge of a geographic region in the Oklahoma Tourism and Recreation Department, Division of State Parks.

"Season" means the primary recreation season in a calendar year which is from April 15 through September 30, except when defined differently within this chapter. All other time is considered to be "off season".

"Services" means, but is not limited to, meals and lodging, labor, professional services, transportation, tours or any act for which payment is customarily received.

"Sign" means a board, poster, placard or device displayed in a state park to advertise or convey information or a direction.

"Smoking" means the carrying of lighted cigarettes, cigars or pipes or the intentional and direct inhalation of smoke from these objects.

"State" means the State of Oklahoma.

"State law" means the applicable and non-conflicting laws or statutes enacted by the legislative and executive branches of government of the State of Oklahoma.

"State Park System" means all facilities, lands, waters under the control and administration of, owned or leased, operated and managed by the Oklahoma Tourism and Recreation Department, Division of State Parks.

"Sunrise" means a period of time one-half hour before actual sunrise.

"Sunset" means a period of time one-half hour after actual sunset.

"Take" means the pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

"Traffic" means pedestrian, ridden or herded animals, vehicles and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for the purpose of travel.

"Traffic control device" means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the park manager for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

"Trap" means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

"Unit" means a single state park.

"Unloaded" as applied to weapons and firearms, means that:

(A) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm.

(B) A muzzle-loading weapon does not contain gun powder in the pan, or percussion cap is not in place.

(C) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn on land, and devices moved by human power or used exclusively upon stationary rails or track.

"Visitor" means a user of a park.

"Weapon" means a firearm compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spear gun, hand thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes any other weapon the possession of which is prohibited under the laws of the state.

"Wildlife" means any member of the animal kingdom and includes a part, product, egg, or offspring thereof, or the dead body or part thereof.

725:30-2-6. Closure and curfew

(a) Consistent with applicable state law and administrative rules, and based upon a determination that such action is necessary for the maintenance of public health and safety, protection of the environment, natural and cultural resources, implementation of operation and management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the park manager or designee may with approval of the regional manager:

(1) Close all or a portion of a park area to all public use or to a specific use or activity.

(2) Designate areas for specific uses or activities, or impose conditions or restrictions on a use or activity.

(3) Terminate or relax a restriction, limit, closure, designation, condition or visiting hour restriction imposed under (a) (1) or (2) of this section.

(b) Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude or duration that will result in significant alteration of the public use pattern of the park area or adversely affect the park's natural or cultural resources, or is of highly controversial nature, shall be approved by the commission ~~and published as rulemaking in the Oklahoma Register.~~

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, or closure, the park manager shall prepare a written determination justifying such action or in the case of terminating a restriction, condition or closure previously established under (a) of this section, a determination of why the restriction is no longer necessary. This determination shall be filed in the director's office of the Oklahoma Tourism and Recreation Department, Division of State Parks and the park office where the restriction, condition or closure exists. This determination shall be available to the public upon request.

(d) To relax a condition whereby the area is currently restricted or closed the park manager shall implement a use limit system through the use of permits. Permits shall be issued in accordance with subchapter (16) of this chapter.

(e) For the purpose of this subchapter a curfew shall not be considered an emergency and subject to the ~~all~~ applicable provisions set forth in this chapter except under (b) of this section and shall be approved by the director.

(f) Violating a restriction, condition or closure is prohibited.

725:30-2-7. Public notice

Whenever the authority of 725:30-2-6(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of a park or park area as open or closed, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along boundaries of affected areas.

(2) Maps defining affected areas shall be provided in park office and other convenient locations in the park.

(3) Public service announcements or a publication in a newspaper of general circulation in the affected area.

(4) Public service announcements through radio or television.

~~(5) A public hearing 20 days prior to the restriction or control is invoked for provisions defined in 725:30-2-6(b)~~.

725:30-2-8. Signs, signals and markings

(a) Signs located within the state park system provide general information and regulatory guidance for public health and safety and protection of natural and cultural resources, ~~using symbols set forth in Appendix A of this chapter~~ and can include the use of international symbols.

(b) Certain signs will designate activities which are prohibited in the following manner:

(1) The word "prohibited" will be defined as part of the signs language, or

(2) A symbolic sign will bear a slash mark. These signs are pictured in Appendix A of this chapter.

(c) Signs, signals or markings regulating the operation of motor vehicles, motorcycles and other legal modes of transportation within state parks shall carry the same force and affect as defined by Article I and II of Title 47, Oklahoma Statutes.

SUBCHAPTER 4. PUBLIC USE AND RECREATION

725:30-4-1. Preservation and protection of natural, cultural and archaeological resources

Except as otherwise provided in this chapter, the following is prohibited in state parks:

(1) Possessing, destroying, injuring, defacing, removing, digging, killing, or disturbing in or from its natural state:

(A) Living or dead wildlife or the parts or products thereof, such as antlers, nests, or skins [74:2217].

(B) Plants or trees or any parts thereof [74:2217].

(C) Non-fossilized and fossilized paleontological specimens, cultural or archaeological resources, or the parts thereof [74:2217].

(2) The feeding, touching, teasing, frightening or intentional disturbance of wildlife, their nesting or breeding sites or other aspects of wildlife habitat.

(3) Using or possessing wood gathered from within the park area. Provided, however, that the park manager may designate areas where wood on the ground may be collected for use as fuel for camp fires within the park area only.

(4) Walking on, climbing, entering, ascending, descending, or traversing on any archaeological or cultural resource site, monument, or statue, except in areas designated by the park manager.

(5) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, sub-bottom profiler, or any other metal detecting device. This paragraph does not apply to:

(A) A device broken down and stored or packed to prevent its use while in park areas;

(B) Electronic equipment used for the navigation of boats and fishing purposes;

(C) Metal or mineral detectors when authorized by permit from the park manager, or Director.

(6) The gathering and removal of nuts, berries and fruits or any other natural products for personal consumption purposes, except when authorized by a permit upon determination that the gathering and removal will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The park manager may:

(A) Limit the quantity that may be gathered; or

(B) Limit the location where natural products may be gathered; and

(C) Restrict the possession or consumption to the park area.

725:30-4-4. Weapons

(a) Except as otherwise provided in this section or pursuant to 21 O.S. 1290.1 et.seq. the following is prohibited in state parks:

(1) Possessing or carrying a weapon on one's person [21:1272].

(2) Possessing or carrying a loaded weapon in a motor vehicle, vessel or other mode of transportation [21:1289.7].

(3) Using a weapon in violation of any other applicable state laws.

(b) Weapons may be carried, possessed and used in accordance with 725:30-4-2(b), and:

(1) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose.

(2) Firearms with blank ammunition for living history events when approved by the park manager by permit.

(3) Within a residential dwelling. For the purposes of this paragraph only, the term "residential dwelling" means a fixed housing structure which is either the principal residence of its occupants, or is occupied by its occupants as an alternative residence.

(4) May be possessed within a temporary lodging arrangement when such implements are rendered temporarily inoperable or are parked, cased or stored in a manner which shall prevent their use.

(5) For authorized law enforcement officials in the performance of their official duties.

725:30-4-6. Audio disturbances and quiet hours

(a) Operating equipment or machinery such as an electric generating plant, motor vehicle, audio device or musical instrument which generates unreasonable noise, considering the nature and purpose of the conduct, location, time of day or night, purpose for which the area was established, impact upon park visitors, and other factors that would govern the conduct of a reasonably prudent person under such circumstances is prohibited. This subsection does not apply to vessels in areas where motor boating is allowed, unless level of noise is unreasonable.

(b) During quiet hours (11:00 p.m. - 6:00 a.m. daily) operating equipment or machinery such as an electric generating plant, motor vehicle, boat, audio device, musical instrument which, or any person who, generates unreasonable noise beyond the immediate camp or picnic site is prohibited. For the purposes of this section "unreasonable" shall mean noise which in the judgment of the park manager or park ranger is considered disturbing to a reasonably prudent person.

(c) A permit from the park manager shall be required for special events or functions which will violate the terms set

forth in subsections (a) and (b) of this section. Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

725:30-4-8. Sanitation

The following is prohibited in state parks:

(1) Disposing of refuse in any manner or area except refuse receptacles.

(2) Depositing of refuse or materials in marked recyclable containers not designated for such refuse or materials.

(3) Using state park refuse receptacles or other refuse facilities for dumping household, commercial or industrial refuse, brought as such from private or municipal property, except in accordance with conditions as may be established by the park manager.

(4) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(5) Draining sewage and/or grey water from a trailer or recreational vehicle, except in facilities provided for that purpose.

(6) Washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those areas designated for such purpose.

(7) Disposing of fish remains on land, or waters within 200 feet of boat docks or designated swimming areas.

(8) In non-developed or primitive areas the disposal of human body waste. The park manager shall establish conditions concerning the containerization and carryout of human body waste.

(9) Disposing of refuse in a park where a trash in - trash out program has been instituted.

725:30-4-10. Horses, llamas and pack animals

The following is prohibited in state parks:

(1) The use of horses, llamas and pack animals outside of trails, routes or areas designated for their use.

(2) The use of horses, llamas and pack animals on a park road, except where such travel is necessary to cross to or from a designated trail or area and no alternative routes have been designated; or the road has been closed to motor vehicles or under emergency conditions.

(3) Allowing a horse, llama or pack animal to act in an uncontrollable or imprudent manner when such animal is controllable by the owner.

(4) Bringing a horse, llama or pack animal to a park unit that is dangerous and/or not able to be controlled by its owner.

(5) Failing to retrieve and properly dispose of excrement within campgrounds or other heavily used public areas within a state park unit.

(6) Individuals who bring horses into an Oklahoma State Park must have documentation that verifies that the animal(s) has/have had a negative Coggins test in conformance with rules of the Oklahoma Department of Agriculture.

(7) Only certified hay shall be used in state parks, to the extent required by state law.

725:30-4-12. Smoking

(a) The park manager may designate a portion of the park area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect natural or cultural resources, reduce the risk of fire, or prevent conflicts among visitor use activities [63:1-1523]. Smoking in an area or location so designated or defined by state law is prohibited.

