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Notices of Rulemaking Intent

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

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

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

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 301. LABORATORY ACCREDITATION

[OAR Docket #13-1097]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Quality Assurance/Quality Control

Part 3. Standard Operating Procedures and Methods Manual

252:301-9-37 [AMENDED]

SUMMARY:

The proposed rulemaking amendment would incorporate by reference the most recent EPA required analytical methodologies for drinking water, wastewater and solid waste. If adopted, these changes update the list of approved methods for environmental testing and provide new quality assurance and quality control requirements. The proposed amendment also deletes one redundant reference, and another unneeded reference.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification, § 2-4-101 *et seq.*

COMMENT PERIOD:

The Notice of Rulemaking Intent for these actions was published at 30 OK Reg 459 on May 1, 2013. Oral comments may be made at the Environmental Quality Board meeting on November 13, 2013.

PUBLIC HEARINGS:

Before the Environmental Quality Board on November 13, 2013, at 9:30 a.m. in the Muskogee Civic Center, 425 Boston Street, Muskogee, Oklahoma 74401.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULE:

Copies of the proposed rule may be obtained from the contact person, reviewed at the DEQ, or viewed online at http://www.deq.state.ok.us.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person, reviewed at the DEQ or may be viewed online at http://www.deq.state.ok.us.

CONTACT PERSON:

The contact person is David Caldwell. He can be reached at david.caldwell@deq.ok.gov (e-mail), 405-702-1000 (phone), or 405-702-1001 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

This Notice is to announce the location of the November 13, 2013 Environmental Quality Board meeting.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three working days in advance of the hearing during business hours at 405-702-1000 or by using TDD relay number 1-800-522-8506.

[OAR Docket #13-1097; filed 6-18-13]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 302. FIELD LABORATORY ACCREDITATION

[OAR Docket #13-1096]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

252:302-9-25 [AMENDED]

SUMMARY:

The proposed rulemaking amends OAC 252:302-9-25 to incorporate by reference 40 CFR 136 as published on July 1, 2012. If adopted, the changes update the list of approved methods for environmental testing, and provide new quality assurance and quality control requirements.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification § 2-4-101 *et seq.*

COMMENT PERIOD:

The Notice of Rulemaking Intent for these actions was published at 30 OK Reg 459-460 on May 1, 2013. Oral comments may be made at the Environmental Quality Board meeting on November 13, 2013.

PUBLIC HEARINGS:

Before the Environmental Quality Board on November 13, 2013, at 9:30 a.m. in the Muskogee Civic Center, 425 Boston Street, Muskogee, Oklahoma 74401.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE:

Copies of the proposed rule may be obtained from the contact person, reviewed at the DEQ, or may be viewed online at http://www.deq.state.ok.us.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person, reviewed at the DEQ or viewed online at http://www.deq.state.ok.us.

CONTACT PERSON:

The contact person is David Caldwell. He can be reached at david.caldwell@deq.ok.gov (e-mail), 405-702-1000 (phone), or 405-702-1001 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

This Notice is to announce the location of the November 13, 2013 Environmental Quality Board meeting.

PERSONS WITH DISABILITIES:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three working days in advance of the hearing during business hours at 405-702-1000 or by using TDD relay number 1-800-522-8506.

[OAR Docket #13-1096; filed 6-18-13]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #13-1095]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:410-1-7. [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 30. Byproduct Material Licensing in General
252:410-10-30. [AMENDED]
Part 31. Byproduct Material: General Licenses
252:410-10-31. [AMENDED]
Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items
252:410-10-32. [AMENDED]
Part 34. Industrial Radiographic Operations
252:410-10-34. [AMENDED]
Part 36. Irradiator Licenses and Radiation Safety Requirements
252:410-10-36. [AMENDED]
Part 39. Well Logging
252:410-10-39. [AMENDED]
Part 40. Domestic Licensing of Source Material
252:410-10-40. [AMENDED]
Part 70. Special Nuclear Material: Licensing
252:410-10-70. [AMENDED]
Part 71. Packaging and Transporting Radioactive Material
252:410-10-71. [AMENDED]
Subchapter 20. Standards for Protection against radiation
252:410-20-1. [AMENDED]

SUMMARY:

The Department is proposing to amend OAC 252:410-1-7(a) to change the date for the incorporation of federal regulations by reference to January 1, 2013. Additional amendments to Subchapters 10 and 20 are required to conform the Oklahoma rules to the updated federal regulations.

AUTHORITY:

Environmental Quality Board and Radiation Management Advisory Council powers and duties, 27A O.S. §§2-2-101, 2-2-104, 2-2-201, 2-9-104, and 2-9-105.

COMMENT PERIOD:

Written comments may be submitted to the contact person from July 15, 2013, through August 14, 2013. Oral comments may be made at the Radiation Management Advisory Council meeting on August 15, 2013, and the Environmental Quality Board meeting on November 13, 2013.

PUBLIC HEARINGS:

Before the Radiation Management Advisory Council on August 15, 2013, at 10:00 a.m., in room A-229, Tulsa Tech - Riverside Campus, 801 E. 91st Street, Tulsa, Oklahoma 74132.

Before the Environmental Quality Board on November 13, 2013, at 9:30 a.m. in the Muskogee Civic Center, 425 Boston Street, Muskogee, Oklahoma 74401.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by this proposed rulemaking provide the DEQ, 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.

COPY OF PROPOSED RULE:

The proposed rule may be obtained from the contact person, reviewed in person at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm.

RULE IMPACT STATEMENT:

The rule impact statement for the proposed rule will be on file at the Department of Environmental Quality and may be requested from the contact person or reviewed online at the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm.

CONTACT PERSON:

Contact Mike Broderick, Environmental Programs Manager, Radiation Management Section, Land Protection Division at mike.broderick@deq.ok.gov or (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. The TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #13-1095; filed 6-18-13]

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 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #13-1073]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
75:15-1-1.1 [AMENDED]
75:15-1-2 [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault Programs
75:15-2-1 [AMENDED]
75:15-2-2 [AMENDED]
75:15-2-3 [AMENDED]
75:15-2-4 [AMENDED]
75:15-2-5 [NEW]
75:15-2-6 [NEW]
Subchapter 5. Client Records and Confidentiality
75:15-5-3 [AMENDED]
75:15-5-3.1 [AMENDED]
75:15-5-4 [AMENDED]
75:15-5-4.1 [NEW]
75:15-5-7 [NEW]
Subchapter 13. Personnel and Volunteers
Part 3. Training
75:15-13-20.1 [AMENDED]
75:15-13-20.2 [AMENDED]
Subchapter 17. Client Rights Domestic Violence, Sexual Assault Programs and Shelters
75:15-17-3 [AMENDED]
GUBERNATORIAL APPROVAL:
May 6, 2013

[OAR Docket #13-1073; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #13-1075]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:1-1-2 [AMENDED]
265:1-1-3 [AMENDED]
265:1-1-4 [AMENDED]
265:1-1-5 [AMENDED]
265:1-1-6 [AMENDED]
265:1-1-7 [AMENDED]
265:1-1-8 [AMENDED]
265:1-1-10 [AMENDED]
265:1-1-11 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1075; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #13-1076]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
265:3-1-2 [AMENDED]
265:3-1-4 [AMENDED]
Subchapter 3. Procedures
265:3-3-4 [AMENDED]
265:3-3-7 [AMENDED]
265:3-3-10 [AMENDED]
Subchapter 5. Hearings
265:3-5-3 [AMENDED]
265:3-5-4 [AMENDED]
265:3-5-6 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1076; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 10. SMOKE DETECTORS

[OAR Docket #13-1077]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Compliance
265:10-5-1 [AMENDED]
265:10-5-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1077; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 20. EXPLOSIVES

[OAR Docket #13-1078]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:20-1-1 [REVOKED]
265:20-1-2 [REVOKED]
265:20-1-3 [REVOKED]
265:20-1-4 [REVOKED]
265:20-1-5 [REVOKED]
265:20-1-6 [REVOKED]
265:20-1-7 [REVOKED]
265:20-1-8 [REVOKED]
265:20-1-9 [REVOKED]
Appendix A. American Tables of Distances [REVOKED]
GUBERNATORIAL APPROVAL:
May 15, 20135

[OAR Docket #13-1078; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 25. ADOPTED NATIONAL CODES AND STANDARDS

[OAR Docket #13-1079]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:25-1-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1079; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 35. FIELD CITATIONS

[OAR Docket #13-1080]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
265:35-1-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1080; filed 6-12-13]

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

[OAR Docket #13-1070]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General provisions
310:400-1-3. Definitions [AMENDED]
Subchapter 5. Rules of professional conduct
310:400-5-3. Professional competence and integrity [AMENDED]
Subchapter 9. Licensure examinations
310:400-9-2. Format [AMENDED]
310:400-9-4. Application [AMENDED]
Subchapter 15. Issuance and maintenance of license
310:400-15-3. License renewal [AMENDED]
310:400-15-4. Continuing education~~.~~ [AMENDED]
310:400-15-9. Temporary license [REVOKED]
GUBERNATORIAL APPROVAL:
April 29, 2013

[OAR Docket #13-1070; filed 6-12-13]

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

[OAR Docket #13-1071]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:405-1-2.1. Definitions [AMENDED]
Subchapter 3. Rules of Professional Conduct
310:405-3-2. Competence [AMENDED]
Subchapter 9. Academic Requirements
310:405-9-2. Knowledge area required [AMENDED]
Subchapter 17. Continuing Education Requirements
310:405-17-2. Number of hours required [AMENDED]
310:405-17-3. Acceptable continuing education [AMENDED]
310:405-17-4.1. Continuing education accrual from home-study or technology-assisted <u>distance</u> learning courses [AMENDED]

Subchapter 21. License and Speciality Renewal
310:405-21-5. Requirements for renewal [AMENDED]
Subchapter 27. Licensure by Endorsement
310:405-27-3. License by endorsement [AMENDED]
GUBERNATORIAL APPROVAL:
April 29, 2013

[OAR Docket #13-1071; filed 6-12-13]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 451. FIRE EXTINGUISHER INDUSTRY

[OAR Docket #13-1072]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:451-1-3. Adopted references [AMENDED]
GUBERNATORIAL APPROVAL:
April 29, 2013

[OAR Docket #13-1072; filed 6-12-13]

TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION

[OAR Docket #13-1083]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULES:
Subchapter 7. Oklahoma Miner Training Institute
460:1-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1083; filed 6-13-13]

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

[OAR Docket #13-1084]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General
460:20-1-7 [AMENDED]
460:20-1-9 [AMENDED]
Subchapter 11. State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations
460:20-11-4 [AMENDED]
Subchapter 17. Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights
460:20-17-4 [AMENDED]
Subchapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operations Plan
460:27-27-14 [AMENDED]
Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards
460:20-43-47 [AMENDED]
Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities
460:20-45-17 [AMENDED]
460:20-45-47 [AMENDED]
Subchapter 63. Individual Civil Penalties
460:20-63-5 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2013

[OAR Docket #13-1084; filed 6-13-13]

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

[OAR Docket #13-1062]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-8 [REVOKED]
Subchapter 7. Duties and Liabilities
710:65-7-17 [AMENDED]
710:65-7-17.1 [AMENDED]
Subchapter 9. Permits
710:65-9-6 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 31. "P"
710:65-19-263 [AMENDED]
Subchapter 21. Use Tax
710:65-21-5.1 [NEW]
GUBERNATORIAL APPROVAL:
April 18, 2013

[OAR Docket #13-1062; filed 6-10-13]

Gubernatorial Disapprovals

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

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

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 10. SMOKE DETECTORS

[OAR Docket #13-1081]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules
RULES:
Subchapter 3. Rationalization
265:10-3-1 [AMENDED]
265:10-3-2 [AMENDED]
265:10-3-3 [AMENDED]
265:10-3-4 [AMENDED]
GUBERNATORIAL APPROVAL:
Written disapproval received May 15, 2013

[OAR Docket #13-1081; filed 6-12-13]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 25. ADOPTED NATIONAL CODES AND STANDARDS

[OAR Docket #13-1082]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules
RULES:
265:25-1-3 [AMENDED]
GUBERNATORIAL APPROVAL:
Written disapproval received May 15, 2013

[OAR Docket #13-1082; filed 6-12-13]

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

[OAR Docket #13-1069]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules
RULES:
Subchapter 15. Issuance and maintenance of license
310:400-15-8. Licensure by endorsement [AMENDED]
GUBERNATORIAL DISAPPROVAL:
April 29, 2013

[OAR Docket #13-1069; filed 6-12-13]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
CHAPTER 20. PURCHASE OF TRANSFERRED CREDITED SERVICE

[OAR Docket #13-1087]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules
RULES:
550:20-1-2 [AMENDED]
GUBERNATORIAL DISAPPROVAL:
Failure of the Governor to approve the rules within 45 calendar days after submission resulted in disapproval on May 20, 2013.

[OAR Docket #13-1087; filed 6-13-13]

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

[OAR Docket #13-1061]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules
PROPOSED RULES:
Subchapter 9. Permits
710:65-9-10 [AMENDED]
GUBERNATORIAL DISAPPROVAL:
Failure of the Governor to approve the rule within 45 calendar days after submission resulted in disapproval on April 27, 2013

[OAR Docket #13-1061; filed 6-10-13]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #13-1060]

RULEMAKING ACTION:
Gubernatorial disapproval of permanent rules

PROPOSED RULES:

Subchapter 3. Returns and Payments
710:90-3-6 [AMENDED]
710:90-3-7 [AMENDED]
710:90-3-17 [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Failure of the Governor to approve the rule within 45 calendar days after submission resulted in disapproval on April 28, 2013

[OAR Docket #13-1060; filed 6-10-13]

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

[OAR Docket #13-1114]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [AMENDED]
AUTHORITY:
Oklahoma State Department of Education; 70 O.S. § 3-104; 70 O.S. § 1210.523
DATES:
Adoption:
May 23, 2013
Effective:
Immediately upon Governor's approval
Approved by Governor:
June 13, 2013
Expiration:
Effective through September 14, 2014, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 13: Student Assessment
210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams.
Gubernatorial approval:
June 1, 2012
Register publication:
29 Ok Reg 1683
Docket number:
12-827
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The proposed changes to the rule are necessary as an emergency measure pursuant to the provisions of 75 O.S. § 253(A)(1)(c) and (e). The proposed amendments are necessary to comply with the amendments to the Achieving Classroom Excellence Act at 70 O.S. § 1210.523 resulting from HB 1756, which was signed into law by the Governor on April 23, 2013 and contained an emergency clause. The amendments are also necessary to avoid serious prejudice to the public interest, because the appeal procedures in the rule are required by 70 O.S. § 1210.523, and are necessary for the agency to review and consider appeals from public school students who have been denied standard diplomas under the provisions of the Achieving Classroom Excellence Act.
ANALYSIS:
The purpose of the proposed amendment to 210:10-13-16 is to implement changes to the Achieving Classroom Excellence Act resulting from HB 1756, which was approved by the Governor on April 23, 2013. In accordance with the amendments to the law, the proposed amendment to the rule adds a procedure whereby a student with a disability whose individualized education program ("IEP") indicates that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment Program ("OAAP") may demonstrate mastery of state academic content standards and graduate with a standard high school diploma if the student fails end-of-instruction ("EOI") exams required by the Achieving Classroom Excellence Act
CONTACT PERSON:
Stephanie Moser Goins, (405) 521-4890

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

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-16. 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~~academic content 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~~ materially 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),~~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 at least one of the steps below until a satisfactory or proficient score is attained and ~~meeting~~ all other graduation requirements are met:

(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; 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 paragraph (b)(2) of this Section.

~~(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~~B) ~~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~~C) 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~~D) 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~~E) School districts shall document a student's failure to complete test retake opportunities. Documentation shall include~~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) End of Course Projects shall be classified by the State Department of Education and submitted to the State Board of Education for approval in three different categories: Category A, Category B, or Category C. Category A projects shall be offered to all students who choose the Alternate Method. Category B projects shall be offered as an Alternate Method to students as directed by an IEP and/or LIEP, and shall incorporate additional, varied approaches for students to demonstrate mastery of the state academic content standards. Category C projects shall be offered as an Alternate Method to students with the most significant cognitive disabilities and shall be designed for students who are participating in an OAAP assessment for that subject area in accordance with the student's IEP.

(~~B~~C) 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, and school districts shall submit reports of all student End of Course Project(s) either in progress or completed by April 1, August, 1, and November 1 of each year.

(~~C~~D) 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~~3) 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~~4) 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~~5) 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.

(6) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) that directs that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment Program (OAAP) may demonstrate mastery of state academic content standards upon a determination by the school district that the student has met all of the following criteria:

(A) The student's special education teacher of record, after consultation with the student's teacher in each subject in which the student failed to meet the requirements of (b) of this Section, provides the student with a written recommendation that the student should graduate with a standard diploma. The written recommendation shall be signed by the special education teacher of record, and shall include:

(i) A signed written statement by the principal of the student's school indicating support of the recommendation for graduation; and

(ii) Documentation demonstrating the acquired knowledge of the student by alternate measures as required by the IEP;

(B) The student completes remediation opportunities to the extent required by the IEP;

(C) The student retakes the exam in each subject in which the student failed to meet the requirements of (b) of this Section if the IEP requires retake opportunities;

(D) The student maintains at least a "C" average or the equivalent in each subject in which the student failed to meet the requirements of (b) of this Section; and

(E) The student meets all other graduation requirements of the school district in which the student is enrolled.

(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."

(d) **Appeal of denial of a standard diploma.** Any student who has been denied a standard diploma by the school district in which the student is or was enrolled for failing to meet the educational requirements of 70 O. S. § 1210.523 may appeal the denial to the State Board of Education in accordance with the following procedures:

(1) **Who may petition for appeal.** Petitions for appeal of a denial of a student diploma may be filed by the following:

(A) A parent or legal guardian of a student or an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and 70 O.S. §1-113(A)(1) may file an appeal with the State Board of Education as a petitioner on behalf of the student if the student is either considered a minor child as of the date of denial of the student's diploma; if the student is considered legally incompetent as of the date of denial of the student's diploma; or both.

(B) A student who is not otherwise considered legally incompetent may file a petition for appeal directly with the State Board of Education as a petitioner if the student has either:

(i) Obtained the legal age of majority set forth under Oklahoma law; or

(ii) Rights of majority have been conferred upon the student by a judicial order recognized by the courts of the State of Oklahoma.

(C) A school, school district, or local school board in which a student is or was enrolled may not name itself as a Petitioner for a student or file a petition on behalf of a student. Any petition for appeal submitted by a school district as a petitioner on behalf of a student shall be grounds for automatic dismissal of the petition for appeal.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** A notice of appeal must be submitted in writing for filing to the Secretary of the State Board of Education within thirty (30) days after the date the student, parent(s) of the student, or legal guardian of the student receives a written notice of denial of a standard diploma issued by the school district or local board of education. In absence of receipt of a written notice of denial of a standard diploma, a diploma shall be deemed denied if not granted within ninety (90) days of the last day of the last semester of the last school year in which the student attended school.

(B) **Method of filing.** Petitions for appeal may be submitted for filing to the Secretary of the State Board of Education in person or by mail. A petition submitted for filing by mail may be accepted for filing if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the petitioner(s) and the school district's Superintendent or the Superintendent's legal designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board shall acknowledge receipt of the request in writing and notify the student and/or parent or legal guardian when the appeal shall be submitted to the State Board of Education for action. All timely filed petitions for appeal shall be brought to the State Board of Education for action. The Board shall take action on the petition no later than forty-five (45) days after the date of receipt of a timely-filed petition.

(3) **Review of petitions.** The State Board of Education shall appoint a committee consisting of employees of the State Department of Education to assign a case number for reference, review the petitions for appeal, and identify the basis for which the standard diploma was denied.

(A) **Factors considered in recommending acceptance or denial of an appeal.** The committee shall make a recommendation of action on the appeal to the State Board of Education based on the following criteria:

(i) Completion and scores of end-of-instruction (EOI) exams;

(ii) Remediation and retests of end-of-instruction (EOI) exams;

(iii) Completion and scores of Alternate tests approved by the State Board of Education;

(iv) Completion of End of Course Projects approved by the State Board of Education;

(v) Completion or scores of alternative methods approved by the State Board of Education;

(vi) The existence of an extenuating circumstance, as defined in (a) of this Section;

(vii) The availability of testing opportunities;

(viii) Other methods identified by the student, which demonstrate mastery of state academic content standards, referenced in (b) of this Section, not to include completion of the course;

(ix) The exhaustion of reasonable alternative methods and exemptions and exceptions approved by the State Board of Education, including the existence of extenuating circumstances; and

(x) Whether action is appropriate based on the statutory language of 70 O. S. § 1210.523.

(xi) Petitions for appeal which are untimely filed shall be submitted to the Board with a recommendation for denial based upon untimeliness,

(B) **Deficiencies in petitions for appeal.** The State Board of Education may provide petitioners with an opportunity to remedy deficiencies in an appeal filed in an inaccurate or incomplete manner in accordance with the following procedures:

(i) Prior to submission to the State Board of Education with a recommendation for denial based upon a deficiency in the petition, the petitioner shall be notified in writing of the deficiency in the appeal and provided five (5) business days from the receipt of written notification to resolve any deficiencies identified in the petition for appeal.

(ii) Within five (5) business days from receipt of the written notification of deficiency, Petitioner shall either:

(I) Provide the Board with all information and/or documentation necessary to remedy the deficiency; or

(II) In the event a petitioner requires additional time to remedy the deficiency, Petitioner may request a stay/continuance of thirty (30) calendar days and provide the Board a signed waiver of the forty-five (45) day deadline in accordance with subparagraph (4)(A) of this section. Failure by a petitioner to complete the steps necessary to timely remedy a deficiency in a petition in accordance with the procedures

set forth in (d)(3)(B)(ii) shall result in a recommendation submitted to the State Board of Education for denial based on deficiency.

(C) Upon completion of review of the petition, the committee shall submit to the Board:

(i) A copy of each petition for appeal;

(ii) A written explanation of the petition;

(iii) Copies of all evidence and/or documentation submitted to the Board by a petitioner in support of the appeal;

(iv) Any additional information that may be necessary for the Board to take action;

(v) A recommendation of either acceptance or denial of the petition.

(4) **Dismissals of petitions for appeal.** At any time after filing, a petition for appeal may be dismissed by the Board prior to final action in accordance with the following procedures:

(A) Grounds for dismissal of a petition may be based upon a demonstration of evidence of one or more of the following circumstances:

(i) The appeal has been rendered moot (e.g., petitioner subsequently meets all ACE requirements during the pendency of the appeal);

(ii) Appeal is filed by a party who is not a proper petitioner as set forth by (d)(1) of this section;

(iii) The appeal is premature (e.g., petitioner's diploma has not yet been denied);

(iv) Denial of diploma was based on factors unrelated to failure to demonstrate mastery of state academic content standards set forth in 70 O.S. § 1210.523 (e.g., denial based upon lack of credit hours necessary to meet graduation requirements set forth in 70 O.S. § 11-103.6);

(v) Inaction by Petitioner (e.g., failure to timely respond to requests for additional evidence or information from the State Board) or

(vi) Dismissal is requested by the Petitioner.

(B) Prior to dismissal, petitioner shall be provided with reasonable notice of intent to dismiss the appeal and opportunity to respond in accordance with the following procedures:

(i) The notice of intent to dismiss the appeal shall conform to the requirements of notice set forth in 75 O.S. § 309, and shall include:

(I) A statement notifying the Petitioner of the forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;

(II) A statement providing the Petitioner with five (5) business days from Petitioner's receipt of notice of intent to dismiss, to respond to the notice of intent to dismiss by either submitting a written opposition to dismissal, or requesting a stay/continuance of the action in accordance with the procedures set forth in (d)(5)(A) of this section; and

(III) A statement that Petitioner's failure to respond to the notice of intent to dismiss within five (5) business days from Petitioner's receipt of notice of intent to dismiss the appeal may result in dismissal of the petition by the Board without further action on the appeal.

(5) **Notice of action on petition recommended to the Board.** Following review of the petition for appeal, the Petitioner shall receive written notification as to the recommended action (i.e., acceptance or denial of the petition) that will be presented to the State Board. Written notification of the recommended action must be received by the Petitioner at least five (5) business days prior to the meeting of the State Board of Education in which the recommendation will be presented.

(A) At any time prior to final action on the appeal, the State Board may grant a stay or continuance of an action on an appeal upon receipt of a motion for continuance by Petitioner and a written waiver by Petitioner of the forty-five (45) day deadline for action upon an appeal set forth at 70 O.S. § 1210.523 and accompanying rules.

(B) Recommendations for denial of a petition for appeal shall be based upon the grounds set forth in paragraph (d)(3) of this section.

(6) **Action on a petition for appeal.** After review of the petition for appeal in accordance with the procedures set forth in (d)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the written information provided in the appeal.

(A) The Board shall consider a petition for appeal in the form of a "Consent Docket," which shall be considered as one item.

(B) Any member of the Board may request that a petition for appeal be removed from the "Consent Docket" for discussion or to be separately considered. If such a request is made, the matter shall be removed from the docket and presented for individual action by the State Board of Education.

(C) In the event the Board determines that there is insufficient evidence in order to make an effective or proper ruling on the appeal, the State Board of Education may, by a vote of the majority of members, remove a petition for appeal from the "Consent Docket" and set a hearing for further review and consideration in accordance with the procedures set forth at (d)(7) of this section.

(7) **Procedures for hearings on appeal of a petition.** If the Board determines a hearing is necessary, the Secretary of the Board shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 309 *et seq.* and with the following procedures:

(A) The Board shall provide the Petitioner(s) and all interested parties, if any, with reasonable notice of the hearing and opportunity to appear at the hearing to present explanation of the petition, evidence submitted to the Board, and/or any additional information that Petitioner believes may be necessary for the

Board to take action. Any proper party to the appeal shall have the right to designate legal counsel to appear and act for and on behalf of the party represented, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma.

(B) In addition to the contents of the notice required by 75 O.S. § 309, the notice shall also advise Petitioner of:

(i) The forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;

(ii) Petitioner's opportunity to submit a motion and waiver of Petitioner's right to final action of the board along with a waiver of the forty-five (45) day time requirement in accordance with the procedures set forth in (d)(5)(A) of this section; and

(iii) A statement that Petitioner's failure to respond to the notice of petition and/or appear at the hearing, may result in dismissal of the petition for appeal.

(C) The school district in which the student is or was enrolled shall be named as an "Interested Party" and shall be provided with notice and opportunity to appear and present evidence at the appeal hearing before the State Board of Education.

(D) The determination of the State Board of Education shall be considered a final agency order, shall be issued in writing, and shall conform to the requirements of final agency orders set forth in 75 O.S. § 312.

(e) **Exceptions and Exemptions to Student Requirements to Demonstrate Mastery of State Academic Content Standards.** The State Board of Education may approve the petition for appeal of students and grant a waiver of one or more EOI assessments for students who have provided evidence of the existence of at least one of the following:

(1) Facts documenting events, conditions, or situations which fall within the definition of "extenuating circumstances" set forth in paragraph (a)(3) of this section;

(2) Demonstration of mastery of the state academic content standards referenced in subsection (b) of this rule, by successful completion of a higher level course in the same subject matter and attaining a satisfactory or proficient score in an end-of-instruction exam in that same course.

(f) **Reporting appeal data.** By September 1 of each year, each school district shall report to the State Department of Education all data necessary for the Board to complete the annual report required pursuant to 70 O. S. § 1210.523 by the October 1 deadline. The report provided to the State Department of Education shall include, at a minimum, the total number of students in the school district who filed petitions for appeal of denials of diplomas which occurred in the previous school year, and the total number of those petitions filed which were granted. Data shall include subtotals of number of appeals filed and granted for each school site. Information collected pursuant to state statute shall be made available to the district's Regional Accreditation Officer (RAO) during the accreditation process.

[OAR Docket #13-1114; filed 6-24-13]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #13-1110]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
AUTHORITY:
The Administrator of the Office of Management and Enterprise Services, Human Capital Management, (formerly Office of Personnel Management of the Office of State Finance): 74 O.S., §§ 840-1.6A and 840-2.16.
DATES:
Comment period:
N/A
Public hearing:
N/A
Adoption:
April 29, 2013
Effective:
Immediately upon Governor's approval or July 1, 2013, whichever is later.
Approved by Governor:
May 15, 2013
Expiration:
Effective through July 1, 2014, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The proposed amendments to the Appendix A. Pay Band Schedule are necessary to so that the schedule is in compliance with the provisions of Title 74 O.S. §840-2.16, which requires the State Employee Minimum Wage Rate to be that of a three-person household as established by the Federal Poverty Guidelines, issued by the United States Department of Health and Human Services. The United States Department of Health and Human Services recently revised the Federal Poverty Guidelines. The proposed amendments to the Pay Band Schedule reflect the revisions of the guidelines.
ANALYSIS:
The proposed amendments to the Appendix A. Pay Band Schedule are necessary to so that the schedule is in compliance with the provisions of Title 74 O.S. §840-2.16, which requires the State Employee Minimum Wage Rate to be that of a three-person household as established by the Federal Poverty Guidelines, issued by the United States Department of Health and Human Services. The United States Department of Health and Human Services recently revised the Federal Poverty Guidelines. The proposed amendments to the Pay Band Schedule reflect the revisions of the guidelines.
CONTACT PERSON:
Kara I. Smith, Deputy General Counsel, Office of Management and Enterprise Services, Human Capital Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 521-2177.

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

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

Pay Band	Minimum	Midpoint	Maximum
A*	$19,530	$18,859	$23,574
B*	$19,530	$19,108	$23,884
C*	$19,530	$20,215	$25,268
D*	$19,530	$21,793	$27,241
E*	$19,530	$23,973	$29,967
F	$19,778	$26,370	$32,963
G	$21,756	$29,008	$36,260
H	$23,931	$31,908	$39,885
I	$26,502	$35,336	$44,170
J	$29,136	$38,849	$48,561
K	$31,848	$42,464	$53,080
L	$35,032	$46,709	$58,387
M	$38,885	$51,846	$64,808
N	$43,163	$57,550	$71,938
O	$48,342	$64,455	$80,569
P	$54,627	$72,835	$91,044
Q	$61,728	$82,304	$102,880
R	$69,753	$93,004	$116,255

*Minimum revised to reflect State employee minimum wage rate. (see 74 O.S. 840-2.16)

[OAR Docket #13-1110; filed 6-20-13]

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 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #13-1074]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
75:15-1-2. Definitions [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault Programs
75:15-2-1. Service programs core services [AMENDED]
75:15-2-2. Shelter program [AMENDED]
75:15-2-5. Crisis intervention services [NEW]
75:15-2-6. Sexual assault services [NEW]
75:15-2-7. Children services [NEW]
Subchapter 5. Client Records and Confidentiality
75:15-5-3. Record content - general [AMENDED]
75:15-5-3.1. Record content - service specific [AMENDED]
75:15-5-4. Client confidentiality [AMENDED]
75:15-5-4.1. Waiver of Confidential Information [NEW]
75:15-5-7. Shelter Policy on Medications [NEW]
Subchapter 17. Client Rights
75:15-17-3. Client rights [AMENDED]
AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
DATES:
Comment Period:
February 15, 2013 through March 20, 2013
Public Hearing:
March 20, 2013
Adoption:
March 29, 2013
Submitted to Governor:
March 29, 2013
Submitted to House:
March 29, 2013
Submitted to Senate:
March 29, 2013
Gubernatorial Approval:
May 6, 2013
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013
Final Adoption:
May 23, 2013
Effective:
July 25, 2013
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic violence, sexual assault and stalking services in this state. These rules set forth the requirements which are necessary to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement, and auditing of domestic violence and sexual assault services. Amendments are necessary to ensure that the language in the definitions section of this chapter correspond with the language in the Billing Codes and Services Definitions approved by the Department of Central Services. Amendments are also necessary to specifically address the definitions of "medication," "voluntary services" and "self-determination," which were inadvertently omitted in the last amendments. The remaining amendments, including large sections of revocations, are moving sections involving client record content to make the rules more accessible and user-friendly for the staff providing services. Amendments are also necessary to further define the confidentiality policies programs must have in place to comply with state and federal law.
CONTACT PERSON:
Lesley Smith March(405) 522-0042

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

75:15-1-2. Definitions

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

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

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links clients and their dependents with the appropriate service components to encourage self-determination, autonomy, physical and emotional safety, and to offer information that will enable independence. This can be viewed as a combination of active listening and facilitating personal problem solving along with researching options of action, safety planning, community outreach and education and include medical, dental, financial, employment, legal and housing assistance.

"Advocate" means a person who offers clients appropriate services.

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

~~**"Batterer"** means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated~~

~~minor or minor child, who are family or household members or who are or were in a dating relationship.~~

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

"Behavioral Health Professional" means either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents.

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

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

"Case management" means the process of supporting and helping victims/survivors and their dependents as they cope with and overcome the effects of domestic violence, sexual assault and stalking. Actions may include activities such as 1)developing, reviewing, and updating the service plan that is designed to solve specific problems in the current life situation; 2) supporting adult/child survivor's skills in making their desired life changes through activities such as introducing new skills, modifying previous ways of coping with their situation and linking to resources to address immediate needs and secondary issues, and/or 3) exit planning as part of the individual supportive services. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

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

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

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

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

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

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

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

"Client record" includes but is not limited to, all communication, records and information on an individual client.

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

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

"Counseling" means a face-to-face therapeutic session with one-on-one interaction between a behavioral health professional and an individual to promote emotional and/or behavioral change focused on victim safety and perpetrator accountability. Those individuals providing professional therapy to adult/child victims/survivors of domestic violence/sexual assault and stalking must be prepared to offer education and information about:

(A) Physical and emotional safety;

(B) How perpetrators maintain control and dominance over their victims;

(C) The need to hold perpetrators accountable for their actions;

(D) The recognition that individuals victimized are not responsible for a perpetrator's violent behavior, and the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion and national origin.

"Court advocate" means a qualified, trained staff or volunteer whose duties are to offer assistance to victims and any dependents in legal matters relevant to their situation. A Court Advocate provides court advocacy through support, information, assistance, safety planning, accompaniment and

intervention with any aspect of the civil or criminal legal system on behalf of a victim of domestic violence, sexual assault or stalking.

"Crisis intervention" means ~~services based upon a problem-solving model to offer information and referrals that assist an~~short-term, immediate assistance and advocacy given by phone or in person to victims of ~~individual~~ domestic violence, sexual assault or stalking ~~victim/survivor in crisis~~. Crisis intervention services include but are not limited to assessing dangerousness, safety planning, information about available legal remedies, establishing rapport and communication, identifying major problems, exploring feelings and providing support, exploring possible alternatives, and/or formulating an action plan and follow-up measures.

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

"Cultural diversity" means the spectrum of differences that exists among groups of people with definable and unique cultural backgrounds.

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

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

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

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

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

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for danger assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention.

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

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

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

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

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

"Group counseling" means a face-to face therapeutic session with a group of adult/child victims/survivors to promote emotional or behavioral change. Those individuals providing professional therapy to victims/survivors of domestic violence must be prepared to provide education and information about:

(A) Physical and emotional safety;

(B) How perpetrators maintain control and dominance over their victims;

(C) The need to hold perpetrators accountable for their actions;

(D) The recognition that individuals victimized are not responsible for a perpetrator's violent behavior, and the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion or national origin.

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

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

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

"Intake" means an interaction intended to discover what has happened, determine what the crisis is, assess dangerousness indicators, do safety planning, and/or establish the immediate needs of domestic violence/sexual assault & stalking victims and any dependents to determine appropriate services and referrals. This includes interaction with an individual determined to be appropriate for ongoing service in order to obtain basic demographic information, gather vital information on the adult and the children, orient the victim/survivor to the program, program rules, and if applicable, the facilities. Cultural needs should also be identified at this time.

"Language Interpretation" means activities that involve a client who is deaf or hearing impaired or has limited English

proficiency requiring an interpreter for a staff member or volunteer to offer services.

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

"Medical care" means those diagnostic and treatment services which can only be provided or supervised by a licensed physician.

"Medication" ~~means any prescription or over the counter drug, that is taken as prescribed or directed.~~ means any drug that is legally in the possession of the client, her children, or a person seeking admittance to the shelter or her children; this definition includes prescription medications and medications available for legal purchase without a prescription.

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

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

"OAG" means the Office of the Attorney General.

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

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

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

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

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

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

"Primary Victim" means a client who has experienced domestic violence, sexual assault, stalking or the consequences of these crimes first hand.

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

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

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

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

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

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

"Release" or **"Waiver"** means consent that is informed, written and reasonably time-limited. The terms may be used interchangeably to mean the same thing. "Release" implies that confidential information is released (despite confidentiality or privilege protection), and "Waiver" implies waiving the right (to maintain privilege). If release of information is compelled by statutory or court mandate, the program shall make reasonable attempts to provide notice to victims affected by the disclosure of information and take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

"Referral" means information disseminated and/or coordinated access to agency and community services to meet victims'/survivors' and their dependents' identified needs.

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

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

"Safety Planning" means the process of working with the adult/child victim/survivor to develop tools in advance of potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents.

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

"Secondary Victim" means a person with a relationship with the primary victim.

"Self Determination" means the right to make one's own choices.

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

"Service note" means the documentation of the time, date, location and description of services offered or provided,

and signature of staff or volunteer offering or providing the services.

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

"Sexual Assault" means a range of behaviors, including but not limited to rape, attempted rape, sexual battery, sex trafficking, sexual abuse of children, sodomy and sexual harassment.

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

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

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

"Stalking" means a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

"Substance Abuse services" means the assessment and treatment of diagnosable substance abuse and dependence disorders, as defined by current DSM criteria, by qualified alcohol and drug treatment professionals.

"Support" or **"Supportive Services"** means the provision of direct services to victims and their dependents for the purposes of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence.

"Transitional living services" means temporary, independent living programs with support services provided by the staff or volunteers of the sponsoring domestic violence, sexual assault and stalking program. These services are extensions of domestic violence shelter services to victims of domestic violence, sexual assault and/or stalking and their dependents. These services permit victims to develop their financial capacity and other means to live independently.

"Trauma-informed services" means a service approach that recognizes the impact of trauma and acknowledges the role of trauma in the lives of victims/survivors and their dependents.

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

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

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

"Voluntary Services" means a program shall not mandate participation in supportive services as a condition of shelter residency or emergency services (Family Violence Prevention and Services Act (426 U.S.C. 10401 et seq.)

"Volunteer" means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 2. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

75:15-2-1. Service programs core services

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

(b) All certified programs shall provide a safe, accessible, and trauma-informed services for survivors of domestic violence, sexual assault and stalking and their dependents or family members.