(b) Areas which shall be posted by the park manager as "no smoking" areas shall include and not be limited to, park offices (except private enclosed rooms within park offices designated as an employee's personal office whom smokes), information centers, nature centers, cabin offices, gift shops, grocery stores, caves and caverns, comfort stations, a certain percentage of cabins and lodge rooms and golf pro shops.

725:30-4-13. Property

(a) **Prohibited activities.** The following are prohibited in state parks:

(1) Abandoning property.

(2) Leaving property unattended for longer than 48 hours, except when authorized by permit from the park manager in accordance with the conditions set out therein.

(3) Failing to turn in found property to the park manager or park ranger as soon as practicable.

(b) **Impoundment of property.**

(1) Property left unattended in excess of an allowed period of time may be impounded by park officials.

(2) Unattended property that interferes with visitor safety, orderly management of the park area, or presents a threat to natural resources may be impounded by park officials.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard such property.

(4) The owner of record is responsible and liable for all charges to the person who has removed, stored or otherwise disposed of property impounded pursuant to this section; fees may be charged at the discretion of the park manager for the impoundment and storage of property impounded pursuant to this section.

(5) Impoundment of motor vehicles and boats shall be conducted in accordance with state law.

(c) **Disposal of property.**

(1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60 day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the park manager's custody, if the owner cannot be identified.

(2) Unclaimed found property shall be stored a minimum of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the

Oklahoma Tourism and Recreation Department, Division of State Parks. If a finder claims such property the finder shall be responsible for any fees associated with such claimed property. Found property not claimed by the owner or an authorized representative or the finder shall be deemed abandoned.

(3) All unclaimed abandoned property shall become the property of the Oklahoma Tourism and Recreation Department, Division of State Parks and shall be disposed of in the following manner:

(A) Property which can be utilized for official state park business ~~which has a value of $100.00 or more~~ shall be inventoried pursuant to procedure as state park property by the state park unit where the property was abandoned and utilized by that park unit or any other park unit where such property may be applicable.

(B) Property which cannot be utilized for official state park business ~~which has a value of $100.00 or~~ more shall be inventoried pursuant to procedure as state park property by the state park unit where the property was abandoned and liquidated at the next Oklahoma Tourism and Recreation Department's sponsored auction.

725:30-4-18. Alcoholic beverages and controlled substances

(a) The use or consumption of alcoholic beverages with **less than or equal** to three and two-tenths percent (3.2%) alcohol by weight within park areas is allowed in accordance with the provision of this section.

(b) The following are prohibited:

(1) The consumption of alcoholic beverages within park areas when such alcoholic beverage is **in excess** of three and two-tenths percent (3.2%) alcohol by weight and mixed beverage coolers except with an approved state license. In any event the park manager has authority to allow, or not, the use of alcohol in excess of 3.2% when the requisite license is held.

(2) The possession and consumption of a non-alcoholic or alcoholic beverage, as defined in subsections (a) and (b)(1) of this section, by a person under 21 years of age.

(3) The sale or gift of a non-alcoholic or alcoholic beverage, as defined in subsections (a) and (b)(1) of this section, to a person under 21 years of age.

(4) The possession of a controlled substance, unless such substance was obtained by the possessor directly or pursuant to a valid prescription, from a practitioner acting in the course of professional practice allowed by state law [63:2-418].

(5) Presence in a park area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person or damage property or natural resources.

(c) The park manager may close all or portions of a public use area or facility to the consumption of beverages containing alcohol including 3.2% alcohol product when:

(1) The consumption of such beverages or the possession of an open container of such beverages would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(2) Incidents of aberrant behavior related to the consumption of such beverages are of such magnitude that the diligent application of enforcement, over a reasonable period of time, does not alleviate the problem.

(3) Violating a closure pursuant to this subsection is prohibited.

725:30-4-20. Soliciting

The following is prohibited in state parks:

(1) Soliciting or demanding gifts, money, goods or services.

(2) Selling, hawking, peddling any goods, wares, merchandise, liquids, edibles or any item of value without a contract, or lease agreement approved by the ~~Commission~~ Department.

725:30-4-25. Memorialization

~~(a) The installation of a monument, memorial, tablet, structure or other commemorative installation in a park area without authorization of Commission is prohibited.~~

~~(b) The scattering of human ashes from cremation is prohibited except pursuant to the terms and conditions of a permit.~~

(a) The installation of a monument, sign, structure or other commemorative installation in a park area without Commission authorization is prohibited.

(b) The naming of a state asset using the name of an individual requires Commission authorization.

(c) Signs or exhibits that interpret the history of a state park area may contain the names of individuals. Such interpretive signage shall be approved by the Executive Director.

(d) The scattering of human ashes from cremation is prohibited except pursuant to the terms and conditions of a departmental Use Permit.

SUBCHAPTER 6. FEES, DISCOUNTS AND WAIVERS

725:30-6-1. Fee authority, requirements, discounts and waivers

(a) Recreation fees are hereby established as approved by the Oklahoma Tourism and Recreation Department Commission. The Commission shall prescribe rates, fees, tolls, or charges for the services, facilities and commodities rendered by all property of the Commission [74:2220]. Such fees, rates and charges shall be based upon staff recommendation pursuant to prevailing market conditions for similar facilities, services or merchandise. Fees, rates and charges shall be structured in a manner that is competitive with the private sector and avoids undercutting.

(b) All fees and charges shall be posted in a convenient location in each park. Every person using any facility shall be charged with the same fee except:

(1) Individuals 62 years of age and over and his or her spouse ~~are entitled to~~ may receive discounts for camping, cabin rental, golf, cave tours, swimming and bicycle rentals. A driver's license shall be used for verification of age [74:2220].

(2) Individuals who have been certified as totally disabled as defined by state or federal law and their spouses shall be entitled to a discount which shall apply to use of, or access to, recreation facilities, regardless of residency. Acceptable means of verifying total disability include: the presentation of a Medicare card issued to an individual prior to their 65th birthday; a Notice of Award letter from the Social Security Administration; hunting and fishing license that notes total disability; award letter issued by the Department of Veterans Affairs or a document issued by a retirement or insurance board, commission or administration that attests to the individual's total disability; or a physicians letter, on letterhead stationery, that declares the individual is totally disabled. [74:2220].

(3) Children's groups that provide beneficial services ~~are entitled to~~ may receive discounts for camping, shelters and swimming [74:2220]. Such services shall be restricted to projects which provide environmental education awareness such as tree planting, refuse clean up, or wildlife habitat improvement. Children's groups performing a minimum of 2 hours service toward such projects shall be entitled to prescribed fee discounts. For the purpose of this section a group is 5 or more persons and a child is a person under the age of 18.

(c) The director may, when in the public interest, prescribe times or periods during which the collection of fees may be waived or suspended.

(d) The director may offer special group or promotional rates in accordance with 74 O.S., Section 2221.

(e) Using campground sites, facilities, equipment or services, or participation in group activities, recreation events, or other specialized recreation used for which fees have been established without paying such fees is prohibited. Violation of the terms and conditions of this section may result in the suspension or revocation of the use of the facility, equipment or service or any other penalties prescribed by state law.

(f) Entrance or day-use charges established by the Oklahoma Tourism and Recreation Department Commission, in accordance with 725:30-6-1, shall be evidenced by a receipt or pass sold upon demand from the public or at the entrance of any designated entrance or day-use charge facility. The method of collection will be by deposit in a self-pay receptacle or payment to Department personnel who will provide a cash receipt.

SUBCHAPTER 8. CAMPING AND DAY USE

725:30-8-1. Definitions

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

"Primitive campsite" means a site or area where there are no utilities, sanitation facilities or developments and is generally a significant distance from emergency services.

"Unimproved campsite" means a site where there is no water, electric or sanitation hookups for recreational vehicles but water, tables and grills are available in the area.

"Semi-modern campsite" means a site with a table, grill and electric utility service and water hydrants either at the site or in the area.

"Modern campsite" means a site which may have a table, grill, electric utility service, sanitation dump and water.

"Tent site" means a campsite where tents may be erected for overnight camping which includes erecting tents upon unimproved, semi-modern or modern campsites.

"Reserved/assigned camping" means camping in an area with gate and site attendant present during the recreation season. Reservations are accepted.

"Non reserved/assigned camping" means camping in an area which is not secured with a gate and a site attendant may not be present. Reservations are not accepted and are based on first-come, first-served.

"Family unit" means either a married couple, an adult (over 18 years of age, or two adults with a child or children who are under 18 years of age.

"Camping/sleeping unit" means any method used for remaining overnight for the purpose of camping in a state park unit which includes ~~but is not limited to~~ tents, recreational vehicles, ~~cots, sleeping bags or any other method not described herein~~ or trailers.

725:30-8-3. Fee collection, restrictions and exemptions

(a) The daily fee covers use of facilities ~~from 5:00 p.m. on day of payment~~ until ~~5:00 p.m.~~ 2:00 p.m. the ~~following~~ day of check-out. Check in prior to 5:00 p.m. may be permitted by the Park Manager.

(b) Camping fee receipts are non-transferable.

(c) Camping fee receipts shall be maintained at the campsite and available for review upon request by the park manager, park ranger or any other official designated to collect fees.

(d) Unimproved camping fees shall be assessed and charged in the following manner:

(1) Persons in a "family unit" shall only be charged one (1) unimproved camping fee ~~regardless of the number of "sleeping units".~~ This applies when the family unit is not more than 2 parents and dependent children or grandparents and grandchildren only.

(2) Persons not in a family unit shall be charged one (1) fee for each "sleeping unit".

(3) Organized groups shall be charged according to the rule of four (4) which is one (1) unimproved fee for each multiple of four (4) persons. Children's groups may receive a discount in accordance with 725:30-6-1(b) (3).

(e) Improved camping fees shall be assessed and charged in the following manner:

(1) One (1) recreational vehicle fee shall be charged for each unit occupying an improved site.

(2) If the improved site is not occupied by a recreational vehicle but rather with other "sleeping unit" methods the rules defined under (d) of this section shall apply and improved camping fees shall be assessed.

(3) One (1) tent only may be established as an extension to a recreational vehicle in an improved site. There shall be no charge for this extra tent if it is a small profile children's unit used by dependent children under the age of 18 whose parent or parents or grandparents are occupying the improved site. Any other person, such as friends or relatives, shall be charged one (1) unimproved fee for the extra tent. Fees for use of utilities for the additional tent will be in accordance with the utility fee structure for improved sites. The park manager has discretion to determine fee application.

(f) Any person who utilizes any type of campsite, regardless of equipment, shall pay the established fee for said site.

725:30-8-4. Time limits and extensions

(a) The following is prohibited:

(1) Camping for periods longer than 14 consecutive days within the same campsite or campground depending on the park during the camping season.

(2) Camping within the same state park unit for periods longer than 14 consecutive days without an extension approved by the park manager.

(b) Camping is permitted for longer than 14 days in accordance with the following conditions:

(1) The park manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon the degree of park use, anticipated weekend or holiday occupancy and recreation season.

(2) Persons receiving extended camping privileges shall be limited to specific campsites or campgrounds as defined by permit.

(3) Persons with a medical disability, who are currently under a physicians care for such disability, may maintain the same campsite for periods longer than 14 days with an approved permit. Verification of such disability shall be provided to the park manager at the time an extension is requested.

(4) Extensions shall be requested 48 hours prior to the requested date of the extension.

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

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

"Daily" means the charge for use of a camp site from 5:00 p.m.~~on the day of payment~~ until ~~5:00 p.m.~~2:00 p.m. the ~~next~~ day of check out.

"Deposit" means the normal deposit for the first night's rate to be applied to the last night of the reservation. A deposit may be in the form of cash, check or properly authorized and processed credit card.

"Free shelter" means shelters designated by the park manager available free of charge on a first-come, first-served basis.

"Function space" means any area of the park unit used for purposes other than sleeping accommodations, such as meetings, banquets, dances and receptions.

"Group" means 8 or more persons.

"Group reservation" means a reservation for 20 or more cabins for one or more nights.

"Holiday weekend" means any three day weekend during the summer season when a state-declared holiday falls on a Friday or Monday.

"One-half day" means a period of time before 2:00 p.m. or after 4:00 p.m.

"Per day" means 6:00 a.m. to 11:00 p.m.

"Reservation" means a confirmed request for a park accommodation or facility which is available to be reserved and such availability has been verified and a deposit received by the park unit.

"Season" means, for the purposes of this subchapter only, the period of time between May 15 and September 16 each year.

"Year-to-day" means the same day, week, weekend or holiday of the subsequent calendar year.

725:30-12-3. Group camps

(a) **Group camp season.** Group camps open April 1 and close October 31 of each year. Exceptions may be approved by the park manager.

(b) **Application.**

(1) Reservation applications are accepted on a year-to-day basis.

(2) Applications for a reservation may be obtained by contacting the ~~park manager at the~~ park unit in which the reservation is desired ~~or by contacting the Division of State Parks administrative offices in Oklahoma City.~~ Applications shall be completed in full and define an alternate date.

(3) Applications shall be mailed directly to the park unit for which the reservation is requested.

(c) **Reservations and reservation priorities.**

(1) Reservations for groups requesting the use of the group camp for 5 consecutive days or more shall be accepted and confirmed on a first-come, first-served basis, except as provided for in OAC 725:30-12-5(c)(4).

(2) Reservations for groups requesting the use of the group camp for less than 5 consecutive days shall be confirmed after January 1st each year.

(3) In instances when 2 or more groups have requested the same group camp on the same date, first consideration will be given to the earliest postmark date on the envelope

in which the application was submitted. In cases of 2 identical postmark dates, first consideration shall be given to the group having the same reservation dates in the previous year. The next consideration will be the requested alternate date.

(4) The number of reservations is not limited during any single season, and the park manager shall give consideration to serving the greatest numbers of groups and the maximum number of persons. In addition, the park manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of the group camp. Such determinations shall be based upon the reservation type, size and activities.

(5) If an application is accepted a request for reservation deposit shall be mailed or presented to the group representative. The deposit shall be equal to the first night's rate and shall be mailed or presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation may be cancelled. Failure to submit an accurate deposit amount may result in cancellation of the reservation. Upon receipt of the deposit the reservation will be confirmed. Once confirmed a reservation will not be cancelled or changed to accommodate any other group.

(6) Cancellation of reservations shall be made by the group representative 60 days in advance of the occupancy date which is listed on the confirmed reservation form or the deposit shall be subject to forfeiture.

(7) In cases where the group camp is not reserved it may be rented to the first group making application and providing a deposit on a first-come, first served basis.

(d) **Restrictions and general information.**

(1) No group will be permitted to reserve a group camp for 2 successive holiday or special event periods.

(2) A damage and cleaning deposit may be requested by the park manager.

(3) Group directors shall receive the area between 2:00 p.m. and 4:00 p.m. on the first day of the reservation or in its present condition at any other time.

(4) All fees are due and payable upon departure except as defined by the park manager.

(5) The group camp will be furnished with silverware, china, drinking glasses, pots and pans, chairs, beds, tables, paper products, mattresses and mattress covers. All other equipment, bedding and supplies necessary for the operation, cleanliness and safety of the group camp shall be provided by the group.

(6) A group camp director shall be provided and shall be no less than 25 years of age and one (1) counselor shall be provided for every eight (8) children who shall be no less than 18 years of age.

(7) Any damages to property or injuries shall be reported to the park manager.

(8) Arrangements for medical care shall be arranged in the nearest community prior to group camp occupancy.

(9) Groups using pools or water related recreational facilities shall provide a waterfront director who holds a valid lifesaving certificate as defined by the American Red Cross and is no less than 18 years of age. The Oklahoma Tourism and Recreation Department, Division of State Parks may provide lifeguard services pursuant to the fee defined in 725:30-6-1. Such fee shall not exceed the posted maximum limit which has been set forth by the Oklahoma Tourism and Recreation Department Commission. Swimming pools may be reserved at the discretion of the park manager.

(10) Recreational vehicles may be parked in the vicinity of the group camp at the discretion and designation of the park manager based upon the established fee ~~of semi modern campsites~~ for the campsite type.

(11) Group camps shall be left clean and sanitary prior to check out time which is ~~12:00 noon~~11:00 a.m. on the scheduled day of departure.

(e) **Prohibited activities.** The following is prohibited:

(1) Using the group camp for purposes other than those activities which are approved by the park manager.

(2) The sale of merchandise, goods or services to anyone other than a member of the group.

(3) Transfer or assignment of the group camp reservation to any other group without authorization of the park manager.

(4) Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of the use of the group camp.

725:30-12-4. Shelters

(a) Reservation and reservation priorities.

(1) Shelters shall be reserved on a year- to-day basis.

(2) Reservations shall be taken on a first-come, first served basis.

(3) A reservation can be made by contacting the park unit in which the reservation is requested.

(4) If accepted, a request for reservation deposit shall be mailed or presented to the person requesting a reservation. The deposit shall be equal to the fee charged for the entire shelter reservation period and shall be presented to the park unit within 14 days (excluding Sundays) from the date the request for deposit was mailed from the park unit or the reservation shall be cancelled.

(5) Cancellation of the reservation shall be made 5 days in advance of the occupancy date or the deposit shall be subject to forfeiture.

(6) In cases where the shelter is not reserved, it may be reserved up to 24 hours in advance by providing a deposit on a first-come, first served basis.

(7) A damage deposit may be required at the discretion of the park manager.

~~(8) A group may use an unreserved shelter free of charge unless reserved as defined by reservation requirements set forth in this subchapter.~~

(~~9~~8) The park manager may determine the length of the reservation so that successive reservations will result in the greatest occupancy of shelter use. Such determination shall be based upon the reservation type, size and activities.

(~~10~~ 9) Persons may reserve a shelter for half ($\frac{1}{2}$) days which is fifty percent (50%) of the full daily rate.

(~~11~~ 10) Picnic equipment and supplies may be left in the shelter overnight when shelter is rented for 2 or more days.

(b) Special considerations. Shelter rental discounts are available for volume campsite rental as follows:

(1) 10 campsites per day - 50% discount

(2) 20 campsites per day - 75% discount

(3) 30 or more campsites per day - 100% discount

(c) Prohibited activities. The following is prohibited:

(1) Using a shelter for purposes other than those approved by the park manager.

(2) The sale of merchandise, goods or services to anyone other than a member of the group.

(3) Violation of the terms and conditions as defined in this section is prohibited and may result in the suspension or revocation of use of the shelter.

725:30-12-5. Reserved/assigned and group camping

(a) **Reservations and reservation priorities - reserved/assigned camping.**

(1) Reservations shall be accepted on a year-to-day basis.

(2) Reservations shall be taken on a first-come, first-served basis.

(3) A reservation can be made by contacting the park unit in which the reservation is requested.

(4) The minimum reservation shall be for 2 nights on weekends and 3 nights on holiday weekends during the season.

(5) If accepted, a request reservation deposit shall be ~~mailed or presented to~~ provided by the person requesting a reservation. The deposit shall be equal to the first night's rate (3 nights on holiday weekends) and presented to the park unit within 14 days (excluding Sundays) from the day the request for deposit was mailed from the park unit or the reservation shall be cancelled.

(6) Cancellation of the reservation shall be made 5 days in advance of the occupancy date or the deposit shall be subject to forfeiture, unless otherwise directed by the park manager. A transaction fee may still apply.

(7) Reservations shall be held without guarantees until 6:00 p.m. Reservations may be held after 6:00 p.m. with prepayment by check, money order or accepted credit cards in those parks that provide credit card services.

(8) Persons may reserve a campsite in person on a first-come, first served basis when campsites have not been reserved and are available at the established reserved/assigned campground fee.

(9) Sites shall be reserved by availability and not by site number, unless the park manager determines otherwise.

(10) One tent may be established in the immediate area of a rented site and a fee may be imposed at the discretion of the park manager.

(11) The provisions in (1) through (9) of this subsection apply only to State Parks offering reserved camping.