(~~b~~c) The program shall develop a philosophy of service provision based upon voluntary services and individual self-determination. The written statement of the philosophy of services shall be approved by the governing authority and made available to the community, staff, volunteers and clients.

(~~c~~d) The program shall have policy and procedures to maintain facilities, staffing, and operational methods, including a policy on the recruitment of board members, staff and volunteers who are representative of the diversity in the local community and the diversity of their clients.

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

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

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

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

~~(4) Needed clothing for the sexual assault victim.~~

~~(5) Follow-up contact that does not compromise privacy and safety needs of the victim shall be offered to all sexual assault clients seen in the medical setting. If written~~

~~permission is granted by the client for follow-up contact, it shall be done no later than fourteen (14) business days after face-to-face crisis intervention. Follow-up will offer the client agency services or other available resources needed by the client.~~

(f~~e~~) All certified programs shall offer crisis intervention services. ~~including, but not limited to:~~

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

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

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

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

~~(5) Cooperation with law enforcement to offer assistance to the victim and accompanying dependent(s). Programs should ensure victims are educated about participating in the legal prosecution of their offender and that an appropriate release or waiver may be necessary.~~

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

~~(7) Foreign language interpretation.~~

~~(8) Follow-up services shall be offered to all victims if victim safety is not compromised.~~

(g~~f~~) All certified programs shall offer danger assessment, safety planning, counseling or support, support groups, and advocacy in a trauma-informed environment. ~~and victim recovery. Group and/or individual counseling or support services shall be made available before or after normal business hours (8 am to 5 pm), if needed by clients. These services shall minimally offer the following:~~

~~(1) A facility with offices, individual and group counseling space to offer services.~~

~~(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.~~

~~(3) Current service agreement to be renewed every three (3) years with available community services to offer access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.~~

~~(4) A resource document of local, area, or state resources to facilitate referrals for clients.~~

~~(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.~~

~~(6) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.~~

~~(g) Within five (5) business days of entry into residential services (excluding advocacy or children's activities or crisis intervention), all certified programs shall offer to assess the risk and needs of the children accompanying primary victims and offer children's services to address the impact of violence and trauma in their lives and to facilitate healing. A risk and needs screening and assessment on each child ,when accepted, shall minimally include information on his or her:~~

~~(1) Safety, including but not limited to:~~

~~(A) History of child abuse or neglect;~~

~~(B) Exposure or witnessing violence;~~

~~(C) Child's response to witnessing violence;~~

~~(D) History of involvement in the child welfare system; including the presence of current child welfare involvement;~~

~~(E) Visitation with the perpetrator;~~

~~(2) Brief trauma screening to assess the impact of trauma;~~

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

~~(4) Medical or physical health history;~~

~~(5) Social history to include interactions with peers;~~

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

~~(7) Parent/guardian custodial status;~~

~~(8) Community referral needs.~~

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

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

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

~~(3) advocacy with community systems;~~

~~(4) referral to community resources for needed services;~~

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

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

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

~~(i) Pursuant to Title 10A O.S. § 1-2-101, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.~~

(j~~h~~) All certified programs shall ~~maintain an atmosphere and~~ offer services that are free from all forms of unlawful discrimination based on race, ~~sex~~gender, religion, color, age, national origin, and/or disability (i.e., physical, mental illness, and substance abuse), including a policy that services to immigrant women will not be denied or diminished on the basis of immigration status.

(k~~i~~) All certified programs shall public education to increase the community's awareness and understanding of domestic

violence, sexual assault and stalking, available and needed resources, and identify the role community can play in eliminating domestic violence, sexual assault, and stalking.

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

75:15-2-2. Shelter program

(a) All shelter programs shall comply with section 75:15-2-1 and each shelter program shall provide long-term (thirty [30] days or more) shelter services and staffing to offer services twenty-four (24) hours per day, seven (7) days per week and offer the following:

(1) ~~A group living~~Shelter program shall provide room, ~~board~~, food, bathing and laundry facilities, necessary clothing and toiletries for victims and their children free of charge. Programs shall not ask clients to use their nutrition assistance benefits to supplement food for the facility.

(2) Shelters shall be staffed at all times when clients are in residence. When there are no clients in residence, each shelter program must assure availability for immediate contact or services.

(3) The shelter's policy shall have written procedures regarding the supervision of children.

(4) In the event the shelter does not offer services to clients with dependent boys over the age of twelve, the shelter shall have written policies regarding linkage to alternative provision of services including emergency shelter.

(5) Shelter programs shall offer screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making initial contact.

(6) The shelter program shall maintain cooperation/liaison with the local school system.

(7) Each shelter program must ensure to the best of its ability the physical and emotional safety, security, and confidentiality of clients and the location of the shelter.

(8) The shelter shall maintain a written policy for involuntary exit criteria.

(b) Compliance with 75:15-2-2 shall be determined by a review of policy and procedures, service agreements, on site observation, and/or other supporting documentation.

75:15-2-5. Crisis intervention services

(a) All certified dvsa programs shall offer crisis intervention services which include:

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

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

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

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

(5) Cooperation with law enforcement to offer assistance to the victim and accompanying dependent(s). Programs should ensure victims are educated about participating in the legal prosecution of their offender and that an appropriate release or waiver may be necessary.

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

(7) Foreign language interpretation.

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

(b) Group and/or individual counseling or support services shall be made available before or after normal business hours (8 am to 5 pm), if needed by clients. These services shall minimally offer the following:

(1) A facility with offices, individual and group counseling space to offer services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to offer access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(6) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.

75:15-2-6. Sexual assault services

(a) All certified programs shall be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place. The program shall collaborate with other certified DV/SA providers in their service area. When appropriate staff or volunteers are available, the program shall assist the Council on Law Enforcement Education and Training(CLEET) by providing appropriate staff or

volunteers to assist in sexual assault and sexual violence training to law enforcement. The program shall offer at a minimum the following services:

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

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

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

(4) Needed clothing for the sexual assault victim.

(5) Follow-up contact that does not compromise privacy and safety needs of the victim shall be offered to all sexual assault clients seen in the medical setting. If written permission is granted by the client for follow-up contact, it shall be done no later than fourteen (14) business days after face-to-face crisis intervention. Follow-up will offer the client agency services or other available resources needed by the client.

(b) When appropriate staff or volunteers are available, the program shall assist the Council on Law Enforcement Education and Training (CLEET) by providing appropriate staff or volunteers to assist in sexual assault and sexual violence training to law enforcement.

(c) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.

75:15-2-7. Children services

(a) Within five (5) business days of entry into residential services (excluding advocacy or children's activities or crisis intervention), all certified programs shall offer to assess the risk and needs of the children accompanying primary victims and offer children's services to address the impact of violence and trauma in their lives and to facilitate healing. A risk and needs screening and assessment on each child, when accepted, shall minimally include information on his or her:

(1) Safety, including but not limited to:

(A) History of child abuse or neglect;

(B) Exposure or witnessing violence;

(C) Child's response to witnessing violence;

(D) History of involvement in the child welfare system; including the presence of current child welfare involvement;

(E) Visitation with the perpetrator;

(2) Brief trauma screening to assess the impact of trauma;

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

(4) Medical or physical health history;

(5) Social history to include interactions with peers;

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

(7) Parent/guardian custodial status;

(8) Community referral needs.

(b) Services provided to each child shall be culturally sensitive while addressing identified risks and needs and shall minimally include:

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

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

(3) advocacy with community systems;

(4) referral to community resources for needed services;

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

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

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

(c) Pursuant to Title 10A O.S. § 1-2-101, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

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

(a) Client records for both residential and non-residential clients shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse including an evidence-based, dangerousness assessment and screening for stalking and trauma including a description of the event that precipitated the request for services and safety planning, and

(F) Perpetrator information if known.

(2) Service notes, which shall minimally include:

(A) The date, location, start time, duration and description of services provided delineated by time spent and service code;

(B) The signature of staff or volunteer providing the services, and volunteer, and

(3) Service plan shall focus on victim safety and well-being which shall minimally include: Goals and objectives of the client, which shall be agreed upon between the client and staff or volunteer.

(4) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff or volunteer dated signatures or an explanation if staff or the volunteer were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member or volunteer making the entry.

(c) Compliance with 75:15-5-3 shall be determined by a review of program policy and procedures; review of the client records for content; and/or other supporting program documentation.

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

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

(1) Shelter Services:

(A) On a client's entry to the shelter, staff or volunteer shall record the client's name, emergency contact person(s) and any referral for medical or emergency services. This information may be a part of the full intake interview if the full intake is done on entering the shelter. An evidence-based, dangerousness assessment and safety planning shall also be done at this time.

(B) Shelter clients shall have the full intake interview and screening completed within forty-eight (48) hours of entry into the shelter.

(C) Service plans shall be completed within five (5) business days of the shelter client's entry to the shelter.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The client's service plan shall include components which address the needs of each child accompanying the client.

(F) The service plan shall include safety issues for client and children.

(G) A daily note.

(2) Crisis Intervention Services:

(A) All face-to-face contacts with ~~active~~ clients are documented and contacts with persons not receiving additional services shall be offered and documented. Documentation shall minimally include the following:

(i) Staff/Volunteer Name and signature;

(ii) Date, time, length, and location of intervention;

(iii) Safety planning based on risk.

(~~iii~~iv) Client's name, age, race, county of residence, and contact number if given.

(~~iv~~ v) Protective order information if applicable;

(~~v~~vi) Personnel involved such as police, hospital, etc.

(~~vi~~vii) Summary of contact including visible injuries, treatment and services requested;

(~~vii~~viii) Outcome;

(B) All telephone contacts shall be documented. Documentation shall minimally include the following:

(i) Staff/Volunteer name;

(ii) Date, time and length of call;

(iii) Safety planning based on risk.

(~~iii~~iv) Caller's name and contact number, if given; However, no caller shall be required to give a name, phone number or any other identifying information as a condition to receive information or domestic violence, sexual assault or stalking services;

(~~iv~~v) Summary of the call including services needed;

(~~v~~ vi) Outcome; and

(~~vi~~vii) Follow-up services offered if victim safety is not compromised.

(C) Contact information is kept by the ~~crisis intervention~~ program.

(D) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) Counseling, Support and Advocacy Services:

(A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy or counseling session.

(C) A service plan review and update shall be completed at least every six (6) months.

(4) Sexual Assault Services:

(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.

(B) Service plans shall be reviewed and updated at least every ninety (90) days.

(5) Transitional Living Services:

(A) A service plan including safety issues for the client and dependents shall be developed within five (5) business days of the client moving in.

(B) The service plan shall be reviewed and updated at least every ninety (90) days.

(6) Safe Home Services

(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the Safe Home, the safe home provider shall record the client's name, emergency contact information, and pertinent medical information.

(B) Safe Home clients shall receive a full intake interview and screening by program staff or volunteer within twenty- four (24) hours of admission or by the first business day following admission.

(C) A service plan shall be developed within five (5) business days of the client's entry to the Safe Home.

(D) All records regarding the client shall be retained in the client's record at the sponsoring program.

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.
(c) Compliance with this 75:15-5-3.1 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

75:15-5-4. Client confidentiality

~~(a) Case or client records, files or notes, of a DV/SA program shall be confidential and shall only be released under certain prescribed conditions (74 O.S. § 18p-3).~~
~~(b) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records. When a client record is established, the program shall discuss the confidentiality requirements with each client and maintain documentation in the client record that they have reviewed the circumstances under which confidential information may be revealed.~~
~~(c) Compliance with 75:15-5-4 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.~~ The DVSA program must know the state and federal laws that governs confidentiality and any exceptions to those laws.

(1) State Law: Case or client records, files or notes, of a DV/SA program shall be confidential and shall only be released under certain prescribed conditions (74 O.S. § 18p-3).

(A) The case records, case files, case notes, client records, or similar records of a domestic violence or sexual assault program certified by the Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or has resided in such program or who has otherwise utilized or is utilizing the services of any domestic violence or sexual assault program or counselor shall be confidential and shall not be disclosed.

(B) For purposes of this subsection, the term "client records" shall include, but not be limited to, all communications, records, and information regarding clients of domestic violence and sexual assault programs.

(C) The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf or by court order for good cause shown by the judge in camera.

(2) Federal Law:

(A) VAWA- 42 U.S.C. § 13925 (b)(2).Federally, the U.S. Violence Against Women Act January, 2006 and mandates that programs that receive VAWA funds may not reveal personally identifying information about victims without "reasonably time-limited," written, and informed consent. Under this provision, VAWA-funded programs are prohibited from disclosing personally identifying victim information to any third party, including to any database operated by any party outside of the domestic violence program. "Reasonably time-limited" is not defined in the statute, but it is determined by the circumstances and the purposes for which the client is requesting the release of information. It could be a few minutes, a few hours, and a few days. In no event should it be for more than 15 days, or 30 at the outside.

(B) FVPSA U.S. Family Violence Prevention and Services Act (FVPSA)each have specific confidentiality protections that apply to many domestic violence and sexual assault programs. (42 U.S.C. 10402(a)(2)(E)). Grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services. subgrantees shall not -

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) Housing Assistance Emergency Shelter Grants 42 U.S.C. § 11375 (c)(5).Grant recipients are required to implement procedures to ensure confidentiality of records pertaining to any individual who is provided family violence prevention or treatment services. All grant recipients must also certify that the address of the family violence shelter will not be made public without permission of the agency.

(D) Stewart B. McKinney Homeless Assistance Act 42 U.S.C.§ 11301. The Violence Against Women Act also specifically added a provision that specifies that a domestic violence program provider shall not disclose any personally identifying information about any client to the Homeless Management Information System (HMIS).

75:15-5-4.1. Waiver of Confidential Information

(a) For a waiver of confidentiality to be valid, it must:

(1) Be voluntary;

(2) Relate only to the participant or the participant's dependents;

(3) Clearly describe the scope and any limitations of the information to be released;

(4) Include an expiration date; and

(5) Inform the participant that consent can be withdrawn at any time, orally or in writing.

(6) Programs may only share the specific information the client allows in the release. The client gets to choose when, how and what personal information will be shared, or not shared, and with whom.

(7) Even when a court mandate requires the program to disclose or release information about the client, the program may only share the minimum information necessary to meet the statutory or court mandate.

(8) The program/agency shall notify the victim of any disclosure and to continue taking steps to protect the victim's safety and privacy.

(b) A valid written release form for disclosure of client information shall have, at a minimum, the following elements:

(1) the specific name or general designation of the program or person permitted to make the disclosure,

(2) the name and title of the individual within the organization to which disclosure is to be made,

(3) the name of the client whose records are to be released,

(4) the purpose of the disclosure,

(5) a description of the information to be disclosed,

(6) the dated signature of the client or authorized representative or both when required,

(7) a statement of the right of the client to revoke the release in writing and a description of how the client may do so,

(8) an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer than 90 days reasonably necessary to serve the purpose for which it is given.

(c) "In the event of my death" clause: Some programs have chosen to talk with clients about the lethality of domestic violence and ask if they would like the program to share information with police, prosecutors, the Oklahoma Fatality Review Board, or others the client may indicate in the event that the client dies (due or not due to DV). Because clients may have to sign multiple releases, programs shall have the "in the event of my death" exception on a different form.

(d) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records. When a client record is established, the program shall discuss the confidentiality requirements with each client and maintain documentation in the client record that they have reviewed the circumstances under which confidential information may be revealed.

(e) Compliance with 75:15-5-4 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.

75:15-5-7. Shelter Policy on Medications

(a) The shelter shall seek to afford shelter residents with the greatest possible privacy and autonomy in regard to their medication, while also providing a safe shelter environment.

(1) Staff and volunteers will not dispense medication.

(2) The shelter will provide every resident with an individual locking box, locker, or locking cabinet ("locked space") for storage of medications and valuables or lock the clients' medication in a safe but accessible location.

(3) The shelter will not limit or monitor the survivor's access to her medication.

(4) If a client indicates that she needs access to refrigerated storage space, the shelter will provide refrigerated storage space in the manner that provides the greatest possible privacy and autonomy.

(5) The shelter shall have a policy for the disposal of unused or abandoned medication or other substances.

(b) Safety Agreement-During a resident's stay at shelter, the client shall be asked to make sure that any medications she has are safety secured.

(1) The shelter will ask every resident to sign an agreement that she will store any medications in her individual locking box, locker, or locking cabinet provided, or if it is one requiring refrigeration, as otherwise provided. The agreement will provide that residents who have medications that must be taken in the event of a medical emergency may carry them on their person (e.g., in a fanny pack).

(c) Compliance with 75:15-5-7 shall be determined by a review of the program's policy and procedures, and on-site observation.

SUBCHAPTER 17. CLIENTS RIGHTS

75:15-17-3. Client rights

(a) Each client shall be afforded all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:

(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each client has the right to a safe, sanitary, and humane living environment.

(3) Each client has the right to a humane psychological environment protecting him or her from harm, abuse, and neglect.

(4) Each client has the right to an environment that provides reasonable privacy, promotes personal dignity, and provides physical and emotional safety.

(5) Each client has the right to receive services suited to her or his needs without regard to his or her race, religion, ~~sex~~gender, ethnic origin, age, degree of disability, legal status, or ability to pay for the services.

(6) Each client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.

(7) Each client shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Each client has the right to uncensored, private communications including, but not limited to, letters and

telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.

(9) No client shall be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each client shall have the right to practice his or her own religious beliefs, and be afforded the opportunity for religious worship that does not infringe on the health or safety of others. No client shall be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(11) Each client has the right to be offered prompt, competent, appropriate services and an individualized service plan.

(A) The client shall be afforded the opportunity to participate in her or his service plan.

(B) The client may consent, or refuse to consent, to the proposed services.

(12) The records of each client shall be confidential. Thisconfidentiality remains intact even after the client's death.

(13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(14) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(15) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(16) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply. Each client also has the right that all information and records regarding him or her shall be treated as confidential.

(17) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(18) Each client has the right to self-determination.

(19) Each client has the right to decide whether or not to participate in supportive services offered by the program.

(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.

(c) Programs shall have written policy and a procedure to ensure each client is afforded, and has explained to him or her, these rights; and these rights are visibly posted in client areas of the facility.

(d) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff or volunteers.

[OAR Docket #13-1074; filed 6-12-13]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
CHAPTER 2. ~~ADMINISTRATION~~ ADMINISTRATIVE OPERATIONS

[OAR Docket #13-1067]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
245:2-1-4 [AMENDED]
245:2-1-6 [AMENDED]
245:2-1-10 [AMENDED]
245:2-1-13 [AMENDED]
245:2-1-18 [AMENDED]
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These revisions to the administrative rules will further interpret Title 59, 475.1 et seq. and comply with the Post-Military Service Occupation, Education and Credentialing Act.
CONTACT PERSON:
Kathy Hart, Executive Director, (405) 521-2874

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, 2013:

245:2-1-4. Board meetings

(a) The Board holds at least four (4) regular meetings each year within the State of Oklahoma. ~~The exact time and place shall be determined by the Chair and shall be set forth in a written notice, a copy of which shall be mailed to each member, at the member's last address of record, by the Executive Director or Principal Assistant at least ten (10) days in advance of the date of the meeting. Other meetings may be called as prescribed by law.~~

(b) All meetings shall be conducted by the current edition of "Roberts Rules of Order Newly Revised" unless otherwise provided herein or by Statute.

~~(c) Members of the Board may waive formal or written call or notice of meeting, and by the attendance at any meeting such members so attending shall be deemed to have waived all notice thereof.~~

(~~d~~c) A quorum of the Board shall consist of a majority of the full Board that includes at least one (1) Professional Land Surveyor Member. A majority vote of those present is required to pass a motion. The Chair shall vote as a member of the ~~board~~Board.

(~~e~~d) In the absence of a quorum at any regular or special meeting called, those members of the Board in attendance shall reschedule such meeting to any later date.

245:2-1-6. Duties of Executive Director and Principal Assistant

(a) The Board shall employ an Executive Director who shall be responsible for the administration of the policies of the ~~board~~Board, the processing of its routine operations, and other administrative and ministerial duties as the Board authorizes.

(b) The Board shall ~~appoint~~employ a Principal Assistant for the Board, who shall not be a member of the Board, ~~but shall~~and may be a Professional Engineer or Land Surveyor. The Principal Assistant's duties shall be to assist the Executive Director in the administration of the policies of the ~~board~~Board and other administrative and ministerial duties as the Board authorizes. The Principal Assistant shall act on behalf of the Executive Director in the absence of the Executive Director.

(c) The Board shall furnish the Executive Director and Principal Assistant the necessary equipment, supplies and clerical assistance, paying for same ~~directly on claims handled~~ as prescribed herein and by law.

(d) The Executive Director and Principal Assistant shall make available to the Public for inspection at ~~201 N. E. 27th Street, Oklahoma City, Oklahoma, or subsequent address,~~its official published address, all public records of the Board, and shall accept submissions and requests at said location.

(e) The Executive Director shall ~~prepare~~present monthly reports to the Board for the "Professional Engineers and Land Surveyors Fund", which shall show all funds received and disbursed from the fund.~~compared to the previous year's monthly report. Such report shall be presented to the Board at the next scheduled meeting.~~

245:2-1-10. Official records

Among other official records required by law, or by rules of other agencies in support of law, the Board shall maintain accurate and current records including, but not limited to:

(1) A record of minutes, in proper order, containing a summary of actions of all meetings of the Board.

(2) Records of Licensees, containing the name and license number of all persons to whom Certificates of Licensure are issued, date of original license, the last known physical and e-mail ~~address~~addresses of all current licensees and renewals affected through biennial licensure, and the discipline(s) of engineering in which the applicant is claiming competency.

(3) Licensee files for each current licensee containing the original application, relevant verification and evaluation data, record of examination ~~grades~~results, and when applicable, records of alleged violations, suspensions, revocations, refusal to renew, orders issued, hearing transcriptions and penalties levied.

(4) Certificate of Authorization files containing the name of each current firm holding a current certificate, the engineer(s) or land surveyor(s) of record, a record of all partners, officers and directors of the entity, their license number and state in which they are licensed, if applicable, and the last known address.

(5) A system of finance records indicating funds received, budgeted, committed, spent, remaining and projections of appropriate request for consideration in budget development.

245:2-1-13. Confidential records

(a) Prior to presentation to the Board for formal or informal adjudication, files of investigations in progress shall be deemed not subject to the Open Records Act and therefore, confidential. Files of investigation that are confidential shall not be subject to disclosure to the extent such files would not be discoverable under state law, are protected by an evidentiary privilege, contain the record of a lawfully constituted executive session, or contain the personal notes or personally created materials of a public official prior to taking action, or contain materials otherwise exempt from disclosure or discovery under applicable laws.

(b) Files of investigations in progress as referenced in this Section, shall mean any record, as defined by 5l O.S. 1991, Section 24A.3 and any amendments thereto pertaining to alleged violations of the Act or the Rules in this Chapter, by an individual, firm, partnership, association, corporation or entity prior to presentation to the Board for formal or informal adjudication.

(c) Upon written request, the Board or Board staff will examine its investigation files to determine the extent to which material contained in the file of an investigation in process should be deemed not confidential and, therefore, may be disclosed. In all cases, the Board will confirm a complaint has or has not been received and that an investigation is in progress.

(d) Other Board records and papers that may be kept confidential according to Title 59, Section 475.10(D): examination materials, file records of examination problem solutions, exam scores, letters of inquiry and reference concerning applicants, transcripts of college courses and grades, closed complaints, information otherwise protected by law and all other matters of like confidential nature.

245:2-1-18. Fees and penalties

(a) Schedule of fees and penalties, effective July 1, ~~2009~~2013, are as follows:

(1) Application:

(A) Original

(i) Engineer/Surveyor - $150.00
(ii) Intern - $50.00
(iii) Firm - $200.00
(B) Comity
(i) Engineer/Surveyor - $250.00
(ii) Intern - $50.00
(iii) Firm - $250.00
(C) Re-license
(i) Engineer/Surveyor - $250.00
(ii) Intern - $50.00
(iii) Firm - $250.00
(D) Requalifications
(i) Engineer/Surveyor - $150.00
(ii) Intern - $25.00
(2) Biennial renewals:
(A) Individuals (Renewal fees are waived for Oklahoma licensed engineers and surveyors at 70 years old. Individuals must be 70 years old prior to their biennial renewal date and ~~return~~comply with the administrative renewal requirements of ~~form sent by~~ the Board to qualify.)
(i) Engineer/Surveyor - $150.00
(ii) Intern B WAIVED
(B) Firm - $200.00
(3) Reinstatement penalty (in addition to the renewal fee): The following reinstatement penalty schedule refers to payments received by the Board within the prescribed number of days following the expiration date of the renewal:
(A) 1 B 60 days:
(i) Engineer/Surveyor - $100.00
(ii) Firm - $100.00
(B) 61 B 120 days:
(i) Engineer/Surveyor - $150.00
(ii) Firm - $150.00
(C) 121 B 180 days:
(i) Engineer/Surveyor - $250.00
(ii) Firm - $250.00
(D) Reinstatement penalties for professional engineers and land surveyors may be waived if the licensee was unable to renew because they were in non-compliance with the Oklahoma Tax Commission.
(4) Re-examination application:
(A) Engineer/Surveyor - $50.00
(B) Intern - $10.00
(5) Temporary permit (Engineering) - $750.00
(6) Administrative fee for returned checks: $25.00
(7) Duplicate certificate: $25.00
(8) Application fee to revise license or authorization
(A) Engineer/Surveyor $50.00
(B) Intern B no charge
(C) Firm - $100.00
(9) Transcript of hearing B Actual cost
(10) Copy of public records (per page): $.25
(b) The Board shall make no refunds of any fees or penalties to any applicant or licensee.
(c) These fees and penalties apply to the Rules in this Chapter and Chapter 15 of this Title.
(1) The administrative fee for returned checks shall be applied to any check returned to the Board for insufficient funds.
(2) Any such check returned to the Board shall be replaced with a cashier's check or money order within ten (10) days following notification from the Board of the returned check.
(d) Any member of the Armed Forces of the United States who is deployed on active duty who at the time of deployment was duly licensed in good standing as a professional engineer or land surveyor in Oklahoma, may renew their license without the payment of renewal or reinstatement fees. The license or certificate issued pursuant to the provisions of this section may be continued as long as the licensee or certificate holder is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty.

[OAR Docket #13-1067; filed 6-11-13]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
CHAPTER 15. LICENSURE AND PRACTICE OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[OAR Docket #13-1068]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
245:15-1-3 [AMENDED]
245:15-1-4 [AMENDED]
Subchapter 3. Application and Eligibility for Licensing
245:15-3-2 [AMENDED]
245:15-3-3 [AMENDED]
245:15-3-4 [AMENDED]
245:15-3-5 [AMENDED]
245:15-3-6 [AMENDED]
245:15-3-7 [AMENDED]
245:15-3-8 [AMENDED]
245:15-3-9 [AMENDED]
245:15-3-10 [AMENDED]
Subchapter 5. Examinations
245:15-5-1 [AMENDED]
245:15-5-2 [REVOKED]
245:15-5-3 [AMENDED]
245:15-5-4 [AMENDED]
245:15-5-5 [AMENDED]
245:15-5-7 [AMENDED]
Subchapter 7. Licensure
245:15-7-1 [AMENDED]
245:15-7-3 [AMENDED]
245:15-7-4 [AMENDED]
245:15-7-5 [AMENDED]
Subchapter 9. Rules of Professional Conduct
245:15-9-5 [AMENDED]
245:15-9-7 [AMENDED]
Subchapter 11. Continuing Education
245:15-11-3 [AMENDED]
245:15-11-5 [AMENDED]
245:15-11-6 [AMENDED]
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245:15-11-10 [AMENDED]
245:15-11-11 [AMENDED]
245:15-11-13 [AMENDED]
Subchapter 13. Minimum Standards for the Practice of Land Surveying
245:15-13-2 [AMENDED]
245:15-13-4 [NEW]
Subchapter 15. Ethical Marketing of Services
245:15-15-3 [AMENDED]
Subchapter 17. Licensee's Seal
245:15-17-1 [AMENDED]
245:15-17-2 [AMENDED]
Subchapter 19. Organizational Practice
245:15-19-1 [AMENDED]
245:15-19-2 [AMENDED]
Subchapter 21. Corner Perpetuation and Filing Act Requirements
245:15-21-1 [AMENDED]
245:15-21-2 [AMENDED]
245:15-21-3 [AMENDED]
Subchapter 23. Violations
245:15-23-1 [AMENDED]
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ANALYSIS:
These revisions to the administrative rules will further interpret Title 59, 475.1 et seq and Title 65 O.S., Sections 3-116, and comply with the Post-Military Service Occupation, Education and Credentialing Act. Definitions for "Oklahoma Model Law Engineer", "Related science degree" and the "Practice of Engineering" are modified. Revisions allow for computer based testing for licensure. Revisions modifying the Minimum Standards for the Practice of Land Surveying.

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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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

245:15-1-3. Definitions

The following words or terms, when used in the Rules of Procedure, shall have the following meaning, unless the context clearly indicates otherwise. Definitions in 59 O.S. Section 475.2 and 65 O.S. Section 3-118 shall be read together with the definitions and interpretations provided in the Rules of Procedure of the Board.

"Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal filled bottles, steel or wooden stakes, or other objects.

"Certify" or "Certification" or similar expressions relating to engineering or land surveying services shall mean a statement based upon facts and knowledge known to the licensee and is not a guarantee or warranty, either expressed or implied.

"Closure error" means the ratio between the horizontal linear error of closure to the total horizontal distance traversed, with the numerator of the ratio being the number "one".

"Land or boundary survey" means a survey, the primary purpose of which includes, but is not limited to, the determining of the perimeter of a parcel or tract of land by establishing or reestablishing corners, monuments and boundary lines.

"Linear closure" means a measure of the horizontal linear error without regard to direction, between the computed location of the first and last points of a traverse when either the traverse actually returns to its beginning point (geometrically and mathematically closed), or the traverse ends at a point of previously established control relative to the beginning point (geometrically open, but mathematically closed).

"Mortgage Inspection Report" means a representation of the boundaries of a parcel of real property and the improvements thereon, prepared incident to a mortgage of real property.

"Monument" means a physical structure that occupies the exact position of a corner.

"Oklahoma Model Law Engineer" means a person who meets the minimum requirements of this act and:

(A) is a graduate of an engineering curriculum accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) or, has an engineering degree recognized as ~~substantially~~ equivalent to an EAC/ABET degree by the Board, or has a Board-approved related science degree;

(B) has passed the Fundamentals of Engineering examination using the NCEES cut score except that for an applicant having eight years of acceptable engineering experience who obtained an original license prior to December 31, 1996, the Fundamentals of Engineering examination is waived for this definition only;

(C) has a specific record of an additional four years of progressive experience on engineering projects following graduation, or has a ~~board~~Board-approved related degree and an additional six years of progressive experience on engineering projects following graduation;

(D) has passed the Principles and Practices of Engineering examination using the National Council of Examiners for Engineering and Surveying (NCEES) cut score if the state of Oklahoma required such an examination at the time the comity applicant's original license was granted;

(E) has not been disciplined in any jurisdiction by a Board of licensure for engineering or land surveying or architecture;

(F) has not been convicted of a felony ~~or non-traffic related misdemeanor~~.

"Positional error" means the difference between the actual position of a corner monument and its described or computed position. This error may be determined by computing the difference between the measured position and the adjusted position of the monument or by measurement of angle and distance between three of the corner monuments on the survey if made with precise surveying instruments using proper procedures.

"Practice of land surveying" as defined by Title 59 O.S. Section 475.2(7)(a) also includes monumenting the subdivision of land into smaller parcels and the preparation of legal descriptions in connection therewith; however, the preparation of legal descriptions by a person who does not monument the land so described is not the practice of land surveying. Preparation of the control portion of geographic information systems and land information systems means the authoritative and monumented ground survey of a system of marks or objects to establish horizontal or vertical positions.

"Professional Engineer, Retired" - The term "Professional Engineer, Retired" as used in these rules, shall mean an individual who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Engineer, Retired."

"Professional Land Surveyor, Retired" - The term "Professional Land Surveyor, Retired" as used in these rules, shall mean an individual who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Land Surveyor, Retired."

"Related science degree" means one of the following: a degree from an ETAC/ABET accredited engineering technology program of four (4) years or more, or a degree from an architecture program accredited by the National Architectural Accrediting Board (NAAB). ~~Degrees of four (4) years or more in other sciences will be deemed a related science degree only if approved by the Board after a review of the curriculum. Provided, after July 1, 2016, non-accredited technology degrees shall no longer be eligible for consideration as a related science degree, but may be considered by the Board as a step towards licensure under 245:15-3-7(2)(B)(ii).~~ Further, degrees of four (4) years or more in mathematical, physical, or engineering sciences may only be considered as a related science degree if they were obtained from a university with an EAC/ABET or ETAC/ABET accreditation in a ~~discipline~~program of engineering and must include a minimum of 8 hours of mathematics beyond trigonometry and 20 hours of engineering or related sciences. Otherwise, the degree may be considered as a step towards licensure under 245:15-3-7(2)(B)(ii). Provided, after July 1, 2016, non-accredited technology degrees shall no longer be eligible for consideration as a related science degree, but may be considered by the Board as a step towards licensure under O.S. Title 59, 475.12(A)(d). Further, no examination shall be administered following July 1, 2020, for applicants applying with a non-accredited technology degree or non-related science degree for licensure as a Professional Engineer even if the applicant's application was approved by the Board prior to July 1, 2016.

"Rules of professional conduct for Professional Engineers and Land Surveyors" means those rules promulgated by the Board.

"Signature" means "manual signature" or "digital signature" and shall be defined as follows:

(A) Manual signature means the handwritten name of a person applied to a document that identifies the person, serves as a means of authentication of the contents of the document, provides responsibility for the creation of the document and provides for accountability for the contents of the document.

(B) A digital signature shall carry the same weight, authority, and effects as a manual signature.

"Survey plat", "sketch", or "map", or similar document, shall mean any drawing of a parcel or tract of real property used for the purpose of depicting the results of a field survey.

245:15-1-4. Statutory charges to the Board

Provisions of the Statutes charge the Board with adoption and enforcement of all reasonable and necessary Rules and Regulations which it may deem advisable and empowers the Board with authority to deny the issuance, restoration or renewal of, or place on probation for a period of time and subject to such conditions as the Board may specify, suspend, revoke or refuse to renew Certificates of Licensure and Certificates of ~~Authority~~Authorization for certain causes. The Statutes also ~~empowers~~empower the Board with administrative penalties (fines) and ~~does~~do not preclude the Board from using any necessary legal proceedings to enforce its decisions.

SUBCHAPTER 3. APPLICATION AND ELIGIBILITY FOR LICENSING

245:15-3-2. Documents required for licensing

(a) Every individual applying for a license shall submit an application, which shall be the ~~printed~~ forms furnished by the

Board or forms located on the Board's website, accompanied by the applicable fees.

(b) All information filled in on the application forms must be typewritten or computer generated. In case there is not sufficient room on the form to present all the subject matter necessary, the applicant shall set forth the additional information on additional sheets of plain white paper, 8 1/2" x 11" in size. Such sheets shall be typewritten or computer generated on one side only, shall be marked and numbered consecutively and in series with the regular pages of the application.

(c) An affidavit certifying the truthfulness of the statements in the application shall constitute a part of each application. Withholding information or providing statements which are untrue or misrepresent the facts may be cause for denial of an application.

(d) An applicant shall request the university or college,or its designee, from which credit has been obtained to forward directly to the Board a properly certified university or college transcript showing all academic work.

(e) All application forms and information furnished thereon and all examinations and answers thereto shall be entirely in the English language.

245:15-3-3. Non-resident applications for original license

~~The Board will receive and process non-resident applications for original license of an applicant who is a graduate of an Oklahoma university or college or an applicant who is an Oklahoma certified engineer intern. All other applicants for original license must be an Oklahoma resident~~All applicants for original license must show proof they are a United States citizen or show proof they are lawfully present in the United States.

245:15-3-4. Board action required

(a) Individual comity applicants meeting the requirements of a "Oklahoma Model Law Engineer" as defined in these regulations and the application for Certificate of Authorization of the firm for which the comity applicant is in responsible charge, may be approved by the Principal Assistant and Executive Director, or the designee. Certificate of Authorization applications for firms in which the responsible charge engineer or surveyor is a currently licensed engineer and/or surveyor in Oklahoma may also be approved by the Principal Assistant and Executive Director if the firm has not been disciplined in any jurisdiction by a Board of licensure for engineering, land surveying or architecture. All other applications for Professional Engineer, Professional Land Surveyor and Certificate of Authorization submitted for a license shall be first considered by the Board for approval or disapproval.

(b) Intern applications for ~~admission to the fundamentals examination(s)~~certification may be approved by the Executive Director, ~~or~~ Principal Assistant, or the designee.

(c) The Board or its designee shall approve or disapprove applications for certification as an Engineer Intern or Land Surveyor Intern.

245:15-3-5. ~~Application deadlines~~ Examination dates and locations

~~Professional Engineer, Professional Land Surveyor, Engineer Intern and Land Surveyor Intern applications for initial license or certification may be made at any time. Cut-off dates for receiving applications will be set out in a policy of the Board and circulated with application information. If an application is received following the cut-off date the application will be continued to the next examination scheduled.~~ Examinations are offered on dates and locations as set by NCEES and/or the Board.

245:15-3-6. Active and inactive applications

(a) Incomplete applications will be withdrawn from consideration by the Board after one year from the date submitted to the Board and a new and complete application shall be required from an applicant seeking licensure.

(b) An applicant's application will be closed after a ~~fourth~~ prescribed number of~~failure~~ failures of any NCEES paper and pencil examination or the Oklahoma Law and Surveying Examination, regardless of the jurisdiction in which the examination is administered. ~~An applicant's application will also be closed after a fourth failure of the Oklahoma Law and Surveying examination.~~For further consideration, ~~An~~an applicant shall file a new and complete application for re-examination, to include evidence of additional education, knowledge or skill sufficient to materially improve the applicant's qualifications for re-examination. NCEES examinations administered using computer based testing will be administered per NCEES policy and the policies of the Board.

(c) If an applicant requests that the applicant's application be withdrawn from consideration, the Board will reject the application. Any further consideration will require a new and complete application and fee.