(b) **Reservation and reservation priorities - group camping.**

(1) Reservations shall be accepted for groups when there will be five (5) or more sites occupied by the group for 2 or more consecutive nights or three (3) consecutive nights on holiday weekends on a year-to-day basis. At the park manager's discretion, reservations for groups (5 or more sites) may be requested for dates not in excess of three years from the date of application.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by one (1) person representing the entire group. The group representative shall provide the park unit:

(A) The arrival and departure dates;

(B) The number of campsites which will be occupied by the group; and

(C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) The provisions (1) through (3) of this subsection apply only to state Parks offering reserved group camping.

(5) Two methods of advance deposits are available for groups.

(A) A security bond deposit in the amount of $200.00 allows groups to make unlimited campground reservations for up to three years in advance. The deposit shall be submitted to the headquarters of the Oklahoma Tourism and Recreation Department.

(i) Upon notice of a group reservation a reservation confirmation shall be sent to the group representative.

(ii) When the $200.00 security bond deposit level is reduced by the terms set forth in (b) (6) of this section the group representative shall reestablish the $200.00 level within ten (10) days notice from the Department.

(B) Non-security bond deposits shall be made by the group representative 60 days in advance of arrival date in accordance with the following requirements or the reservation will be cancelled:

(i) The amount of deposit shall be equal to the first night's rate multiplied by the number of reserved sites, except on weekends and holidays.

(ii) The amount of deposit shall be equal to the nightly rate for two (2) nights multiplied by the number of sites on weekends during the season.

(iii) The amount of deposit shall be equal to the nightly rate for three (3) nights multiplied by the number of sites on holiday weekends during the season.

(iv) Upon receipt of deposit for non-security bond deposit a reservation confirmation shall be sent to the group representative.

(6) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 10 days in advance of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(7) Upon arrival at the reserved/assigned campground the group representative or designee shall provide payment for the balance of the reservation period and verification for senior citizen and totally disabled person discounts for the entire group.

(8) Visitation and reservation circumstances shall dictate consecutive site allocation for groups.

(c) **Reservation and reservation priorities - rallies and large groups.**

(1) Reservations shall be accepted outside of campgrounds for groups in excess of 20 recreational vehicle units where park facilities can accommodate the size of the group on a year-to day basis.

(2) A reservation can be made by contacting the park unit in which the reservation is requested 75 days in advance of the date of arrival.

(3) Reservations shall be made by one (1) person representing the entire group. The group representative shall provide the park unit:

(A) The arrival and departure dates;

(B) The number recreational vehicles; and

(C) The number of members applicable to a discount as defined in 725:30-6-1.

(4) A deposit shall be required in accordance with the terms set forth in (b) (5) of this section.

(5) Notice of cancellation for the entire group shall be received by mail or telephone from the group representative 30 days in of the occupancy date or the deposit amount will be deducted from the security bond deposit or the deposit will be forfeited for non-security bond deposits.

(6) A permit requiring liability insurance may be required contingent upon activities conducted by the group in accordance with rules set forth in subchapter 16 of this chapter.

(7) Upon arrival the group representative or designee shall provide payment for the balance of the reservation period for the entire group.

(d) **Transferring of reservations.** The transferring of campsite reservations is prohibited.

SUBCHAPTER 18. SPECIAL USE AREAS

725:30-18-3. McGee Creek Natural Scenic Recreation Area - McGee Creek State Park

(a) The Natural Scenic Recreation Area is a unique 8,900 acre natural recreational resource authorized by Congress as a feature of the McGee Creek Project. The Natural Scenic Recreation Area was formulated, through a public involvement process, based on four concepts:

(1) a quiet water zone,

(2) a wilderness-type recreational experience,

(3) non-motorized activities, and

(4) preservation of natural and cultural resources.

(b) In compliance with environmental resource use regulations as defined by the United States Department of Interior, Bureau of Reclamation, the following interim rules shall apply to the McGee Creek Natural Scenic Recreation Area of McGee Creek State Park:

(1) **Access to the Natural Scenic Recreation Area.** Access to the Natural Scenic Recreation Area is authorized by permit only and available at the entrance station and park office. The purpose of the permit system is to minimize environmental impacts in the Natural Scenic Recreation Area. Permit issuance is based upon the number of persons individually or in a group until the maximum daily limit is reached. The maximum daily limit may be adjusted based upon the changes in the number of miles of designated trails, updated user group ratio data, and/or adjustments in response to the results of the ongoing monitoring program, including user surveys. Maintenance of trails by the different user types is considered in setting the maximum daily limit. Permits are issued for each user type and are not transferable or interchangeable.

(A) The following table defines maximum daily limits (users/mile/day):

	Multi-use trails	Biker/Hiker only	Hiker only
Biker	1.0	4.1	0
Equestrian	2.0	0	0
Hiker - land access	3.6	14.6	21.2
Hiker - water access	0.9	3.7	5.3
Total user/mile	7.5	22.4	26.5
Camper	(1.5)	(4.5)	(5.3)
Impact units	26.5	26.5	26.5
Half-day user	40 vehicles maximum (4 hour limit)		
Boater/fishermen	No limit (shoreline area access only)		

(B) The Oklahoma Tourism and Recreation Department, Division of State Parks has the discretion to temporarily restrict use within the Natural Scenic Recreation Area under certain circumstances such as severe weather conditions, high fire danger, trail maintenance, special events and other approved uses.

(2) **Day use permits.** Half ($\frac{1}{2}$) of the full day permits may be reserved up to 90 days in advance. Half-day permits are issued on a first-come, first served basis only. Any reserved permit not picked up by 10:00 a.m. of the date of issue will be released for use by others unless previous arrangements have been made.

(3) **Overnight camping.** Camping in the Natural Scenic Recreation Area will be by permit only and be restricted to specified areas. When the permit is issued, users will be provided with a map of the Natural Scenic Recreation Area indicating the location of their reserved/assigned camp area for each night of their stay.

Users shall park their vehicles in a secured parking area at the Natural Scenic Recreation Area entrance and enter the Natural Scenic Recreation Area from the trail-head access only. The camper maximum daily limit will indicate the maximum number of campers allowed throughout the Natural Scenic Recreation Area at any given time. Half (50%) of the daily camping permits may be reserved up to 90 days in advance. The remaining camping permits shall be issued on a first-come, first-served basis up to the maximum daily limit. Individual party size shall be limited to a maximum of 12 persons per campsite for sanitary reasons. Camping permits not picked up by the opening of business of the second day of the permit may be released for others to use. Persons arriving after the close of business hours shall camp in the McGee Creek State Park camping areas, and obtain the permit the next day. The maximum length of stay for each permit is four days, beginning with sunup of the day the permit is issued and ending at sunset of the last day. Camping permits may be renewed depending on availability, and only if the camper maximum daily limit has not been reached.

(4) **Water access permits.** Permits for water access for hiking and camping shall be permitted in accordance with (2) and (3) of this subsection. Some campsites may be designated for water access users only. Vessels may be anchored, tied to shore, or carried to the campsite for storage. Construction of racks or bars for dry storing of vessels is prohibited. Use of internal combustion engines within the quiet zone is prohibited. Electric motors, paddles, poles, or sails are permitted.

(5) **Equestrian permits.** Permits for equestrian access shall be permitted in accordance with (2) and (3) of this subsection. Some campsites may be designated for equestrian users only. Horses tethered to trees or structures are prohibited. Hobbles or ground tying is prohibited. Use of feed bags and picket lines are required adjacent to the designated camping area. Horses shall be kept in the campsite only as long as it takes to unpack or pack them. Users shall not be allowed to turn their horses loose to graze. Horses shall not be left unattended for more than a few hours. Stallions are prohibited. Since all trails open to equestrian use will be multi-use, horse droppings shall be dispersed off the trails. Horse droppings at the camp sites shall be buried. Tying up horses overnight within 100 yards of any body of water or creek is prohibited.

(6) **Multi-use trails.**

(A) With the limited number of miles of trails ~~initially~~ available, all groups shall be required to use the main trails. Equestrians shall be limited to logging roads or trails designated for equestrian use only. Bicyclists may be allowed on ~~additional~~ designated trails that are appropriate for their use. The remainder of the trails shall be restricted to hikers only. Any additional proposed trails shall be mapped and their use approved by the Bureau of Reclamation before they are opened. National accepted trail etiquette will apply to the Natural Scenic Recreation Area and any other guidelines posted at the trail head.

(B) Trail signage shall consist of painted blazes on trees and routed wood signs. The blazes shall be color coded by U.S. Forest Service Standards to indicate which user type can access that trail. The blaze shall be located at eye level to a hiker and, if possible, spaced so as to be in sight of the next marker. Routed wood signs shall be kept to the absolute minimum needed to identify junctions and campsites. These and other types of signs and their locations shall be submitted for approval by the Bureau of Reclamation.

(7) **Fire.** The use of wood fires shall be restricted to fire pans or fire blankets. Fire rings or pits are prohibited. Natural deadfall will be the only source material. Cutting of standing trees or large logs is prohibited. No axes or other large cutting implements shall be permitted into the area except for maintenance by Oklahoma Tourism and Recreation Department, Division of State Parks' staff and assignees. Campers entering the area shall be required to show that they have in their possession a fire pan, fire blanket, or backpackers stove before they are allowed to proceed. Ash and other residue from the fire will be disposed of as follows: large chunks of unburned wood will be buried; debris will be removed from the ash and packed out; ash will be dispersed outside the camp area over as much ground as possible. Disposal of ash within 100 yards of any body of water or creek is prohibited.

(8) **Disposal of human waste.** Disposal of human waste shall be accomplished by the use of cat holes. Every camper entering the area shall be required to have (or share) a small hand shovel for this purpose. Digging cat holes within 50 feet of any campsite or 100 yards from a body of water, creek or spring is prohibited. Large group latrines or pits are prohibited.

(9) **Llamas.** Until an in-depth study of llama activity can be conducted, llamas will be treated as pack animals. Restrictions set forth in (5) of this subsection shall apply to llamas.

(10) **Quiet water zone.** An internal combustion engine in the zone is prohibited. Electric motors shall be allowed and there will be no limit to the number of vessels accessing the zone. Any boater wanting to access the land portion of the Natural Scenic Recreation Area, other than the immediate shoreline area, shall be required to get a permit before entering the quiet water zone. Signage stating the rules shall be posted at the junction of the permit station road, the Grassy Hollow access road, the Grassy Hollow boat ramp, and the start of the quiet water zone which is defined by floating signs.

(11) **Special events.** Permitting of a limited number of periodic special large group events (except on holiday weekends) will be considered on a case by case basis. Factors to be considered before deciding whether to issue a permit shall include:

(A) Compatibility with the four environmentally quality concepts which govern the use of the Natural Scenic Recreation Area.

(B) User impacts observed to date from the monitoring program.

(C) Any other rules set forth in subchapter (4) of this chapter.

(12) **Natural Scenic Recreation Area restrictions.** In addition to the restrictions and prohibitions set forth in (1)-(11) of this subsection the following prohibitions shall apply to the Natural Scenic Recreation Area:

(A) The use of motorized vehicles except emergency and maintenance vehicles.

(B) Development and construction unless authorized by the Bureau of Reclamation.

(C) Trace backpacking rules.

(D) Access to the Ferndale Bog area without prior authorization of the park manager and director with concurrence of the Bureau of Reclamation.

(E) Pets of any kind except horse and pack animals.

(F) Using any area except designated trails and camping areas.

(G) Removal of artifacts and plants.

(13) **West Buffer Zone.** The 1,200 acre portion of the Natural Scenic Recreation Area west of the McGee Creek is jointly managed by the Oklahoma Tourism and Recreation Department and the Oklahoma Department of Wildlife Conservation in accordance with a Memorandum of Understanding dated September 14, 1987. All use and development within the 1,200 acres is subject to the same Natural Scenic Recreation Area environmental quality concepts previously discussed. No trails will be developed within the 1,200 acre area for the interim operating plan. Accordingly, only wilderness type hunting will be allowed initially with access by permit only from the Wildlife Management Area. Appropriate signs will be posted to identify the area and notify users of applicable rules and regulations. Although no Maximum Daily Limit limits are included in the initial interim operating plan (the maximum daily use to date has been 6 hunters), the use levels and associated impacts will be informally monitored. If necessary, a hunter Maximum Daily Limit may be established prior to implementation of the final Resource Management Plan.

(14) **Natural Scenic Recreation Area rules.** All rules defined in this chapter shall apply to the Natural Scenic Recreation area. Violating any rules pursuant to this section or chapter may result in the suspension or revocation of a permit, use privilege or any other penalties prescribed by state law.

SUBCHAPTER 20. VOLUNTEERS

725:30-20-2. Application, qualification, selection and restrictions

(a) Any person may volunteer, without regard to race, color, creed, religion, age, sex, political affiliation or national origin, when work or other services are designated by the park manager as those which may be accomplished by a volunteer.

(b) Application for volunteer work may be made by contacting the park manager in the park where the person wishes to volunteer their services.

(c) An interview shall be conducted by the park manager or designee to determine if such person is physically capable or has the required education and/or experience to meet the requirements of the position. Such requirements shall be set forth by the park manager.

(d) The park manager may request the volunteer applicant to disclose a self identification of medical disability or obtain a medical examination if there is a question regarding the volunteer's physical capability to perform assigned tasks associated with a position.

(e) Any person convicted of any violent crime, sexual offense, crime against another person, crime involving the use of deadly force, or any crime involving moral turpitude or other serious offense; or any person who is an illegal alien in the United States is prohibited from participating as a volunteer.

(f) A person shall be considered selected for volunteer services when a volunteer contract has been fully executed between the volunteer and the park manager. Where volunteer services will result in fee waiver for facility use the park manager and director's approval shall be required.

SUBCHAPTER 22. CONCESSION LEASES

725:30-22-2. Bidding process

The Department shall competitively bid a property or facilities for a concession lease as follows:

(1) A bid package shall be prepared by the Department which shall include the following:

(A) Instructions to bidders which define the important times and dates of the bidding process.

(B) A statement of the process by which bids shall be awarded, including the method of evaluation.

(C) Explanation of the reasons for bid rejection.

(D) An invitation to bid (ITB) form which includes space for the prospective bidder to propose what rents will be paid; what services will be provided; and a place for the bidder's signature, date and notary public all of which shall be mandatory requirements.

(E) A required financial statement, listing experience and background.

(F) An operation and management proposal.

(G) General terms applicable to the ITB.

(2) Concession leases shall be advertised in a minimum of two (2) major newspapers or other publications for a minimum of ~~fifteen (15) days~~ one ad in each of two consecutive weeks in the region where the property or facility is located.

(3) Interested parties may request a bid package from parties defined in the list provided in the concession lease advertisement. Requests for bid packages shall be made between the hours of 8:00 a.m. and 4:00 p.m. on regular workdays excluding weekends and holidays. Requests for bid packages shall be mailed by the Department within three (3) days of receipt of the request.

(4) Fully executed bid packages shall be received, either by mail or in person at the location stated in the ITB no later than the date and time of the pubic bid opening.

(5) Bid packages shall be opened and reviewed at the time of the bid opening. The name of the bidder and amount of proposed rent shall be publicly announced and documented by at least two Department employees, ~~including one from the purchasing section of the Department~~ at the time of the bid opening.

(6) No award shall be made at the bid opening. The Department reserves the right to reject all or part of all bids within thirty (30) calendar days from the bid opening. Such notice of rejection, stating the reasons for rejection, shall be provided in writing within ten (10) calendar days of the rejection.

(7) The following includes reasons for rejection, but the Department is not limited solely to these reasons:

(A) The bid was not submitted in accordance with the deadline set forth in the ITB.

(B) The information requested in the ITB concerning proposed rents, bidders' signature and notary were not completed or fully executed.

(C) The bid did not meet the requirements set forth in (1) (D) (E) and (F) of this section.

(D) The bid included inaccurate, false or inauthentic information or inaccurate, false or inauthentic documentation.

(E) The Department has withdrawn the ITB.

(F) Unfavorable results of criminal background check. Agricultural leases may be exempt from the requirements set forth in (1) (E) and (F) of this subsection.

725:30-22-8. Grievance process

(a) Any customer of a contracted concessionaire may file a grievance with the Oklahoma Tourism and Recreation Department when he/she feels that the concessionaire has acted outside the bounds of standard business practices for that type of business. The written grievance must be noted as "OFFICIAL GRIEVANCE REQUIRING INVESTIGATION" within the document. The grievance letter must state the circumstances or what action by the contracted concessionaire led to the grievance.

(b) The grieved party may submit the grievance in writing to the Director for review.

(c) Grievances may be filed in regard to, but not limited to, pricing, customer service, or business policy.

(d) Upon receipt of the written grievance, the Director ~~of Parks, Resorts and Golf~~ will investigate the validity and whether or not the grievance falls within an area of contract non-compliance.

(e) After an investigation the Director shall draft a written response to the grieved party with his/her findings and any action, if needed, taken by the department regarding the concessionaire's business transaction with the grieved party.

(f) If the grieved party is not satisfied with the ~~Director of Parks, Resorts and Golf~~ Director's response then the grieved party may make a written request that the grievance be forwarded to the Executive Director of the Oklahoma Tourism and Recreation Department.

(g) The Executive Director of the Oklahoma Tourism and Recreation Department will follow the same procedure as required of the Director ~~of Parks, Resorts and Golf~~ and draft a final written directive of actions, if any, the department will take regarding the contracted concessionaire.

(h) The findings of the Executive Director shall represent the final determination and the grievance process will be considered closed upon completion of the response by the Executive Director.

SUBCHAPTER 26. VEHICLES AND TRAFFIC SAFETY

725:30-26-14. Off-road vehicles

(a) Off-road vehicles, when operated within designated off-road vehicle areas, shall operate such vehicles in a reasonable and prudent manner which provides for the safety and protection of the operator, wildlife, park resources, and the general public. Operating an off-road vehicle in an unreasonable or imprudent manner or without the proper equipment as defined in subsection (b) of this section may result in the suspension or revocation of off-road vehicle area use privileges.

(b) The following equipment is required for off-road vehicles operation in designated areas:

(1) The vehicle will have a whip, which is any pole, rod, antenna, etc., that is securely mounted on the vehicle and which extends at least ten feet from the surface of the ground to the end of the whip. In addition, when the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any flags attached thereto. Lake Murray ATV area is exempt from this section.

(2) At least one whip attached to the vehicle shall have a flag that is s solid bright orange in color and that is at least six inches by twelve inches in size. The flags must be within ten inches of the tip of the whip and may be of triangular, square, or rectangle shape. Club or other flags may be mounted below the above flag or on a second whip. Lake Murray ATV area is exempt from this section.

(3) Each 4 wheel vehicle equipped with bench or bucket seats must be equipped with adequate roll bars or roll structure or sufficient strength to support the vehicle weight.

(4) Each 4 wheel vehicle shall be equipped with a seat and seat belt for the vehicle operator and each passenger, except a 4 wheel cycle equipped with a seat that must be straddled by the operator and passenger shall not require seat belts. Each 2, 3, and 4 wheel cycle shall have a seat for the vehicle operator and each passenger.

(5) For operation at nighttime, every vehicle shall be equipped with at least one headlamp emitting a white light visible from a distance of not less than 200 feet to the front and at least one tail lamp emitting a red light visible not less than 200 feet to the rear. For the purposes of this section, "nighttime" is defined as $\frac{1}{2}$ hour after sunset to $\frac{1}{2}$ hour before sunrise.

SUBCHAPTER 29. LODGE OPERATIONS

725:30-29-6. Special rates and promotional discounts

(a) Individuals sixty-two (62) years or older (and their spouse if using it together) ~~will~~ may be offered a special rate for a guest room or cottage providing they identify themselves as senior citizens and the request is made prior to use. This special rate may be restricted during periods of heavy demand.

(b) Individuals who have been certified as totally disabled under state or federal law, will be offered a special rate providing request is made prior to use of the guest room or cottage. This special rate may be restricted during periods of heavy demand.

(c) Guest rooms, cottages, banquet space and/or meeting space may be made complimentary or a discount may be offered when it is determined by the Director of State Parks or Lodge Manager that such action is in tandem with the marketing program and likely to result in improved financial condition for the Lodge System.