~~(d) An applicant who fails to attend an examination for which they have been scheduled will forfeit the fee paid for the examination, except in the case of illness, death in the family, or other unavoidable causes for absence where the fee will be applied to the next test administration. Failure of an applicant to attend an examination for which they have been scheduled to attend does not count as a failure of the examination.~~

245:15-3-7. Qualifications for engineer license

To be eligible for consideration for licensure as a Professional Engineer or certification as an Engineer Intern, the applicant must be of good character and reputation. Applicants must meet all qualifications as contained within the Statutes and the Rules of the Board. Applications for professional licensure shall be individually reviewed by the Board or its designee. Evidence of minimum qualifications is required by the Board in accordance with the following requirements:

(1) Engineer Intern:

(A) Graduation and Examination – A graduate of an EAC/ABET accredited engineering program of four (4) years or more, or an engineering program of four (4) years or more determined by the Board to be ~~substantially~~ equivalent to an EAC/ABET accredited

engineering program ~~in the United States~~, or an applicant who has completed ninety (90) semester hours or more of academic requirements towards such degree for graduation, shall register with NCEES to take ~~be admitted to a Board approved~~the NCEES Fundamentals of Engineering examination ~~in the fundamentals of engineering~~. Upon passing such examination and providing an application to the Board including proof of graduation, the applicant shall be certified as an engineer intern, if otherwise qualified.

(B) Alternative Graduation, Experience, and Examination - A graduate of a related science program other than those approved in 245:15-3-7(1)(A) or an applicant who has completed ninety (90) semester hours or more of academic requirements towards such degree for graduation shall register with NCEES to take ~~be admitted to a Board approved~~ the NCEES Fundamentals of Engineering examination ~~on the fundamentals of engineering~~. Upon passing such an examination, providing proof of graduation and providing an application to the Board including proof of a specific record of one year or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall be certified as an engineer intern, if otherwise qualified. No examination shall be administered following July 1, 2020, for applicants applying under this Section of the Rules for licensure as a Professional Engineer who do not meet these educational requirements even if the applicant's application was approved by the Board prior to July 1, 2016.

(C) A graduate of a four (4) year degree program in a science not considered an equivalent engineering or a related science degree by the Board must complete ~~twelve (12) hours of graduate level courses towards~~ a Board approved Masters Degree in engineering ~~from an institution with a comparable EAC/ABET accredited undergraduate engineering program~~ before being considered for approval as a related science degree by the Board. Following completion of the undergraduate degree program,~~and twelve (12) hours of graduate level courses towards~~ the Board approved Masters Degree, ~~the graduate shall be admitted to a Board approved~~passing the NCEES Fundamentals of Engineering examination ~~in the fundamentals of engineering. Upon passing such examination, completing the required additional education towards a Masters Degree in engineering,~~ and providing proof of a specific record of one year or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall, upon application, be certified as an Engineer Intern, if otherwise qualified. The one year of required experience must follow the completion of the Masters Degree in engineering.

(D) Foreign degrees not determined by the Board to be ~~substantially~~ equivalent to an EAC/ABET accredited engineering degree may be considered following a degree evaluation by an evaluation service approved by the Board. The maximum equivalency granted for all non-EAC/ABET foreign degrees, except those determined by the Board to be ~~substantially~~ equivalent to an EAC/ABET accredited engineering degree, shall be that of a related science degree.

(E) All applicants for the NCEES Fundamentals of Engineering examination administered using computer based testing will register directly with NCEES to sit for the examination according to NCEES and Board policy and procedures.

(F) Passing results of the NCEES Fundamentals of Engineering examination shall be accepted whether or not they were obtained prior to meeting the education requirements outlined in this section.

(2) Professional Engineer (original license):

(A) Graduation, Experience, and Examination - The Board shall license as a professional engineer, an applicant who meets one of the following as minimum evidence that an applicant is qualified for licensure:

(i) A graduate of an EAC/ABET accredited engineering program of four (4) years or more, or an engineering program of four (4) years or more determined by the Board to be ~~substantially~~ equivalent to an EAC/ABET accredited engineering program ~~in the United States~~, ~~and following the date of degree a specific record of an additional~~with four (4) years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, ~~shall be admitted to a Board approved~~who has passed the NCEES Fundamentals of Engineering examination ~~in the fundamentals of engineering, and, if passed, then shall be admitted to a Board approved~~and the NCEES Principles and Practice of Engineering examination; or~~in the principles and practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice engineering in this state, if otherwise qualified.~~

~~(B) Alternative Graduation, Experience and Education -~~

(~~i~~ii) A graduate ~~holding~~of a related science ~~degree~~program other than those approved in 245:15-3-7(2)(A)(i) and following the date of degree has a specific record of six (6) years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, ~~shall be admitted to a Board approved~~ who has passedthe NCEES Fundamentals of Engineering examination ~~on the fundamentals of engineering~~, and ~~if passed, then shall be admitted to~~the NCEES Principles and Practice of Engineering examination; or, ~~an eight hour written examination in the principles~~

~~and practice of engineering. Upon passing such examination, the applicant shall be granted a certificate of licensure to practice engineering in the state, if otherwise qualified. No examination shall be administered following July 1, 2020, for applicants applying under this Section of the Rules for licensure as a Professional Engineer who do not meet these education requirements even if the applicant's application was approved by the Board prior to July 1, 2016.~~

(~~ii~~iii) A graduate of a four (4) year degree program in a science, not considered an equivalent engineering or a related science degree by the Board, ~~must completetwelve (12) hours of graduate level courses towards~~ who has completed a Board-approved Masters Degree in engineering, with six (6) years of progressive experience, following the date of the Master's degree, on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, ~~from an institution with a comparable EAC/ABET accredited undergraduate engineering program before their degree program may be being considered for approval as a related science degree by the Board. Following completion of the undergraduate degree program and twelve (12) hours of graduate level courses towards the Masters Degree in engineering, the graduate shall be admitted to a Board approved~~who has passed the NCEES Fundamentals of Engineering examination,~~in the fundamentals of engineering and if passed shall be admitted to a Board approved~~and the NCEES Principles and Practice of Engineering examination.~~in the principles and practice of engineering. Upon passing such examinations, completing the required additional education towards the Masters Degree in engineering, and providing proof of a specific record of six years or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall be granted a certificate of licensure to practice engineering in this state, if otherwise qualified.~~

(B~~iii~~) Foreign degrees not determined by the Board to be ~~substantially~~ equivalent to an EAC/ABET engineering degree may be considered following a degree evaluation by an evaluation service approved by the Board; however maximum equivalency granted shall be that of a related science degree in 245:15-3-7 (2)(A)(ii). Foreign degrees determined not to be equivalent to an EAC/ABET engineering degree may not qualify for education or experience credit earned by obtaining a Master's Degree in engineering.

(C) Experience credit may be claimed to the date of the application and is based on employment on a 40 hour per week full-time basis. Experience record is to be continuous from beginning to the date of the application. Experience time shall not exceed elapsed calendar time. Applications with insufficient experience will be rejected by the Board. Only experience obtained directly within the professional field will be considered as qualifying experience by the Board and must be verified. Experience ~~should~~ shall be gained under the supervision of a licensed professional engineer or, if not, an explanation ~~should~~shall be made showing why the experience should be considered acceptable. United States ~~Experience~~experience gained under the technical supervision of an unlicensed individual may be considered if the appropriate credentials of the unlicensed supervisor are submitted and approved by the Board. Engineering experience gained outside the United States shall be verified by a U.S. licensed professional engineer. At least half of the required experience for initial licensure must be obtained in the United States or, if the experience is not in the United States, it must be obtained working for a United States owned firm.~~The following areas of experience will be considered creditable if the experience involves the application of engineering principles~~ In evaluating experience that indicates to the Board that the applicant may be competent to practice engineering, the following will be considered:

(i) Experience must be progressive on engineering projects to indicate that it is of increasing quality and requiring greater responsibility.

(ii) Experience must not be obtained in violation of the licensure act.

(iii) Experience gained in the armed services, to be creditable, must be of a character equivalent to that which would have been gained in the civilian sector doing similar work. Normally, it would be expected that the applicant, while in the armed services, served in an aengineering or engineering-related group.

(iv) For sales experience to be creditable, it must be demonstrated that engineering principles were required and used in gaining the experience.

(v) Teaching experience, to be creditable, must be in engineering or engineering-related courses at an advanced level in a college or university offering an engineering program of 4 years or more that is approved by the Board.

(vi) Experience gained in engineering research and design projects by members of an engineering faculty, where the program is approved by the Board, is creditable.

(vii) Experience in construction, to be creditable, must demonstrate the application of engineering principles.

(viii) Experience should include demonstration of knowledge of engineering mathematics, physical and applied science, properties of materials, and the fundamental principles of engineering design.

(ix) Experience should include demonstration of the application of engineering principles in the practical solution of engineering problems.

~~(i) Evaluation, selection and application of standard engineering techniques, procedures and criteria, using judgment in making adaptations and modifications.~~

~~(ii) Engineering research and development.~~

~~(iii) Plan, design and analysis of engineering projects, systems and/or manufactured products.~~

~~(iv) Construction of engineering projects or systems.~~

~~(v) Applications and operational analysis of engineering projects, systems or facilities.~~

~~(vi) Teaching in a college or university offering an approved program of four (4) years or more of advanced engineering subjects and related courses.~~

(D) A maximum of six (6) months experience may be allowed for successful completion of an EAC/ABET accredited engineering cooperative education program with work experience meeting (2)(A) of this Sections. Partial experience credit may be given for experience earned prior to receipt of a baccalaureate degree, at the discretion of the Board, if the employment is at least half-time and the work is performed under the supervision of a professional engineer. At the time the experience was gained, the applicant must have passed upper level engineering or related engineering science courses and applied relevant engineering knowledge in the claimed experience. In no case shall the experience credit exceed one half of that required for approved qualifying experience.

(E) Concurrent time, that is, time spent in engineering work while attending school will be credited either as education experience or work experience but not both.

(F) Applicants, applying under (2)(A)(i), or (2)(~~B~~A)(ii), ~~or (2)(B)(ii),~~ who successfully complete graduate study leading to a Board approved Master's Degree in engineering may be awarded one (1) year's experience ~~provided that at the time the Master's Degree in engineering was awarded the institution had a bachelor's level EAC/ABET accredited engineering program of four (4) years or more or an engineering program of four (4) years or more determined by the Board to be substantially equivalent to an EAC/ABET accredited engineering program~~. If a Ph.D. in engineering is completed under the same conditions, two years total experience may be awarded. The two years awarded include the one year awarded for the master's degree. If the Ph.D. in engineering is completed under the same conditions but without the master's degree in engineering ~~which does not follow an EAC/ABET accredited engineering curriculum of four (4) years or more or an engineering curriculum of four (4) years or more recognized by the ABET Washington Accord Agreement,~~ one year of experience may be awarded for the combined master's degree and Ph.D.

(G) Accredited engineering programs of six (6) years or more which confer a master's of science in engineering without first conferring a bachelor of science in engineering may be accepted under 2(A)(i) and may be allowed the additional one year of engineering experience under 2(F) of this section.

(H) Applicants shall submit a minimum of five (5) acceptable references, three (3) of whom shall be Professional Engineers having personal knowledge of the applicant's engineering experience, none of whom may be current members of the Board. References verifying experience, who have been disciplined by any professional licensure board within the past 10 years, must submit a copy of the formal disciplinary action taken for the Board's review and consideration. ~~These references~~References should verify the periods of experience since the beginning of the history, leaving no gaps in dates. Comity applicants who obtained their original license more than ten years prior must list all engineering experience obtained since their original license, but shall only be required to verify the most recent ten years of experience. The Board cannot give credit for engineering experience that has not been verified by one or more references.

(I) When the requirements of the Statutes and of this Chapter are met, the applicant shall be admitted to, and must pass, an examination covering the laws, rules, procedures and practices pertaining to engineering in the state of Oklahoma.

(J) Applicants may apply for a waiver of the NCEES Fundamentals of Engineering examination by showing proof of a minimum of fifteen (15) years of acceptable progressive engineering experience following the date of the conferred degree qualifying the applicant for licensure.

245:15-3-8. Qualifications for land surveying licensure

To be eligible for consideration for licensure as a Professional Land Surveyor or certification as a Land Surveyor Intern, an applicant must be of good character and reputation. Applicants must meet all qualifications as contained within the Statutes and the Rules of the Board. Applications for professional licensure shall be individually reviewed by the Board or its designee. All applicants for admittance to the NCEES Fundamentals of Surveying examination administered using computer based testing will register directly with NCEES to sit for the examination according to NCEES and Board policy and procedures. Evidence of minimum qualifications is required by the Board in accordance with the following requirements:

(1) Land Surveyor Intern:

(A) A graduate of a surveying program of four (4) years or more approved by the Board, or an applicant who has completed sixty (60) semester hours or more of academic requirements for graduation, shall ~~be~~

~~admitted to a Board approved~~ register with NCEES to take the NCEES Fundamentals of Engineering examination. ~~examination in the fundamentals of surveying.~~ Upon passing such examination and providing an application to the Board including proof of graduation, the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(B) A graduate of a surveying program of two (2) years or more approved by the Board, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation from a two-year surveying program approved by the Board shall register with NCEES to take ~~be admitted to an eight hour written examination in~~ the NCEES ~~fundamentals of surveying~~Fundamentals of Surveying examination. Upon passing such examination and providing proof of graduation the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(C) A graduate of other academic programs of two (2) years or more approved by the Board, which shall include the Board-approved Core Curriculum in surveying, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation, including twenty-one (21) semester hours or more of the Core Curriculum, from another academic program of two (2) years or more approved by the Board, shall ~~be admitted to a Board approved~~register with NCEES to take ~~examination in~~ the ~~fundamentals of surveying~~ Fundamentals of Surveying examination. Upon passing such examination, providing an application to the Board including proof of graduation and providing proof of a specific record of one year or more of progressive experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(D) An applicant who provides proof of completion of sixty (60) credit hours approved by the Board, which shall include the Board-approved Core Curriculum in surveying, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation, including twenty-one (21) semester hours or more of the Core Curriculum, shall ~~be admitted to a Board approved~~register with NCEES to take the NCEES Fundamentals of Surveying ~~examination in the fundamentals of surveying~~. Upon passing such examination and providing an application to the Board including proof of completion of the educational requirements and a specific record of one year or more of progressive experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(E) All applicants for the NCEES Fundamentals of Surveying examination administered using computer based testing will register directly with NCEES to sit for the examination according to NCEES and Board policy and procedures.

(F) Passing results of the NCEES Fundamentals of Surveying examination shall be accepted whether or not they were obtained prior to meeting the education requirements outlined in this section.

(2) Professional Land Surveyor (original license):

(A) Graduation, Experience, and Examination:

(i) A graduate of a surveying program of four (4) years or more approved by the Board and a specific record of four (4) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, of which no less than two (2) years experience must be following the date of the degree, who has also passed ~~an eight hour written examination in the fundamentals of surveying~~the NCEES Fundamentals of Engineering examination, shall be admitted to a ~~Board approved examination in the principles and practice of surveying~~the NCEES Principles and Practice of Surveying examination and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(ii) A graduate of a surveying program of two (2) years or more approved by the Board and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying and who has also passed ~~a Board approved~~the NCEES Fundamentals of Engineering examination ~~in the fundamentals of surveying~~, shall be admitted to ~~a Board approved~~ the NCEES Principles and Practice of Surveying examination ~~in the principles and practice of surveying~~ and an Oklahoma Law and Surveying examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(B) Alternative Graduation, Experience and Examination:

(i) A graduate of other academic programs of two (2) years or more, approved by the Board, which shall include the Board-approved Core Curriculum in surveying and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on

land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, who has also passed ~~a Board approved~~the NCEES Fundamentals of Surveying examination ~~in the fundamentals of surveying~~, shall be admitted to ~~a Board approved~~ the NCEES Principles and Practice of Surveying examination ~~in the principles and practice of surveying~~ and an Oklahoma Law and Surveying examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(ii) An applicant who provides proof of completion of sixty (60) credit hours, approved by the Board, which shall include the Board-approved Core Curriculum in surveying, and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, who has also passed ~~a Board approved examination, in~~ the NCEES Fundamentals of Surveying ~~fundamentals of surveying~~ shall be admitted to ~~a Board approved~~the NCEES Principles and Practice of Surveying examination ~~in the principles and practice of surveying~~ and an Oklahoma Law and Surveying examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(C) Long Established Practice and Examination:

(i) An applicant with a specific record of nine (9) years or more of practice in land surveying of a grade and character which indicates to the board that the applicant may be competent to practice surveying shall ~~be admitted to an eight-hour written examination in the fundamentals of surveying~~ register with NCEES to take the NCEES Fundamentals of Surveying examination, and, if passed, then shall be admitted to ~~a six-hour written examination in the principles and practice of surveying~~the NCEES Principles and Practice of Surveying examination and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified. Provided, after July 1, 2014, the record of practice in land surveying specified in this paragraph shall not be considered by the Board as minimum evidence that an applicant is qualified for licensure as a professional land surveyor. No examination shall be administered following July 1, 2014, for applicants applying under this section of the rules for licensure as a Professional Land Surveyor, even if the applicant's application was approved by the Board prior to July 1, 2014.

(D) Experience record may be claimed to the date of the application and is based on employment on a 40 hour per week full-time basis. Experience record is to be continuous from the beginning to the date of the application. Experience time shall not exceed elapsed calendar time. Applications with insufficient experience will be rejected by the Board. Only experience obtained directly within the land surveying area will be considered as qualifying experience by the Board. United States ~~Experience~~experience shall ~~should~~ be gained under the supervision of a licensed professional surveyor~~,~~; or if not, an explanation ~~should~~shall be made showing why the experience should be considered acceptable. Land Surveying experience gained outside the United States must be verified by a U.S. licensed professional land surveyor. At least half of the required experience for initial licensure must be obtained in the United States. ~~The following listed experience will be considered to be of a grade and character satisfactory to the Board.~~ In evaluating experience which indicates to the Board that the applicant may be competent to practice surveying, the following will be considered:

(i) Experience must be progressive on surveying projects to indicate that it is of increasing quality and requiring greater responsibility.

(ii) Experience must not be obtained in violation of the licensure act.

(iii) Experience gained in the armed services, to be creditable, must be of a character equivalent to that which would have been gained in the civilian sector doing similar work. Normally it would be expected that the applicant while in the armed services served in a surveying group.

(iv) Teaching experience to be creditable must be at an advanced level in a surveying program that is approved by the Board.

(v) A substantial portion of the experience must be spent in charge of work related to property conveyance, retracement and original boundary line determination.

(vi) Adequate experience in the technical field aspects of the profession must be demonstrated.

(vii) Experience should include demonstration of the application of surveying principles in the practical execution of surveying tasks.

~~(i) "Office experience" which includes, but is not limited to, land surveying activities, where the applicant:~~

~~(I) Assists in the planning, directing and analyzing necessary for the preparation of surveys, plats, and related documents.~~

~~(II) Reduces and evaluates land surveying data.~~

~~(III) Develops procedures and systems for the collection, reduction, adjustment and use of land surveying data.~~

~~(IV) Prepares data to be used by field surveyors or field crews.~~

~~(V) Coordinates the preparation and processing of maps, plats, reports, descriptions, or other documents.~~

~~(VI) Researches records to obtain survey and title data.~~

~~(VII) Performs boundary analysis and reconciles records and field evidence to identify boundary line's discrepancies.~~

~~(ii) "Field experience" which includes, but is not limited to, land surveying activities, where the applicant:~~

~~(I) Assists in determining field survey methods and procedures, including selection of accuracy standards.~~

~~(II) Selects or verifies that the correct control monumentation is used to establish the survey datums (horizontal and vertical) and selects "on the ground" locations for control monuments.~~

~~(III) Inspects monumentation in the field and/or examines field evidence for the determination and identification of physical evidence.~~

~~(IV) Reviews measurements observations with the responsibility for accuracy, completeness, and consistency.~~

~~(V) Reviews, determines procedures for and prepares field notes and records for proper application of field survey procedures.~~

~~(VI) Plans field checks, reviews field checks, and, based on such checks, determines if completed field survey plats are accurate and sufficient.~~

~~(VII) Searches for boundary and control monuments; assists in analyzing field evidence; compares record data to found physical evidence; compares record data to measured data, documents discrepancies; assists in acquiring and documenting testimony regarding boundary locations; recommends boundary locations and/or establishment; selects or verifies that the correct controlling monuments are used to locate or establish boundary points and lines.~~

~~(VIII) Recommends when existing boundary monuments are to be replaced; selects the methods to be used for replacing and resetting monuments.~~

~~(IX) Functions as a "party chief," "chief of parties," or lead person in charge of field surveyors or field crews performing land surveying services of a grade and character satisfactory to the Board.~~

(E) Professional land surveyor ~~Applicants~~applicants shall submit a minimum of five (5) acceptable references, at least three (3) of whom shall be Professional Land Surveyors having personal knowledge of the applicant's land surveying experience and none of whom may be current members of the Board. References verifying experience who have been disciplined by any professional licensure board within the past 10 years must submit a copy of the formal disciplinary action taken for the Board's review and consideration. ~~These references~~ References should verify the periods of experience since the beginning of the history, leaving no gaps in dates. Comity applicants who obtained their original license more than ten years prior must list all surveying experience obtained since their original license, but shall only be required to verify the most recent ten years of experience. The Board cannot give credit for surveying experience that has not been verified by one or more references.

245:15-3-9. License by comity or endorsement

(a) Applicant for comity or endorsement license shall provide proof that the applicant is a person holding a Professional Engineer or Land Surveyor license, in good standing, issued by a proper authority.

(b) Applicant must have been licensed, based on requirements that do not conflict with the provisions of the Statutes and Rules of the Board.~~and were of a~~If the applicant was originally licensed by standards ~~standard not~~ lower than ~~that~~those specified in the applicable Statute in effect in Oklahoma at the time such ~~certificate~~license was issued, the applicant must provide proof that they have not been subject to a disciplinary action in any licensing jurisdiction and possess a record of sufficient verifiable experience since the date of their original license evidencing their qualification for Oklahoma licensure.

(c) Applicant shall submit a minimum of five (5) references, three (3) of whom shall be Professional Engineers or Land Surveyors having personal knowledge of the applicant's engineering or surveying experience, none of whom may be current members of the Board. Comity applicants who obtained their original license more than ten years prior must list all engineering and/or surveying experience obtained since their original license, but only shall be required to verify the most recent ten years of experience.

(d) An applicant with less than the standards outlined in subsection (b) of this section, may be required to obtain additional experience ~~or be admitted to a fundamentals examination, or be admitted to a principles and practice examination, or an examination on Oklahoma land surveying and related laws, or an examination on Oklahoma law and engineering, or to meet such experience~~ and examination requirements as the Board may determine to establish the applicant's qualifications.

(e) Upon satisfactorily complying with minimum requirements of this section, the applicant shall be licensed in the State of Oklahoma.

245:15-3-10. Temporary Permits

The Executive Director or Principal Assistant shall be authorized to issue a Temporary Permit to an engineer, subject to the approval of the Board, under the following conditions:

(1) An applicant for a Temporary Permit shall have a valid professional engineer's license in the applicant's resident state or jurisdiction, shall submit a complete permanent professional engineer application to this Board within 30 days of the date of issuance of the temporary permit, and the information provided by the applicant on the application form approved by the Board does not disclose a prima facie violation of any provision of Sections 475.1 et seq of the laws of the state of Oklahoma or the rules of this Board; has not been disciplined in any jurisdiction by a Board of licensure for either engineering or land surveying or architecture; has not been convicted in any jurisdiction of a felony ~~or misdemeanorwhich is non-traffic related~~.

(2) An applicant who is granted a Temporary Permit, but fails to submit their complete permanent professional engineer application within the prescribed period of time, may be considered to be in violation of the Rules of this Board. An application shall be considered complete when all required properly completed forms and fees have been received in this office .

(3) Information relative to a license in the other state or jurisdiction shall be verified before issuance of a Temporary Permit.

(4) The Temporary Permit fee as prescribed by law shall be remitted with the application.

(5) A Temporary Permit shall be issued for a definite period of time not to exceed 120 days, for a specifically described single work project in one location as set out in the application form and may not be renewed or extended.

(6) A Temporary Permit shall expire the earliest of the issuance of the permanent professional engineer license by this Board, the rejection of the application for licensure, or a time limit stated in the temporary permit, but not later than 120 days after issuance.

(7) The holder of a Temporary Permit shall seal plans, specifications, surveys, or documents only in accordance with the Statutes and Rules of this Board. The seal used shall be the holder's license seal of the state on which issuance of the Temporary Permit was based and immediately under the seal the following shall be inserted:

Oklahoma Temporary Permit number_____
Date of issue_____
Date of expiration_____
Signature of holder_____

(8) No person may be issued more than one (1) temporary permit.

SUBCHAPTER 5. EXAMINATIONS

245:15-5-1. Examinations required, scheduling, and postponements

~~Approved applicants for a license shall personally appear and pass the required examinations, which shall be conducted under conditions warranting honest and best results. Each administration of an examination will be graded independently with a passing grade established by the Board. Staff, Board Members and/or their representatives will monitor all tests, and applicants will not be permitted to communicate with one another during examination periods.~~

(a) An applicant who fails to attend an examination for which he or she has been scheduled will forfeit the fee paid for the examination, except in the case of illness, death in the family, or other unavoidable causes for absence where the application fee may be applied to the next examination administration.

(b) An applicant may be admitted to an examination, following the deadline, by the Principal Assistant or Executive Director if sufficient evidence of hardship exists to warrant such action.

245:15-5-2. Examination notifications, deadlines and postponements [REVOKED]

~~(a) **Notifications.** Examination information formats, dates, times, and places will be announced in notices mailed to applicants, at their last known address, prior to such arrangements.~~

~~(b) **Postponements.** An applicant may request one examination postponement if a work assignment, family emergency, or illness will prevent the applicant from appearing for the scheduled examination. Applicants seeking postponement of a scheduled examination must request such postponement in writing and be approved by the Executive Director prior to the scheduled examination date. In addition to the applicant's written request, a letter substantiating the applicant's claims, must be received from the applicant's supervisor or physician in the event of a work assignment conflict or illness. In the event a second postponement request, for the same examination, is received, such request may be presented to the Board for approval.~~

~~(c) **Admittance by Principal Assistant.** An applicant may be admitted to an examination by the Principal Assistant, if the submittal deadline was met and the application is complete prior to the examination date. An applicant may be admitted to an examination by the Principal Assistant, if the submittal deadline was not met, when the applicant can show a hardship exists which will affect the applicant's employment, and the application is complete before the examination date.~~

245:15-5-3. ~~Examinations syllabus~~ Examination specifications

(a) Examinations offered by the Board will be in accordance with NCEES specifications ~~*syllabus*~~, developed by NCEES examinations committees ~~and as approved for administration on specified dates~~.

(b) Land surveyor applicants will, in addition, be tested by ~~a two (2) hour~~ an examination approved by the Board, upon their knowledge of Oklahoma laws and surveying.

(c) All applicants will, in addition, be tested by an open book exam based on Oklahoma laws, approved by the Board and administered by Board policy.

245:15-5-4. Taking and order of taking examinations

(a) Applicants approved to take examinations will be required to take one or more of the examinations listed in this subsection ~~and administered by the Board~~.

(1) Fundamentals of Engineering (FE)

(2) Principles and Practice of Engineering (PE)

(3) Fundamentals of Surveying (FS)

(4) Principles and Practice of Surveying (PS)

(5) Oklahoma Law and Surveying (OLS)

(6) Oklahoma Law and Engineering/Surveying (OLE/S)

(b) Applicants required to take the Fundamentals of Engineering or Surveying examination and the Principles and Practice of Engineering or Surveying, shall have received a passing score on the Fundamentals examination prior to being permitted to take the Principles and Practice examination.

(c) The Structural examination shall be considered and referred to as one 16-hour examination. The Structural examination shall consist of two 8-hour components: the Vertical Forces (gravity/other) and Incidental Lateral component and the Lateral Forces (wind/earthquake) component. A candidate must receive acceptable results on both 8-hour components to pass the Structural examination. A candidate may sit for each component in separate exam administrations but must receive acceptable results on both components within a 5-year period. Receiving acceptable results on only one 8-hour component shall not be sufficient for licensure purposes.

(~~c~~d) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion for paper-and-pencil examination offerings includes, but is not limited to:

(1) Communication between examinees inside of the examination room.

(2) Giving or receiving any unauthorized assistance on the examination while an examination is in progress.

(3) Having any unauthorized printed or written matter or other devices in his or her possession which might serve to aid the examinee on the examination.

(4) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during or after the administration of the examination.

(5) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.

(6) Permitting anyone to copy answers to the examination.

(7) Removing any secured examination materials from the examination facility.

(8) Allowing another person to take the examination in the examinee's place.

(9) Placing any identifying mark upon his or her examination papers other than his or her identification number or other identifiers as directed by the examination administrator.

(10) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting any examinee in the examination.

(11) Writing on anything other than designated examination material.

(12) Writing or erasing anything after time is called.

(~~d~~e) If there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

(1) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.

(2) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.

(3) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination.

(4) The examinee may be requested to submit written advisement of his or her intent to comply with and understanding of the law.

(5) The examination results may be voided and the application fee forfeited.

(6) The examinee may not be allowed to sit for an examination for a time prescribed by the Board following investigation.

(~~e~~f) The Executive Director reserves the right not to release the examination results to the examinee pending the outcome of any investigation of examination subversion.

(~~f~~g) Removal from or voidance of one part of a multiple-part examination taken during a single examination administration shall constitute removal from or voidance of all other parts of the multiple-part examination.

245:15-5-5. Examination grading, and retention of ~~grades~~ examination results

(a) **Grading.** NCEES examinations will be graded and results released in accordance with NCEES policies and procedures. ~~A minimum grade of 70 points as recommended by NCEES and approved by the Board shall be required for passing a NCEES examination.~~ Examination results will be reported as pass or fail only.

(b) **Retention of ~~grades~~ examination results.** The Board or its representative will maintain an applicant's examination results obtained on the examinations taken for reference.

245:15-5-7. Transfer of examination grades

(a) **Outgoing.** The Board or its representative, upon written request, will transfer examination results given under the

Board's jurisdiction to any other duly constituted licensing board for use in evaluating such applicant's eligibility for a license or to NCEES for use in evaluating such applicant's eligibility for certification with NCEES records program.

(b) **Incoming.** The Board will accept examination results or examinations taken in other states by applicants who met the requirements in effect in Oklahoma at the time the examinations were taken or who meet the current requirements for licensing in Oklahoma. All others will be considered by the Board on a case-by-case basis.

SUBCHAPTER 7. LICENSURE

245:15-7-1. Certificate of Licensure

(a) Licensure certificates shall be issued to individuals meeting statutory licensure requirements and the current Rules of Procedure of the Board. The certificate will identify the licensee by name and license number, show the effective date, confirm the licensee's qualifications and acknowledge the licensee's right to practice engineering or land surveying, as the case may be, in the State of Oklahoma.

(b) Certificate of Licensure will be issued by the Board for the life of the licensee, subject to powers of renewal, reinstatement, suspension, revocation, penalties, orders or refusal to renew for cause, vested in the Board by the Statutes.

(c) When a professional engineer or land surveyor in good standing desires to retire his or her license, he or she may do so upon application to the Board, subject to reinstatement and continuing education requirements by the Board.

(d) Individuals holding a Certificate of Licensure shall display or maintain it at the licensee's place of practice and be prepared to substantiate biennial license renewal.

(e) Duplicate original Certificates of Licensure will be issued to a licensee provided:

(1) The current license renewal is effective;

(2) The licensee makes written request for a replacement of certificate;

(3) The licensee certifies that the original certificate has been lost, damaged or destroyed; and

(4) The licensee pays the prescribed fee.

(f) Duplicate Certificates of Licensure will be issued for display at multiple places of practice upon a written request and payment of the prescribed fee. However, each duplicate certificate will be marked as such.

(g) It is the duty of the licensee to notify the Board office, in writing or online, of changes in employment or contact information within 30 days of the change. Failure to properly notify the Board of these changes may be cause for an administrative action.

245:15-7-3. Biennial licensure required

(a) The Statute requires all engineers and land surveyors desiring to practice in Oklahoma to biennially renew with the Board and pay a biennial licensure renewal fee as prescribed by this Chapter. Notices will be sent to all licensees at the last known physical or e-mail address of record; however, it is the responsibility of each individual licensee to insure the renewal fees and any other required documentation~~properly completed renewal form, along with any required continuing education log forms,~~ are received by the Board office not later than the renewal date or the renewal process is completed online. The license expires on the last day of the month in which it is due, and becomes invalid on that date unless the renewal fee is paid. Upon receipt by the Board of the individual's, and if applicable, firm's or entity's properly completed renewal forms, fees and any required continuing education log forms, the license will be valid. No Certificate of Licensure or Certificate of Authorization will be valid for longer than a two (2) year period, unless otherwise required by law..

(b) Failure to biennially renew and remit renewal fees and penalties where applicable, as prescribed by the Statute and the current Rules of Procedure of the Board will result in revocation of the licensee's Certificate of Licensure or the Certificate of Authorization, unless otherwise required by law.

(c) Notices of revocation will be sent to the last known address of licensees and firms failing to biennially renew and remit renewal fees.

245:15-7-4. Waived renewal fees for engineers and surveyors over the age of 70

The biennial renewal fee for engineers or land surveyors who reach the age of 70 prior to the renewal date of their certificate of licensure will be waived. Renewal forms must be filled out and returned to the Board office or completed online prior to the renewal date to qualify. ~~Licensees who are required to fulfill continuing education requirements must fill out and submit the log form supplied by the board by the license expiration date.~~ Otherwise, the certificate of licensure will be revoked and reinstatement fees and penalties will apply to re-license.

245:15-7-5. Reinstatement of revoked or retired licenses

(a) Licenses revoked for nonpayment of fees, ~~failing to fill out and return a required continuing education log form,~~ failing to return the renewal form for licensee over the age of 70, or licenses that were voluntarily retired by the licensee, may be reinstated by making written application for reinstatement within one hundred eighty days after expiration and payment of the prescribed renewal fee and penalty. After one hundred eighty (180) days of revocation, a new application and fees will be required, which shall be considered specifically by the Board, both from the standpoint of competency and character. If reinstatement is within one hundred eighty (180) days following the date of revocation, then licensure will be deemed to have been continuous. Offering or practicing engineering or surveying ~~Practicingyour profession~~ with a revoked or retired license during this reinstatement period is a violation of Title 59, Section 475.1 et seq and the Rules of this Board.

(b) If a license revoked for non-payment or a retired license remains canceled or suspended for a period exceeding three (3) consecutive years, such former licensee~~licensee's application for re-licensure~~ may ~~not~~ be required ~~considered~~ by the Board

~~without the former licensee taking and~~ to take and pass ~~passing~~ a current examination as prescribed by the Board.

(c) Licenses suspended, refused to renew, penalties, orders issued or revoked for cause, may be reinstated only by Board action and only then in the manner determined by such Board action. Request for reinstatement of a license shall show the Board that the public interest will not suffer by reason of the reinstatement and shall be addressed to the Chair at the Board office. The Board, by Statute, has the discretion as to whether to reinstate the Certificate of Licensure or Certificate of Authorization or deny it.

SUBCHAPTER 9. RULES OF PROFESSIONAL CONDUCT

245:15-9-5. Public statements

Licensees shall issue public statements only in an objective and truthful manner.

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony.

(2) Licensees ~~may~~shall express publicly a professional opinion on technical subjects only when that opinion is founded upon adequate knowledge of the facts and competence in the subject matter.

(3) Licensees shall issue no statements, criticisms or arguments on technical matters which are inspired or paid for by interested parties, unless the licensees have prefaced their comments by explicitly identifying the interested parties on whose behalf they speak, clearly identifying their interests, and by revealing the existence of any interest the licensees may have in the matters.

245:15-9-7. Solicitation of work

Licensees shall avoid improper solicitation of professional employment.

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of participation or responsibility in prior assignments nor the complexity of said assignments. Brochures or other presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the award of a contract by public authority.

(3) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, nor indiscriminately criticize other licensees' work.

SUBCHAPTER 11. CONTINUING EDUCATION

245:15-11-3. Scope and exemptions

(a) Licensees shall be required to meet the continuing educational requirements of the rules for professional development in this subchapter as a condition for licensure renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

(b) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(1) New licensees by way of examination or comity shall be exempt for their first renewal period.

(2) A licensee ~~serving on temporary active duty in the Uniformed Services of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year~~who is deployed on active duty as a member of the Armed Forces of the United States,~~the licensee~~ shall—be exempt from obtaining the professional development hours required during that year when circumstances associated with military duty prevent obtaining training and a waiver request has been submitted to the Board; when the active-duty military member performs engineering and/or land surveying services respectively as part of his or her military duties as annotated in Defense Department Form 214 (DD 214), or when performing any other act typically required for renewal of the license.

(3) A licensee experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the ~~board~~Board may be exempt. Supporting documentation must be furnished to the ~~board~~Board.

(4) A licensee who elects to choose Retired status at the time of renewal shall be exempt. In the event such person elects to return to active practice of professional engineering or surveying, 30 PDH's must be earned before returning to active practice.

245:15-11-5. Requirements for Professional Engineers and Land Surveyors

(a) To demonstrate that a Professional Engineer and/or Land Surveyor maintains an acceptable level of competency, a licensee must obtain thirty (30) professional development hours (PDH's) for a twenty-four month (biennial) renewal period. If a licensee exceeds the requirement in any biennial renewal period, a maximum of fifteen (15) PDH's may be carried forward into the subsequent biennial renewal period. PDH's may be earned by a licensee as follows:

(1) Successful completion or auditing of college courses.

(2) Successful completion or auditing of continuing education courses.

(3) Successful completion of short courses/tutorials and distance-education courses offered through correspondence, television, videotapes, or the Internet.

~~(3) Attending seminars, correspondence, televised, videotaped, and other short courses/tutorials.~~

(4) Presenting or attending qualifying seminars meeting the criteria of Section 15-11-6, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences.

(5) Active participation in professional or technical societies serving the engineering or land surveying profession,or code development technical committees, or code commissions. Credit for active participation in a professional and technical society serving the engineering or land surveying profession (limited to 4 PDH's per renewal period), requires that a licensee serve as an officer and/or actively participates in a committee of the organization. PDH's are not earned until the end of each year of service is completed.

(6) Active participation in standards or code development technical committees, standards or code commissions, or licensing examination development committees.

(~~6~~7) Teaching or instructing in (1) through (4) of this subsection.

(~~7~~8) Authoring ~~peer reviewed~~ published papers, articles,~~and~~ books, accepted licensing examination items, or building codes.

(~~8~~9) Authoring published articles.

(~~9~~10) Award of patents to the licensee or to licensee's employer when developed by the licensee.

~~(10) Documented self study (1 PDH unit = 3 hours) maximum of 3 PDH's per renewal period.~~

(b) All such PDH's earned in activities as described in (a)(1) through (a)(~~9~~10) of this section must be relevant to the practice of engineering and/or land surveying as applicable and may include technical, ethical or ~~managerial~~ business content. Qualifying ethical or business courses or activities must contain content areas related to (1) the awareness of ethical concerns and conflicts; (2) an enhanced familiarity with the codes of conduct; (3) an understanding of standards of practice or care; (4) project management and risk-assessment management; or (5) other similar topics aimed at maintaining, improving, or expanding the skills set and knowledge relevant to the licensee's field and methods of practice.