(d) Special rates for groups will be established in conjunction with the establishment of individual rates. Group rates or any promotional discount afforded them will apply only when a Group Reservation Agreement is fully executed and will be limited to the provisions and terms stated therein.

[OAR Docket #10-1001; filed 6-10-10]

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

[OAR Docket #10-1000]

RULEMAKING ACTION:
PERMANENT final adoption
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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Title 74. Chapter 47C - Oklahoma Tourism, Parks and Recreation Enhancement Act, Section 2204 - Oklahoma Tourism and Recreation Commission - Powers, Rights, and Duties
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ANALYSIS:
The Department made changes to Part 1 to update a change in statute.
The Department made changes to Parts 2, 3 and 5 to remove items that are a duplication of statute, and to add language contained in the current Oklahoma Film Enhancement Rebate Program Guidelines and Instructions for Application, which have been developed over the past year.
CONTACT PERSON:
The contact person is Kathy Hehnly, of the Oklahoma Tourism and Recreation Department. Ms. Hehnly can be reached at kathy.hehnly@oklatourism.gov, 405-230-8308 (phone) or 405-230-8508 (fax). The Oklahoma Tourism and Recreation Department is located at 120 N. Robinson, Suite 600, Oklahoma City, OK 73102.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FOURTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2010:

SUBCHAPTER 1. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

725:35-1-1. Purpose

The purpose of the Oklahoma Film Enhancement Rebate Program (Program) is to create a new incentive program to attract film and television production to the state. In accordance with 68 O.S. § 3624, this Program shall be administered by the Oklahoma Tax Commission and Office of the Oklahoma Film and Music Commission (OFMO), which is created within the Oklahoma Tourism and Recreation Department pursuant to 74 O.S. § ~~5026~~ 2236.

725:35-1-2. Definitions

~~(a) "Expenditure" or "production cost" includes, but is not limited to:~~

~~(1) wages or salaries of persons who are residents of Oklahoma and who have earned income from working on a film in Oklahoma, including payments to personal services corporations for the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,~~

~~(2) the cost of construction and operations, wardrobe, accessories and related services,~~

~~(3) the cost of photography, sound synchronization, lighting and related services,~~

~~(4) the cost of editing and related services,~~

~~(5) the cost of rental facilities and equipment, and~~

~~(6) other direct costs of producing a film.~~

~~(b) "Film" means~~

~~(1) a professional single media, multimedia program or feature,~~

~~(2) which is not child pornography as defined in Title 21, Section 1024.1(A) of the Oklahoma Statutes or obscene material as defined in Title 21, Section 1024.1(B)(1) of the Oklahoma Statutes.~~

~~(3) Qualifying films include, but are not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets.~~

~~(c) "Production company" means a person or entity who produces film for exhibition in theaters, on television or elsewhere.~~

(~~d~~a) "Application" refers to the Application of Eligibility for Rebate Programs.

(~~e~~b) "Director" refers to the Director of the Oklahoma Film and Music Office.

(~~f~~c) "Rebate" is defined as a certain percentage (defined in 68 O.S. § 3624) of production costs incurred in Oklahoma directly attributable to the production of a film in this state if the OFMO determines that the proposed project has a reasonable chance of economic success.

(~~g~~d) "Principal photography" is defined by the filming of major or significant components of a movie which involve lead actors.

(~~h~~e) "Production board" is a scheduling device that breaks every scene by location, by day and night, and by interior or exterior.

(~~i~~f) "Rebate claim" is defined as the documentation of production costs incurred in Oklahoma and submitted in compliance with the requirement of this Program.

725:35-1-3. Program requirements and qualification

~~(a) In order to be eligible for a rebate payment, the production company responsible for a film must:~~

~~(1) Submit documentation to the OFMO of the amount of wages paid for employment in Oklahoma to residents of Oklahoma directly related to the production;~~

~~(2) File an Oklahoma income tax return;~~

~~(3) Complete the OFMO Expenditure Form;~~

~~(4) To provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program".~~

~~(5) To provide the following prior to the beginning of principal photography:~~

~~(A) Application of eligibility for rebate programs ,~~

~~(B) Copy of the proposed budget,~~

~~(C) Copy of the script and the inclusion of the OFMO on the project's revisions distribution list and,~~

~~(D) Copy of the production board or equivalent documentation.~~

~~(6) To provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography.~~

~~(7) Provide the name of the completion guarantor, a copy of the bond guaranteeing the completion date, and a copy of the contract between the production company and the principal actors or equivalent proof of completion to ensure a mechanism for the compensation of local vendors.~~

~~(8) Provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars ($1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.~~

(~~b~~a) Production companies cannot use this Program in addition to the sales tax rebate provided in Title 68, Section ~~1357~~ 3624 of the Oklahoma Statutes.

(~~c~~b) Production companies shall provide an affidavit as required by law.

~~(d) The minimum budget for the film shall be Two Million Dollars ($2,000,000.00) of which not less than One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00) shall be expended in Oklahoma.~~

(c) The following is a list of qualifying Oklahoma expenditures:

(1) Above and below-the-line wages or salaries paid to Oklahoma residents

(2) Wages or salaries paid to Oklahoma Expatriates (as described in item (d) below)

(3) Salaries for resident and non-resident above-the-line personnel paid to loan-out corporations or limited liability companies registered to do business with the Oklahoma Secretary of State's Office. No more than Twenty-five percent (25%) of total rebated amount can be comprised of qualifying above-the-line salaries

(4) Underlying rights for screenplay and novels paid to an Oklahoma entity or individuals with an Oklahoma tax liability (also subject to the 25% cap detailed above)

(5) The cost of construction and operations, wardrobe, accessories and related services procured in Oklahoma or paid to an Oklahoma company

(6) The cost of photography, sound synchronization, lighting and related services

(7) Rental of facilities and equipment paid to an Oklahoma company

(8) Other direct costs of pre-production, production and post production of a film to include:

(A) Location scouting expenditures made in Oklahoma

(B) Employer paid payroll taxes for Oklahoma employees, including SUI, FUI, FICA, and Workers Comp

(C) Union fringe paid to Oklahoma crew

(D) Shipping and postage for packages originating within Oklahoma

(E) Hotel costs

(F) Completion bonding if utilizing an Oklahoma-based company

(G) Production insurance if utilizing an Oklahoma-based company

(H) The purchase of airline tickets for the purposes of location scouting and production of the film if utilizing an Oklahoma-based travel agency

(I) Per Diem paid to cast and crew for Oklahoma filming dates

(J) Third party audits conducted by pre-certified Oklahoma accounting firms

(d) Oklahoma Expatriate Program: Included in the definition of qualifying "crew" are wages and salaries paid to an individual registered as an Oklahoma Expatriate by the Oklahoma Film & Music Office. The Expatriate roster consists of Oklahoma below-the-line crew not currently residing in Oklahoma, who have pre-registered with the Oklahoma Film & Music Office, by first meeting all requirements. That roster will be made available to producers in an effort to supplement Oklahoma's existing crew base.

(1) If a producer chooses to hire one of the qualifying crew members whose name appears on that roster, wages and salaries paid to that person will qualify as an Expenditure or Production Cost and count towards the minimum requirement of Twenty-five Thousand ($25,000) in Oklahoma expenditures.

(2) Before rebate payment can be made, producer must provide proof to the Oklahoma Film & Music Office that the individual has filed (or has agreed in writing to file) an Oklahoma income tax return for the year services were rendered on the production to the Oklahoma Film & Music Office.

(3) A further requirement is that in exchange for utilizing a crew member from the Expatriate Roster as a qualifying local expenditure, the production must accept assignment of an intern provided by an Oklahoma institution of higher education or Career Tech for an agreed upon length of time during the course of the production (to be assigned to the expatriate or other appropriate personnel).

(e) Third Party Audit Requirement: In order to be eligible to receive rebate monies, the production must retain the services of an independent certified public accountant to serve as a Third Party Auditor. In order for this to be a rebatable expenditure, the production must appoint a Third Party Auditor who is licensed to do business in the state of Oklahoma and who shall not be related to the producer. The Director of the Oklahoma Film & Music Office must be provided with the name, address and telephone number of the independent auditor proposed by the producer in order to make contact with the auditor prior to beginning the audit. The audit shall be performed in accordance with auditing standards generally accepted in the United States of America and the auditor shall have sufficient knowledge of accounting principles and practices generally recognized in the film and television industries. The auditor shall present a final report based upon agreed-upon procedures:

(1) Only actual paid expenditures clearly and demonstrably in Oklahoma for the qualified production may be recorded and certified as direct production expenses or qualified personnel expenditures.

(2) The costs to be recorded are actual costs and shall not include any mark-ups or profit additions. These costs must be made in Oklahoma; must be directly attributable to the production or distribution of the qualified production which is the subject of the Oklahoma Film Enhancement Rebate Program; and must be subject to taxation in Oklahoma.

(3) The cost report must be in US dollars and the period during which the expenditures were incurred must be disclosed.

(4) It is the eligible production company's responsibility to ensure that all of the required information is provided.

(5) For payments made to loan out companies or limited liability companies, the auditor must verify that the loan out or LLC is registered with the Oklahoma Secretary of State's Office to do business in the state of Oklahoma.

(6) Auditor must ensure that salaries for both resident and non-resident above-the-line personnel paid to loan-out corporations or limited liability companies registered to do business in Oklahoma do not comprise more than Twenty-five percent (25%) of the total amount being submitted for rebate.

(f) End Credit Requirement: The following screen credit and the current Oklahoma Film and Music Office logo or written confirmation thereof must be included in the end credit crawl of all release prints of a completed short or long-form film: "Filmed in Oklahoma utilizing the Oklahoma Film Enhancement Rebate Program."

(g) Rebate Payout Timeline: For expenditures made in FY10 (July 1, 2009 - June 30, 2010) the rebate is payable on or after July 1, 2010 pursuant to the production meeting all requirements of the Oklahoma Film Enhancement Rebate Program. Thereafter, rebates will be paid out immediately after all requirements have been met with no fiscal year delay. Beginning July 1, 2010, and pending receipt of results and supporting documentation of Third Party Audit described in 2D, the Oklahoma Film & Music Office will approve or disapprove of all claims within a period of thirty (30) days. The Oklahoma Tax Commission shall, upon notification of approval from the Oklahoma Film & Music Office, issue payment for all approved claims.