245:15-11-6. Criteria for continuing educational activities

(a) Continuing educational activities used to earn PDH's must meet the following criteria:

(1) There is a clear purpose and objective for each activity, which will maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

(2) The content of each presentation is well organized and presented in a sequential manner.

(3) There is evidence of preplanning which should include the opportunity for input by the target group to be served.

(4) The presentation will be made by persons who are well qualified by education or experience.

(5) There is a provision for individual participant registration which will include information required for record keeping and reporting.

(b) The Board has final authority with respect to acceptability of courses, credit, PDH value for courses, and other methods of earning credit.

(1) Credit for college or community college approved courses will be based upon course credit established by the college.

(2) Credit for qualifying seminars and workshops meeting the criteria in 245:15-11-6(a) will be based on one PDH for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings or building code meetings will earn PDH's for the actual time of each program.

(3) Credit determination for activities referenced in 245:15-11-5(a)(6) and (a)(7) is the responsibility of the licensee (subject to review as required by the ~~board~~Board).

245:15-11-7. Conversion of units

The conversion of other units of credit of continuing education to PDH's is as follows:

(1) One (1) college or unit semester hour - 15 PDH's

(2) Auditing of (1) college or unit semester hour -15 PDH's

(3) One (1) hour of technical or professional development in course work, seminars, technical and professional meetings, conventions, workshops, - 1 PDH

(4) One (1) hour for developing professional licensure examinations - 1 PDH

(5) For teaching or making presentations - apply multiple of 2 (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time or part-time faculty members unless the activity is outside the scope of the licensee's customary teaching responsibilities.)

(6) Each peer-reviewed published Professional/Technical paper or book in the licensee's area of professional practice -10 PDH's

(7) Each published paper or article in the licensee's area of professional practice - 5 PDH's

(8) Active participation in a professional and technical society or association. (maximum of 4 PDH's per biennial renewal period) - 2 PDH's

(9) Each patent. - 10 PDH's

(10) Active participation serving on standards or code commissions (maximum of 8 PDH's per biennial renewal period)

245:15-11-10. Forms

Renewal applications will require the completion of a continuing education form specified by the Board outlining PDH's claimed. The licensee must supply sufficient detail on the form to permit audit verification, must certify and sign the continuing education form, and keep in their files for audit verification purposes. ~~submit with the renewal application and fee.~~

245:15-11-11. Disallowed credit; failure to comply

If a licensee fails to ~~provide a log form showing~~certify completion of 30 PDH's per biennial renewal period by their expiration date the license will not be renewed. If the Board disallows claimed PDH's, the licensee shall have 120 days after notification to substantiate the original claim or to earn other credit to meet the minimum requirement. Failure to comply with an audit or submitting false information to the Board on the log form in an attempt to renew a license are violations of Board Rules and may lead to disciplinary action.

245:15-11-13. Dual Licensees

For an individual licensed both as an engineer and surveyor, the number of PDH's required shall remain 30 per biennial renewal period, at least 1/3 of which shall be obtained in each profession. ~~For the Dual Licensee who is exempt from continuing education requirements for one profession per 245:15-11-3(b)(4), but has practiced the other profession, the number of PDH's required shall remain 30 per biennial renewal period, all of which shall be obtained in the profession for which they are not exempt.~~

SUBCHAPTER 13. MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING

245:15-13-2. Minimum Standards

(a) **Definitions**: as used in these standards, the following terms shall have the following meanings where the context permits as provided in 59 O.S. 471.1 et seq and Chapter 245:15-1-3 of the Rules of the Board.

(b) **Research and investigation.** Every property boundary survey shall be made in accordance with the boundary description, as provided to or as created by the surveyor, as nearly as is practicable. The surveyor, prior to making a survey, shall acquire available necessary survey data, which may include record descriptions, deeds, maps, abstracts of title, section corner ties, government notes, subdivision plats, road records, and other available section and boundary line location data in the vicinity. The surveyor shall analyze the data and make careful determination of the record title boundary of the property to be surveyed. From the information gathered, the surveyor, or those working under his or her direct control and personal supervision, shall search thoroughly for all controlling corners and all other available field evidence of boundary location. In the event of the discovery of a material disagreement with the work of another surveyor, the surveyor shall make reasonable efforts to contact the other surveyor in an attempt to resolve the disagreement.

(c) **Minimum technical standards for land or boundary surveys (field and office).**

(1) In order for a plat, subdivision plat, map, or sketch of a survey to be acceptable in terms of this rule, it must be complete and shall be certified or otherwise stated as meeting these minimum technical standards.

(2) All measurements made in the field shall be in accordance with the United States Standard, using either US Survey Feet or meters. All measurements shall be referenced to the horizontal or vertical plane, with the exception of geodetic surveys.

(3) All survey documents produced by an individual practicing under his or her own name shall bear the name, address, and telephone number, along with the license number, seal, signature, and date of signature of the surveyor. All survey documents produced by a firm shall bear the name, address, telephone number, and Certificate of Authorization number, along with the name, license number, seal, signature, and date of signature of the surveyor.

(4) All survey documents must bear the date of the last site visit and bear the date of any revisions thereon. If the site visit was performed on multiple dates, the drawing may specify the range of those dates.

(5) A designated north arrow and scale of the map shall be shown prominently upon the drawing.

(6) Any symbols and/or abbreviations representing physical objects used on the drawing will be clearly noted upon the drawing.

(7) A reference to all bearings shown must be clearly stated, i.e., whether to 'True North'; 'Grid North as established by state plane datum'; 'Assumed North based on the bearing of a well established line'; a 'Deed call for a particular line'; or 'the bearing of a particular line shown upon a plat'; etc.

(8) Referencing surveys.

(A) Surveys based on the United States Public Land Survey System shall be referenced to original or properly restored corners. The appropriate Bureau of Land Management Manual of Surveying Instructions shall be used as a guide for the restoration of lost or obliterated corners and subdivision of sections into aliquot parts.

(B) Lot surveys within platted subdivisions shall be referenced to existing corner monuments within the subdivision as necessary to verify the survey.

(9) Where evidence of inconsistencies is found, such as overlapping descriptions, hiatuses, excess or deficiency, or conflicting boundary line or monuments; the nature and extent of the inconsistencies shall be shown on the drawing.

(10) All survey drawings shall show the change in direction between lines, lines and curves, and between adjacent curves, by angles, bearings or azimuths. Circular curves shall show: 1. The length of radius; 2. The arc distance; and 3. The chord distance and chord bearing. Sufficient information must be shown to mathematically close all lots and/or parcels.

(11) All easements, rights-of-way and building lines drawn or referenced on recorded subdivision plats on or across the land being surveyed and the width of the rights-of-way of all section lines adjoining or within the surveyed property shall be shown upon the survey drawing. Physical evidence of roadways providing access to or through the property being surveyed shall be shown and/or noted. If location of easements or rights-of-way, other than those drawn or referenced on recorded subdivision

plats is required, this information must be furnished to the surveyor.

(12) The land surveyor shall establish or confirm a monument or confirm the prior placement of monuments at each and every property corner on the boundary line or boundary lines of the parcel or tract of land being surveyed. In such cases where the placement of a required monument at its proper location is impractical, a witness or reference monument shall be placed with the data given to show its location upon the ground in relation to the boundary lines or corner. In any case the type and size of all monuments, either found or set, and the relationship of the monuments to the surveyed lines and corners will be shown on the drawing. Where practical, monuments shall be constructed of material capable of being detected with the conventional instruments for finding ferrous or magnetic objects. All set monuments shall have affixed thereto a durable marker or cap bearing, at a minimum, the license number of the land surveyor in responsible charge, or the Certificate of Authorization number of the firm performing the survey. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to the recordation of the subdivision plat. It is the responsibility of the surveyor to set the interior corners on all lot and block corners prior to the conveyance of the lot, block or any part thereof within thirty days of completion of the infrastructure improvements, but no later than one year after recordation of the subdivision plat.

(13) Accuracy of measurements. The accuracy of the measurements for the survey shall be based upon the type of survey, and the current or expected use of the land. The accuracy of the measurements thus performed shall be substantiated by the computations of the traverse; the relative error of closure permissible shall be no greater than the following standards given below:

(A) Where there is or will be zero lot line construction on small tracts in a high density urban area, the allowable closure error is 1:10,000 ~~and~~or the allowable positional error is plus or minus 0.10 feet.

(B) In residential or commercial subdivisions where the length of lines does not exceed 300 ft, the area of tracts does not exceed 2 acres, and there is no plan for zero lot line construction, the allowable closure error is 1:10,000 ~~and~~or the allowable positional error is plus or minus 0.25 feet.

(C) In suburban or rural residential or industrial tracts where the length of lines does not exceed 1000 feet and the area of tracts is between 2 and 40 acres, the allowable closure error is ~~1:7,500~~1:10,000 ~~and~~or the allowable positional error is plus or minus 0.50 feet.

(D) Rural tracts of 40 acres or more where the corners of the tract may be connected with traverse legs in excess of 1000 feet, the allowable closure error is ~~1:7,500~~1:10,000 ~~and~~or the allowable positional error is plus or minus ~~1.5 feet~~1.0 foot.

(E) Rural tracts of 40 acres or more in rough or tree covered terrain where the corners of the tract must be connected with short traverse lines because of poor visibility between the corners of the tract, the allowable closure error is ~~1:5,000~~1:7,500 ~~and~~or the allowable positional error is plus or minus ~~3.0~~1.5 feet.

(F) Field work performed which has a closure error greater than the maximum allowed, or linear error of closure greater than the maximum positional error shown, shall be considered unacceptable and shall be corrected. Adjustment of a traverse must not shift the position of any point more than the maximum positional error listed above.

~~(G) In lieu of maximum allowable positional error, the latest Accuracy Standards for ALTA/ACSM Land Title Surveys may be used for determining minimum accuracy requirements.~~

(14) When special conditions exist that effectively prevent the survey from meeting these minimum standards, the special conditions and any necessary deviation from the standards shall be noted upon the drawing. It shall be a violation of this rule to use special conditions to circumvent the intent and purpose of these minimum standards.

(15) A survey plat, sketch or map must be created whenever a land or boundary survey is ~~done~~ performed. Every survey plat, sketch or map must contain the legal description of the land being surveyed, either on the face of the survey plat or attached to and referenced to the survey plat.

(16) Additions or deletions to survey drawings by other than the signing party or parties ~~is~~ are prohibited without written consent of the signing party or parties.

(d) **Minimum Standards for Legal Descriptions.**

(1) Metes and bounds descriptions prepared shall at a minimum contain the following items:

(A) A preamble containing the Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron) and the County and/ or City of the tract of land being described or a preamble containing the Lot and/or Block number, subdivision name and if available, the recording information of the plat and the City, if applicable, and County in which it is filed of record, and

(B) A beginning point (if applicable) referenced to a point such as a section corner, quarter-section corner, sixteenth section corner, or a Lot/Block corner of a recorded subdivision, and

(C) Distances listed to the nearest hundredth of a foot (if surveyed), and

(D) Bearings or angles listed in degrees, minutes and seconds (if surveyed), and

(E) A reference to all bearings shown must be clearly stated, i.e., whether to 'True North'; 'Grid North as established by state plane datum'; 'Assumed North based on the bearing of a well established line'; a 'Deed call for a particular line'; or 'the bearing of a particular line shown upon a plat', and

(F) Curved lines with circular curves shall show: 1. Direction of the curve (right or left); 2. The radius;

3. Arc distance; and 4. Chord distance and chord bearing, and

(G) The name and license number of the professional surveyor who prepared the description, and

(H) The date of preparation of the legal description, and

(I) Each metes and bounds description must return to the Point of Beginning and close mathematically ~~within the allowable closure error stated in this subchapter~~.

(2) Aliquot descriptions may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron), city (if applicable) and the County of the tract of land being described.

(3) Lot and block description may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Lot and/or Block number, subdivision name, City (if applicable), the County in which it is filed of record and, if available, the recording information of the plat.

(4) A written legal description of the surveyed tract of land must provide sufficient information to locate the property on the ground and distinctly set it apart from all adjoining properties.

~~(c) **Mortgage Inspection Report.** A Professional Land Surveyor may, based upon their general knowledge of land boundaries and monuments in a given area, prepare a Mortgage Inspection Report for the use of a specific client. Such report shall be prominently labeled 'Mortgage Inspection Report' and shall not be designated as or construed as being a Land or Boundary Survey, and the statement furnished on the certificate shall be similar to the following form:~~

~~MORTGAGE INSPECTION REPORT~~

~~"This Mortgage Inspection Report was prepared for ...(individual or firm)..., It is not a land or boundary survey plat, and it is not to be relied upon for the establishment of fence, building or other future improvement lines. The accompanying sketch is a true representation of the conditions that were found at the time of the inspection, and the linear and angular values shown on the sketch, if any, are based on record or deed information and have not been verified unless noted."~~

~~Any further statements shall be made only after proper research, investigation and boundary analysis is conducted per 245:15-13-2(a) through (d).~~

245:15-13-4. Mortgage Inspection Report

(a) A Professional Land Surveyor may prepare a Mortgage Inspection Report for the use of a specific client based upon their general knowledge of land boundaries and monuments in a given area. Such report shall be prominently labeled 'Mortgage Inspection Report' and shall not be designated as, or construed as being, a Land or Boundary Survey. Professional Land Surveyors showing measurements on a mortgage inspection report that are not true representations of the conditions that were found at the time of the inspection will be in violation of the Minimum Standards for the Practice of Land Surveying. The statement furnished on the certificate shall be similar to the following form:

(b) 'This Mortgage Inspection Report was prepared for ...(individual or firm).... It is not a land or boundary survey plat, and it is not to be relied upon for the establishment of fence, building or other future improvement lines. The accompanying sketch is a true representation of the conditions that were found at the time of the inspection, and the linear and angular values shown on the sketch, if any, are based on record or deed information and have not been verified unless noted.'

(c) Any further statements shall be made only after proper research, investigation and boundary analysis is conducted per 245:15-13-2(a) through (d).

SUBCHAPTER 15. ETHICAL MARKETING OF SERVICES

245:15-15-3. Professional obligation in solicitation of professional employment

(a) The Professional Engineer or Land Surveyor shall not supplant, nor attempt to supplant, directly or indirectly, another Professional Engineer and/or Land Surveyor in a particular engineering or land surveying project. The furnishing of informative brochures on one's self or one's firm is not considered an attempt to supplant.

(b) A Professional Engineer or Land Surveyor, acting individually or through a firm, shall neither request, propose, nor accept an agreement, contract or commission for professional services on a "contingency basis" unless there is a conflicting funding requirement. For the purpose of adjudging the provisions of this section, "Contingency basis" shall be interpreted only to include:

(1) The preparation of preliminary reports and/or applications for funds, where the fee involved is to be paid only after such submission or approval, or the fee is substantially below the actual cost of performing the service, or

(2) Reviewing for approval preliminary reports and/or applications for funds, where the fee involved is to be paid only after such submission or approval or the fee is substantially below the actual cost of performing the service.

(c) The Professional Engineer or Land Surveyor, acting individually or through a firm, shall seek professional employment from governmental clients or any entity contracted by governmental clients to furnish engineering or land surveying services, in compliance with O.S. Title 61, Sections 60-64. The Board shall have the power to reprimand, place on probation, fine, revoke or suspend the Certificate of Licensure or Certificate of Authorization of any licensee or firm who fails to comply with any provision of O.S. Title 61, Sections 60-64

in effect at the time the services were offered. ~~on the basis of qualifications, previous experience and technical competence for proper accomplishment of the work. The procedure for seeking professional employment restricts the engineer, land surveyor, or firm from submitting a fee or price for services, except as provided herein, until the governmental client or any entity contracted by the governmental clients to furnish engineering or land surveying services has selected, on the basis of qualifications, previous experience and technical competence, engineers, land surveyors, or firms for negotiation.~~

(d) Licensees participating in a design/build procurement as a prime contractor or as a consultant to a builder or another professional of any tier for delivery of a project to or for the use of a governmental entity shall not have violated the provisions of ~~section~~OAC 245:15-15-3 by the submission of a fee or price for services prior to the licensee's selection to participate in the project.

SUBCHAPTER 17. LICENSEE'S SEAL

245:15-17-1. Licensee's seal

(a) Every person authorized to practice engineering or land surveying by a certificate of licensure may obtain a seal with which to identify all final engineering and land surveying papers or documents, including drawings, specifications, plans, reports, land surveys, plats, land descriptions, design information, construction documents, calculations, addenda, change orders, field orders and other documents of service involving the practice of engineering or land surveying issued by the licensee for use in the State of Oklahoma whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the direct control and personal supervision of the licensee.

(b) The seal required shall be of a type which will make an image on the surface of original documents and duplications of original documents. The use of a rubber stamp or electronic digitization which produces an accurate and legible image of the seal is permissible ~~when duplicate copies of originals are required~~.

(c) The seal of the licensee shall consist of two (2) concentric circles. The inner circle shall have inscribed the licensee's name and number, which shall correspond to the name and certificate number shown on the Certificate of Licensure. The area between the two (2) circles shall be inscribed with the word "Oklahoma" at the bottom reading counter-clockwise and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor" at the top reading clockwise. The seals commercially designated as 1 7/8" seal, with an inner circle of 1 1/8" diameter and an outer circle of 1 3/4" diameter, or the 1 5/8" seal, with an inner circle of 1 1/16" diameter and an outer circle of 1 9/16" diameter, are acceptable, as shown in Appendix A of this Chapter. Reproduction of the original documents with the required seal may produce a different seal size provided the seal remains completely legible.

(d) A licensee who practices in other than their full legal name shall register the name customarily used in professional practice with the Board together with a copy of their signature for such customarily used name. The seal may be inscribed with the registered, customarily used name, and the signature affixed across or adjacent to the seal shall be the name inscribed on the seal. A seal and signature affixed in a registered, customarily used name shall have the same force and effect as the seal and signature affixed in a licensee's full legal name.

(e) Existing seals containing the words "Registered Professional Engineer", "Registered Professional Land Surveyor", and "Registered Land Surveyor" may continue to be used.

245:15-17-2. Use of seal

(a) The application of the licensee's signature and date of signature to a sealed document shall constitute certification that the work thereon was done by the licensee or under the licensee's direct control and personal supervision and that the licensee accepts full responsibility and liability for the professional work represented thereon. Authorized use of the prescribed seal is an individual act. The licensee is responsible for its security at all times. The licensee shall permit no other person, firm, or entity to use the prescribed seal. The seal shall be affixed to documents and instruments only during the time the licensee's license is current and in good standing. Whenever the seal is applied, the document must be signed by the licensee thereby certifying that he or she is competent in the subject matter and was in direct control and personal supervision of the work product.

(b) Licensees must affix their seal, signature and date of signature to documents or drawings which reflect work for which the licensee has responsible charge, including revisions and addenda thereto. In the case when multiple licensees are involved, each sheet in a set of drawings shall contain the seal, signature and date of the licensee responsible. A licensee not practicing as, or through a firm shall also include contact information to include address and phone number.

(c) Regarding professional engineering, the licensee is responsible for meeting all of the following requirements to be in direct control and personal supervision of the work:

(1) The licensee supervises the preparation of the plans, specifications, drawings, reports, or other documents and has input into their preparation prior to their completion and reviews the final plans, specifications, drawings, reports, or other documents prior to signing and sealing the work; and

(2) The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports, or other documents prior to signing and sealing the work; and

(3) The intent of the definition of direct control and personal supervision may be met if all provisions of the definition are met using remote electronic or communication means.

(4) An engineer who signs and seals work must be capable of answering questions as to the engineering decisions made during the work on the project in sufficient detail as to leave little doubt as to the engineer's competence for the work performed. It is not necessary to defend decisions, as in an adversary situation, but only to demonstrate the engineer who is in direct control and personally

supervising the work made them and possessed sufficient knowledge of the project to make them. The individual should be able to clearly define the degree of control over the work and how it was exercised, and should be able to demonstrate that the engineer was answerable within said degree of control necessary for the work done.

(5) The intent of the law shall not be met if an unlicensed person independently performs engineering work, to then be reviewed, signed and sealed by a professional engineer. An unlicensed person may only be used if the professional engineer is personally directing the unlicensed person and the work is performed concurrent with the supervision.

(d) Regarding land surveying, the licensee is responsible for meeting all of the following requirements to be in direct control and personal supervision of the work:

(1) The licensee directly controls and personally supervised the surveying work; and

(2) The licensee has the authority to, and does, make any necessary and appropriate changes to the work prior to signing and sealing the work; and

(3) All surveying offices must have a professional land surveyor physically present at the location to be in responsible charge of, and in direct control and supervision of the work; and

(4) A surveyor who signs and seals work must be capable of answering questions as to the surveying decisions made during the project in sufficient detail as to leave little doubt as to the surveyor's involvement with the work performed. It is not necessary to defend decisions, as in an adversary situation, but only to demonstrate that the surveyor who is in direct control and personally supervising the work made them and possessed sufficient knowledge of the project to make them. The licensee should be able to clearly define the degree of control over the work and how it was exercised, and should be able to demonstrate that the surveyor was answerable within said degree of control necessary for the work done.

(5) The intent of the law shall not be met if an unlicensed surveying crew independently performs surveying work, to then be reviewed, signed and sealed by a professional land surveyor. An unlicensed surveying crew may only be used if the professional land surveyor in direct control and supervision of the work is personally directing the land surveying crew and the work is performed concurrent with the supervision.

(e) In the case of bound documents, licensees must affix their seal, signature and date of signature to the cover sheet or index page, which identifies all documents bound together for which the licensee has responsible charge. In the absence of covers and index pages each document must have the seal, and dated signature of the licensee who has responsible charge. For bound documents involving multiple licensees, either each document in the bound set must be sealed, signed and dated by the licensee in responsible charge for that portion of the work, or the cover sheet or index page must be sealed, signed and dated by each licensee with a breakdown of the licensee in responsible charge of each document clearly identified.

(f) In the case when the work consists of a letter or report prepared by a single licensee, the licensee need only seal, sign and date the first page, title page or signature page of the document.

(g) The Statute, 59 O.S., Sections 475.1 et seq. and Rules of the Board in this Chapter describe the use of the seal of the licensee. The seal, signature and date of signature shall be placed on all final engineering and land surveying documents whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the responsible charge of the licensee. In lieu of sealing, signing and dating each copy of the work, the seal, signature and date shall be placed on originals, tracings, or other reproducible documents by the licensee in such a manner that when the originals, tracings, or other reproducible documents are reproduced the seal, signature and date will be legible.

(h) Work of a preliminary nature, submitted to obtain comments and not for formal approval, shall be clearly marked with the following statement: ***'This document is preliminary in nature and is not a final, signed and sealed document'*.**

(i) An Engineer Intern or Land Surveyor Intern shall not have a seal.

(j) Drawings, reports, or documents that require a signature may be signed using a digital signature. The digital signature must be:

(1) Unique to the person using it;

(2) Capable of verification; and

(3) Under the sole responsibility and control of the licensee affixing it.

(A) A scanned image or other reproduction of an original signature may be used in lieu of an original signature or digital signature if accompanied by an original handwritten date.

(B) A digital signature having an electronic authentication process attached to or logically associated with the electronic document may also be used and does not need to include the handwritten date, but must be dated. In this instance, the digital signature shall be linked to a document in such a manner that the data in the document can be verified as being unaltered since the time that the digital signature was affixed.

(k) Successor licensee - In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a site adaptation of a standard design plan, a successor licensee may take responsible charge over, and complete the work, in accordance with the provisions of this Chapter.

(1) A licensee shall perform or have responsible charge over all professional engineering or land surveying services to include development of a complete design file including work or design criteria, calculations, code research, field notes, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance.

(2) The non-professional services, such as drafting, need not be redone by the successor licensee but must

clearly and accurately reflect the successor licensee's professional work.

(3) The licensee shall have direct control and personal supervision over the engineering or surveying work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision. A professional engineer or land surveyor who adopts, signs, and seals work previously engineered or surveyed under this provision shall perform sufficient review and calculation to ensure that all standards of practice required of licensees are met, including satisfying the relevant criteria stated in paragraph (c)(iv) and (d)(iv) above and shall take professional and legal responsibility for documents signed and sealed.

(l) Prototypical design plans - A licensee may take responsible charge over a standard, prototypical design plan, including drawings and specifications in printed or electronic form, for the purpose of adapting the plan to a specific site in this state, provided the licensee's work is completed in accordance with the provisions of this Chapter. This provision shall apply to both site adaptation of new structures and site adaptation for construction in an existing structure.

(1) In the case of an existing structure, the engineering for modifications to the existing structure and any of its systems shall be under the responsible charge of persons licensed in this state.

(2) Standard, prototypical designs that may be site adapted under this provision are drawings and specification documents prepared for the purpose of defining the Owner's requirements but not yet completed for construction on a specific site.

(3) Site adaptation shall not include, and this provision does not authorize, a licensee to take responsible charge over work designed for construction on a specific site in this state that was prepared by a person not licensed in this state.

(4) Standard prototypical design plans shall not be released publicly or submitted to a client or user unless the plans are marked with a statement substantially equivalent to 'This document is preliminary in nature and is not a final, signed and sealed document'. The statement shall not be removed until an Oklahoma licensee has taken responsible charge of the work and the work is dated and issued under the seal and signature of an Oklahoma licensee.

(5) A licensee shall perform or have responsible charge over all professional engineering services to include development of a complete design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance.

(6) The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's professional work.

(7) The licensee shall have direct control and personal supervision over the engineering work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision.

(m) Any revision to a document containing the seal and signature of a licensee shall be identified and dated. Revisions not done by the original licensee must be signed and sealed by the licensee in responsible charge of the revision. At no time shall a successor licensee remove the seal and signature of the original licensee in responsible charge of the work.

(n) Record drawings prepared to reflect changes made during construction based on the record of changes made to construction drawings and changes to the construction observed by the licensee or on the licensee's behalf or reported by contractors is deemed a drafting service and shall not require a licensee's seal, signature, and date of signature.

(o) In the case of a firm, each separate document, the first page of a bound document, and, in the case of multiple licensees, the portion of the work for which each firm is responsible, shall also show the name of the firm, the firm's Certificate of Authorization number and contact information for the firm.

(p) Engineering or surveying technical submissions given to an architect for a project must be signed and sealed by the professional engineer or land surveyor in responsible charge of the work prior to the architect taking responsible charge of the work as the prime professional for the project.

(q) Consultants hired to do work on behalf of the firm must sign, seal and date their work and include their title block, contact information, and Certificate of Authorization information , if applicable, on the work. Consultants may not sign and seal as the responsible charge engineer for the firm to which they are consulting.

SUBCHAPTER 19. ORGANIZATIONAL PRACTICE

245:15-19-1. Certificate of Authorization required

Firms practicing, offering to practice or contracting to ~~provide~~perform engineering or land surveying services in the State of Oklahoma shall obtain a Certificate of Authorization issued by the Board. Certificates of Authorization may be granted by the Board to any firm approved by the Board which meets the criteria in this Chapter.

245:15-19-2. Criteria for issuance of Certificate of Authorization

The Board may grant a Certificate of Authorization to practice through individual licensees to those firms meeting the following criteria:

(1) An application is filed and approved by the Board or its designee.

(2) At least one individual in responsible charge of the services and personnel performing services on behalf of the firm in this state is licensed to practice engineering or land surveying in the State of Oklahoma. If the firm is offering to practice both professions, the firm shall have at least one individual in responsible charge licensed to practice each profession. A licensee must be a

full-time employee of a firm ~~shall not~~to qualify as a person designated in responsible charge. ~~A licensee who can demonstrate, through an employment relationship (not a consulting relationship) with the firm, the required direct control and personal supervision over all the engineering or land surveying services and the personnel performing services on behalf of the firm shall not be disqualified for the sole reason that all of the firm's engineering or land surveying services are accomplished with less than full time employment of the licensee.~~

(3) The firm's practice of engineering or land surveying in any main office or branch office, is under the direct control and personal supervision of a duly licensed engineer or land surveyor in responsible charge. In the case of an out-of-state firm authorized to perform engineering services in Oklahoma, the firm may have one or more branch offices located in Oklahoma only if the firm has a professional engineer designated responsible and in charge of the firm's professional practice in this state. The professional engineer designated for this purpose shall be required to spend a majority of normal business hours at one or more branch offices located in Oklahoma and be duly licensed as a professional engineer in this state, as prescribed by law.

(4) All documents relating to engineering or surveying work shall be sealed, signed, and dated by the Professional Engineer or Land Surveyor in responsible charge of the work.

(5) The Certificate of Authorization shall identify all individual(s), Oklahoma Professional Engineer(s) or Land Surveyor(s), who shall practice engineering or land surveying on behalf of the firm and shall be employees of the firm.

(6) Notwithstanding that licensees may practice through or with a firm, licensees shall have individual responsibility for the actions taken by them in violation of the statutes and rules applicable to licensees, firms, and entities, including this Chapter, 59 O.S. Sections 475.1 et seq, and 65 O.S Section 3-118 et seq, and for their failure to act when required.

(7) Certificates of Authorization shall be issued to firms meeting statutory requirements and the current Rules of Procedure of the Board. The certificate will identify the firm by name and authorization number, show the effective date, and confirm the firm's right to practice engineering and/or land surveying in the State of Oklahoma.

(8) One Certificate of Authorization will be issued by the Board for each firm, which shall be subject to powers of renewal, reinstatement, suspension, revocation, penalties, orders or refusal to renew for cause, vested in the Board by the statutes.

(9) Firms holding a Certificate of Authorization shall display or maintain it at the firm's place of practice.

(10) Duplicate original Certificates of Authorization will be issued to a firm provided:

(A) The current Certificate of Authorization's renewal is effective;

(B) The firm makes written request for a replacement of certificate;

(C) The firm certifies that the original certificate has been lost, damaged or destroyed; and

(D) The firm pays the prescribed fee.

(11) Duplicate Certificates of Authorization will be issued for multiple places of practice upon a written request and payment of the prescribed fee. However, each duplicate certificate will be marked as such.

SUBCHAPTER 21. CORNER PERPETUATION AND FILING ACT REQUIREMENTS

245:15-21-1. Purpose

The purpose of the Corner Perpetuation and Filing Act, 65 O.S. ~~1991~~, ~~Section~~Sections 3 - 116- 3.123~~et seq.~~, ~~purpose~~ is to protect and perpetuate public land survey corners and information concerning the location of such corners, by requiring the systematic establishment of monuments and filing of information concerning the marking of the location of such public land survey corners. The Archives and Records Division of the Oklahoma Department of Libraries serves as the registry for Certified Corner Records. The Board is charged, by law, with the responsibility to prescribe the information to be included, to prescribe the form in which such Certified Corner Records shall be presented and filed, and to enforce the provisions of the Act.

245:15-21-2. Recordation of corners

~~The Board has prepared an Instruction Manual for Oklahoma land survey monument records and a Certified Corner Record Form.~~

(a) Each Certified Corner Record shall be prepared on the Certified Corner Record Form adopted by the Board ~~effective January 1, 2005~~ in accordance with the Instruction Manual for Oklahoma Certified Corner Records adopted by the Board ~~November 14, 2008~~.

(b) The Professional Land Surveyor shall complete and file a Certified Corner Record for every public land survey corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey. The completed Certified Corner Record shall be filed within ninety (90) days after the survey is completed, unless the public land survey corner and accessories are substantially as described in an existing, filed Certified Corner Record. The Board shall consider a survey complete when any one of the following occurs:

(1) Monuments have been established; or

(2) A plat or drawing has been submitted; or

(3) Field notes for plans or planned purposed have been submitted.

245:15-21-3. Specifications for Certified Corner Records

The Board has established the following specifications for Certified Corner Records, which are also included in the

Instruction Manual for Certified Corner Records adopted by the Board:~~November 14, 2008, contains the specifications for the preparation of the Certified Corner Record Form.~~

(1) Each Certified Corner Record shall be signed, sealed and dated in the manner prescribed by Title 59, O.S. Section 475.15 and OAC 245:15-17-2.

(2) Each Certified Corner Record shall be complete, accurate and contain the following information:

(A) Classification as either an existent, obliterated or lost corner, as defined by the current Manual of Surveying Instructions published by the United States Bureau of Land Management; and

(B) Corner identity; and

(C) Description of the original monument, accessories, and any subsequent restoration by the United States government; and

(D) Monument description when the corner monument is found and a listing of sufficient supporting evidence; or monument description when the monument is set, the method used if the corner is classified as lost, and a listing of sufficient evidence to support the position if the corner is obliterated; and

(E) Description of, and angular and linear measurements to, at least three (3) readily identifiable and permanent accessories; and

(F) A legible sketch showing the relative positions of the monument, the accessories, streets, any conflicting monuments and other identifying features, including a north arrow; and

(G) Oklahoma state plane coordinates (if determined); and

(H) Professional Land Surveyor's certificate.

SUBCHAPTER 23. VIOLATIONS

245:15-23-1. Prima facie evidence

(a) A person, firm, or entity shall be construed to practice or offer to practice engineering or land surveying, who does any of the following:

(1) practices any branch of the professions the ~~board~~Board regulates, or

(2) by display or verbal claim, sign, advertisement, contract, card or other printed, engraved, or written instrument or device, bearing a person's, firm's, or entity's name or in any other way represents to be ~~a~~an Engineer, Professional Engineer,~~or~~ Land Surveyor, or Professional Land Surveyor or a firm providing or having the qualifications to provide engineering or land surveying services, or

(3) through the use of some other title implies that the person, firm, or entity is ~~a~~an Engineer, Professional Engineer,~~or~~ Land Surveyor, or Professional Land Surveyor or a firm providing engineering or land surveying services, or

(4) holds himself/herself or itself out as having the qualifications to, is able to, or who does contract, offer or perform any engineering or land surveying service.

~~(5)~~

(b) The following actions shall not be violations under 59 O.S. 475.1 et seq and the ~~rules~~Rules of the Board ~~provided that the licensee is licensed in the licensee's home jurisdiction, meets the requirements of licensing for Oklahoma, discloses that the licensee is not licensed in Oklahoma, and obtains a license in Oklahoma prior to commencing the practice of engineering or land surveying in Oklahoma~~:

(~~A~~ 1) Advertising in national publications or electronic media, provided there is no offering of professional services in jurisdictions where not licensed

(~~B~~ 2) Responding to letters of inquiry regarding requests for proposals, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding the scope of project and to demonstrate interest

(~~C~~3) Responding to letters of inquiry from prospective clients, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding scope of project and to demonstrate interest

(~~D~~4) Using the title/designation Professional Engineer, ~~Licensed~~ Engineer, P.E., Professional Land Surveyor, ~~Licensed~~ Land Surveyor, or P.L.S. or the like on letterheads, or business cards from an office in the jurisdiction where licensure is held.

(~~b~~c) Regardless of the above, proposals may not be submitted, contracts signed, or work commenced until the engineer, surveyor and firm become licensed in Oklahoma.

(~~c~~d) Any violation of such action noted by this Section shall be sufficient to justify an injunction or any other order or a conviction without evidence of a general course of conduct. The Board shall determine if other legal procedures and penalties are necessary and shall have the power to proceed with any and all legal procedures in addition to the injunction or other such orders issued.

245:15-23-2. Grounds for violations and penalties - Conduct

(a) **Knowledge of Rules.** All persons licensed under the provisions of the act are charged with having knowledge of these Rules as well as amendments from time-to-time which are made known in writing to every licensee and applicant for licensure.

(b) **Convictions.** A licensee of this Board who has been fined, received a reprimand, had a license revoked, suspended or denied in another jurisdiction for reasons or causes which the Board finds would constitute a violation of the law governing the practice of engineering or surveying in this jurisdiction or any rule or regulation promulgated by the Board may be cause for levying a fine, reprimanding the licensee, denying, revoking, or suspending a license to practice engineering or surveying by the licensee in this jurisdiction.

(c) Non-payment of fines or penalties or violation of any order approved by the Board may result in disciplinary action against the holder of the Certificate of Licensure or Certificate of Authorization.

245:15-23-5. Gross negligence

(a) The Professional Engineer or Land Surveyor is responsible for many professional, technical, ethical and tactical judgments relating to planning, surveys, reports, studies, inspections, designs, plans and specifications, construction materials, methods, techniques and systems processes. The licensee's education, training and experience, or the education, training and experience of the licensee in responsible charge of the services of any Firm, should enable such licensee to make such determinations with confidence in a successful result.

(b) Each licensee, firm, entity, or person representing same, shall exercise prudent and deliberate consideration in decisions, made only after responsible and thorough investigation, research and, when necessary, expert advice and assistance.

(c) When the results from such decisions are not reasonably predictable, each licensee, firm, entity, or person representing same, shall so advise the client, and fully disclose the implications involved.

(d) When such decisions require procedures, techniques, materials, or systems unfamiliar to the planning, design and/or construction team involved, the licensee, firm, entity, or person representing same shall exercise additional care and attention to the process, advancing the result sought.

(e) If, in the judgment of the Board, a licensee, firm, entity, or person representing same, does by its failure to discharge its duties, obligations, and responsibilities under 59 O.S., Sections 475.1 et seq and the Rules of the Board or the laws and regulations of another jurisdiction demonstrate carelessness which is in reckless disregard for the safety, property or lives of others, or is so great it appears to be a conscious violation of other people's property, or rights to health, safety or welfare, the Board may deem such neglect to be gross negligence.

245:15-23-6. Gross incompetence

(a) Licensees have been licensed under the authority of the Statutes regulating professional engineering and land surveying which establishes minimum competence to provide engineering and land surveying services in the State of Oklahoma. Licensees shall continue their professional development after licensure, improving and increasing their proficiency and skills, knowledge and abilities. The licensee, firm, or entity shall undertake only those professional assignments the licensee, firm, or entity is qualified to perform and lawfully authorized to undertake.

(b) The following practices, among others may be deemed gross incompetence by a licensee, firm, or entity or person representing same:

(1) A deficiency on the part of a licensee in the basic knowledge and skill necessary to the practice of engineering or land surveying such that the licensee does not demonstrate an ability to practice engineering or land surveying at the threshold level of professional competence for issuing engineering reports or undertaking projects of the kind and complexity ~~undertaken in the disciplines practiced~~ performed, thus endangering the property, safety, health of others or welfare of the public.

(2) Failure to engage other competent licensed architects, engineers or land surveyors when the licensee has contracted to furnish services outside of the licensee's area of competence.

(3) Practicing engineering or land surveying while under the influence of alcohol, drugs or mentally impaired.

245:15-23-7. Misconduct or dishonest practice

(a) The following practices, among others, by a licensee, firm, or entity or person representing same, may be deemed misconduct and a violation:

(1) Acts which evidence attempts to violate any laws or rules of this or any other state relating to licensure to practice engineering or land surveying.

(2) Acts which evidence a disregard or indifference toward the rules or statutes governing the practice of engineering or land surveying regulations, codes, ordinances and recognized standards including but not limited to those regulating the design of facilities to be constructed, structural inspections and reports, or special inspections for buildings or roadways .

(3) Acts which evidence attempts to violate or do so violate the Statutes Regulating Professional Engineers and Land Surveyors or Rules in this Chapter or assist any other person or firm to attempt or to do so.

(4) Acts which evidence attempts to conceal personal interests in conflict with responsibilities of service to the public or a client.

(5) Acts which evidence, through commission or omission, a failure or refusal to reasonably communicate with the client, so that the client shall be reasonably informed of the status of any services provided or agreed to be provided by the licensee or a firm holding a Certificate of Licensure and/or Certificate of Authorization under the responsible charge of the licensee.

(6) Acts which evidence a detriment to a client caused by a personal or the firm's interest which conflicts with the responsibility owed to the client by a licensee or a firm holding a Certificate of Licensure and/or Certificate of Authorization under the responsible charge of the licensee.

(b) The following practices, among others, by a licensee, firm, or entity or person representing same, may be deemed a dishonest practice and a violation:

(1) Acts which evidence attempts through commission or omission, to mislead or defraud any person, firm, or entity.

(2) Acts which evidence attempts to bribe any person, firm, or entity, who may influence the selection of any licensee, firm, or entity. Kickbacks, donations or forgiveness offered or paid to gain improper advantage in selection will be considered bribes.

(3) Acts evidenced by exaggerated, misleading, deceptive or false statements in claims about professional qualifications.

245:15-23-9. Filing a complaint; forms and evidence; Formal Notice of Charges

(a) ~~Proceedings to levy a fine upon an individual, licensee, entity or firm, or to reprimand, place on probation, suspend, refuse to renew, or to revoke an individual's Certificate of Licensure or a firm's Certificate of Authorization may be initiated by any person who may prefer charges of violations of these Rules.~~ Any person may file a complaint alleging violations of these Rules, Title 59 O.S. Section 475.1 et seq., and the Corner Perpetuation and Filing Act, Title 65 O.S. Sections 3.116-3.123.

(b) All ~~charges~~complaints may be made on forms prescribed by the Board, which are available from the Board, or by other means. ~~The information requested may include the name and address of the complainant and the respondent, a concise statement of the complaint with facts supporting the allegations that a violation has occurred and statement of the relief sought~~. The complainant may submit anonymous written complaints, which may be investigated.~~remain anonymous if sufficient information is provided to conduct an investigation.~~

(c) When a complaint is received by the Board ~~in which an individual, licensee or firm is charged with a violation~~, it is referred to an investigation committee designated by the Executive Director or Director of Enforcement. The ~~investigative~~investigation committee makes a determination if probable cause exists for taking further action or for issuing a ~~complaint~~ Formal Notice of Charges. Action against the individual, licensee, entity or firm holding a Certificate of Authorization may be brought in the name of the Board.

(d) In the event the investigation committee determines that a probable cause exists, the legal counsel of the Board is requested to prepare a ~~formal complaint~~ Formal Notice of Charges.

(e) The ~~formal complaint~~Formal Notice of Charges shall be personally served or mailed to the last known address of the ~~parties~~ respondent(s)~~charged or firm holding a Certificate of Authorization~~ at least 30 days before the date fixed for hearing.

(f) The ~~complaint~~Formal Notice of Charges shall show the time, place, and nature of the hearing, a statement of legal authority and jurisdiction under which the hearing is to be held, a reference to the particular section of the statutes and rules involved, and a short and plain statement of the matters asserted. The ~~notice of theformal complaint~~ Formal Notice of Charges shall indicate that at any hearing the accused individual, licensee, entity or firm holding a Certificate of Authorization shall have the right to appear in person or by counsel or both to cross-examine witnesses in his/her or its defense and to produce evidence and witnesses of his/her or its own defense. If the accused person or firm fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges.

(g) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall, upon motion by either party or evidence submitted not in compliance with OAC 245:15-23-15(a)(3), be excluded. The rules of evidence as applied in civil cases in the court of common pleas shall be followed. The Board shall give effect to the rules of privilege recognized by law. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties involved will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Any party may conduct cross-examination. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

245:15-23-15. Hearings

(a) **General provisions.**

(1) At any hearing, the licensee, firm, entity, or person, charged with ~~misconduct or~~a violation shall enjoy the rights:

(A) against self-incrimination; and

(B) of confidential communication with his/her spouse, attorney, clergyman, priest and/or physician; and

(C) of withholding confidential or privileged records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States; and

(D) of cross examination; and

(E) of counsel.

(2) All motions, except for a motion to continue, must be filed seven (7) days prior to the scheduled date of the hearing. Responses to motions, if any, must be filed two (2) days prior to the hearing.

(3) The parties shall exchange names of all witnesses they anticipate testifying ten (10) days prior to the hearing. Additional witnesses may be called subject to the approval of the Board.

(4) The first motion for a continuance filed on behalf of a party may be granted by the Executive Director.

(b) **Hearing record.**

(1) The hearing records shall include:

(A) all pleadings, motions and intermediate rulings;

(B) evidence received or considered;

(C) questions and offers of proof, objections, and ruling thereon;

(D) proposed findings and exceptions;

(E) any decision, opinion, or report by the officer presiding at the hearing, if any;

(F) any records, including records of the Board, of which the Board chooses to take judicial notice;

(G) all staff memoranda or data submitted to the hearing officer, if any, or member of the agency in connection with their consideration of the case.

(2) Oral proceedings or any part of the oral proceedings shall be transcribed on request of any party. The

requesting party shall pay all costs incurred for the original transcript and other parties requesting copies shall bear the cost of additional copies.

(3) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(c) **Methods of hearings.** Hearings shall be conducted by one of the following methods as determined by the Board:

(1) by the Board;

(2) by a member or emeritus member of the Board or its designee acting as hearing examiner;

(3) by an attorney licensed to practice before the Supreme Court of the State of Oklahoma acting as hearing examiner.

(d) Unless precluded by law, any party may waive rights and proceed by stipulation, agreed settlement, consent order or default. No provision in the rules shall be construed as prohibiting the Board from continuing to a later date, suspending or holding in abeyance any formal or civil proceeding pending the outcome of informal negotiation or informally agreed upon terms.

245:15-23-16. Hearing disqualification procedures

Any Board Member or Hearing Examiner shall withdraw from any proceeding in which the individual cannot ~~afford~~render a fair and impartial hearing or consideration. Any party may request such disqualification by filing a motion pursuant to OAC 245:15-23-15(a)(2) detailing the alleged grounds for disqualification. ~~an affidavit promptly upon discovery of the alleged grounds for disqualification; stating the particular grounds for disqualification~~. The issue shall be referred to the Board to be determined promptly by the Board, or the remaining members thereof, and upon disqualification the Board shall assign another Hearing Examiner and if necessary, as provided by Statutes of Oklahoma, seek appointment of an additional member or members pro-tem.

245:15-23-18. Findings of the Board and penalties

(a) The Board may find on any one or more of the charges:

(1) The charges are dismissed for insufficient evidence;

(2) The charges are dismissed without prejudice;

(3) The charges are dismissed with prejudice;

(4) The respondent is found not guilty;

(5) The respondent is found guilty.

(b) If the finding is guilty, the Board shall then determine the ~~administrative~~ penalty to be imposed. The ~~administrative~~ penalty resulting from a finding of guilty may be one or more of the following:

(1) Reprimand

(2) Censure

(3) Suspension

(4) Revocation

(5) Probation

(6) Administrative ~~Penalty~~Fine

~~(c) The Board will consider past disciplinary action taken against any licensee person, firm, or entity found guilty of misconduct or violation in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions or penalties to be imposed by the Board in the present proceeding.~~

(~~d~~c) The order of the Board in each case is a public record.

[OAR Docket #13-1068; filed 6-11-13]

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

[OAR Docket #13-1091]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General provisions
310:400-1-3. Definitions [AMENDED]
Subchapter 5. Rules of professional conduct
310:400-5-3. Professional competence and integrity [AMENDED]
Subchapter 9. Licensure examinations
310:400-9-2. Format [AMENDED]
310:400-9-4. Application [AMENDED]
Subchapter 15. Issuance and maintenance of license
310:400-15-3. License renewal [AMENDED]
310:400-15-4. Continuing education. [AMENDED]
310:400-15-8. Licensure by endorsement [AMENDED]
310:400-15-9. Temporary license [REVOKED]

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 59 O.S. Section 1925.5 *et seq*.

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ANALYSIS:
These rule amendments address those individuals who are a Licensed Marital and Family Therapist (LMFT), those persons who are LMFT candidates, and those individuals holding a license from another jurisdiction who wish to become an LMFT in the State of Oklahoma. The proposed rule modifications more closely align the state program with national standards; provide professional standards for forensic services; remove the oral examination component thereby removing subjectivity from the scoring of results; simplify provisions for reporting continuing education; and revise requirements for licensure by endorsement, offering new avenues for licensure.

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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

310:400-1-3. 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:

"Approved LMFT supervisor" means an individual who meets the qualifications to become an approved supervisor and is approved by the Department as set forth in Section 310:400-11-3 of this Chapter.

"Extra therapeutic relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-counseling relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LMFT's professional obligation to a client.

"Forensic services" means the application of knowledge, training and experience from the mental health field to the establishment of facts and/or the establishment of evidence in a court of law or ordered by a court of law.

"Home-study or technology-assisted distance learning" refers to the delivery of graduate coursework or continuing education through mailed correspondence or other distance learning technologies, which focuses on synchronous or asynchronous instructional delivery methods. Home-study or technology-assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.

"OAC" means the Oklahoma Administrative Code.

"On-site supervisor" means a person who may not be an approved LMFT supervisor but is licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LMFT Candidate whose assigned job duties include acting as the immediate supervisor to the LMFT Candidate.

"Technology-assisted supervision" refers to supervision that occurs through video teleconferencing, over secure internet connections, wherein an Approved LMFT Supervisor and a Licensed Marital and Family Therapist Candidate are in separate physical locations. Technology-assisted supervision must be approved by the Department prior to the accrual of hours. Factors to be considered by the Department include: distance between approved supervisor and candidate; financial hardship on approved supervisor or candidate; physical hardship on approved supervisor or candidate; specialty credentials; and other pertinent factors.

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

310:400-5-3. Professional competence and integrity

(a) LMFTs are dedicated to maintaining high standards of professional competence and integrity.

(b) LMFTs are presumed to have violated high standards of integrity or competence if they:

(1) are convicted of a felony;

(2) are convicted of a misdemeanor (related to their qualifications or functions);

(3) engage in conduct which could lead to conviction of felonies, or misdemeanors related to their qualifications or functions;

(4) have their licenses or certificates suspended or revoked; or

(5) are no longer competent to practice marital and family therapy because they are impaired due to physical or mental causes or the abuse of alcohol or other substances.

(c) LMFTs shall seek appropriate professional assistance for their own personal problems or conflicts that are likely to impair their work performance and their clinical judgment.

(d) LMFTs, as teachers and supervisors, are dedicated to maintaining high standards of scholarship and presenting information that is accurate.

(e) LMFTs shall remain abreast of new developments in family therapy knowledge and practice through both educational activities and clinical experiences.

(f) LMFTs shall not engage in sexual or other harassment or exploitation of clients, students, trainees, supervisees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.

(g) LMFTs shall not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.

(h) LMFTs shall prevent the distortion or misuse of their clinical and research findings.

(i) LMFTs are aware that, because of their ability to influence and alter the lives of others, they must exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

(j) LMFTs shall protect the welfare of the client by storing and/or destroying, when appropriate, client files.

(k) LMFTs shall not, under normal circumstances, offer professional services to clients concurrently receiving services from another professional except with the knowledge of the professional.

(l) LMFTs shall display their original, current license certificate in a prominent place in the primary location of their practice.

(m) LMFTs shall keep the Department updated regarding changes in mailing address, phone number and place of employment. Failure to do so may place the license in jeopardy

due to missed renewal notices and other important communications.

(n) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates may ~~not~~ perform forensic services, which may include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, ~~except~~only under the following conditions:

(1) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates must demonstrate competence by ~~certification,~~ education or experience in the subject matter relevant to the issues in question ~~and must certify in writing, upon request, that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:400-5-1(i), 310:400-5-2(d) and 310:400-5-3(e),(g),(h),(i), and (n) of this Chapter.~~, as determined by the court.

(2) ~~LMFT candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.~~LMFTs and LMFT Candidates shall provide a written notice and make reasonable attempts to obtain a signature acknowledging receipt of such notice, from each person or persons who is the subject of the forensic services. This written notice shall include:

(A) a description of what procedure will be followed in the evaluation process;

(B) how such information, interpretations, conclusions, and recommendations will be distributed;

(C) fee arrangements; and

(D) explanation of the role of the evaluator if subsequently called upon to provide expert testimony before a trier of fact

(3) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding~~, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee~~.

(5) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children ~~must~~shall be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates who provide therapy services for a client ~~may~~shall only provide fact witness testimony, which may include diagnostic impressions, treatment plans and other factual clinical information ordinarily included in a treatment file. Fact witness testimony by LMFTs and LMFT Candidates shall not include opinions or recommendations pertaining to matter subject to a decision by the Court, in forensic matters involving that client, unless otherwise required by law or court order. ~~LMFT candidates and licensees~~LMFTs and LMFT Candidates who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide therapy concurrently or subsequently to any person(s) involved or directly affected by the ~~LMFT candidate's or licensee's~~LMFT's or LMFT Candidate's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations by the ~~LMFT candidate or licensee~~LMFT or LMFT Candidate and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

(o) An LMFT, LMFT candidate, or applicant for LMFT licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:400-17-3, shall not:

(1) knowingly make a false statement of material fact; LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(2) fail to disclose a fact necessary to correct a misapprehension known by the LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LMFT, LMFT candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

(p) No person may engage in the private or independent practice of marital and family therapy work or open a facility with the intent of providing private or independent therapy practice unless that person:

(1) is licensed under this Act as a Licensed Marital and Family Therapist; and,

(2) has met all requirements of ~~Section~~OAC 310:400-11-4 of the LMFT Regulations; and

(3) has continued to meet all continuing education requirements set forth in Subchapter 15 of this Chapter.

SUBCHAPTER 9. LICENSURE EXAMINATIONS

310:400-9-2. Format

Applicants shall take two examinations:

(1) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department and

(2) ~~An oral and/or written examination~~The Oklahoma LMFT Examination covering psychopathology and the LMFT law and regulations as approved by the Department.

310:400-9-4. Application

(a) The Department shall mail notification of eligibility to sit for examination(s) to the last known address of applicant no later than sixty (60) days after receiving the required and completed application materials.

(b) The Department will schedule the ~~oral exam~~Oklahoma LMFT Examination and notify the applicant of test date. An applicant who wishes to take a scheduled national examination must complete an examination registration form, return it to the Department's designee and submit the required fee prior to the date of the examination.

(c) The applicant must pass the ~~oral exam~~Oklahoma LMFT Examination within one year from the first date applicant is eligible to test or the supervision agreement will be revoked and the applicant shall be mailed notification at last known address. After passing the ~~oral exam~~Oklahoma LMFT Examination, the applicant may submit a new supervision agreement and on-site supervisor verification form for Department approval.

(d) An applicant's eligibility to sit for the national examination shall be valid for three years, at which time if the applicant has not successfully passed the national exam, the licensure application shall be voided and the applicant shall be mailed notification at last known address. An applicant may re-apply with an additional requirement of a plan of remediation acceptable to the advisory board.

SUBCHAPTER 15. ISSUANCE AND MAINTENANCE OF LICENSE

310:400-15-3. License renewal

(a) **Responsibility.** Each LMFT is responsible for renewing his/her license before the expiration date.

(b) **Initial licensing period.** The renewal date of the original license shall be two (2) years from the last day of the month in which the license was originally issued.

(c) **Annual renewal.** Subsequent renewals will be yearly, on or before January 1. License fees will be prorated on a quarterly basis for the first renewal.

(d) **Interim renewal.** The notice for the initial renewal shall solicit the required continuing education documentation and invoice the LMFT for the interim period between the original renewal date and the following December 31 so that subsequent renewals shall be on a calendar year basis. The renewal notice shall inform the licensee of the number of continuing education hours required by December 31. Fees and continuing education hours shall be prorated according to the schedule below.

(1) For a license expiring during January, February or March the following shall apply:

(A) The renewal fee shall be $100.00; and

(B) Continuing education of 20 hours shall be due by December 31.

(2) For a license expiring during April, May or June the following shall apply:

(A) The renewal fee shall be $75.00; and

(B) Continuing education of 15 hours shall be due by December 31.

(3) For a license expiring during July, August or September the following shall apply:

(A) The renewal fee shall be $50.00; and

(B) Continuing education of 10 hours shall be due by December 31.

(4) For a license expiring during October or November, the following shall apply:

(A) The renewal fee shall be $25.00; and

(B) Continuing education of 5 hours shall be due by December 31.

(5) Licenses expiring in December are not prorated.

(e) **Requirements for renewal.** Requirements for renewal are:

(1) Compliance with the Act and Board rules.

(2) Documentation of the required continuing education. (See 310:400-15-4 for information regarding C.E.).

(3) Payment of the renewal fee(s).

(4) Submission of Continuing Education Roster, on official Department form.

(f) **Display of renewal certificate.**

(1) License renewal verification cards shall be displayed on the original (or replaced) license certificate.

(2) A current license verification card shall be readily available on the LMFTs person at any time marital and therapy services are being provided.

310:400-15-4. Continuing education.

(a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.

(b) **Number of hours required.**

(1) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours. Current LMFT Advisory Board members shall receive clock hours of acceptable continuing education for attendance and participation in advisory board or LMFT Advisory Board Chair appointed sub-committee meetings.

(2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics from programs pre-approved by the Department or its designee. Continuing education in mental health ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act;

(B) Addresses regulations as promulgated in Subchapter 5 of this Chapter; and

(C) Meets all requirements of subsections (b) through (e) of OAC 310:400-15-4 of this Chapter.

(D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.

(E) Current LMFT Advisory Board members shall receive clock hours of acceptable continuing education in mental health ethics for attendance and participation in advisory board or LMFT Advisory Board Chair appointed sub-committee meetings.

(3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee. Continuing education in Therapy Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter; and

(B) Contains content in one or more of the following knowledge areas:

(i) Overview of a supervision model;

(ii) Supervisors' areas of focus and roles in supervision;

(iii) Supervisors' process and practical application;

(iv) Ethical dilemmas involved in therapy supervision;

(v) Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;

(vi) Overview of AAMFT standards of supervision; or

(vii) Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and

(C) Meets all requirements of subsections (b) through (e) of ~~Section~~OAC 310:400-15-4 of this Chapter.

(c) **Acceptable continuing education.** Continuing education is acceptable to the Department when it:

(1) approximates the content of any of the academic areas listed under Subchapter 7 of this Chapter and;

(2) is presented by a person who meets one of the following qualifications:

(A) is licensed or certified by therapy related professions;

(B) is a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training;

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in ~~Section~~OAC 310:400-7-4 of this Chapter;

(D) the person is presenting or has presented at a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;

(E) is presenting in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(3) takes place in the context of one of the following:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved technology-assisted distance learning or home-study course;

(B) a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services~~.~~; or

(D) LMFT Advisory Board Meetings or LMFT Advisory Board Chair appointed sub-committee meetings, for current LMFT Advisory Board members.

(d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to ~~section~~OAC

310:400-15-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.

(e) **Continuing education accrual from technology-assisted distance learning or home-study courses.** Continuing education may be accrued when the LMFT completes technology-assisted distance learning or home-study programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through technology-assisted distance learning or home-study courses.

(f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

(g) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

(1) an official continuing education validation form furnished by the presenter, or,

(2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,

(3) an official college transcript showing courses or audit credit~~.~~, or

(4) (For teaching) a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(h) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster, on official Department forms, (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop, date of workshop, and the number of hours of each workshop. Only C.E. accrued in the preceding license renewal period is acceptable.

(i) **Audit of continuing education submissions.** In November of each year, the Department will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's must then provide the Department with verification of all credits claimed on their Continuing Education Roster on or before the renewal deadline. The Department may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(j) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(k) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the Department for disciplinary action and may result in suspension or revocation of license.

(l) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Department to make a determination of the suitability of the program for continuing education requirements.

(m) **Continuing Education Rosters for LMFT Approved Supervisors.** Every three (3) years, LMFT Approved Supervisors are required to submit three (3) hours of continuing education in therapy supervision on the LMFT Approved Supervisor Continuing Education Roster. The LMFT Approved Supervisor Continuing Education Roster shall include name of licensee, signature and signature date of licensee, total clock hours of workshop(s), name of therapy supervision workshop, sponsoring agency of workshop(s), date of workshop(s), and number of hours of each workshop.

310:400-15-8. Licensure by endorsement

~~The Commissioner may grant a license by endorsement, in accordance with Section 1925.9 of the LMFT Act.~~

~~(1) **Submission of license or verification card.** An applicant for licensure by endorsement must submit a copy of the current active license, certificate or verification card, and may be required to submit a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency.~~

~~(2) **Licensing procedures.** An applicant must submit the application form and documents as requested, license fees, three current documents of recommendation and official transcript(s).~~

~~(3) The Department shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:~~

~~(A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing;~~

~~(B) The applicant fulfills the requirements of Section 1925.6 A. and B. of the LMFT Act;~~

~~(C) The applicant must have at least a masters degree from a regionally accredited college or university;~~

~~(D) The applicant takes and passes the examination as provided under Section 1925.7 of the LMFT Act, and the applicant has passed the national written, marital and family examination that, in the judgement of the Department, is substantially equivalent to the examination established by the Department.~~

~~(E) The applicant takes and passes the Oklahoma LMFT Oral Examination.~~The Commissioner may grant a license by endorsement, in accordance with Section 1925.9 of the LMFT Act.

(1) **Submission of Out-of-State License Verification Form.** An applicant for licensure by endorsement must submit the Out-of-State License Verification Form and

may be required to submit a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency.

(2) **Licensing procedures.** An applicant must submit all application materials as described in OAC 310:400-7-2(b)(1), (2), (3), (5) and (6).

(3) The Department shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing with no history of suspension or revocation action against the license.

(B) The applicant fulfills the requirements of Section 1925.6 (A), (B), (C) of the LMFT Act;

(C) The applicant must have at least a masters degree in marital and family therapy, or in a mental health, behavioral science, or counseling related field, or a content-equivalent degree from a regionally accredited college or university;

(D) The applicant takes and passes the examination as provided in Section 1925.7, unless the applicant has passed a written, marital and family therapist examination that, in the judgment of the Department, is substantially equivalent to the examination established by the Department; and

(E) The applicant takes and passes the Oklahoma LMFT Examination.

(4) If the Applicant cannot meet the requirements of Paragraph (3) of this section, the Department shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(A) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing which allows the applicant to practice independently without supervision and shall have no history of suspension or revocation action against the license;

(B) The applicant must show proof of practice in marital and family therapy for five (5) years prior to application in Oklahoma;

(C) The applicant fulfills the requirements of Section 1925.6 (A), (B), (C) of the LMFT Act;

(D) The applicant must have at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a regionally accredited college or university;

(E) The applicant takes and passes the Oklahoma LMFT Examination as described in OAC 310:400-9-2(2) of this Chapter.

(F) The applicant meets the requirements in OAC 310:400-7-1(b).

(5) The applicant must meet the requirements in OAC 310:400-7-2(a)(2),(3) and (4).

310:400-15-9. Temporary license [REVOKED]

~~Marital and Family Therapists who are currently licensed in another state, who have made application for licensure by endorsement in Oklahoma may be granted a temporary license. An applicant who has met all requirements for licensure except for the written and/or oral examination and is waiting for the first opportunity to take the first written and/or oral examination may be granted a temporary license. A temporary license is valid up to 12 months from date of issue or until a permanent license is issued or until the application is denied. Temporary licenses must be returned to the Department upon expiration or when a permanent license is issued.~~

[OAR Docket #13-1091; filed 6-17-13]

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

[OAR Docket #13-1092]

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PERMANENT final adoption
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310:405-1-2.1. Definitions [AMENDED]
Subchapter 3. Rules of professional conduct
310:405-3-2. Competence [AMENDED]
Subchapter 9. Academic requirements
310:405-9-2. Knowledge area required [AMENDED]
Subchapter 17. Continuing education requirements
310:405-17-2. Number of hours required [AMENDED]
310:405-17-3. Acceptable continuing education [AMENDED]
310:405-17-4.1. Continuing education accrual from home-study or technology-assisted distance learning courses [AMENDED]
Subchapter 21. License and speciality renewal
310:405-21-5. Requirements for renewal [AMENDED]
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310:405-27-3. License by endorsement [AMENDED]
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Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 59 O.S. Section 1905 *et seq.*
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INCORPORATION BY REFERENCE:

"n/a"

ANALYSIS:

These rules address those individuals who are a Licensed Professional Counselor (LPC), those persons who are LPC candidates, and those individuals holding a license from another jurisdiction who wish to become an LPC in the State of Oklahoma. The rule modifications more closely align the state program with national standards; provide professional standards for forensic services; remove the oral examination component thereby removing subjectivity from the scoring of results; simplify provisions for reporting continuing education; and revise requirements for licensure by endorsement, offering new avenues for licensure.

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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

310:405-1-2.1. 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:

"Act" means Title 59, Sections 1901 et seq. of the Oklahoma Statutes.

"Advisory board" means the Oklahoma Licensed Professional Counselor Advisory Board appointed by the State Board of Health.

"Approved LPC Supervisor" means an individual who is approved by the Department pursuant to Section 310:405-11-4 of this Chapter.

"Counselor" means a person licensed as a Licensed Professional Counselor pursuant to this Act.

"Dual relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's or LPC Candidate's professional obligation to a client.

"Face-to-face counseling" means the counselor and the client shall be in the physical presence of the other during counseling.

"Face-to-face supervision" means the supervisor and the supervisee shall be in the physical presence of the other during individual or group supervision.

"Forensic services" means the application of knowledge, training and experience from the mental health field to the establishment of facts and/or the establishment of evidence in a court of law or ordered by a court of law.

"Full time" means at least twenty (20) hours of on-the-job experience per week.

"Group supervision" means an assemblage of counseling supervisee consisting of from two (2) to six (6) members.

"Home-study or technology-assisted distance learning" means the delivery of graduate coursework or continuing education ~~by any means~~ through mailed correspondence or other distance learning technologies, which focuses on using synchronous or asynchronous instructional delivery methods.~~to students who are not in the physical presence of the educator~~.

"OAC" means the Oklahoma Administrative Code.

"On-site supervisor" means a person who may not be an approved LPC supervisor but is licensed by the state of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LPC Candidate whose assigned job duties include acting as the immediate supervisor to the LPC Candidate and who is available to the candidate at all times when counseling services are being rendered by the LPC Candidate.

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-2. Competence

(a) **Counseling.** LPCs and LPC Candidates shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. An LPC or LPC Candidate shall only practice in a new area when said LPC or LPC Candidate has received the necessary education, training and supervised experience, and shall take steps to ensure the competence of work provided and to protect others from possible harm.

(b) **Testing and assessment.** LPCs and LPC Candidates shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have ~~been trained~~received training and supervision in the administration, scoring and interpretation processes associated with the provisions of such services. LPCs and LPC Candidates shall be responsible for receiving training on testing and assessment instruments that have been revised or updated. LPCs and LPC Candidates shall be familiar with related standardization,~~and~~ proper application, copyright restrictions and security demands of any testing or assessment technique utilized. LPCs and LPC Candidates shall ensure that any testing instrument selected is the most current edition available, has been properly evaluated for validity and reliability and is culturally appropriate for the clients with whom it is used. LPCs and LPC Candidates using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LPCs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Diagnosis of mental disorders.** LPCs and LPC Candidates shall provide the proper diagnosis of mental disorders in their clients, as published in Section E.5., Diagnosis of Mental Disorders, of the American Counseling Association (ACA) Code of Ethics, approved by the ACA Governing Council, 2005.

(d) **Specialty.** LPCs and LPC Candidates shall not represent themselves as specialists in any aspect of counseling, unless so designated by the Board.

(~~d~~e) **Research.** LPCs and LPC Candidates shall plan, design, conduct, and report research only in a manner ~~consistent with current American Counseling Association Code of Ethics~~ as published in Section G., Research and Publication, of the American Counseling Association (ACA)Code of Ethics, approved by the ACA Governing Council, 2005~~, pertinent ethical principles, federal and state laws, rules, and scientific standards governing research with human subjects~~.

(~~e~~f) **Impairment.** LPCs and LPC Candidates shall not offer or render professional services when such services may be impaired by a personal physical, mental or emotional condition(s). LPCs and LPC Candidates shall seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If an LPC or LPC Candidate possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LPC shall not undertake to provide counseling and will terminate the counseling relationship in accordance with these rules.

(~~f~~g) **Knowledge of impairment.** If a LPC or LPC Candidate becomes aware that a LPC or LPC ~~candidate~~Candidate is violating an obligation described in ~~Section~~OAC 310:405-3-2~~(e),~~(f), OAC 310:405-3-4(b) or other provisions of the Act or this Chapter of regulations, the LPC or LPC Candidate must, within ~~a reasonable time~~thirty (30) days, report the situation to the Department in accordance with ~~Section~~OAC 310:405-31-2. The report shall contain, at a minimum, the following:

(1) Name of the LPC or LPC Candidate making the report;

(2) Name of the LPC or LPC Candidate who is allegedly impaired;

(3) Any facts that can be revealed concerning the impairment;

(4) The LPC or LPC Candidate shall maintain the confidentiality of the client pursuant to Title 59 of the Oklahoma Statutes, Section 1910, unless a signed release is received from the client.

(~~g~~h) **Knowledge of ~~improper~~any sexual ~~contact~~ conduct.** If a LPC or LPC candidate becomes aware that another LPC or LPC Candidate is violating ~~Section 310:405-3-3.1~~OAC 310:405-3-3(d) or (e), OAC 310:405-3-4 (c) or OAC 310:405-3-4.1(b), the LPC or LPC Candidate must, within ~~a reasonable time~~thirty (30) days, report ~~the~~ any~~improper~~ sexual ~~contact~~ conduct to the Department in accordance with ~~Section~~OAC 310:405-31-2. The report shall contain, at a minimum, the following:

(1) Name of the LPC or LPC Candidate making the report;

(2) Name of the LPC or LPC Candidate who is alleged to have engaged in the sexual conduct;

(3) Any facts that can be revealed concerning the sexual conduct;

(4) The LPC or LPC Candidate shall maintain the confidentiality of the client pursuant to Title 59 of the Oklahoma Statutes, Section 1910, unless a signed release is received from the client.

(~~h~~i) **~~Evaluations~~Forensic services.** ~~LPC candidates and licensees~~LPCs and LPC Candidates may ~~not~~ perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, ~~or~~ expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, ~~except~~only under the following conditions:

(1) ~~LPC candidates and licensees~~LPCs and LPC Candidates must demonstrate competence by ~~certification,~~ education ~~or~~and experience in the subject matter relevant to the issues in question ~~and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:405-3-1, 310:405-3-2(a)(f) and 310:405-3-5(f)(1)(2)(3) of this Chapter.~~, as determined by the court.

(2) ~~LPC candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.~~ LPCs and LPC Candidates shall provide a written notice and make a reasonable attempt to obtain a signature acknowledging receipt of such notice, from each person or persons who is the subject of the forensic services. This written notice shall include:

(A) a description of what procedure will be followed in the evaluation process;

(B) how such information, interpretations, conclusions, and recommendations will be distributed;

(C) fee arrangements; and

(D) explanation of the role of the evaluator if subsequently called upon to provide expert testimony before a trier of fact.

(3) ~~LPC candidates and licensees~~LPCs and LPC Candidates shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) ~~LPC candidates and licensees~~LPCs and LPC Candidates must conduct a thorough examination ~~of the person~~and must utilize face-to-face interviews of the

person(s) who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding~~., which may be directly adversely affected by the findings and conclusions made by the candidate or licensee,and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis,or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.~~

(5) ~~LPC candidates and licensees~~LPCs and LPC Candidates~~must~~shall base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children ~~must~~shall be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) ~~LPC candidates and licensees~~LPCs and LPC Candidates who provide counseling services for a client ~~may~~shall only provide fact witness testimony, which may include diagnostic impressions, treatment plans and other factual clinical information ordinarily included in a treatment file. Fact witness testimony by LPCs and LPC Candidates shall not include opinions or recommendations pertaining to matter subject to a decision by the Court, in forensic matters involving that client, unless otherwise required by law or court order. ~~LPC candidates and licensees~~LPCs and LPC Candidates who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide counseling to any person(s) involved or directly affected by the ~~LPC candidate's or licensee's~~ LPC's and LPC Candidate's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations made by the ~~LPC candidate or licensee~~LPCs and LPC Candidates and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

310:405-9-2. Knowledge area required

(a) Each applicant shall possess as a part of the required sixty (60) semester credit hours or ninety (90) quarter credit hours of graduate curriculum, one (1) or more courses of at least three (3) semester credit hours or four (4) quarter credit hours per course in each of the following core counseling areas:

(1) Human growth and development - at least one (1) course which deals with the process stages of human intellectual, physical, social and emotional development of any of the stages of life from prenatal through old age.

(2) Abnormal human behavior - at least one (1) course which offers a study of the principles of understanding dysfunction in human behavior or social disorganization.

(3) Appraisal/assessment techniques - at least two (2) courses which deal with the principles, concepts and procedures of systematic appraisal, assessment, or interpretation of client needs, abilities, and characteristics, which may include the use of both testing and non-testing approaches.

(4) Counseling theories/methods - at least two (2) courses which survey the major theories and/or techniques of counseling.

(5) Professional orientation/ethics - at least one (1) course which deals primarily with the objectives of professional counseling organizations, codes of ethics, legal aspects of practice, standards of preparation and the role of persons providing direct counseling services.

(6) Research - at least one (1) course in the methods of social science or mental health research which includes the study of statistics or a thesis project in an area relevant to the practice of counseling.

(7) Practicum/internship - at least one (1) course of an organized practicum with at least three hundred (300) clock hours in counseling with planned experiences providing classroom and field experience with clients under the supervision of college or university approved counseling professionals.

(8) Knowledge areas - at least five (5) courses of at least three (3) semester credit hours or four (4) quarter credit hours each from the knowledge areas listed below.

(A) Group ~~dynamics~~counseling - course that provides both theoretical and experiential understandings of group purpose, development, dynamics, theories, methods, skills, and other group approaches in a culturally diverse society, including issues of group counseling leadership, stages, skills, methods, and ethics issues.

(B) Life style and career development - course that provides an understanding of career development and related life factors, as well as an overview of career development theories, program planning, educational planning, assessment techniques, and applied career counseling processes, including those applicable to specific populations in a global economy.

(C) Social and cultural foundations - course that provides an understanding of the cultural context of relationships, issues, and trends in a culturally diverse society, including an overview of social and cultural theories, strategies, and roles to be applied by the pluralistic counselor to establish an environment for optimal client wellness and successful counseling outcomes.

(D) Personality theories - course that examines contemporary and alternative personality theories that provide the student with models to conceptualize client presentation and that help the student select appropriate counseling interventions, including an

examination of models of counseling that are consistent with current professional research and practice in the field of counseling.

(E) Crisis intervention - course that provides an overview of crisis and disaster intervention strategies for the professional counselor that addresses areas including, but not limited to, crises of suicide, homicide, disability due to a mental illness, domestic violence, school violence, post-traumatic stress disorder, and vicarious trauma.

(F) Marriage/family counseling - course that provides an overview of the knowledge, skills, and practices necessary to address a wide variety of issues in the context of relationships and families, including historical, theoretical, and developmental issues in systems counseling, in addition to examining the basic skills of marriage, couple, and family counseling.

(G) Addictions counseling - course that provides an overview of assessment and treatment methods available for clients and their family members struggling with substance-related disorders or behavioral/process addiction issues.

(H) Rehabilitation counseling - course that provides an overview of the history, philosophy, and legal basis of rehabilitation programs, the roles of the rehabilitation counselor, and the process of rehabilitation, including the organizational structure of public and private rehabilitation systems, societal trends in rehabilitation, and professional issues related to the role of the rehabilitation counselor.

(I) Gerontology - course that provides a conceptual system for understanding the phenomenon of aging and the counselor's role in working with an aging client population, including practical counseling skills necessary for meeting the demands of coping with aging in a culturally diverse society.

(J) Human sexuality - course that focuses on sexual development and educational issues as applied to the field of professional counseling with emphases placed upon becoming comfortable with one's own sexuality, assisting parents with providing sexual education to their children, providing education with regard to sexual matters, and diagnosing and treating sexual dysfunction.

(K) Counseling with children/adolescents - course that provides instruction in the theories and techniques used in counseling children and adolescents, including instruction on the conceptualization of childhood and adolescent problems with an emphasis on age- and developmentally-appropriate interventions.

(L) Clinical supervision - course that serves as a didactic and experiential learning experience for counselors who wish to assume the role of clinical supervisor, including the assimilation and application of major theoretical/conceptual models and approaches to clinical supervision in a variety of settings.

(M) Psychopharmacology - course that provides an overview of commonly prescribed psychotropic medications for psychiatric disorders to assist the counselor in understanding his or her role in working with medical professionals in the concurrent treatment of mental health issues using an interdisciplinary approach.

(N) Consultation - course that provides the knowledge and skills necessary for the delivery of counselor consultation, including basic models of consultation, the content and procedural process for implementing consultation, and characteristics of an effective consultant-consultee relationship.

(O) Physical and Emotional Health - course that deals with the overlap of physiological and psychological health models, examining the neural and hormonal bases of learning, memory, motivation, emotions, mental disorders, and other behaviors.

(P) Grief counseling - course that addresses the mental health, social, and cultural manifestations of grief counseling, including, interventions and the coverage of characteristics of grief throughout the life cycle.

(Q) Specialty areas when established.

(b) **Remaining courses.** ~~Effective January 1, 2000, the~~The remaining courses needed to meet the sixty (60) semester or ninety (90) quarter graduate-hour requirement shall be in any of the knowledge areas listed in 310:405-9-2(a) and may be in increments of one (1), two (2) or three (3) graduate semester hour courses or one (1), two (2), three (3) or four (4) graduate quarter hour courses.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:405-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of continuing education per year. One (1) graduate academic semester credit hour is equal to fifteen (15) clock hours. One (1) graduate academic quarter credit hour is equal to ten (10) clock hours. Current LPC Advisory Board members shall receive clock hours of acceptable continuing education for attendance and participation in advisory board or sub-committee meetings.