(h) When, Where and How to Apply for the Rebate:

(1) Applications must be submitted at least sixty (60) calendar days but no more than one hundred eighty (180) calendar days prior to the start of production. Applications submitted more than 180 calendar days or less than 60 days prior to the scheduled start of production will not be accepted.

(2) Applications must be submitted to The Oklahoma Film & Music Office, 120 N. Robinson Avenue, Suite 600, Oklahoma City, OK 73102. Phone: (405) 230-8440 Website: www.oklahomafilm.org

(3) Applicants must complete, sign and submit hard copies of all required forms, which are available from the Oklahoma Film and Music Office at the above address, or on line at www.oklahomafilm.org, and provide the latest version of the shooting script and production budget. Required forms are: Form A - Project Information; Form B - Application of Eligibility; Form C - Filming Permit; Form D - Statement of Budget; Form E - Expatriate Program

Registration; Form F - Summary of Local Expenditures; Form G - Certification of Information; Form H - Confirmation of End Credit Inclusion; and Form I - Final Rebate Application.

(4) Applicants must schedule an interview to discuss their application with the Oklahoma Film & Music Office by calling (405) 230-8440. The meeting must be attended by a producer or a line producer, unit production manager or production accountant or their designee, subject to the approval of the Director of the Oklahoma Film & Music Office.

(i) Notice of Pre-Approval/Disapproval of Eligibility Application:

(1) If the Eligibility Application is approved, applicant will receive a letter of eligibility signed by the Director of the Oklahoma Film & Music Office listing the items provided on the application and any supporting documentation currently on file with the office along with the projected amount of rebate pending the production meeting all requirements under the Oklahoma Film Enhancement Rebate Program. At that point, the projected rebate amount, and only that specific amount, will be earmarked for the production, providing applicant meets all benchmarks in the application process.

(2) Receipt of the eligibility letter does not guarantee receipt of rebate monies. Final eligibility and the amount of the rebate will be determined after submission and review of the final application, the results of a Third Party Audit, and all required supporting documentation.

(3) If the Eligibility Application is not approved, the Oklahoma Film & Music Office shall provide applicant with a notice of disapproval which shall state the reasons therefore.

(4) As specified in Oklahoma statute, no more than one (1) application per fiscal year per specific production (based on production title, script and budget) will be accepted.

(j) Requirements after Principal Photography:

(1) No more than Ninety (90) calendar days after the payment of all Oklahoma expenditures, the production must submit the following to the Oklahoma Film & Music Office:

(A) Final Rebate Application (Form I)

(B) Final budget and signed statement of budget (Form D)

(C) Amount of wages and qualifying expenditures

(D) Final payroll report provided directly to the Oklahoma Film & Music Office from production payroll company

(E) Final cast and crew lists

(F) Daily production reports for all Oklahoma filming days

(G) Completed Summary of Local Expenditures (Form F)

(H) Final accounting ledger (all supporting documentation and receipts must be kept by the production company of record for a period of three (3) years)

(I) The production company has filed or will file any Oklahoma tax return or tax document which may be required by law

(J) Final production shooting schedule

(K) Results of Third Party Audit conducted by an accounting firm that has been mutually agreed upon in advance. Third Party Audit will be at the expense of the production. This is deemed a qualifying expenditure if certified Oklahoma accounting firm is used.

(L) Certification of Information, signed by producers and notarized before submission, stating among other things, that all information provided to the Oklahoma Film & Music Office for the purposes of qualifying for the Oklahoma Film Enhancement Rebate program are true and correct and that there are no unpaid salaries, invoices, reimbursements for damages or liens against the production entity in the State of Oklahoma. No rebate money will be released until this notarized documentation is on file with the Oklahoma Film & Music Office (Form G)

(M) End Credit Requirement as described in Item 2E

(2) Failure to provide the final information according to the time frame provided above may result in a loss of the credit. Within Thirty (30) days of all requirements being met, the Oklahoma Film & Music Office will issue a letter to Oklahoma Tax Commission, requesting rebate payment, copying production company contact.

(k) Requesting Exemptions to Open Records Act:

(1) The Oklahoma Film & Music Office is subject to the State of Oklahoma Open Records Act, which governs public access to the records of government agencies. Under Title 74 O.S. § 2231 of Oklahoma State Law, certain information provided to the Oklahoma Film & Music Office as a Division of the Oklahoma Tourism & Recreation Department, by a person or entity seeking economic advice from the Oklahoma Film & Music Office and any information compiled by us in response to submissions, may be kept confidential.

(2) In order to protect confidentiality of the above referenced items, rebate applicants must submit a request in writing to the Oklahoma Film & Music Office along with the Eligibility Application requesting that the information be withheld from disclosure on the grounds that it constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the applicant. Applicants must specify the information for which they are seeking protection along with clearly stated reasons for the requested exception.

(3) The Oklahoma Film & Music Office reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. The Oklahoma Film & Music Office will notify the applicant of any requests for disclosure and notify the applicant as to whether the information will be disclosed.

(l) Required Benchmarks for Rebate Eligibility Process:

(1) 180 Calendar Days (and no sooner) Prior to Production you may submit an Eligibility Application for the Oklahoma Film Enhancement Rebate Program signed by authorized production personnel along with all other required documentation.

(2) 60 Calendar Days (minimum) Prior to Production, a production must show proof that fifty percent (50%) of the production budget is in place in the form of a signed and certified letter of intent from a recognized financier or by written verification of the amount of the production's balance from a recognized financial institution. Letter must include name, address, phone number and contact name and account number for financier/bank for verification purposes. Note: Sixty (60) days prior to production is the last point at which a production may revise their Eligibility Application to increase their projected rebate amount and have monies earmarked in advance, subject to availability of funds.

(3) 30 Calendar Days (minimum) Prior to Production (via the same methods described for Fifty percent (50%) verification above), production must show proof of ability to cash flow the production on previously established date of commencement of Production. Also required at Thirty (30) days:

(A) Copy of the shooting schedule and inclusion on revisions distribution list (or as soon as available prior to principal photography).

(B) Latest version of production budget and signed Statement of Budget (Form D)

(C) Latest version of the script and inclusion in revisions distribution list

(D) Latest version of Crew List tagged as resident and non-resident hires

(E) Copy of the completion bond (where applicable, see Guidelines, Item 6A, D3)

(F) Copy of the Certificate of General Liability, carrying a minimum of One Million Dollars ($1,000,000) (USD) in coverage

(G) Proof of Workers Compensation Policy pursuant to Oklahoma State law

(H) Legal Counsel name and contact information for producers and financiers

(I) Additional documents as may be requested by the Oklahoma Film & Music Office

(4) If a production delays the start of Production as provided in the eligibility application process, its rebate eligibility will be pushed the same length of time between its initial start date and its newly revised start date. Any productions behind it in the eligibility cue with start dates within this window of time will move ahead, thereby having first claim to rebate funds. Should a production push the start of production a second time, it will move to the back of the eligibility cue. Should a production push its start of production a third time, its Eligibility Application becomes null and void. A subsequent re-application will be delayed until the next fiscal year.

(5) Eligibility is non-transferable. Each Eligibility Application shall be filed under the title of the screenplay submitted to the Oklahoma Film & Music Office. Projects deemed eligible for the rebate under each application shall only be eligible to the extent that project is substantially based on the screenplay previously submitted and on file with the Oklahoma Film & Music Office and supporting budget submitted for said project title.

725:35-1-5. Procedures for submission and review of rebate claims

(a) To qualify for the rebate program, the production company must provide the following to the OFMO prior to the beginning of principal photography:

(1) Application of eligibility for rebate programs;

(2) Copy of the proposed budget;

(3) Copy of the script and the inclusion of the OFMO on the project's revisions distribution list;

(4) Copy of the production board or equivalent documentation;

~~(5) Provide the name of the completion guarantor, a copy of the bond guaranteeing the completion date, and a copy of the contract between the production company and the principal actors or equivalent proof of completion to ensure a mechanism for the compensation of local vendors; and~~

~~(6) Provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars ($1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.~~

(b) After a production company meets all requirements, the Director will issue a formal letter of acknowledgement of qualification.

(c) At the completion of principal photography, the production company must provide the following information before the claim can be reviewed by the Film Rebate Committee:

(1) Submit verifiable documentation to the OFMO of the amount of wages paid for employment in Oklahoma to residents of Oklahoma directly related to the production;

(2) File an Oklahoma income tax return;

(3) Complete the OFMO expenditure form;

(4) Provide the following screen credit, "Filmed in Oklahoma under the Auspices of the Oklahoma Film Enhancement Rebate Program"; and

(5) To provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography.

(d) Review and approval of rebate claims.

(1) The Film Rebate Committee will be comprised of volunteers with expertise in the film industry, accounting or other related areas, enlisted by the Director. This committee shall review applications for rebates and make recommendations to the Director.

(2) The Director shall approve or disapprove each completed rebate claim within sixty (60) days of submission of the rebate claim. The Oklahoma Tax Commission shall issue payment for all approved rebate claims, providing funds are available.

(3) Rebate claims shall be paid in the order in which the rebate claims are approved by the Director.
(4) If an approved rebate claim is not paid in whole or in part, the unpaid rebate claim or unpaid portion may be paid in the following fiscal year as allowed in 68 O.S. § 3624.D (F), providing funds are available.
(5) Only one rebate claim shall be processed per film. Once the production company has been paid for that rebate claim, no amendments for that rebate claim are allowable.
(6) Rebate claims that are disapproved by the Director may be corrected and resubmitted to the Director for reconsideration within ten (10) business days after the date of disapproval. Only one resubmission per rebate claim is allowed.

[OAR Docket #10-1000; filed 6-10-10]

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

[OAR Docket #10-1048]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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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:
May 10, 2010
Register publication:
27 Ok Reg 139
Docket number:
10-1277
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The United States Department of Housing and Urban Development has enacted rules which affect the education and training of manufactured home installers, the standards for installation of new manufactured homes, and remedies for any party injured by improper manufactured home installations. It is necessary to adopt permanent rules for manufactured home installations of new manufactured homes in the state of Oklahoma to conform state standards with the new federal standards.
CONTACT PERSON:
John W. Maile, Executive Director (405)521–3600

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 25, 2010:

SUBCHAPTER 6. DEFINITIONS

765:37-6-1. Terms used
(a) **Permanent installation.** Installation of a new manufactured home shall be deemed a permanent installation when the certificate of title to the home will be surrendered and the home is intended to be determined to be realty.
(b) **Temporary installation.** Installation of a new manufactured home not a permanent installation shall be deemed to be a temporary installation.
(c) **Generic Set.** Installation of a new or previously occupied manufactured home according to the standards set forth in Subchapter 7 hereinafter for temporary installations shall be deemed a generic set.
(d) **HUD Standards.** All references to "HUD Standards" or "HUD Rules" shall refer to any standard or rule implemented by the United States Department of Housing and Urban Development.

SUBCHAPTER 7. INSTALLATION STANDARDS FOR GROUND SETS

765:37-7-1. Acceptable procedure
(a) All new manufactured homes to be permanently installed in the State of Oklahoma shall be installed according to the installation standards set forth in the manufacturer's installation manual.
(b) Any new manufactured home to be temporarily installed in the state of Oklahoma may be installed according to the installation standards set forth in the manufacturer's installation manual or according to the installation standards set forth

hereinafter (generic set) or an approved plan by a qualified professional licensed engineer ~~(e.g. Manufactured Home Installation Manual)~~.

(c) Use of an installer not licensed at the time of the installation by the Oklahoma Used Motor Vehicle and Parts Commission for the installation of any new or previously occupied manufactured home shall be deemed an unacceptable procedure and shall subject any dealer contracting with said unlicensed installer to any liabilities and penalties attributable to such unlicensed activity.

(d) In determining the applicable frost line for permanently installed manufactured homes, the installer shall use the ANSI 225.1 map. A frost line of three inches (3") is presumed in McCurtain County. A frost line of three to six inches (3-6") is presumed in Bryan, Choctaw, Atoka, Pushmataha, Latimer, LeFlore, Haskell and Sequoyah Counties. A frost line of ten to fifteen inches (10-15") is presumed in Woods, Major, Garfield, Alfalfa and Grant Counties. A frost line of six to ten inches (6-10") is presumed in all the remaining counties of the state. An installer may rely on verifiable local standards in determining the frost line in any specific location. If a local standard cannot be ascertained the applicable frost line shall be deemed to be the maximum level stated in the county where the home is to be sited.

765:37-7-2. Site preparation

(a) ~~**Responsibility**~~ **Permanent installations.** Site preparations for all permanent installations shall conform to HUD standards.

(b) **Temporary installations.** The purchaser or homeowner shall bear the responsibility for adequate site preparation for any installation other than a permanent installation, including grading, drainage requirements and utilities connections.

(~~b~~ c) **Notice.** A manufactured home manufacturer and a manufactured home dealer shall notify ~~its~~ the purchaser by written notice signed by both parties of ~~said responsibility~~ the applicable site preparation standards. The dealer may act as the manufacuturer's agent in providing said notice to the purchaser.

~~(c) **Regulation of site preparation.** Site preparation is an unregulated activity and is not the duty of either a manufactured home dealer or installer unless contracted for separately.~~

[OAR Docket #10-1048; filed 6-18-10]

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

1:2010-26.

EXECUTIVE ORDER 2010-26

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby state and order as follows:

The State Department of Education is an agency under the Executive Branch of state government, and subject to the authority of the Governor.

Although the Legislature did not pass a directive spending bill requiring the State Department of Education to fund essential programs, as is its customary practice, due to time constraints at the end of session, it is the intent of the Governor and the Legislature that these programs be funded.

In order to accommodate the needs served through these programs, the State Board of Education shall apportion funds appropriated by Enrolled Senate Bill No. 1561 of the 2nd Session of the 52nd Oklahoma Legislature to those programs listed in Sections 5 through 36 of Enrolled House Bill No. 1137 of the 1st Session of the 52nd Oklahoma Legislature. Apportioned amounts shall be proportional to those amounts listed, but shall not be decreased by more than 7.9% to reflect the decrease in appropriation to the State Board of Education from FY 2010 to FY 2011.

Copies of this Executive Order shall be distributed to the State Superintendent of Public Instruction and the State Board of Education who shall cause the provisions of this order to be implemented.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 10th day of June, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1045; filed 6-16-10]

1:2010-27.

EXECUTIVE ORDER 2010-27

I, Jari Askins, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Tornadoes, severe storms, straight line winds and flooding beginning June 13, 2010 and continuing have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.
2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, straight line winds and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The 59 counties included in this declaration are:

Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Carter, Cherokee, Cleveland, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Mayes, McClain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pontotoc, Pottawatomie, Roger Mills, Rogers, Seminole, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods and Woodward.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on June 14, 2010 and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and

damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.
5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.
6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 14th day of June 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:
Michelle Waddell
Acting Assistant Secretary of State

[OAR Docket #10-1046; filed 6-16-10]

1:2010-28.

EXECUTIVE ORDER 2010-28

I, Jari Askins, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, June 16, 2010, to honor Specialist Charles Jirtle, an Oklahoma resident, who died on Monday, June 7, 2010, at age 29 while on active duty supporting Operation Enduring Freedom in Afghanistan.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 15th day of June, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1049; filed 6-18-10]

1:2010-29.

EXECUTIVE ORDER 2010-29

At the request of Brad Henry, I, Jari Askins, Governor of the State of Oklahoma, by virtue of the Oklahoma Constitution and the laws of the State of Oklahoma, hereby grant a stay of execution of Jeffrey Matthews of the scheduled execution, June 17, 2010, until July 19, 2010. This stay is granted in order to allow the Public Defender's Office to evaluate fingerprint evidence previously unavailable for review.

On May 26, 2010, the Oklahoma Pardon and Parole Board voted 3-2 to deny clemency to Jeffrey Matthews. On June 15, 2010, the Office of the Federal Public Defender requested a reprieve to evaluate fingerprint evidence.

In accordance with 22 O.S. Section 1001.1(G), I hereby direct that, in the event clemency is not granted, the sentence of death be carried out on Tuesday, July 20, 2010.

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 16th day of June, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #10-1047; filed 6-16-10]

1:2010-30.

EXECUTIVE ORDER 2010-30

I, Jari Askins, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 2 of Article VI of the Oklahoma Constitution, 63 O.S. §§ 683.1 et seq., and pursuant to Title 49 CFR Part 390.23 hereby declare that because there is a state of emergency continuing in the State of Oklahoma due to catastrophic weather occurring statewide, it is necessary to assist and expedite all efforts of storm relief. In order to accommodate this need and to provide assistance to the citizens of Oklahoma in this extraordinary situation, I hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of oversized vehicles under Title 47;
2. The requirements for special permits for use of overweight vehicles operating off the interstate highway system under Title 47;
3. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;
4. The requirements for licensing/registration as required by the Oklahoma Tax Commission and the Oklahoma Corporation Commission;
5. Exemption from Parts 390 through 399 of Title 49 of the Federal Motor Carrier Safety Regulations.

This Executive Order provides relief for 30 days from Sections 390 through 399 of the Federal Motor Carrier Safety regulations for those interstate and intrastate carriers who are providing direct assistance for the immediate restoration of essential services (such as electrical, sewer, water, and telecommunications) or essential supplies (such as food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate or intrastate commerce to transport cargo not destined for the emergency relief effort, or when a motor carrier dispatches such driver or vehicle to a location outside the relief area.

Nothing contained in this Executive Order shall be construed as an exemption from the Controlled Substance and Alcohol Use and Testing requirements (49 CFR Part 382), the Commercial Driver License requirements (49 CFR Part 383), the Financial Responsibility requirements (49 CFR Part 387), or any other portion of the regulations not specifically identified herein. Motor carriers that have an Out-Of-Service Order in effect cannot take advantage of the relief from regulation that this declaration provides.

Consistent with Title 49 CFR Part 390.23 this Executive Order will remain in effect for 30 days, beginning June 13, 2010, and ending July 13, 2010.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 17th day of June, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1050; filed 6-18-10]

1:2010-31.

EXECUTIVE ORDER 2010-31

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 beginning at 8:00 a.m. Thursday, June 24, 2010, through 5:00 p.m. Friday, June 25, 2010, to honor Hannah Atkins, an Oklahoma resident, who died on Thursday, June 17, 2010, at age 86.

In 1968, Hannah Atkins was the first African American women elected to the Oklahoma House of Representatives. During her twelve years as a Representative she became the first woman to chair a House committee serving as the Chairwomen of the Public and Mental Health Committee.

After serving as Representative of House District 97, President Jimmy Carter named Hannah Atkins to the General Assembly of the 35th Session of the United Nations, where she focused on social and economic issues as a member of the Third Committee. Furthermore, she was named the first women Oklahoma Secretary of State by Governor Henry Bellmon in 1987. While serving as Secretary of State, she served as Governor Bellmon's Cabinet Secretary for Social Services. When she retired from state service in 1991, she retired as the highest ranking woman in Oklahoma state government.

Throughout her life, Hannah Atkins championed health care, child welfare, mental health reforms, and civil rights issues and served others through numerous philanthropic organizations. Hannah Atkins dedicated her life to public service and blazed a trail for others to follow. Her dedication to serving others inspired many in her lifetime. Her story and

achievements will be felt within the State of Oklahoma and around the world for many generations to come.

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 23rd day of June, 2010.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1062; filed 6-24-10]

1:2010-32.

EXECUTIVE ORDER 2010-32

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, July 2, 2010, to honor Specialist Andrew R. Looney, an Oklahoma resident, who died on Monday, June 21, 2010, at age 22 while on active duty supporting Operation Enduring Freedom in Afghanistan.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 30th day of June, 2010.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1082; filed 7-1-10]