(b) A minimum of three (3) clock hours of continuing education hours must be in counseling ethics from programs pre-approved by the Department or its designee. Continuing education in counseling ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses ethics issues, as the sole focus and specifically pertains to the practice of counseling, as defined in Title 59 of the Oklahoma Statutes, Section 1902(6) ~~of this Act~~, counseling treatment interventions, consulting, referral activities, or research activities as defined in Title 59 of the Oklahoma Statutes, Section 1902 ~~of this Act~~.

(2) Addresses regulations as promulgated in Subchapter 3 of this Chapter.

(3) Meets all requirements of sections 2-5 of ~~Section~~OAC 310:405-17-3 ~~of this Chapter~~.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling ethics continuing education must be accrued in a face-to-face setting.

(5) Current LPC Advisory Board members shall receive clock hours of acceptable continuing education for attendance and participation in advisory board or sub-committee meetings.

(c) Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision from programs pre-approved by the Department of its designee. Continuing education in Counseling Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses issues specifically related to the practice of clinical supervision, as the sole focus, pursuant to regulations promulgated in Subchapter 11 of this Chapter.

(2) Contains content in one or more of the following knowledge areas:

(A) Ethical and legal considerations in the practice of clinical supervision;

(B) Theoretical models of clinical supervision;

(C) Clinical supervision intervention methods and modalities;

(D) Research in clinical supervision; and

(3) Meets all requirements of sections 2-5 of ~~Subchapter~~OAC 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling supervision continuing education must be accrued in a face-to-face setting.

310:405-17-3. Acceptable continuing education

Continuing education (C.E.) is acceptable to the Department when it:

(1) Approximates the content of any of the academic areas listed under ~~subchapter~~OAC 310:405-9-2 of this chapter and;

(2) Is presented by a person who:

(A) is licensed or certified by counseling related professions;

(B) is a licensed or certified member of a non-counseling field, i.e. medicine, law if the content of the presentation is counselor related and falls within the presenter's area of training; or

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in ~~Section~~OAC 310:405-9-2 ~~of this Chapter~~; or

(D) the person is presenting or has presented at a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(E) is presenting in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(3) Takes place in the context of:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved home-study or technology-assisted distance learning course;

(B) takes place in the context of a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), American Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services; ~~and~~ or

(D) Current LPC Advisory Board members shall receive clock hours of acceptable continuing education for attendance and participation in advisory board or sub-committee meetings.

(4) Is accrued during the twelve (12) months preceding the renewal deadline or, in the case of the first licensing period, twenty-four (24) months preceding.

310:405-17-4.1. Continuing education accrual from home-study or technology-assisted distance learning courses

Continuing education may be accrued when the LPC completes home-study or technology-assisted distance learning programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through home-study or technology-assisted distance learning courses. Presenter or program author must meet all requirements of OAC 310:405-17-3 of this Chapter. Home-study or technology-assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.

SUBCHAPTER 21. LICENSE AND SPECIALITY RENEWAL

310:405-21-5. Requirements for renewal

Requirements for renewal include:

(1) Compliance with the Act and rules.

(2) Documentation of the required continuing education.

(3) Payment of the renewal fee(s).

(4) Submission of Continuing Education on the Continuing Educations Roster for Renewal of LPC licensure form.

SUBCHAPTER 27. LICENSURE BY ENDORSEMENT

310:405-27-3. License by endorsement

~~(a)~~ The Department shall issue a license by ~~full~~ endorsement to an applicant who is licensed or certified as a professional counselor ~~in another jurisdiction~~by another state or territory of the United States or the District of Columbia and who meets the following:

(1) The applicant's professional counselor license in the other jurisdiction is active and in good standing which allows the applicant to practice independently without supervision . The applicant shall have ~~with~~ no history of suspension or revocation action against the license and fulfills all the requirements located in OAC 310:405-5;

(2) The applicant fulfills the requirements of Title 59 of the Oklahoma Statutes, Section 1906(A)~~, (B) and (C)~~and (B) (1)(3)(4) ~~of the LPC Act~~;

(3) The applicant must have at least a masters degree in a counseling or a mental health related field from a regionally accredited college or university;

(4) The applicant must show proof of one of the following:

(A) has held a license in another jurisdiction for at least five years; or

(B) satisfies the requirements located at Title 59 Oklahoma Statutes , Section 1906 (C); and

~~(4) The applicant takes and passes the examination as provided in Section 1907(A)(1) of the LPC Act, unless the applicant has passed a written, counseling examination that, in the judgment of the Department, is substantially equivalent to the examination established by the Department.~~

(5) The applicant ~~takes and passes~~successfully completes the Oklahoma Legal and Ethical Responsibilities Examination.

~~(b) The Department shall issue a two (2) year, non-renewable license by endorsement to applicants seeking full endorsement who do not fulfill the requirements set forth in subsection 310:405-27-3(a) of this Chapter, but only under the following conditions:~~

~~(1) The applicant must show proof of continuous practice in counseling for five (5) years prior to application in Oklahoma;~~

~~(2) The applicant must show proof of professional counselor licensure in the other jurisdiction is current and in good standing, with no history of suspension or revocation against the license;~~

~~(3) The applicant takes and passes the examinations as provided in subsection 310:405-15-2 of this Chapter; and~~

~~(4) The applicant completes all deficient course work to meet the academic requirements as provided in subchapter 9 of this Chapter.~~

~~(c) The license by endorsement will expire after two years from the date of issue. Failure to fulfill the requirements as provided in this subsection, within the two (2) year licensure period, will require the applicant to fulfill licensure requirements set forth in Section 1906 (C)(1)(2) of the Act.~~

[OAR Docket #13-1092; filed 6-17-13]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 451. FIRE EXTINGUISHER INDUSTRY

[OAR Docket #13-1093]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
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Incorporated Standards:
International Code Council International Building Code, 2009 Edition
International Code Council International Fire Code, 2009 Edition
National Fire Protection Association Standard for Portable Fire Extinguishers, 2010 Edition
National Fire Protection Association Standard on Carbon Dioxide Extinguishing Systems, 2011 Edition
National Fire Protection Association Standard on Halon 1301 Fire Extinguishing Systems, 2009 Edition
National Fire Protection Association Standard for Dry Chemical Extinguishing Systems, 2009 Edition
National Fire Protection Association Standard for Wet Chemical Extinguishing Systems, 2009 Edition
National Fire Protection Association National Electrical Code, 2011 Edition
National Fire Protection Association National Fire Alarm Code, 2013 Edition
National Fire Protection Association Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 Edition
National Fire Protection Association Standard on Clean Agent Fire Extinguishing Systems, 2012 Edition

National Fire Protection Association Standard on Water mist fire Protection Systems, 2010 Edition

National Fire Protection Association Code for Safety to Life from Fire in Buildings and Structures, 2012 Edition

Incorporating Rules:

310:451-1-3. Adopted references

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Consumer Health Services Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone (405) 271-5243

ANALYSIS:

These rules update references to building and fire safety codes that are incorporated by reference as the minimum standard of installation for the fire extinguisher industry in Oklahoma. These codes are consensus standards adopted by the International Code Council, the Oklahoma Uniform Building Code Commission, and the National Fire Protection Association with the participation of state, county and municipal code officials and fire officials, architects, engineers, builders, contractors, elected officials, manufacturers and others in the construction industry. These codes are updated by these bodies periodically. These changes update the references to more recent versions of the codes. The result of this change will be to apply current building and fire codes to the fire extinguisher industry.

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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

310:451-1-3. Adopted references

The Board of Health hereby incorporates by reference the International Code Council (ICC) ~~2006~~2009~~(IBC)~~ Edition International Building Code (IBC); 2009 Edition International Fire Code (IFC); the National Fire Protection Association (NFPA) ~~2007~~2010 Edition Standard for Portable Fire Extinguishers (NFPA 10); the ~~2005~~2011 Edition Standard on Carbon Dioxide Extinguishing Systems (NFPA 12); the ~~2004~~2009 Edition Standard on Halon 1301 Fire Extinguishing Systems (NFPA 12A); the ~~2002~~2009 Edition Standard for Dry Chemical Extinguishing Systems (NFPA 17); the ~~2002~~2009 Edition Standard for Wet Chemical Extinguishing Systems (NFPA 17A); the ~~2005~~ 2011 Edition National Electrical Code (NFPA 70); the ~~2007~~2013 Edition National Fire Alarm Code (NFPA 72); the ~~2004~~2011 Edition Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations (NFPA 96); the ~~2004~~2012 Edition Standard on Clean Agent Fire Extinguishing Systems (NFPA 2001); the ~~2006~~2010 Edition of the Standard on Water mist fire Protection Systems (NFPA 750); ~~the 2006 Edition of the Clean Agent fire Extinguishing Systems (NFPA 2001)~~ and the ~~2006~~2012 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) as the minimum standard of installation for the fire extinguisher industry in Oklahoma. If a conflict exists between any of the above referenced installation standards, the more stringent standard shall apply. If a conflict exists between any of the above referenced codes or standards and this Chapter, the requirements in this Chapter shall apply.

[OAR Docket #13-1093; filed 6-17-13]

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

[OAR Docket #13-1094]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 15. Nursing Service
310:667-15-6 [AMENDED]
Subchapter 19. Medical records department
310:667-19-2 [AMENDED]
Subchapter 21. Drug distribution
310:667-21-8 [AMENDED]
Subchapter 39. Critical access hospital
310:667-39-9 [AMENDED]
Subchapter 40. Emergency hospital
310:667-40-9 [AMENDED]
310:667-40-11 [AMENDED]

AUTHORITY:

Oklahoma State Board of Health, 63 O.S. Sections 1-104 and 1-705

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Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2013

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SUPERSEDED EMERGENCY ACTIONS:

"n/a"

INCORPORATION BY REFERENCE:

"n/a"

ANALYSIS:

This proposal removes the forty-eight (48) hour time limit for authentication of certain verbal or telephone orders given by physicians and practitioners. The current rule requires signatures by physicians or practitioners within forty-eight (48) hours after giving verbal orders for medications, treatments and tests. After the change, verbal and telephone orders will be authenticated pursuant to each hospital's medical staff bylaws. The proposal will enable hospitals to implement recent changes in federal rules governing Medicare certification of hospitals at Title 42 of the Code of Federal Regulations, Section 482.24(c) with the purpose of reducing a regulatory and financial burden on hospitals.

The new federal regulation authorizes authentication of verbal orders by either the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under 42 CFR § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. The new federal rule strikes the forty-eight (48) hour timeframe requirement for authentication of orders and instead defers to hospital policy and State law for establishment of any timeframe. The new federal rules provide that if there is no State law

establishing such a timeframe, then a hospital would be allowed to establish their own time frame for authentication of orders, including verbal orders.

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, 2013:

SUBCHAPTER 15. NURSING SERVICE

310:667-15-6. Evaluation and review of nursing care

(a) There shall be a continuous review and evaluation of the nursing care provided for patients. There shall be written nursing care procedures and nursing care plans for patients.

(b) Nursing care policies and procedures shall be written and be consistent with current standards of practice and be reviewed and revised as necessary.

(c) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(d) Nursing care plans shall include assessment, planning, intervention, and evaluation. Nursing care plans shall be established for each inpatient and be revised as necessary.

(e) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(f) Only the following shall be permitted to administer medications, and in all instances, in accordance with state and federal law:

(1) A licensed physician or licensed independent practitioner;

(2) A registered nurse;

(3) A licensed practical nurse; or

(4) Other practitioners, if designated by the medical staff and authorized by law.

(5) Facilities participating in a program for training nursing students may permit nursing students to administer medications to patients provided the facility has on file an agreement between the nursing school and the facility, outlining protocols for participation, scope of involvement, education levels of students, level of supervision, and a current roster of nursing students in the program. Specific details relating to the operation of the program shall be included in the facility's policies and procedures manual.

(g) All medical orders shall be signed by the prescribing physician or practitioner. Telephone ~~and~~ or verbal orders for medications, treatments and tests shall be given only to the practitioner authorized by administration to receive these orders and be signed by the prescribing physician or practitioner ~~as soon as possible within forty-eight (48) hours~~. Other orders may be accepted by staff as designated by medical staff policy, consistent with state and federal laws. The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

(h) ~~Verbal~~Telephone or verbal orders may be authenticated as described at OAC 310:667-19-2(c)(4).

(i) Blood product transfusions and intravenous medications shall be administered as required by written hospital policy in accordance with state and federal law. Hospital staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(j) An effective hospital procedure shall be established for reporting transfusion reactions and adverse drug reactions.

SUBCHAPTER 19. MEDICAL RECORDS DEPARTMENT

310:667-19-2. Reports and records

(a) Reports shall be made by each hospital to the appropriate agency, including but not limited to the following:

(1) Communicable disease.

(2) Births and deaths.

(3) Periodic reports to the Department on forms supplied for this purpose.

(4) Newborn hearing screening report.

(A) All hospital nurseries shall complete a newborn hearing screening report form on all live newborns discharged from their facility. For facilities with a two-year average annual birth census of 15 or greater, physiologic hearing screening results as well as "at risk" indicators must be recorded on the report form; for facilities with a two-year average annual birth census of fewer than 15, "at risk" indicators must be recorded and if physiologic hearing screening is conducted, those results also must be recorded on the report form. It shall be the responsibility of the hospital administrator to assure that the Newborn Hearing Screening Report Form is correctly completed and subsequently submitted to the Department. The hospital administrator may designate one individual, who shall then be responsible for review of all newborn discharge summaries to insure that a report form has been completed for each infant and that the report form is a permanent part of that infant's record. A copy of the hearing screening report form must be given to the infant's caregiver at discharge.

(B) If an infant is transferred from one hospital to another, the second hospital shall be responsible for providing physiologic hearing screening, "risk indicator" screening, and for completion of the report form.

(C) It shall be the responsibility of the hospital administrator to insure that all completed report forms

are mailed to the Department within seven (7) days of an infant's birth.

(D) It shall be the responsibility of the attending physician or licensed independent practitioner to inform parents if their infant passed or was referred on the physiologic hearing screening and/or if the infant is to be considered "at risk" for hearing impairment. Prior to discharge, the attending physician or licensed independent practitioner shall review the completed report form and shall inform the parents of their infant's status. Infants who do not pass the physiologic screening shall be referred for a diagnostic audiological evaluation as soon as possible.

(E) It shall be the responsibility of the coordinator of the Newborn Hearing Screening Program at the Department to arrange for hospital in-service training for all hospital personnel involved in the process of completion of report forms. A manual of procedures shall be available in regard to processing of screening forms. The literature for distribution to parents shall be available from the Department.

(5) Newborn metabolic disorder screening.

(A) **Testing of newborns.** All newborns in Oklahoma shall be tested for phenylketonuria, hypothyroidism, galactosemia and sickle cell diseases by a Certified Newborn Metabolic Disorder Screening Laboratory as defined in Chapter 550 of this Title; a parent or guardian may refuse metabolic disorder screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices. A parent or guardian who refuses metabolic disorder screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices shall also indicate in writing this refusal in the newborn's medical record with a copy sent to the Newborn Metabolic Disorder Screening Program, Maternal and Child Health Service, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299.

(B) **Specimen collection for hospital births.** For all live hospital births, the physician or licensed independent practitioner shall order the collection of a newborn metabolic disorder screening specimen on all newborns prior to transfusion, at three to five days of age or immediately prior to discharge, whichever comes first. Specimens shall be collected on the Newborn Metabolic Disorder Form Kit using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(i) If the initial specimen for any infant is collected prior to 24 hours of age, the hospital and the physician or licensed independent practitioner are responsible for notifying the infant's parents that a repeat specimen is necessary at three to five days of age. The infant's physician or licensed independent practitioner is responsible for insuring that the repeat specimen is collected.

(ii) The hospital is responsible for submitting a satisfactory specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge, or if the infant is to be hospitalized for an extended period of time, the name of the infant's physician or licensed independent practitioner.

(iii) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(iv) Infants transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician or licensed independent practitioner and the receiving hospital to insure a specimen is collected.

(v) It is the responsibility of the hospital and physician or licensed independent practitioner to insure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn Metabolic Disorder Screening Program Coordinator shall be notified by contacting Maternal and Child Health Service, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. The physician or licensed independent practitioner is responsible for insuring the specimen is collected at three to five days of age.

(C) **Screening for premature/sick infants.** For all premature/sick infants, the physician or licensed independent practitioner shall order the collection of a newborn metabolic disorder screening specimen prior to red blood cell transfusion, at three to seven days of age, or immediately prior to discharge, whichever comes first. It is recommended that a repeat newborn metabolic disorder screening specimen be collected at 14 days of age. Specimens shall be collected on the Newborn Metabolic Disorder Form Kit using capillary or venous blood. The hospital is responsible for collecting specimens on all premature/sick infants.

(i) Premature/sick infants screened prior to 24 hours of age must be re-screened between 7-14 days of age.

(ii) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be re-screened by the 7th day of life and a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes or phenotype. The accepted time period to determine hemoglobin type is 90 to 120 days after transfusion.

(iii) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a

serum free T4 (measured by direct dialysis or an equivalent method) at 7-14 days of age.

(D) **Hospital recording.** The hospital shall implement a procedure to assure that a newborn screening specimen has been collected on every newborn and mailed to the Newborn Metabolic Disorder Screening Laboratory within 24 - 48 hours of collection.

(i) The hospital shall immediately notify the infant's physician or licensed independent practitioner, and parents or guardians if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(ii) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Metabolic Disorder Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician or licensed independent practitioner.

(iii) Any hospital or any other laboratory which collects, handles or forwards newborn metabolic disorder screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician or licensed independent practitioner, name of the health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the form kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results.

(iv) The hospital is responsible for assuring that employees who collect, handle or perform newborn metabolic screening tests are informed of their responsibilities with respect to screening procedures.

(E) **Parent and health care provider education.** The hospital will be responsible or designate a responsible party to distribute the Newborn Metabolic Disorder Screening Program's written educational materials on newborn metabolic disorder screening provided by the Department to at least one of each newborn's parent or legal guardian.

(F) **Training.** Hospitals shall provide ongoing training programs for their employees involved with newborn screening procedures. These training programs shall include methods of collecting a Satisfactory Newborn Metabolic Disorder Screening Specimen.

(6) Birth defects. Each hospital shall maintain a list of patients up to six (6) years of age who have been diagnosed with birth defects, and all women discharged with a diagnosis of stillbirth or miscarriage. On request, each hospital shall make the medical records of these individuals available to the State Department of Health.

(7) Abortions. Attending physicians shall complete and submit to the Department a report form for each abortion performed or induced as required by 63 O.S. 1999, Section 1-738.

(b) **Record of patient admission.**

(1) All persons admitted to any institution covered by these standards shall be under the care of a doctor of medicine (M.D.) or osteopathy (D.O.) duly licensed to practice medicine and surgery in the State of Oklahoma or a licensed independent practitioner, whose name shall be shown on the admitting record.

(2) The hospital admitting record also shall show the following for each patient.

(A) Full name of patient with age, sex, address, marital status, birth date, home phone number, date of admission, and admitting diagnosis.

(B) Next of kin, with address, phone number, and relationship.

(C) Date and time of admission, the admission and final diagnoses, and the name of physician or licensed independent practitioner.

(D) Any advanced directive for health care as defined in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

(3) Special clinical reports shall be kept, including the following:

(A) Obstetrical patients throughout labor, delivery, and post-partum.

(B) Newborn, giving the infant's weight, length, and other notes relative to physical examination.

(C) Surgical and operative procedures, including pathological reports.

(D) Record of anesthesia administration.

(c) **Orders for medications, treatments, and tests.**

(1) All medication orders shall be written in ink and signed by the ordering physician or practitioner authorized by law to order the medication, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician- approved hospital policy after an assessment for contraindications. The order shall be preserved on the patient's chart.

(2) All orders shall be written in ink and signed by the ordering physician or practitioner. Orders received by resident physicians shall be co-signed if required by medical staff bylaws. The order shall be preserved on the patient's chart.

(3) All orders taken from the physician or practitioner, for entry by persons other than the physician or practitioner, shall be countersigned ~~as soon as possible within forty-eight (48) hours~~.

(4) ~~Verbal~~Telephone or verbal orders may be authenticated by an authorized physician or practitioner other than the ordering physician or practitioner when this practice is defined and approved in the medical staff bylaws. If allowed, medical staff bylaws must identify the physicians or practitioners who may authenticate another physician's or practitioner's telephone or verbal order, e.g. physician partners or attending physicians or practitioners, and

define the circumstances under which this practice is allowed. The bylaws must also specify that when a covering or attending physician or practitioner authenticates the ordering physician's or practitioner's telephone or verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final. The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

SUBCHAPTER 21. DRUG DISTRIBUTION

310:667-21-8. Drug handling

(a) Drugs shall be given to hospital patients only upon written order of a physician or practitioner legally authorized to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. No change in an order shall be made without the approval of the prescriber. ~~Verbal~~Telephone or verbal orders are discouraged but, when necessary, shall be written by an authorized employee and signed by the person legally authorized to write a prescription ~~as soon as possible within 48 hours~~ or meet the requirements at OAC 310:667-19-2(c)(4). The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

(b) Single use units of controlled substances shall be used in the hospital except in the pharmacy where multiple dose vials may be used for IV admixtures.

(c) All Schedule drugs in the hospital, except those in the pharmacy, shall be verified by actual count at the change of shift by two (2) licensed nurses and documented. Schedule drugs outside the pharmacy which are contained in, and controlled by, an automated dispensing device may be verified by actual count at the time of each access and documented. Adequate day-to-day accountability-of-use records shall be maintained and shall include the date and time of each check of a schedule drug substance supply, the balance on hand, the names of patients receiving drugs, the physician's or prescribing practitioner's name, quantity of medication used and wasted, and the signatures of the two persons making the check. Wastage of schedule drugs shall be witnessed by at least two (2) persons, one (1) of which shall be a licensed health professional. Witnesses shall document wastage by signature.

(d) The medical staff shall establish a written policy that all toxic or dangerous drugs not specifically prescribed as to time or number of doses shall be automatically stopped after a reasonable time limit set by the staff. Examples of drugs ordinarily thought of as toxic or dangerous drugs include: controlled substances, sedatives, anticoagulants, antibiotics, oxytocics, and steroids.

(e) The administrator, or his or her authorized representative, shall inventory pharmacy controlled substances and alcohol at least annually.

(f) Drugs past the date of expiration shall be removed from stock and shall not be available for patient use.

SUBCHAPTER 39. CRITICAL ACCESS HOSPITAL

310:667-39-9. Nursing service

(a) **General.** Each CAH shall have an organized nursing service which provides twenty-four (24) hour nursing services for patients. The nursing service shall be supervised by a registered nurse.

(b) **Organization.** The nursing service shall be well-organized with written policies delineating administrative and patient care responsibilities. The director of nursing shall be a registered nurse who shall be responsible for the operation of the service, including determining the staff necessary to provide nursing care for all areas of the CAH. Nursing care shall be provided as specified by written procedures approved by the director of nursing and the governing body. All nursing procedures shall be consistent with state and federal law and current standards of practice. Procedures shall be reviewed and revised as necessary.

(c) **Staffing.** The nursing service shall have adequate numbers of licensed nurses and other nursing personnel available to provide nursing care to all patients as needed based on patient census and acuity. At least one (1) registered nurse shall be on duty on-site to furnish or supervise all nursing services whenever patient care is provided. If the CAH has no inpatients, the registered nurse may be available on an on-call basis provided he or she is available to return to the CAH in a period of time not to exceed twenty (20) minutes.

(d) **Qualifications.**

(1) Individuals selected for the nursing staff shall be qualified by education and experience for the positions they are assigned. The CAH shall verify current licensure of licensed nurses and maintain documentation of verification.

(2) The selection and promotion of nursing service personnel shall be based on their qualifications and capabilities. The director of nursing shall have input regarding the employment, promotion, evaluation and termination of all nursing service personnel.

(3) The qualifications required for each category of nursing staff shall be in written policy and job descriptions, and shall be available in the CAH for reference. The functions of all nursing service personnel shall be clearly defined by written policy.

(e) **Delivery of care.**

(1) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(2) Each inpatient shall have a nursing care plan that includes assessment, planning, intervention, and evaluation. Nursing care plans shall be revised as necessary.

(3) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(4) All drugs and biologicals shall be administered in accordance with state and federal laws by authorized individuals. Orders for drugs,~~and~~ biologicals, treatments and tests shall be in writing and signed by the prescribing physician or practitioner who shall be authorized by law to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. When telephone or verbal orders for drugs,~~or~~ biologicals, treatments and tests are used, they shall be given only to a practitioner authorized by administration to receive these orders and signed by the prescribing practitioner ~~as soon as possible within forty eight (48) hours~~ or meet the requirements at OAC 310:667-19-2(c)(4). The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

(5) Blood products and intravenous medications shall be administered as required by CAH written policy in accordance with state and federal law. CAH staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(6) There shall be an effective procedure for reporting transfusion and adverse drug reactions to the attending physician or licensed independent practitioner and the prescribing physician or practitioner. Errors in drug administration and adverse reactions shall be compiled and reported through the quality assurance committee to the medical and professional staff.

(7) All nursing service personnel shall be trained and currently certified to perform cardio-pulmonary resuscitation (CPR) and shall be knowledgeable of all CAH emergency protocols.

(f) **Patient restraint.** If patients are physically restrained, the CAH shall comply with all requirements specified in OAC 310:667-15-8. If patients are chemically restrained, the CAH shall comply with all requirements specified in OAC 310:667-15-9.

SUBCHAPTER 40. EMERGENCY HOSPITAL

310:667-40-9. Nursing service

(a) **General.** Each EH shall have an organized nursing service which provides twenty-four (24) hour nursing services for patients. The nursing service shall be supervised by a registered nurse.

(b) **Organization.** The nursing service shall be well-organized with written policies delineating administrative and patient care responsibilities. The director of nursing shall be a registered nurse who shall be responsible for the operation of the service, including determining the staff necessary to provide nursing care for the EH. Nursing care shall be provided as specified by written procedures approved by the director of nursing and the governing body. All nursing procedures shall be consistent with state and federal law and current standards of practice. Procedures shall be reviewed and revised as necessary.

(c) **Staffing.** The nursing service shall have adequate numbers of licensed nurses and other nursing personnel available to provide nursing care to all patients as needed based on patient census and acuity. At least one (1) registered nurse shall be on duty on-site to furnish or supervise all nursing services whenever patient care is provided. If the EH has no inpatients, the registered nurse may be available on an on-call basis provided he or she is available to return to the EH in a period of time not to exceed twenty (20) minutes.

(d) **Qualifications.**

(1) Individuals selected for the nursing staff shall be qualified by education and experience for the positions they are assigned. The EH shall verify current licensure of licensed nurses and maintain documentation of verification.

(2) The selection and promotion of nursing service personnel shall be based on their qualifications and capabilities. The director of nursing shall have input regarding the employment, promotion, evaluation and termination of all nursing service personnel.

(3) The qualifications required for each category of nursing staff shall be in written policy and job descriptions, and shall be available in the EH for reference. The functions of all nursing service personnel shall be clearly defined by written policy.

(e) **Delivery of care.**

(1) A registered nurse shall assess, plan, supervise, and evaluate the nursing care for each patient.

(2) Each inpatient shall have a nursing care plan that includes assessment, planning, intervention, and evaluation. Nursing care plans shall be revised as necessary.

(3) Nursing notes shall be informative and descriptive of the nursing care given and include assessment, interventions, and evaluation.

(4) All drugs and biologicals shall be administered in accordance with state and federal laws by authorized individuals. Orders for drugs and biologicals shall be in writing and signed by the prescribing physician or practitioner who shall be authorized by law to write a prescription, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment

for contraindications. When telephone or verbal orders for drugs~~, or~~ biologicals, treatments, and tests are used, they shall be given only to a practitioner authorized by administration to receive these orders and signed by the prescribing physician or practitioner ~~as soon as possible within forty-eight (48) hours~~ or meet the requirements at OAC 310:667-19-2(c)(4). The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

(5) Blood products and intravenous medications shall be administered as required by EH written policy in accordance with state and federal law. EH staff administering blood products or intravenous medications shall be trained regarding hospital policies before they are allowed to carry out these responsibilities.

(6) There shall be an effective procedure for reporting transfusion and adverse drug reactions to the attending physician or licensed independent practitioner and the prescribing physician or practitioner. Errors in drug administration and adverse reactions shall be compiled and reported through the quality assurance committee to the medical and professional staff.

(7) All nursing service personnel shall be trained and currently certified to perform cardio-pulmonary resuscitation (CPR) and shall be knowledgeable of all EH emergency protocols.

(f) **Patient restraint.** If patients are physically restrained, the EH shall comply with all requirements specified in OAC 310:667-15-8. If patients are chemically restrained, the EH shall comply with all requirements specified in OAC 310:667-15-9.

310:667-40-11. Medical record services

(a) **General.** The EH shall have medical record services that ensure a medical record is maintained for every patient evaluated or treated in the facility. Medical record services shall be appropriate to the scope and complexity of the services performed and shall ensure prompt completion, filing, and retrieval of records. In general, services such as transcription, computer indexing and coding, and electronic storage may be performed off-site as a contracted service as long as the medical record remains under the control of the EH. The EH shall ensure that medical records maintained by a contracted service remain confidential and can be immediately accessed by EH staff.

(b) **Reports to agencies and the Department.** The EH shall comply with all requirements specified in OAC 310:667-19-2(a) regarding the reports made to agencies and the Department.

(c) **Content.** The medical record shall contain information to justify patient admission and treatment, support the diagnosis, and describe the patient's progress and response to treatment and services received. All entries shall be legible and complete, and shall be authenticated and dated promptly by the person, identified by name and discipline, who is responsible for ordering, providing or evaluating the service furnished.

(1) The author of each entry shall be identified and shall authenticate their entry. Authentication may include written signatures or computerized or electronic entries. If computerized or electronic authentications are used, the EH shall comply with all requirements specified at OAC 310:667-19-10(e). Telephone ~~and~~or verbal orders shall be authenticated by the physician or practitioner giving the order ~~as soon as possible within forty-eight (48) hours~~ or meet the requirements at OAC 310:667-19-2(c)(4). The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician. Reports of history and physical examinations and discharge summaries shall be authenticated by the authorized physician or practitioner who performed the examination or produced the summary or meet the requirements at OAC 310:667-19-10(e) if authenticated by another physician or practitioner. Signature stamps may be used to authenticate entries in the medical record provided the requirements at OAC 310:667-19-10(d) are met.

(2) All inpatient records shall document the following as appropriate:

(A) Patient identifying information including individuals to be contacted in case of an emergency.

(B) Evidence of a physical examination, including a health history, performed not more than thirty (30) days prior to admission or within forty-eight (48) hours after admission. The history and physical examination shall be completed, signed and placed in the record within 48 hours of admission.

(C) Admitting diagnosis.

(D) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.

(E) Documentation of complications, hospital acquired infections, and unfavorable reactions to any drug or biological.

(F) Properly executed informed consent forms for procedures and treatments performed. The medical and professional staff shall establish which procedures or treatments require informed consent consistent with Federal and State law.

(G) All physicians' and practitioners' orders, nursing notes, reports of treatment, medication records, diagnostic reports, vital signs and other information necessary to monitor the patient's condition.

(H) Discharge summary with outcome of hospitalization, disposition of case, medications at the time of discharge, and provisions for follow-up care.

(I) Reports. All reports and records shall be completed and filed within a period consistent with good

medical practice and not longer than thirty (30) days following discharge.

(J) Final diagnosis.

(d) **Maintenance of records.** The EH shall maintain a medical record for each emergency, stabilization, or observational patient. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible. The EH shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(1) Medical records shall be retained at least five (5) years after the date the patient was last seen or at least of three (3) years after the date of the patient's death. Records of minors shall be retained three (3) years past the age of majority. Medical records may be maintained in their original form or may be preserved by other means as specified by OAC 310:667-19-14(b).

(2) The EH shall have, or provide, a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) Medical records shall be confidentially maintained. Information from, or copies of, records shall be released only to authorized individuals in accordance with state law, and the EH shall ensure that unauthorized individuals cannot gain access to, or alter medical records. Original medical records shall be released only in accordance with federal or state laws or by court order.

(4) Facsimile copies shall be acceptable as any portion of the medical record. If the facsimile is transmitted on thermal paper, that paper shall be photocopied to preserve its integrity in the record. Facsimile copies shall be considered the same as original copies.

(5) In the event of closure of the EH, the EH shall inform the Department of the disposition of the patient medical records. Disposition shall be in a manner to protect the integrity of the information contained in the medical record. These records shall be retained and disposed of as specified by OAC 310:667-19-14(b)(4).

[OAR Docket #13-1094; filed 6-17-13]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 30. RESIDENTIAL RENTAL MULTIFAMILY BOND PROGRAM RULES

[OAR Docket #13-1098]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 2. General Provisions
330:30-2-1. [AMENDED]
330:30-2-2. [AMENDED]
330:30-2-3.1. [AMENDED]
330:30-2-4.1. [REVOKED]
330:30-2-5.1. [AMENDED]
330:30-2-6.1. [AMENDED]
330:30-2-7.1. [AMENDED]
330:30-2-8.1. [AMENDED]
330:30-2-9.1. [AMENDED]
330:30-2-10. [AMENDED]
330:30-2-11. [AMENDED]
Subchapter 4. Application and Processing Procedures
330:30-4-1.1 [AMENDED]
330:30-4-2.1 [AMENDED]
330:30-4-3.1. [AMENDED]
330:30-4-4.1. [AMENDED]
Subchapter 8. Fees and Expenses
330:30-8-1. [AMENDED]
330:30-8-2. [REVOKED]
330:30-8-3. [AMENDED]
330:30-8-4. [REVOKED]
330:30-8-5. [AMENDED]
330:30-8-6. [AMENDED]
330:30-8-7. [AMENDED]
Subchapter 12. Compliance and Reporting Requirements
330:30-12-2. [AMENDED]
330:30-12-3. [AMENDED]
Subchapter 14. Sale, Transfer/Assumption
330:30-14-1. [AMENDED]

AUTHORITY:
These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:
Comment Period:
December 17, 2012 through January 25, 2013
Public Hearing:
January 22, 2013
Adoption:
March 27, 2013
Submitted to Governor:
March 28, 2013
Submitted to House:
March 28, 2013
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March 28, 2013
Gubernatorial approval:
May 6, 2013
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.
Final Adoption:
May 23, 2013
Effective:
July 31, 2013

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 2. General Provisions
330:30-2-8.1. [AMENDED]
Gubernatorial approval:
August 23, 2012
Register Publication:
30 Ok Reg 23
Docket Number:
12-894

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The Board of Trustees of the Oklahoma Housing Finance Agency (OHFA), a public trust, have adopted OHFA's Chapter 30. Residential Rental Multifamily Bond Program Rules (the "Rules") for use in considering applications for bond issuance in OHFA's Multifamily Tax-Exempt and Taxable Bond Finance Programs. The Rules provide guidelines which OHFA outlines in the Rules and are intended to describe the bond issuance process. In Addition, the Rules provide a description of the procedures to be followed by applicants for bond issuance and to be followed by OHFA in evaluating and prioritizing applications. The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 31, 2013:

SUBCHAPTER 2. GENERAL PROVISIONS

330:30-2-1. Purpose

(a) The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This Chapter shall be applicable to ~~OHFA~~Oklahoma Housing Finance Agency (OHFA) programs, transactions and activities relating to the financing of ~~residential~~ multifamily rental Developments~~projects~~ with tax exempt ~~debt~~bond and/or taxable ~~debt~~bond.

(b) The Board of Trustees of OHFA (Trustees) reserves the right to adopt, from time-to-time, priorities for financing of multifamily Developments~~projects~~ pursuant to this Chapter, and to establish additional criteria for evaluating proposed ~~Projects~~Developments and Borrowers in regard to such priorities. Any such priorities and/or criteria shall be provided to each party inquiring about OHFA financing pursuant to this Chapter and will be posted on the website of OHFA.

(c) OHFA provides tax exempt and taxable financing for the acquisition, construction, and/or rehabilitation of multi-family rental housing Developments which satisfy the goals and requirements of OHFA, and comply with applicable federal and State law. In any given year, the ability of OHFA to provide tax-exempt financing for Developments is contingent upon receipt of by OHFA of a tax-exempt bond allocation from the Council of Bond Oversight, through the State of Oklahoma annual private activity allocation.

330:30-2-2. Definitions

Masculine words, whenever used in this Chapter, shall include the feminine and neuter, and the singular includes the plural, unless otherwise specified. The following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise.

"Affiliate"~~"Affiliates", "Affiliate of", or "Person affiliated with"~~ means any Person that directly or indirectly~~,~~ through one (1) or more intermediaries, ~~controls,~~Controls,~~or~~ is ~~controlled by~~ Controlled By, or is ~~under common control with~~Under Common Control With any other Person.~~the Person specified.~~

"Applicant" means ~~the~~any Person and each Affiliate of such Person, which has submitted~~filing~~ an Application ~~with~~to OHFA seeking financing under this Chapter. Applicant includes the Owner and Owner's predecessor in interest, if any, and includes any successor in interest, Transferee of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee Owner or lessee (other than a Resident) of all or any portion of the Development, and any other Person or entity having any right, title, or interest in the Development.

"Application" means ~~the application,~~an Application, in the form ~~which~~prescribed by OHFA ~~may prescribe~~, from time to time at any of the processing stages set forth in this Chapter, including all exhibits and other materials filed by an Applicant with OHFA in support ~~hereof~~, or in connection with~~,~~ financing under this Chapter.

"Area Median Gross Income" means the median Gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Bond Documents" means and may include, but is not limited to the bond purchase agreement, Preliminary Official Statement, the Official Statement and any other official documents of the Bond Indenture.

"Bond Indenture" or"Bond Trust Indenture" means the indenture of trust or other contract pursuant to which OHFA issues bonds or other forms of indebtedness to secure proceeds with which to finance the ~~Project~~Development~~loan to be financed by OHFA~~ pursuant to this Chapter.

"Borrower" means the Person holding title to the ~~Project~~Development and ~~that~~who is financially responsible to Bond holders through the Trustee Bank~~OHFA~~ for repayment of the related ~~mortgage loan~~bonds secured by the ~~Property~~Development.

"Building" means a property containing residential Housing Units located on the Land and included in the Development. In the event more than one Building is located on the Land, each Building must be treated as part of the Development.

"Closing" means the execution and delivery of the OHFA bonds and the ~~loan documents~~ Bond Documents pursuant to, and in accordance with, the Final Resolution of the OHFA Trustees.

"Code" means the ~~United States~~ Internal Revenue Code of 1986, as amended and supplemented, ~~and any~~together with applicable rules ~~or~~and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated ~~or adopted~~ thereunder or referred to therein or in the applicable rules and regulations.

"Conditional Commitment Resolution" means the Resolution duly approved and adopted by the Trustees authorizing the issuance of ~~debt obligations~~bonds to provide financing for a ~~Project~~Development and establishing any conditions or requirements precedent to such issuance. This Resolution may be combined with the Final Resolution.

"Control~~(of Project, Borrower, Owner or Sponsor)~~" (including the terms **"Controls, "Controlling","Controlled By~~by~~",** and **"~~under common Control with~~Under Common Control With"**) means the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with

the other Person or in or with any other Person, or by coercion, or otherwise. ~~Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent (5%) in such other Person.~~

"Developer" means the Person or entity with the responsibility of ensuring the effective construction or rehabilitation of the Development, which may also be the Applicant and/or Owner of the Development. Developer also includes any other Person or organization affiliated with, Controlled by, in Control of or a related party to, the Developer, as determined by OHFA.

"Development" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan.

"Development Team" means the Applicant, Borrower, ~~Sponsor and~~Developer, Owner ~~developer~~, and the Affiliates and principals of each, ~~and~~ the ~~Project~~ architect, general contractor, appraiser,~~and~~ market analyst, tax professional/accountant, attorney, consultant and property management company~~manager~~.

"Due Date" if a Due Date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the Due Date becomes the next business day.

"Final Resolution" or "Financing Resolution" means the ~~final~~ Final Resolution duly approved and adopted by the Trustees approving a ~~Project~~Development and its financing by OHFA~~,~~. This~~which resolution~~Resolution may be combined with or represented by any other ~~resolution~~Resolution pertaining to the ~~Project~~Development and its financing by OHFA, except the Inducement Resolution.

~~**"Governmental Unit"** means the State of Oklahoma or any department, agency, division or branch thereof, including counties, cities and towns, and public corporations, redevelopment agencies and housing development corporations, and public trusts having as their beneficiary the State of Oklahoma or any county, city or town within the State of Oklahoma, and the United States government and any department, division, agency or branch of the federal government and including special governmental corporations .~~

"HUD" means the United States Department of Housing and Urban Development.

"Inducement Resolution" means the initial ~~resolution~~Resolution adopted by ~~the~~ OHFA Trustees pertaining to a specific ~~Project~~Development which must be approved and adopted by ~~the~~ OHFA Trustees at a separate meeting not less than~~t~~ thirty (30) days prior to the adoption of the Final Resolution.~~.~~

"Land" means the site(s) for each Building in the Development.

~~**"Loan Documents"** means and includes the loan agreement, mortgage, mortgage note, security agreements, UCC financing statements, guaranty(ies), letters of credit, pledges, title insurance policy or title opinion, and the Regulatory Agreement.~~

"OHFA" means Oklahoma Housing Finance Agency, a State beneficiary public trust.

"Owner" means the ~~Borrower~~legal Owner of record of the Development, and any and all successors(s) in interest.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal,~~an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization,~~ or any other legally recognized entity,~~(~~or any combination of the foregoing acting in concert~~)~~.

~~**"Priorities"** means the general goals and objectives of OHFA established from time to time by the Trustees to use as criteria in evaluating and/or ranking proposed Projects.~~

~~**"Project"** means a residential rental Project to be funded by OHFA pursuant to this Chapter, generally made up of a building or structure containing one or more similarly constructed units not used on a transient basis together with any functionally related and subordinate facilities.~~

~~**"Regulatory Agreement"**means an agreement of the Owner(s) of the Project and Project Site for the benefit of OHFA and other interested parties whereby the Project and Project Site are restricted as to the use thereof for housing lower income families, which restrictions are imposed for a time certain regardless of change of ownership of the Project and Project Site and are deemed to be covenants running with the land under Oklahoma law.~~

"Resolution" means an official~~the formal~~ action of the Trustees and may include all Resolutions adopted by the Trustees with respect to a Development. ~~duly taken, approved and adopted by the Trustees.~~

~~**"Sponsor"** means the person, persons, group, association, or other entity, regardless of description, which prepares and submits the Application for the Project on behalf of the Applicant.~~

~~**"Staff"** means the Staff of OHFA.~~

"State" means the State of Oklahoma.

"Transfer" means any sale, Transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of the Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a Transfer, sale, contribution or assignment by the Applicant, Owner or Developer of all or any part of its rights, title or interest in the Application, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general partnership, general partner of a limited partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Owner and any other Person or entity having or acquiring any right, title, or interest in the Development.

"Trustee Bank" means the bank selected by OHFA to act as trustee under the Bond Indenture executed by OHFA in connection with OHFA's financing of a ~~Project~~Development pursuant to this Chapter.

"Trustees" means the Board of Trustees of OHFA.

330:30-2-3.1. ~~Trustee~~Application evaluations

(a) In evaluating whether to authorize the issuance of OHFA ~~debt obligations~~bonds for the purpose of financing a Development~~Project~~, the Trustees ~~shall~~may take into consideration certain criteria.~~all of the criteria for disapproval set out in **330:30-2-4.1** and the following:~~The list of criteria may include, but is not limited to the following.

(1) ~~The extent to which there exists a documented need for rental or cooperative housing units affordable by moderate, low or very low income residents or by individuals having special needs within the primary market area to be served by the proposed Project.~~The Application must demonstrate a need and demand for the proposed Development. A market study must be submitted to demonstrate such need and demand.

~~(2) The extent to which the proposed Project is expected to meet or satisfy the need for such housing;~~

(~~3~~2) Whether there is any material negative impact upon the community in the general area of the Development~~Project~~.

(~~4~~3) The availability of suitable credit enhancement to increase the security or creditworthiness of the proposed OHFA bonds. ~~debt obligations;~~

(~~5~~4) The proposed method of sale or placement of the OHFA ~~debt obligations~~bonds and the institutional or retail ~~(private individual)~~ nature of the expected purchaser(s).~~;~~

(~~6~~5) The amount of OHFA ~~debt financing~~bonds relative to total Development~~Project development~~ cost.~~;~~

(~~7~~6) The underwriting criteria applied by the credit enhancer or the proposed purchaser of the ~~debt obligations~~bonds; and

(~~8~~7) Such other criteria as the Trustees, in their discretion, deem appropriate to further effectuate the public purpose objectives of OHFA and/or to better ensure the credit quality of OHFA ~~debt obligations~~bonds.

~~(b) The Trustees have complete and absolute discretion to disapprove or fail to approve the issuance of any debt obligation for the financing of any proposed Project. No Sponsor, Applicant, Borrower, Development Team member or any third party shall have any recourse against OHFA or any of its Trustee, employees, representatives, attorneys, financial advisors or other consultants for any such disapproval or failure to approve.~~

(b) Applications may be disapproved at any stage of processing, for any of the following criteria, in addition to any other specific reason(s) which may be established by the Trustees during the review process.

(1) The financing of such Development involves a risk to OHFA that its current or future financing ability or reputation in the credit markets may generally be adversely affected.

(2) The financing of such Development is determined not to be cost-effective in terms of its proposed utilization of OHFA financing capacity and/or other financial resources.

(3) Failure to submit any information required by this Chapter, any Resolution of the Trustees and/or OHFA advisors at any stage of processing.

(4) Failure to demonstrate, the proposal is consistent with OHFA's public purposes and priorities.

(5) Failure to demonstrate, the proposed financing is reasonable and appropriate for the Development and market conditions.

(6) Failure to demonstrate, that the Applicant and the other Development Team members have the good character, reputation, integrity, honesty, experience, resources and capacity tosuccessfully execute the related financing plan and to properly manage the Development.

(7) The information at the inducement stage varies materially from the information contained in the initial Application or the information filed at the conditional commitment and/or financing stage varies materially from the information filed in the initial Application and/or the inducement stage.

(8) Any condition for Closing has not been satisfied.

(c) Any Applicant, Borrower, Owner, Developer or any Affiliates of, or principals may not be eligible to obtain OHFA financing if that Person has been, within the preceding seven (7) years:

(1) The appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy.

(2) Suspended or expelled from membership in, or suspended or barred from association with a member of, any securities exchange or self-regulating association, or suspended, barred or had any license revoked by any federal or state agency or local governmental unit, in regard to any federal or state statute, rule, regulation, executive or administrative order, or any local governmental ordinance, rule or regulation designed to protect consumers or any federal or state agency or local governmental unit established to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate or any interest therein, franchises, business opportunities, consumer goods, benefits under any federal state or local governmental unit program, or other services offered by federal, state or local governmental units or by private entities.

(3) Having been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;

(4) Events of material uncorrected noncompliance with any federal or State assisted housing programs in any jurisdiction;

(5) Removal as a general partner or managing member;

(6) Failure to comply with OHFA's requests for information or documentation on any Development funded or administered by OHFA.

(d) No Applicant, Borrower, Development Team member or any third party shall have any recourse against OHFA or any

of its Trustees, employees, representatives, attorneys, financial advisors or other consultants for any failure to approve.

330:30-2-4.1. Criteria for Application and/or Applicant disapproval [REVOKED]

~~(a) Applications may be disapproved at any stage of processing, for any of the following reasons, in addition to any other specific reason(s) which may be established by the Trustees during the review process:~~

~~(1) At the discretion of the OHFA Trustees;~~

~~(2) The financing of such Project involves a risk to OHFA that its current or future financing ability or reputation in the credit markets may generally be adversely affected;~~

~~(3) The financing of such Project is determined not to be cost effective in terms of its proposed utilization of OHFA financing capacity and/or other financial resources;~~

~~(4) Failure to cooperate with Staff or to submit any information required by this Chapter, any Resolution of the Trustees or by Staff and/or OHFA advisors at any stage of processing;~~

~~(5) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, the need for additional housing in the related market;~~

~~(6) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposal is consistent with OHFA's public purposes and priorities;~~

~~(7) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the proposed financing plan is reasonable and appropriate for the Project and market conditions;~~

~~(8) Failure to adequately demonstrate, to OHFA's satisfaction, in its discretion, that the Applicant and the other Development Team members have the good character, reputation, integrity, honesty, experience, resources and capacity to successfully execute the related financing plan and development plan and to properly manage the Project;~~

~~(9) The information filed at the inducement stage varies materially from the information contained in the initial Application;~~

~~(10) The information filed at the conditional commitment and/or financing stage varies materially from the information filed in the initial Application and/or the inducement stage; or~~

~~(11) Any condition for Closing has not been satisfied.~~

~~(b) Any Applicant, Sponsor, developer or any other Development Team members or any of their Affiliates or principals or any person that has been or will be paid directly or indirectly remuneration for obtaining, or from the proceeds of, financing by OHFA of the Project, shall not be eligible to obtain OHFA financing hereunder if that Person has been, within the preceding seven (7) years:~~

~~(1) convicted of any felony, crime or offense; or~~

~~(2) subject to any administrative order or judgment; or~~

~~(3) suspended or expelled from membership in, or suspended or barred from association with a member of, any securities exchange or self regulating association, or suspended, barred or had any license revoked by any federal or state agency or local governmental unit, in regard to any federal or state statute, rule, regulation, executive or administrative order, or any local governmental ordinance, rule or regulation designed to protect consumers or any federal or state agency or local governmental unit established to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate or any interest therein, franchises, business opportunities, consumer goods, benefits under any federal state or local governmental unit program, or other services offered by federal, state or local governmental units or by private entities.~~

~~(4) have been involved in uncured financing defaults, foreclosures, or have been placed on HUD's list of debarred contractors;~~

~~(5) have uncorrected or repeated instances of nonperformance or non-compliance under any federally or state assisted housing programs in any jurisdiction; or~~

~~(6) have had a receiver appointed for any multifamily residential rental housing project in which the Development Team member was a Sponsor, Owner or developer; or~~

~~(7) have been removed as a General Partner of a owner of multifamily residential rental housing.;~~

330:30-2-5.1. ~~Owners of Project; Borrowers~~Eligibility of Borrowers

(a) Eligible Borrowers may include any Person as defined in this Chapter.~~, among others, one or more of the following:~~

~~(1) one or more individuals;~~

~~(2) a business corporation;~~

~~(3) a limited liability corporation;~~

~~(4) a general or limited partnership;~~

~~(5) a public or private trust;~~

~~(6) a Governmental Unit or agency or other entity controlled by a Governmental Unit;~~

~~(7) a charitable organization, the operations of which are exempt from federal income tax under Section 501(c)(3) or 501(c)(4) of the Code; or~~

~~(8) a cooperative housing corporation, the shareholders of which are required to be residents of the Project owned by the cooperative and meet the requirements of Section 103(K)(9) of the Code and these Rules.~~

(b) Each Borrower must meet ~~all of~~ the requirements set forth in ~~(1) through (4) of~~ this subsection:

(1) If the Borrower is a business entity, the entity must be in good standing and be qualified to do business in Oklahoma under Oklahoma laws and these Rules.

(2) The Borrower must have all necessary legal ~~and corporate authorizations~~authority to incur the obligations relating to the ~~loan~~bonds requested.

(3) The Borrower must demonstrate creditworthiness and repayment ability ~~acceptable to OHFA~~.

(4) The Borrower must demonstrate, ~~in a manner acceptable to OHFA, that~~ it is capable of and can reasonably be expected to achieve successful completion of ~~it's~~the proposed ~~Project~~Development.

330:30-2-6.1. Financing ~~purposes, terms and~~ requirements

(a) OHFA may finance ~~Projects~~Developments through acquisition, rehabilitation, construction and/or permanent bonds~~mortgage loans~~.

(b) OHFA may participate with other institutions in the issuance~~making~~ of ~~loans~~bonds to finance ~~Projects~~Developments under this Chapter.

(c) Before closing ~~a construction loan for~~on a ~~Project~~Development for which OHFA will not provide 100% of the permanent financing, the Borrower must provide evidence of a permanent ~~loan~~ commitment from a lender approved by OHFA with~~on~~ terms satisfactory to OHFA.

(d) Subject to any limitations imposed by the Code for ~~Projects~~Developments for which any tax exempt financing is sought, OHFA financing may include all reasonable and approved ~~development and project~~Development costs.

(e) OHFA may lend up to one hundred percent (100%) of the approved ~~development and project~~Development costs ~~of any Project~~, provided ~~that~~ the related financing ~~plan~~ demonstrates ~~that of~~ the ~~Project~~Development is financially feasible and viable, and provided that such costs are not prohibited by any applicable law, rule or regulation.

(f) OHFA ~~loans~~bonds shall ~~be subject to the following term limitations:~~meet all reasonable underwriting requirements, and will be subject to adjustment if necessary.

~~(1) Loans for permanent financing of projects may be for terms up to (forty) 42 years, if supported by the financing plan and approved by the Trustees;~~

~~(2) Construction loans may not exceed two (2) years unless a longer period shall be specifically approved by the Trustees due to extenuating circumstances.~~

~~(g) OHFA may (but is not required to) establish and charge an interest rate on construction and permanent loans such that interest on such loans, together with other reserves, fees and charges paid by OHFA, if any, shall be sufficient to cover the costs of issuance and interest that OHFA pays on the revenue notes, bonds, or other obligations issued to raise the funds for loans and the allowable expenses of OHFA, including general operating and administration expenses of OHFA over the term of the loan. Any funds or residual values remaining upon retirement of the OHFA debt obligation shall remain the sole and exclusive property of OHFA, unless such retention is prohibited by applicable laws, rules or regulations or as otherwise specifically provided for by mutual agreement of OHFA and the Borrower.~~

(~~h~~g) OHFA shall prescribe the form and content of all Closing documents, including without limitation, the ~~bond and loandocuments~~Bond Documents, construction facility documents and the regulatory agreement(s)~~Regulatory Agreement~~. The regulatory agreement(s)~~Regulatory Agreement~~ may, at the discretion of OHFA, limit the profit and rate of return on investment of a Borrower/Owner either directly or by control of rentals or limited income occupancy requirements imposed by applicable State or federal requirements. ~~In the case of loans insured by the Federal Housing Administration, or other loans made under this program at the OHFA's discretion, certain regulatory provisions with respect to State occupancy requirements may appear in an unrecorded occupancy agreement.~~

(~~i~~h) ~~Loans~~Bonds may not be assumed or prepaid without the prior written consent of OHFA. All ~~loan documents~~Bond Documents~~must~~may be required to contain a "due on sale" clause.

(~~j~~i) Borrowers must pay or cause to be paid any servicing fees, ~~loan~~ insurance premiums, or late charges that OHFA or the credit enhancer may require and that are permitted by State law.

(~~k~~j) OHFA may require the Borrower to periodically deposit with OHFA or its ~~designated~~ designate, depository amounts to be applied toward the real estate taxes, hazard insurance premiums, mortgage insurance premiums, reserves for asset replacement and other expenses of the ~~Project~~Development.

(~~l~~k) OHFA may require a Borrower to fund, under the control of OHFA, by cash or by irrevocable letter of credit, a ~~development~~Development contingency fund in an amount equal to a specified percentage of the ~~mortgage loan~~bond amount to cover any deficiency in the construction or rehabilitation of the ~~Project~~Development. Such fund ~~shall~~may be retained by OHFA for a period of time following the completion of construction or rehabilitation to cover operating deficiencies, repairs and cost increases or overruns, if any. OHFA, may at its discretion, determine when funds may be released.

(~~m~~l) OHFA may require the following instruments or guarantees, in addition to the ~~Mortgage Loan~~Bond Documents, to secure its ~~construction/rehabilitation loans~~bonds:

(1) Such sureties or guarantees of the ~~loan~~bonds as may be determined necessary by OHFA;

(2) Cash or an unconditional, irrevocable letter of credit from a financial institution approved by OHFA to meet working capital, operating deficit, development contingency funds and off-site improvement completion requirements;

(3) Payment and performance bonds for all construction contracts each in an amount equal to one hundred percent (100%) of the contract price, or alternatively, cash or an irrevocable letter of credit equal to twenty five percent (25%) of the contract price. ~~(For FHA insured multi family rental projects, compliance with FHA requirements for completion assurance normally will be acceptable to OHFA);~~

(4) Guarantees of completion by the Owner(s), Borrower(s) and/or such other Persons as deemed by OHFA, in its discretion, to be credit worthy to make such Guarantees;

(5) Escrows of syndication proceeds when deemed by OHFA, in its discretion, to be necessary or appropriate.

(~~n~~m) For any ~~Project~~Development to be financed by the issuance of bonds~~Bonds~~, the interest on which is intended to be excluded from federal income tax under the Code, the Borrower shall be responsible to insure that all applicable requirements of the Code concerning the design, construction and operation of the ~~Project~~Development, and the use of any proceeds of such bonds~~Bonds~~, are and remain satisfied for the requisite period of time.

330:30-2-7.1. Insurance

The Borrower must comply with all~~the following~~ insurance requirements of OHFA relating to ~~a~~the Development~~Project proposed to be financed by OHFA~~.

~~(1) **Multi-peril insurance.** Both during and after construction the Borrower, at Borrower's expense, must maintain fire and extended coverage insurance upon the Project and/or other security, if appropriate, which includes such endorsements as OHFA may require, such as collapse, explosion, loss of rents and vandalism.~~

~~(2) **Liability insurance.** The Borrower must maintain comprehensive general liability insurance with such endorsements as OHFA may require both during construction and upon occupancy of a Project.~~

~~(3) **Flood insurance.** If the Project is located in a one hundred (100) year flood plain as designated by the United States Department of Housing and Urban Development (HUD), the Project must be covered by a flood plain insurance policy.~~

~~(4) **Title insurance.** The Borrower must provide a standard American Land Title Association Loan Policy 1970, as amended, containing only standard exceptions and encumbrances approved by OHFA.~~

~~(5) **Other insurance.** The Borrower must provide at construction loan closing such other Insurance, including builder's risk, boiler insurance, comprehensive automobile liability, and broad form worker's compensation as may be required by OHFA.~~

~~(6) **Terms and conditions.** Each insurance policy must meet the following minimum requirements:~~

~~(A) Be written by companies licensed in Oklahoma and acceptable to OHFA;~~

~~(B) Be in force at the time of the construction loan closing;~~

~~(C) Name OHFA as loss payee and named insured mortgagee as its interest may appear in a standard mortgagee endorsement attached to or printed in the policy;~~

~~(D) Not be terminable without written notice to OHFA; and~~

~~(E) Contain terms, endorsements and coverage satisfactory to OHFA.~~

330:30-2-8.1. Eligible Developments~~Projects~~

(a) In order to qualify for bond financing, a proposed Development~~project~~ must be multifamily (in excess of one unit) ~~residential rental~~ housing. At a minimum, the rental housing must contain working cooking facilities, including a refrigerator ~~and stove/microwave in good working order~~ and bathing facilities. The ~~Project~~Development must comply with all applicable federal, State and local laws. A ~~Project~~Development may consist of detached housing, row houses, high-rises, or the residential portion of a mixed-use ~~Project~~Development. Multiple Buildings~~buildings~~ are part of the same ~~Project~~Development only if such Buildings~~buildings~~:

(1) ~~have~~Have similarly constructed units,

(2) ~~are proximate, i.e., located on a single tract of land, defined to mean any parcel or parcels of land which are contiguous except for the interposition of a road, street, stream or similar property, and are~~Are owned by the same ~~person~~Person and are financed pursuant to a common plan, i.e., the financing of all such Buildings~~buildings~~ are provided by the same bond issue or several bond issues subject to a common Bond Indenture.

(b) The economic feasibility of the ~~Project~~Development and the independent creditworthiness of the Borrower must demonstrate ~~that~~ the OHFA ~~loan~~bonds can reasonably be ~~reasonably~~ expected to be paid in full in accordance with its terms. In this regard the Borrower has the affirmative burden of demonstrating both the economic feasibility of the ~~Project~~Development and the creditworthiness of the Borrower to the satisfaction ~~of the OHFA~~to the Trustees prior to their approval of a Final Resolution.

(c) The ~~Project~~Development has or will have, ~~assuming reasonable maintenance and availability of an adequate asset replacement reserves on an on-going basis,~~ a remaining useful life at least equal the term of the regulatory agreement(s)~~Regulatory Agreement~~ and/or the Bond Documents.~~related OHFA debt applications~~.

(d) If a ~~Project~~Development is funded in whole or in part by other State or federal programs ~~(for example, HOME Investment Partnership Program, Internal Revenue Code Section 42 housing tax credits, State Housing Trust Fund)~~ the ~~Project~~Development must meet all requirements and qualifications of those programs.

330:30-2-9.1. Credit enhancement requirements

(a) Credit enhancement techniques or mechanisms may include, but are not limited to:

(1) ~~mortgage~~Mortgage insurance,~~(~~including mortgage pool insurance or payment guarantees~~)~~;

(2) ~~bond~~Bond insurance;

(3) ~~collateral~~Collateral pledges;

(4) ~~surety~~Surety or other third party guarantees;

(5) ~~letters~~Letters of credit; or

(6) ~~combinations~~Combinations thereof.

(b) Credit enhancement techniques or mechanisms may be employed in connection with the issuance of ~~debt~~bonds by OHFA to achieve one or more of the following objectives, among others:

(1) ~~to~~To obtain a rating from a nationally recognized bond rating service;

(2) ~~to~~To secure a bond purchase commitment from a purchaser or investor;

(3) ~~to~~To reduce the interest rate or total borrowing costs associated with the ~~debt obligations~~bonds; and

(4) ~~to~~To provide for the purchase of the ~~debt~~bonds by a certain class or classes of investors.

(c) Credit enhancement may be provided:

(1) ~~upon~~Upon issuance of ~~debt obligations~~bonds by OHFA, or

(2) ~~upon~~Upon application or disbursement of the proceeds of the ~~debt obligations~~bonds, whether occurring in installments (as with construction-related draw downs) or in a lump sum (as upon completion of construction).

(d) The form and structure of credit enhancement utilized in connection with any OHFA ~~debt obligation~~bonds must be approved by formal action of the Trustees.

(e) All ~~debt obligations~~bonds of OHFA which are to be initially offered to the general public and/or which may be purchased in a transaction not exempt from registration under the securities laws, rules and regulations of the federal government or any state government in subsequent secondary market transactions must be credit enhanced in a manner acceptable to OHFA, in its complete discretion.

(f) All ~~debt obligations~~bonds of OHFA which are to be initially offered to the general public and/or which may be purchased by the general public in subsequent, secondary market transactions must be credit enhanced in a manner acceptable to OHFA or be rated by a nationally recognized rating agency as being investment grade without Credit Enhancement.

(g) OHFA may authorize the issuance of ~~debt obligations~~bonds which are not the subject of a Credit Enhancement commitment if the purchasers of such ~~debt obligations~~bonds are limited to one or more institutional investors who execute an investment letter in a form acceptable to OHFA and acknowledging each of the following (unless specifically exempted by OHFA from one or more of these required acknowledgements):

(1) That such investor(s) understand and acknowledge the financial risks involved;

(2) That such investor(s) have financial resources sufficient to enable them to assume the risks associated with the purchase of the ~~debt obligations~~bonds;

(3) That such investor(s) agree to restrict the secondary market resale of such obligations to other institutional investors who will provide an investment letter meeting the requirements of this paragraph; and

(4) That such investor(s) will accept delivery of the obligations containing a legend to such effect.

330:30-2-10. Income eligibility of ~~residents~~tenants

Developments must set aside at least forty percent (40%) of the units for households with incomes of sixty percent (60%) of Area Median Gross Income, or less, or twenty percent (20%) for households with incomes of fifty percent (50%), or less.

~~(a) OHFA shall establish limits on the annualized income of individuals, families or households that will constitute eligible residents, such limits shall take into consideration such factors as may be required by the Code and such additional factors as OHFA may in its complete discretion, deem to be relevant to a Project, which may include, but are not necessarily be limited to the following:~~

~~(1) The availability, cost and condition of alternative housing within the market area of the Project site;~~

~~(2) The economic feasibility of the Project;~~

~~(3) The amount of total individual and family income available to meet housing needs in the market area of the Project site;~~

~~(4) unsubsidized housing market in the market area of the Project site; and~~

~~(5) Standards and definitions established for pertinent federal housing programs.~~

~~(b) OHFA may establish income eligibility limits on the basis of family or household size and/or may establish income eligibility limits for a particular Project which are more restrictive than those generally applicable to similar projects in the same region or market area, or more restrictive than the requirements imposed by federal statue or regulation.~~

330:30-2-11. Compliance with Applicable laws

(a) The Applicant, the Development, the Owner(s),~~and other members of~~ the Development Team and the Affiliates of each, must comply with all applicable federal, ~~state~~State and local laws, rules, regulations and ordinances, including but not limited to, the ~~applicable sections of the Internal Revenue~~ Code and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended, all disclosure requirements promulgated by the Securities Exchange Commission and/or the Municipal Securities Rulemaking Board. ~~No member of~~ Neither the Applicant, the Owners(s), the Development Team ~~or~~nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status, or disability ~~or handicap in connection with the employment of any person associated with any member of the Development Team or in the construction, marketing or leasing of the Project.~~in the lease, use or occupancy of the Development or in connection with the employment or application for employment of Persons for the operation and/or management of any Development. Owners(s) of a Development will be required to covenant and agree in the regulatory agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period promised in the Application.

(b) Any issuance of ~~debt~~bonds by OHFA is subject to compliance with all applicable ~~state~~State and federal laws and all rules and regulations promulgated thereunder and all local ordinances, rules and regulations applicable to the Development~~Project~~, its financing, or any portion or aspect thereof.

(c) The Applicant and all members of the Development Team and the Affiliates of each must be in compliance with, and good standing under, any OHFA program in which any may participate.

SUBCHAPTER 4. APPLICATION AND PROCESSING PROCEDURES

330:30-4-1.1. Preliminary matters ~~(Pre-application)~~(Pre-Application)

(a) Prior to submission of an Application~~application~~, it is advisable for the Applicant to schedule a meeting with OHFA's Executive Director or his designees to present a brief overview of the proposed ~~Project~~Development. Any technical aspects of the ~~Project~~Development or its proposed financing should be explained to ~~the Staff of~~ OHFA at this meeting. ~~Staff~~OHFA should be advised of any anticipated difficulties or contingencies ~~the Applicant expects~~.

(b) The Applicant should, prior to submission of an Application, assemble the Development Team. The Development Team should be identified for OHFA~~Staff~~ at ~~a pre-application conference.~~the pre-Application meeting.

(c) While Applications may be submitted at any time, it is essential to discuss any proposal with ~~Staff~~OHFA to establish a timeline consistent with other transactions of OHFA. ~~Applicants seeking an allocation of bond issuance authority under the State's annual private activity bond volume cap must take into consideration the State's approval process for such allocations.~~The State's approval process for allocating the State's annual private activity bond volume cap may affect timing and should also be taken into consideration.

(d) OHFA requires adequate time to review any proposal. No proposal will be taken to the Trustees unless ~~the Staff~~OHFA has had adequate review time. ~~Generally, this means that an Application (or any supplements to the Application) must be submitted at least thirty (30) days prior to any required action by the Trustees.~~

(e) Applicants seeking funding from other programs administered by OHFA must submit ~~applications~~Applications for such funding ~~at least thirty (30) days prior to consideration of a Conditional Commitment Resolution by the Trustees.~~according to other program Application materials.

(f) OHFA will engage a team of professionals, according to State procedures. At a minimum, a financial advisor, bond counsel, underwriter, and Trustee Bank will be chosen. Any substitutions to this professional team have to be approved by OHFA and the team member proposed to be substituted. If a substitution is approved, the amount of fees charged cannot exceed those outlined through the State process.

330:30-4-2.1. Application Processing Stages

(a) There are ~~four~~two~~phases or~~ stages in OHFA's review of ~~multifamily bond applications~~ Applications: Initial/Inducement Application Stage; ~~Inducement Application Stage;~~ Conditional Commitment State ~~and~~/Final Financing ~~Approval~~ Stage. The ~~Initial Application Stage and Inducement Application Stage Applications may be combined; however, the~~ Inducement Resolution may not be combined with ~~any other~~the Final Resolution.

(~~1~~b) ~~**Initial Application Stage.**~~ The primary objective of this Initial/Inducement Application Stage review is to ~~preliminarily~~ assess the extent to which:

(~~A~~1) ~~the~~The Development ~~Plan~~ addresses a need for housing~~,(~~including special needs housing~~)~~, in the related market;~~and~~

(2) The Development is consistent with the public purpose objectives and priorities of OHFA;

(~~B~~3) ~~the~~The Application demonstrates a reasonable~~ness of the Applicant's preliminary~~ plan of financing. The Development must be financially feasible and viable. OHFA will underwrite the Application. ~~and~~

(~~C~~4) ~~the~~The Application demonstrates sufficient capacity, experience and performance history of the Applicant and the Development Team. The Applicant must provide evidence that the Applicant and~~Applicant's~~ Development Team have the capacity and experience to develop, construct, market and manage multifamily ~~residential rental~~ Developments~~projects~~. ~~If a Project receives Staff preliminary approval, the Applicant will be notified and informed of any additional requirements for the Trustees to consider the Application for an Inducement Resolution. OHFA's notice to the Applicant will establish a timeline for filing additional or supplemental information.If the initial Application is disapproved, OHFA will so notify the Applicant.~~

~~(2) **Inducement Application Stage.**~~

~~(A) This stage consists of a more detailed review and preliminary underwriting of the Project by OHFA. The primary objectives of this stage are to more thoroughly evaluate the extent to which the proposed Project will serve the market area and targeted populations and will be economically feasible and viable.~~

(5) ~~OHFA will review the~~The Applicant has the ability ~~of the Applicant~~ to obtain a credit enhancement commitment and/or a bond purchase commitment, as applicable and whether the implementation of the undertaking is dependent upon identified contingencies (e.g., receipt of a State volume cap reservation, award of Affordable Housing Tax Credits, an award of HOME Investment Housing Partnership funding, the award of grants or loans from private or governmental sources, or other material contingencies). ~~OHFA will also evaluate the Development Team and determine whether any of the criteria for disapproval are present.~~

(c) The Applicant will be notified and informed of any additional requirements for the Trustees to consider the Application for an Inducement Resolution. OHFA's notice to the Applicant will establish a timeline for filing additional or supplemental information.

(~~B~~d) Following OHFA's review, only Applicants meeting the all requirements of these Rules and any additional requirement of OHFA will be submitted to the Trustees for their consideration for approval of an Inducement Resolution.

~~(C) If a reservation of tax-exempt bonding authority from the State's volume cap is required, the Applicant must apply at this point. Applicants requiring a volume cap reservation must obtain same before they may proceed.~~

(~~D~~e) ~~During the Inducement Application Stage,~~After the Inducement Resolution is issued, a Public Hearing must be conducted by OHFA after reasonable public notice, for the purpose of receiving and evaluating comments in support of and/or in opposition to the proposed Development~~Project~~.

(f) An application for State bond cap must be submitted with all required documentation. The application will be submitted by OHFA or one of its designates.

(~~3~~g) Conditional Commitment/Final Financing Stage.

(~~A~~1) ~~During the Conditional Commitment Stage, the~~The Applicant and OHFA, together with their respective legal and financial advisors or consultants, must prepare all documents and financial analyses required to enable OHFA to adopt a Financing Resolution. The

Trustees may combine the Conditional Commitment Resolution and Financing Resolution, conditioning same upon such conditions precedent as the Trustees deem, in their discretion, necessary to Closing.

(~~B~~2) ~~During this stage, working in cooperation with Staff and OHFA's advisors, all~~All information previously provided must be updated and supplemented, to the extent necessary. Failure to comply with this requirement may result in the denial of the Application.

(~~C~~3) The Applicant/Borrower must prepare a mortgage credit package acceptable to OHFA containing sufficient information to enable OHFA to evaluate and underwrite the financial capacity of the Applicant to successfully execute the proposed financing plan ~~and development plan~~. These requirements may~~shall~~ include:~~generally, as applicable:~~

(~~i~~A) ~~a~~A written representation regarding the nature, extent and availability of its own capital, bank credit lines, governmental grants or other sources of funds to meet or cover working capital requirements, equity contributions contemplated by the Applicant(s)'s Financing ~~Plan~~, or ~~Project~~Development cost overruns should they occur;

(~~ii~~B) ~~references~~References from bankers, attorneys, accountants or other persons or firms having had prior business relationships with the Applicant(s), plus references of public agencies, as applicable;

(~~iii~~C) ~~current~~Current certified financial statements for all general partners or corporate Applicant and Borrower. At OHFA's option, current certified financial statements may also be required for each of the Applicant(s), and each of the proposed guarantors or other credit enhancement providers;

(~~iv~~D) ~~if~~If applying for OHFA financing without credit enhancement, audited financial statements for each of the Applicant(s) for each of the three fiscal years preceding the date of the Inducement Application, or from the inception of each of the Applicant(s)__whichever time period is shorter, supplemented by unaudited financial statements for each of the subsequent accounting periods and the written representation(s) of each of the Applicant(s) that no material adverse changes in financial position have occurred since the date of the most recent audited financial statements submitted.

(~~vi~~E) Any additional financial information requested by OHFA, its Trustees or advisors.

~~(4) **Financing Approval Stage.**~~

~~(A) TheFinancing Approval Stage commences on the date on which the Trustees adopt a Financing Resolution. During this stage of processing, the Applicant is required to meet all of the conditions and requirements set forth in the OHFA Financing Resolution relating to the Project and all related matters leading to the issuance of OHFA debt obligations to provide financing for the Project. The fees payable to OHFA by or onbehalf of the Applicant at the Financing Approval Stage shall be payable by the Applicant at Closing and prior to issuance of any debt obligations by OHFA.~~

(~~B~~4) OHFA shall not be obligated to close on the financing on a ~~Project~~Development unless the Board of Trustees~~Chairman, or the Vice-Chairman~~, in their respective complete discretion, are satisfied that all the requirements and standards imposed by federal and Oklahoma laws, rules and regulations and local ordinances, rules, regulations, and other applicable restrictions, and this Chapter, and the terms and conditions of all resolutions adopted by the OHFA Trustees pertaining to the ~~Project~~Development have been, and at the time of the Closing remain, fully completed and satisfied.

(~~C~~5) The final terms and conditions of OHFA ~~debt obligations~~bonds issued ~~to provide financing for a multi-family residential rental Project or cooperative~~ must be reflected in the Bond Documents~~financing documents~~ relating to the transaction.~~, which financing documents may include, among others:~~

~~(i) bond trust indenture;~~

~~(ii) loan agreement;~~

~~(iii) regulatory agreement;~~

~~(iv) mortgage loan note and mortgage; and~~

~~(v) guarantees of completion and/or contractor bonds.~~

(~~D~~6) The Bond Documents~~financing documents~~ must reflect in all material respects ~~the financing plan, development plan and other aspects of the proposed Project as described in~~ the Application, as amended and supplemented and as approved by the Trustees in the related Commitment and~~/or~~ Financing Resolution.

~~(b) Fees must be paid in the amount and at the times set forth in 330:30-8 unless waived or deferred by OHFA.~~

330:30-4-3.1. Conferences with OHFA

During any stage ~~or phase~~ of the Application process, ~~the staff of~~ OHFA may request one or more conferences with the Applicant ~~and/or Sponsor~~ and/or any Development Team member to review and clarify any aspect of the proposed Development~~Project~~ and/or any of the information submitted.

330:30-4-4.1. Basic Application requirements

(a) ~~The content of the initial Application and the information required to be submitted during the various processing stages will be established at the pre-application and subsequent conferences. Applicants are advised to consult with OHFA respecting the acceptable format for presentation of data. Unless specifically waived by OHFA, the following must be provided to OHFA no less than (30) days prior to the consideration of a Conditional Commitment Resolution by the Trustees, except as noted:~~ Applicants are advised to consult with OHFA respecting the acceptable format for presentation of information. OHFA reserves the right to require additional information if the disclosures provided are deemed inadequate. The content of the Initial/Inducement Application and the information required to be submitted during the first two (2) stages, may include, but is not limited to the following:

(1) **~~Project~~Development name;**

(2) **Borrower.**

(A) The legal name and tax identification number for the Borrower should be provided. Any Person~~person or entity~~ having an ownership interest in the Borrower must be identified and the nature and percentage ownership disclosed. ~~For example, if the Borrower is a limited partnership, the identity of the general partner(s) and their relative ownership interests must be disclosed. In the event the general partner is a limited liability company or partnership, the members and their relative ownership and voting positions must be disclosed. OHFA reserves the right to require additional information if the disclosures provided are deemed inadequate.~~

~~(A) the Borrower must be formed under the laws of the State of Oklahoma.~~

(B) All formation documents and an Oklahoma certificate of good standing ~~from the State of Oklahoma~~ should be provided for the Borrower and any Person having an Ownership interest.

~~(B) the formation documents for the general partner, if applicable, together with a certificate of good standing from the State of Oklahoma.~~

~~(C) the initial Application may be filed by the Sponsor; however, the Borrower and Borrower's general partner must be identified and the appropriate formation documents, contacts, etc. filed not less than thirty days prior to the consideration of an Inducement Resolution by the Trustees unless a different timetable is agreed to by OHFA.~~

(3) **Development Team.** Provide ~~the name, mailing address, telephone number, facsimile number and e-mail address of~~ the ~~primary~~ contact information~~or representative~~ of the Applicant,~~and Sponsor,~~ Borrower ~~(if identified)~~ and each member of the Development Team.

(A) Resumes of the Development Team members and a summary of the multifamily and affordable housing development, ownership and management experience of each should be included. ~~Applicants should include a~~Resumes should include a list of all bond-financed or affordable housing developments in which any Development Team member participated, during the prior ~~five~~seven years, including the particular nature of team member's role in each (i.e., Owner ~~owner~~, ~~developer~~Developer, manager, etc.) and in the case of bond-financed transactions the name of the issuer, issue size, and date of issue. Any delinquencies or defaults or uncured noncompliance must be disclosed. Any changes to the Development Team at any time must be disclosed and the Application supplemented.

(B) If a ~~not-for-profit~~nonprofit organization will have a direct or indirect ~~ownership~~Ownership interest in the ~~Project~~Development identify and provide a history of the organization. Describe how such organization will be involved in the ~~Project~~Development (i.e., specific areas of responsibility) and how the organization will function as part of the ~~development team~~Development Team. Formation documents and proof of ~~not-for-profit~~nonprofit status should be provided.

(4) **Certifications and Affidavits.** Each Applicant ~~(~~and ~~other members of~~ the Development Team~~)must~~may be required to provide the following certifications and affidavits, in the form as prescribed by OHFA, in conjunction with the Application:

(A) A verified conflict of interest statement~~, in the form to be provided by OHFA~~;

(B) A statement that each Development Team member understands the penalty under State law for submitting false information in its Application or in other materials submitted to OHFA;

(C) An affidavit~~Affidavit~~, ~~in the form to be provided by OHFA,~~ attesting the Affiant~~affiliant~~ is not ineligible under the criteria set out in 330:30-2-3.1~~330:30-2-4~~;

(D) Anti-collusion affidavit; and

(E) Indemnity Letter from~~(~~Applicant~~,Sponsor~~ and ~~developer),~~Borrower~~in the form to be provided by OHFA,~~ holding OHFA and its Trustees, employees, representatives, attorneys, financial advisors and other consultants harmless ~~for anything that could go awry~~. The ~~Indemnity Letter~~indemnity letter must acknowledge that the Trustees have complete and absolute discretion to ~~disapprove~~approve or fail to approve the issuance of any ~~debt obligation~~bonds at any point during the Application process.

(5) **Market Study.** The market study must comply in all respects with the market analysis required under OHFA's Affordable Housing Tax Credit Program. See current year's Tax Credit Application Instructions.~~The market study must include all projects receiving any form of federal or state assistance or subsidies, bond and tax credit projects, both operating and not yet placed in service, located in the Project's market area. The study must provide the current vacancy rate for each project, compare the rents, amenities, unit sizes, bedroom sizes and populations served for these projects. The market study must be supplemented to incorporate any projects in the Project's market area which have been approved for federal or state assistance or subsidies, including bond financing, tax credits, HOME and Housing Trust Fund financing since the date of the initial preparation of the market study.~~

(6) **~~Project Plan~~Development Description.** ~~A Development Description Project Plan consists of a description of the proposed Project, including includes, but is not limited to, the following:~~The Application should, at a minimum, include:

(A) Street ~~address~~addresses, legal site description and site maps to locate the ~~Project~~Development within its respective sub-market and within the larger market area;

~~(B) Photographs of street scenes and adjacent property;~~

(~~C~~B) Current or proposed site plans showing the location of all Buildings ~~buildings~~, site entrances/exits, driveways and parking areas, easements, recreational facilities and other significant features;

(~~D~~C) ~~Configuration (number/~~Number and type of Buildings ~~buildings,~~ number of units categorized by number of bedrooms/bathrooms and square footage~~)~~ ~~supplemented by recent photographs, artist renderings or representative photos/renderings of the interior of the residential units~~ plus floor plan layouts of each unit and Building configuration.

~~(E) Type of construction and design, with recent photographs, artist renderings or representative photos/renderings of each type of building configuration;~~

(~~F~~D) Shared facilities and amenities. ~~, documented with recent photographs, artist renderings or representative photos/renderings of such facilities/amenities, including Project entrance(s), driveways and parking areas, recreational facilities, congregate dining facilities, etc.;~~

(E) The population, if any that will be served by the Development.

(~~G~~7) **Capital Needs Assessment.** For existing Developments~~Projects, a written description (supplemental by photos where appropriate) of the physical condition of the site and the Project with particular specific descriptions of each of the following: uninhabitable units, structural deficiencies, major building system deficiencies, surface water control problems, etc., together with the Applicant(s) estimate of costs of renovations, on a line by line basis and~~a Capital Needs Assessment. This must comply in all respects with the Capital Needs Assessment requirements under OHFA's Affordable Housing Tax Credit Program. See current year's Tax Credit Application Instructions.

~~(H) target population.~~

(~~7~~8) **~~Preliminary Operating~~Income and Expenses Information.** ~~Preliminary Project operating information including~~The Application should, at a minimum, include:

(A) Schedule of current (if applicable) and proposed rents by unit type and any annual increase factor; ~~and~~

(B) Other income and any annual increase factor;

(C) Annual expenses, including replacement reserves and any annual increase factor; and

(~~B~~D) Fifteen year pro forma, demonstrating~~revenue and expense analysis to evidence the basis for an estimate of~~ stabilized net operating income ~~(NOI)~~ before debt service, and a reasonable debt coverage ratio.~~prepared or approved in writing by a member of the AICPA.~~

(~~8~~9) **~~Development Plan~~Site Information.** ~~A Development Plan is a written description of the plan to acquire and construct or rehabilitate the Project, including:~~The Application should, at a minimum, include:

(A) Current ownership of the Land/Building(s)~~property~~;

(B) ~~Nature of the current site control, including evidence thereof (e.g., a copy of a option topurchase, signed by each party necessary to effectuate the same, etc.);~~Site control must be demonstrated through a deed, option to purchase, option to lease, etc. Any options must be long enough to close the Bonds, or have extensions to be long enough. A lease will be required to be at least as long as the period of affordability.

(C) Current zoning of site, which allows for proposed type of Development;~~of the property and proposed zoning if a change is needed to implement the Development Plan, together with a written status report on the zoning change request, if applicable~~;

(D) Proposed construction and/or rehabilitation plans to be completed, including ~~staging and major building systems affected~~; and

(E) Proposed timetable for completion of each of the major steps for the Development.~~in the Development Plan.~~

~~(9) **Financial Feasibility Plan.** The Financial Feasibility Plan that must include, at a minimum, the following information:~~

~~(A) For existing, Projects, a schedule indicating current occupancy rates by unit type and for the Project overall, together with a schedule of current rents and other sources of Project revenues;~~

~~(B) Schedule of proposed rents (both "opening" or initial rents as well as stabilized rents) by unit type;~~

~~(C) Schedule of operating and maintenance expenses for most recent twelve (12) month period, (for existing Projects only)and as Projected for stabilized operations during a stabilization period that, unless good cause can be shown, shall not exceed twelve (12) months after completion of construction or rehabilitation, whichever is applicable;~~

~~(D) A signed appraisal, prepared within the last twelve months on an "as rehabilitated" or "as built" basis;~~

~~(E) Copy of all feasibility analyses prepared by or behalf of the Borrower or other third party; and~~

~~(F) Fifteen year pro forma revenue and expense analysis evidencing sufficient net operating income (NOI) to support the mortgage loan amount requested, after allowance for appropriate debt service coverage.~~

(10) **~~Financing Plan.~~Costs/Sources.** ~~A Financing Plan containing a written description of the Applicant(s)'s plan to fund the costs of acquiring and constructing and/or rehabilitating the Project, including:~~ The Application should, at a minimum, include:

(A) Schedule of total development costs including ~~current estimates or allowances for~~ each significant component of hard costs, ~~and~~ soft costs and a construction budget;

(B) Detailed statement of all proposed sources of construction~~funds~~, permanent and credit equity if applicable.~~to acquire and construct/rehabilitate~~

~~the Project, including (as appropriate) bridge loan financing, Owner equity, proceeds from syndication of equity including each other Housing Assistance items that are being or may be sought from OHFA, or other similar governmental units, i.e., Affordable Housing Tax Credits, HOME funds, Housing Trust Funds, Community Action Bloc Grants, etc.;~~

~~(C) Detailed statement of proposed sources of funds to permanently finance the Project following construction or rehabilitation, including (as appropriate) Owner equity, OHFA financing, mortgage debt from other sources, proceeds of equity syndication, including but not necessarily limited to, each other Housing Assistance items that are being or may be sought from OHFA, or other similar governmental units, i.e., Affordable Housing Tax Credits, HOME funds, Housing Trust Funds, Community Action Bloc Grants, etc.;~~

(~~D~~C) Identification of proposed source(s) of credit enhancement ~~(if any)~~ supported by ~~letters of interest,~~ letters of intent or commitments from the related provider(s)~~, if available~~; and

~~(E) Identification of proposed purchaser(s) of OHFA debt obligations (if not credit enhanced) supported by letters of interest, letters of intent or commitments from the proposed purchaser(s), if available.~~

(11) **Management/Marketing ~~Plan~~.** ~~A Management and Marketing Plan including the following information:~~ The Application should, at a minimum, include:

(A) For existing Developments,~~Projects~~, ~~to the extent such information is available to the Applicant(s) at the time of Inducement Application,~~ current resident profile by income and household size together with a discussion of resident displacement which could occur in order to effect rehabilitation or repairs, or to comply with imposed income limitations;

~~(B) Target market by income and household size;~~

~~(C) Primary and secondary market draw areas;~~

(~~D~~B) Overview of proposed marketing strategy, particularly regarding the strategy to achieve and maintain low income occupancy requirements; and

(~~E~~C) Overview of the proposed management plan for the Development ~~property~~.

(12) **Supplemental Information.** Any and all additional information OHFA may require in order to analyze the Development and Application~~analysis the Project~~ at any stage of its review.

(b) The Applicant shall submit an original ~~and five (5) copies of the~~ Application in a three-ring binder utilizing an index and corresponding tabs. Applications must be complete and consistent with all supporting documentation. Some information may be submitted electronically, if OHFA has stated or approved.~~OHFA may permit the submission of copies of the Application on diskettes. Prior permission of OHFA is required for a diskette submission. A printed copy with appropriate signatures must also be submitted.~~

(c) Any amendment or changes to information filed with OHFA must be disclosed immediately. This is a continuing disclosure requirement. Any amendments or changes not immediately brought to the attention of OHFA, in writing, may result in the Application being rejected.

SUBCHAPTER 8. FEES AND EXPENSES

330:30-8-1. Initial/Inducement Application~~application~~ stage

(a) ~~Unless waived or deferred by OHFA, upon submission of the initial Application,~~When notified by OHFA the Applicant shall remit to OHFA ~~an~~a nonrefundable~~Initial~~intial/inducement Application Fee in an amount equal to the greater of:

(1) ~~Three~~Ten basis points ~~(.030%)~~(.10%) of the dollar amount of OHFA ~~debt financing~~ bonds requested; or

(2) Five Thousand Dollars ($5,000)~~1,500.00~~.

~~(b) The Initial Application Fee is non-refundable.~~

~~(c) All or a portion of the Initial Application Fee may be waived or deferred by OHFA.~~

(~~d~~b) OHFA may require an~~a Sponsor or~~ Applicant to make payments to third parties~~, if any, which~~who provide services relating to OHFA's review and evaluation of the~~Sponsor's Initial~~ Application.

330:30-8-2. Inducement application stage [REVOKED]

~~(a) Unless waived or deferred by OHFA, at the commencement of the Inducement stage, Applicant shall remit to OHFA an Inducement Application Fee in an amount equal to the greater of~~

~~(1) Seven basis points (.070%) of the dollar amount of OHFA debt financing requested; or~~

~~(2) $3,500.00.~~

~~(b) The Inducement Application Fee is non-refundable.~~

~~(c) All or a portion of the Inducement Application Fee may be waived or deferred by OHFA.~~

~~(d) OHFA may require a Sponsor or Applicant to make payments to third parties, if any, which provide services relating to OHFA's review and evaluation of Sponsor's Inducement Application.~~

330:30-8-3. Conditional Commitment/Final Financing~~commitment~~ stage

(a) ~~Unless waived or deferred by OHFA at the commencement of the Conditional commitment stage,~~When notified by OHFA the Applicant shall remit to OHFA ~~an~~a nonrefundable~~Conditional Commitment~~conditional commitment/final financing Fee in an amount equal to the greater of:

(1) ~~Fifteen~~Forty basis points ~~(0.15%)~~(0.40%) of the dollar amount of OHFA ~~debt financing~~bonds requested; or

(2) Twenty Thousand Dollars ($20,000)~~7,500.00~~.

~~(b) The Conditional Commitment Fee is non-refundable.~~

~~(c) Concurrent with the payment of its Conditional Commitment Fee, the Sponsor or Applicant shall remit (in cash or in~~

~~the form of an irrevocable letter of credit) to OHFA the Conditional Commitment Expense Escrow Payment, which shall be a percentage of the fees and expenses of OHFA's financial advisor, legal counsel, bond counsel, underwriters, underwriter's consultants and/or consultants relating to the transaction as estimated by OHFA.~~

~~(d) All or a portion of the Conditional Commitment Fee and/or the Conditional Commitment Expense Escrow Payment may be waived or deferred by the OHFA.~~

~~(e) The Conditional Commitment Expense Escrow Payment shall be retained by OHFA for application toward payment of financial advisor, bond counsel fees or similar fees and expenses at Closing or upon earlier termination of the proposed Project financing prior to Closing.~~

(~~f~~b) OHFA may require an~~a Sponsor or~~ Applicant to make payments to third parties~~, if any, which~~who provide services relating to OHFA's review and evaluation of the~~Sponsor's or Sponsor's~~ Application.

(c) Fees for the conditional commitment/final financing stage and/or the fees due to third parties may be incorporated into the closing process.

(d) All fees outstanding will be due and payable by the Borrower at Closing.

330:30-8-4. Financing approval stage [REVOKED]

~~(a) As a part of the Closing of the issuance of the OHFA debt relating to its project, the Borrower shall remit to OHFA the Financing Approval Fee in an amount equal to the greater of:~~

~~(1) Twenty-five basis points (0.25%) of the dollar amount of OHFA debt financing provided; or~~

~~(2) $12,500.00.~~

~~(b) Concurrent with the payment of its Financing Approval Fee, the Sponsor(s), Borrower(s) and Owner(s) shall be required to remit to OHFA the balance (after application of the related Conditional Commitment Expense Escrow Payment) of the actual fees and expenses of OHFA's financial advisor, legal counsel and/or other consultants relating to the transaction.~~

~~(c) Any deferred fees will be due and payable by the Borrower at Closing.~~

330:30-8-5. Administrative fee

(a) The ~~Borrower~~Owner of each Development~~multifamily residential rental Project~~ financed by OHFA shall be required to remit to OHFA an ~~Administrative Fee~~administrative fee equal to twelve and one-half basis points (0.125%) per annum of the principal amount of OHFA ~~debt~~bonds outstanding ~~with respect to the Project financed~~ as of the date of calculation.

(b) The ~~Administrative Fee~~administrative fee shall be paid in advance and must ~~may~~ be paid annually~~, semi-annually, quarterly or monthly as the Sponsor(s), Borrower(s), Owner(s), and OHFA may mutually agree~~.

330:30-8-6. Compliance fee

(a) The Owner of each Development~~Project~~ financed by OHFA shall be required to remit to OHFA annually a ~~Compliance Fee~~compliance fee equal to twelve and one-half basis points (0.125%) per annum of the principal amount of OHFA bonds~~debt~~ outstanding ~~with respect to the Project financed~~ as of the date of calculation.

(b) The ~~Compliance Fee~~compliance fee shall be paid in advance and must ~~may~~ be paid annually.~~, semi-annually, quarterly or monthly as the Sponsor(s), Borrower(s), Owner(s), and OHFA may mutually agree~~.

~~(c) The Compliance Fee may be waived or deferred by OHFA if the Sponsor of the Project is a Non-Profit Organization, a Public Agency, or other governmental unit.~~

330:30-8-7. Assumption and/or~~transfer~~Transfer fee

(a) OHFA may requires~~e~~, for each Development,~~Project, that~~ the ~~Financing~~Bond Documents contain a "due on sale or change of ~~ownership or control~~Ownership or Control" clause in the ~~Project Loan~~Bond Documents.

(b) In connection with the ~~transfer~~Transfer~~of ownership~~ or change of ~~ownership~~Ownership or ~~control~~Control of a Development~~Project financed by OHFA,~~ the Owner/Borrower or the purchaser shall remit to OHFA ~~an~~a nonrefundable~~Assumption/Transfer Fee~~assumption/transfer fee in an amount equal to one percent (1.00%) of the principal amount of OHFA ~~debt~~bonds outstanding as of the date of ~~transfer~~Transfer of Ownership~~ownership~~.

~~(c) The Assumption/Transfer Fee shall be paid in installments as follows:~~

~~(1) fifty percent (50%) upon submission of the related application for Approval of Assumption/Transfer in compliance with 330:30-14-1; and~~

~~(2) fifty percent (50%) upon Closing of assumption/transfer of ownership.~~

~~(d) If for any reason the assumption/transfer transaction does not close, a portion of the first installment of the Assumption/ Transfer Fee will be returned by OHFA to the person or entity having paid such installment, after deducting OHFA's expenses incurred in connection with the proposed assumption/transfer, including a reasonable amount for time and effort spent by OHFA staff.~~

SUBCHAPTER 12. COMPLIANCE AND REPORTING REQUIREMENTS

330:30-12-2. Records and accounts

(a) The Borrower must ~~agree and certify, by executing certain financing documents, to~~ keep ~~at the Project site or other place within the State of Oklahoma,~~ proper books, records and accounts in which complete and correct entries of all financial transactions relating to the Development~~Project~~ are entered and to keep copies of all certificates required to be provided, together with all invoices, receipts, tenant certifications, complete rent roll information or other records regarding ~~occupancy by very low, low and moderate income~~ residents, and other supporting documentation reasonably sufficient to demonstrate the accuracy of such certifications.

(b) The Borrower~~Borrwor~~shall be obligated to furnish to OHFA, at no expense to OHFA, true and correct copies of such

books, records and accounts and other documents pertaining to the Development ~~Project and its financing by OHFA~~ as OHFA, in its complete discretion and from time to time, deems necessary to determine that the federal and ~~state~~State laws, rules and regulations, including this Chapter and the ~~Project Loan~~Bond Documents and financing documents, have been complied with ~~and~~ to ~~satisfy~~ OHFA's satisfaction~~statutory records keeping requirements~~.

330:30-12-3. Audits and examinations

OHFA shall have the right, at any time and from time to time, to examine and audit any and all of the records or accounts of the Applicant, ~~Sponsor~~ and/or Borrower and Affiliates of each pertaining to the Development~~Project~~, the ~~Project loan~~bonds, and the direct and indirect ~~ownership~~ Ownership~~of any beneficial interest~~ in the Applicant and/or ~~Borrow~~Borrower and the Affiliates of each.

SUBCHAPTER 14. SALE, TRANSFER/ASSUMPTION

330:30-14-1. ~~Sponsors, borrowers and owners~~Borrower's requirements

(a) The Borrower and its Affiliates and ~~controlling~~Controlling parties must covenant and agree not to sell, ~~transfer~~Transfer, or otherwise dispose of the Development~~Project~~, or any material portion of the Development~~Project site or any material portion of the Project facilities~~, or any portion of their Ownership or Controlling~~ownership or controlling~~ interest in the Development ~~Project~~ without first obtaining the prior written consent of OHFA.

(b) The Borrower, its Controlling~~controlling~~ parties and prospective buyers ~~must~~may be required to submit the following to OHFA for its review prior to any sale or ~~transfer~~Transfer:

(1) Assumption/~~transfer~~Transfer fee according to 330:30-8-7;

~~(2) Consent to transfer agreement;~~

~~(3) Assumption agreement;~~

~~(4) A copy of the certified transcript of the organization of the prospective buyer;~~

~~(5) A copy of the Real Estate Purchase Contract;~~

~~(6) An opinion of counsel for the prospective buyer that upon closing of the transfer, the remaining obligation of the Borrower under the financing plan, the marketing plan, the Loan Documents, the Regulatory Agreement, and any and all documents relative thereto which were submitted and/or executed by the Sponsor, Applicant and/or Borrower will be assumed by, and become obligations of the prospective buyer and duly binding on the prospective buyer;~~

~~(7) A written representation regarding the nature, extent and availability of the prospective buyer's own capital, bank credit lines, governmental grants or other sources of funds to meet or cover working capital requirements, equity contributions contemplated by the Project's financing plan or Project cost overruns, if any;~~

~~(8) References from lenders, attorneys, accountants or other persons or firms having had prior business relationships with the prospective buyer, plus a listing of all public agencies with which the prospective buyer and each of its Affiliates have done or are currently doing business, together with any releases authorizing OHFA to make inquiry of any of the foregoing;~~

~~(9) Three years certified financial statements for all general partners and/or corporate entity(ies) making up the prospective buyer or owning any interest in the prospective buyer;~~

~~(10) A detailed statement of the transferee regarding its history of ownership and management of multifamily projects;~~

~~(11) Affidavits of the principals and Controlling parties of the prospective buyer in the form to be provided by OHFA; and~~

(~~12~~2) Such additional material as may be required by OHFA, its counsel, or the Trustees, in their complete discretion, including verification that neither the prospective buyer nor any of its Affiliates, Controlling parties or principals is disqualified under 330:30-2-3.1~~330:30-2-4.1~~.

(c) OHFA's criteria for ~~dis~~approval or ~~non-approval~~denial of a proposed sale or ~~transfer~~Transfer shall be at the discretion of the Trustees, based upon the facts and circumstances presented by the Borrower and prospective buyer.

[OAR Docket #13-1098; filed 6-19-13]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #13-1100]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
330:36-1-1. [AMENDED]
330:36-1-3.2. [AMENDED]
330:36-1-4. [AMENDED]
330:36-1-9. [AMENDED]
Subchaper 2. Allocation Procedures
330:36-2-3. [AMENDED]
330:36-2-11. [AMENDED]
330:36-2-12. [AMENDED]
330:36-2-13. [AMENDED]
330:36-2-13.1.[AMENDED]
Subchapter 4. Development Applications and Selection
330:36-4-1.1 [AMENDED]
330:36-4-2. [AMENDED]
330:36-4-2.1. [AMENDED]
330:36-4-3. [AMENDED]
Subchapter 6. Program Administration
330:36-6-1. [AMENDED]
330:36-6-7. [AMENDED]
Subchapter 8. Qualified Contract
330:36-8-5. [AMENDED]

330:36-8-11. [AMENDED]

AUTHORITY:

These Chapter 36 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;

DATES:

Comment Period:

December 17, 2012 through January 25, 2013

Public Hearing:

January 22, 2013

Adoption:

March 27, 2013

Submitted to Governor:

March 28, 2013

Submitted to House:

March 28, 2013

Submitted to Senate:

March 28, 2013

Gubernatorial approval:

May 6, 2013

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.

Final Adoption:

May 23, 2013

Effective:

January 1, 2014

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a federal tax credit (the "Credit") may be claimed for a period of ten years by qualified owners (as defined by the Code) of residential rental property rented to qualified low-income tenants at restricted rental rates, if the owner has been approved for an allocation of Credits by the state housing credit agency. OHFA is Oklahoma's housing credit agency. The Code further provides that each state's Credit annual authority is to be allocated by that state's housing credit agency pursuant to a qualified allocation plan. These Chapter 36 Affordable Housing Tax Credit Program Rules (the "Rules") embody Oklahoma's qualified allocation plan. The purpose of the Rules is to comply with the Code, the Oklahoma Administrative Procedures Act ("APA"), and to provide guidelines for administering the allocations of Oklahoma's annual Credit authority and OHFA's Affordable Housing Tax Credit Program (the "Credit Program"). The Trustees are also required to administer the Credit Program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.

CONTACT PERSON:

Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-1. Purpose

The purpose of the Oklahoma Affordable Housing Tax Credit ("OAHTC") Program is to expand the supply of new affordable rental units and rehabilitate existing rental housing for Qualifying Households ~~by stimulating private investment~~.

330:36-1-3.2. Scope

During each program year, Tax Credit Allocations (TCAs) will be made available to eligible entities for the purpose of implementing specific ~~projects~~Developments that further the stated purpose of the OAHTC Program. Eligible entities include, but are not limited to, for-profit developers, non-profits, public agencies, Native American Tribes, private developers, and local governments.

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code and these Chapter 36 Rules. When a conflict exists between the following definitions and the Code the more restrictive meaning shall be applied.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, Controls, is Controlled By, or is Under Common Control With any other Person.

"Allocation" means the maximum amount of TCAs available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

"Applicable Fraction" means the fraction used to determine the qualified basis of a qualified low-income Building which is the smaller of the Unit Fraction or the Floor Space Fraction.

"Applicant" means any individual, Nonprofit Sponsored Development, Nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Owner and Owner's predecessor in interest, if any, and includes any successor in interest, Transferee~~,~~ of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Owner or lessee (other than a Resident) of all or any portion of the Development, and any other Person or entity having any right, title, or interest in the Development.

"Application" means an Application in the form prescribed by OHFA, from time to time, in the Application Packet (AP), including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA annually, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit formal public input on the Application Packet, and provide explanation of any significant changes. Staff will present the following year's proposed AP to the Trustees for approval at a Trustees meeting. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring

requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, ~~environmental assessments,~~ market studies, Commitments, ~~extensions, Carryover Allocations,~~ Agreements, Elections, set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax-exempt bond financed projects, compliance monitoring, and other matters deemed by Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Area Median Gross Income" means the median Gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Building" means a ~~residential rental~~ property containing residential Housing Units located on the Land and included in the Development. For purposes of the Credit Program, each Building is identified by its Building Identification Number (BIN) assigned by OHFA and its street address assigned by the United States Postal Service. The BIN shall control for Tax Credit purposes. In the event more than one Building is located on the Land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

"Capital Needs Assessment" (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures as set out in the annual AP.

"Carryover Allocation" means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Carryover Allocation Agreement" means the contract between Owner and OHFA, authorized and approved by the Trustees. A Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Certifications" means the representations made under penalties of perjury by the Applicant, Owner, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and Certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the ~~Development Compliance~~Extended Use Period.

"Code" means the Internal Revenue Code of 1986, as amended, ~~and in effect at the date of the Regulatory Agreement,~~ together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Commitment" means a representation or agreement of the Owner/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Owner/Applicant and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Owner/Applicant with OHFA in connection with the Credit Program.

"Compliance Period" means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

"Consultant" means any Person (which is not an Affiliate of an Owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost Certification documents filings with OHFA.

"Control" (including the terms "Controls", "Controlling", "Controlled By", and/or "Under Common Control With") means the possession, directly or indirectly, of the power to direct or cause the direction ~~or~~of the management and policies ~~or~~of any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Credit" (including the terms Tax Credit and Low-Income Housing Tax Credit) means the Low-Income Housing Tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

"Credit Period" means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is Placed-In-Service, for Credit purposes, or if the Owner makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income Building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

"Credit Program" means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

"Credit Reservation" means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

"Developer" means the Person or entity with the responsibility of ensuring the effective construction or rehabilitation

of the Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Owner of the Development. Developer also includes any other Person or organization affiliated with, Controlled by, in Control of or a related party to, the Developer, as determined by OHFA.

"Development" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

"Development Compliance Period" means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

"Development Team" means the Applicant, architect, attorney, Consultant, Developer, general contractor, market analyst and/or appraiser, property management company, Owner, tax professional, and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, or use of a Drug, or the possession of a Drug with intent to manufacture, sell, distribute or use the Drug.

"Due Date" if a Due Date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the Due Date becomes the next business day.

"Elderly" means ~~a person~~all occupant's must be sixty-two (62) years of age or older. This definition is for consideration for the Elderly set-aside in which one hundred percent (100%) of units are for Elderly as defined in the annual AP and these Chapter 36 Rules. This definition is not superseded by Federal or State definitions.

"Eligible Basis" means generally the depreciable basis in the property.

"Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

"Floor Space Fraction" means the total floor space of the ~~low-income units~~Low-Income Unit in the ~~building~~Building divided by the total floor space of all residential units in the ~~building~~Building(whether occupied or not).

"Gross Rent" means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B); (iii) paid to Owner (on the basis of the low-income status of the ~~Qualified~~qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Owner to the extent an equivalent amount is paid to the Rural Housing Service (RHS) under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first year of the Credit Period.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, a reasonable contingency can be included.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining Homeless status. OR (4) displaced as a result of a major disaster and ~~receives~~receiving FEMA assistance. Homeless individuals are considered Homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Housing Unit" means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common ~~Area Units~~area units are not included.

"HUD" means the U.S. Department of Housing and Urban Development.

"Income" means the Income of one or more ~~Qualified~~qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

"IRS" means the Internal Revenue Service of the Treasury.

"IRS Form 8609" means the IRS Form entitled "Low Income Housing Credit Certification". The IRS Form 8609 establishes the maximum Credit for a Building.

"IRS Form 8823" means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with

respect to issues of noncompliance with the laws of the IRS and/or the sale or disposition of the Development.

"Land" means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

"Large Development" means a Development with more than sixty (60) units.

"LIHTC Program" means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

"Low-Income Unit" means a Housing Unit that is both Rent-Restricted and occupied by ~~Qualified~~qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer ~~Total~~total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related Person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

"Market Rate Unit" means a Housing Unit that does not meet the definition of a Low-Income Unit.

"Minimum Low-Income Housing Set-Aside" means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by ~~Qualified~~qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Owner must have selected either: (i) twenty percent (20%) or more of the ~~Total~~total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the ~~Total~~total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Owner and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Owner.

"National Non-Metro Area Median Income" means as determined and published annually by HUD.

"Nonprofit" means a private Nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither Controlled By, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the Owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC Program" means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

"OHFA" means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

"One Year Period (1YP)" means period commencing on the date on which OHFA and the Owner agree to the Qualified Contract Price in writing and lasting twelve (12) calendar months.

"Owner" means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest. Owner also means any other Person or entity having or acquiring any right, title, or interest in the Development.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal.

"Placed-In-Service" means: (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for Rehabilitation Expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

"Program Rules" means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and

other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing for changes in the QAP will be published by OHFA Staff.

"Qualified Building" means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Owner or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

"Qualified Contract" means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

"Qualified Contract Application (QCA)" means an Application containing all information and items required by the OHFA to process a request for a Qualified Contract.

"Qualified Contract Preliminary Application (QCPA)" means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a Qualified Contract Application.

"Qualified Contract Price (QCP)" means calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in Chapter 36 Rules.

"Qualified Development" means a Development ~~or Residential Rental Property~~ where ~~an Applicable Percentage or more of~~ the Housing Units are both Rent-Restricted and occupied by Residents whose Income is at or below the level selected as the Minimum ~~Low Income Housing Set Aside~~Low-Income Housing Set-Aside.

"Qualifying Households" means households whose annual Incomes do not exceed the elected area median family income set-aside required in the ~~code~~Code.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying Land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by State, federal or local law and these OAHTC Rules.

"Rehabilitation Expenditures" means amounts that are capitalized and incurred for the addition to or improvement of an ~~Existing~~existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

"Rent-Restricted" means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the Income limitations for ~~Qualified~~qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

"Resident" means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

"Resolution" means an official action of the Trustees and may include all Resolutions adopted by the Trustees with respect to a Development.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the Review Report for each Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by OHFA staff.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS 538 only projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Section 8" means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in the annual AP, which shall be established and may be changed by OHFA from time to time in the annual AP (using the priorities for the State as they are established from time to time under and pursuant to these Rules and the annual AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the annual AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by the Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or Control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the Extended Use Period), receipt of a deed or conveyance of the Land where the Development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Owner has obtained Site Control.

~~**"Special Needs"** means such targeted populations as may be designated from time to time in the annual AP by official~~

~~action of the Trustees, which designations may include, but are not necessarily limited to, the Homeless, the Elderly, persons with mental and physical disabilities and/or disabled persons.~~

"State" means the State of Oklahoma**.**

"Targeted Populations" means such populations as may be designated from time to time in the annual AP by official action of the Trustees, which designations may include, but are not necessarily limited to, the Homeless, the Elderly, persons with mental and physical disabilities and/or disabled persons.

"Tax Credit Allocation (TCA)" means a federal Low-Income Tax Credit Allocation by OHFA to a Development Owner pursuant to Section 42 of the Code, QAP, and formal action by the Trustees.

"Three-Year Period" for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the Owner may not evict or terminate a tenancy of an existing tenant of any Low-Income Unit except for good cause. During the Three-Year Period the Owner may not increase the Gross Rent with respect to any Low-Income Unit except as permitted under Section 42 of the Code.

"Threshold Criteria" means the criteria set out herein and in the annual AP, which shall be established and may be changed by OHFA from time to time in the annual AP, to determine the qualifications of the Applicant and the Owner and the ~~Proposed~~proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the annual AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the annual AP may result in the disqualification of the Application for further consideration, and may require no further action by OHFA Staff except to notify the Applicant of the disqualification.

"Total Development Costs" means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application. Total Development Costs will be certified by an independent certified public accountant's Certification of sources and uses of funds at times prescribed by OHFA.

"Transfer" means any sale, Transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of the Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a Transfer, sale, contribution or assignment by the Applicant, Owner or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general partnership, general partner of a limited partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Owner and any other Person or entity having or acquiring any right, title, or interest in the Development.

"Transitional Housing" for purposes of these OAHTC Program Rules means Transitional Housing for the Homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

"Treasury" means the United States Department of the Treasury.

"Trustees" means the Board of Trustees of OHFA.

"Unit Fraction" means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of ~~Total~~total Housing Units, whether or not occupied, in the Building.

"Violent Criminal Activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the Owner(s) thereof.

(b) **Compliance Manual.** OHFA shall provide each Owner upon request with a Compliance Manual at a cost sufficient to defray the cost of production. The Compliance Manual will also be available on OHFA's website at www.ohfa.org.

(c) **Compliance with Applicable Laws.** The Applicant, the Development, the Owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, State and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the Owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability in the lease, use or occupancy of the Development or in connection with the employment or application for employment of ~~persons~~Persons for the operation and/or management of any Development. The Owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period as promised in the Application.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-3. Set-aside categories for TCAs

(a) The annual allocation of OAHTC Program tax Credits made available to the State ~~shall~~may be divided into various set-aside categories, including but not necessarily limited to, ~~specific set-aside categories of~~ Nonprofits, Rural 515, Other Rural, Elderly, and such other categories as the Trustees, in their complete discretion, may adopt from time to time for inclusion in the annual AP. Nonprofits competing in the Nonprofit set-aside must comply with the definition of Nonprofit Sponsored Development in these Chapter 36 Rules.

(b) Specific set-aside categories and amounts for each category may be determined from time to time by formal action of the Trustees and shall be set out in the annual AP. The Trustees may, in their sole discretion, modify the amount of the State's annual allocation of Credits devoted to any set-aside, if they determine that the housing needs of the State so warrant, except for the maximum ninety percent (90%) allocation limitation to those other than Nonprofits as required by the Code.

330:36-2-11. OHFA Development notification

(a) OHFA shall, within fifteen (15) business days of receipt of an Application, and not less than thirty (30) calendar days prior to the Trustees consideration thereof, notify, in writing, by certified mail or other form of traceable delivery system to provide proof of transmission and receipt, the Mayor or highest elected official, or if neither of the aforementioned exist, the Chief Executive Officer of each Local Governing Body of the jurisdiction within which the proposed Development is located at the time of Application and the legislators who are entitled to such Notice, regarding the characteristics of the proposed Development located within their jurisdiction/district. All comments received from said Mayor or highest elected official, or if neither of the aforementioned exists, the Chief Executive Officer and/or legislator(s) during this thirty (30) day comment period will be presented to the Trustees for their consideration when reviewing a request for an Allocation of Credits.

(b) If the Application is considered at a different Trustees meeting than in the notice, this notification requirement is considered to be met.

330:36-2-12. Communications with OHFA during Application Review

(a) **Communications with OHFA Employees.** Following submission of an Application, neither the Applicant, any representative or Affiliate of the Applicant, nor any member of the Development Team shall contact any OHFA employee, concerning the Application ~~or~~nor any other Applications filed. OHFA reserves the right, in OHFA's sole discretion, to contact the contact person(s) identified by the Applicant for the purpose of clarifying any matter.

(b) **No Ex Parte Communications with the Board of Trustees of OHFA.** Neither an Applicant, any representative or Affiliate of the Applicant, any member of the Development Team, nor members of the public shall communicate, directly or indirectly, with the Trustees regarding an Application under consideration by OHFA except upon notice and opportunity for all parties to participate. Applicants and others who wish to communicate with the Trustees must follow the specific steps as set forth in 330:36-2-13.1.

(c) **Preliminary Review Report.** Following the release of the preliminary Review Report, the Applicant may submit questions or request clarification concerning the preliminary Review Report. All such questions or inquiries must be in writing and addressed to the Staff member designated in the cover letter accompanying the preliminary Review Report. These questions may be submitted electronically. OHFA reserves the right to grant or deny requests for meetings with the Staff of OHFA at any time during the Application process. Any and all requests must be in writing.

(d) **Final Review Report.** Upon issuance of the final Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13.

(e) **Noncompliance.** Failure to comply with this subsection 330:36-2-12 may result in termination of the review process and denial of the Application.

330:36-2-13. Preliminary Review Reports

(a) Upon completion of its review of all Applications, OHFA will forward OHFA's preliminary Review Report to the contact person identified by the Applicant in the Application. ~~OHFA will mail the Review Report by certified mail with return receipt requested or other form of traceable delivery system to provide proof of transmission and receipt.~~

(b) The Applicant must provide OHFA with any information requested by OHFA in the preliminary Review Report or other clarifying information by the deadline given in the cover letter accompanying the preliminary Review Report. Neither the Staff nor the Trustees will be required to consider a late response to the preliminary Review Report.

(c) In the event the Applicant disputes any matter contained in the preliminary Review Report, including without limitation any finding, determination, recommendation or scoring by OHFA, the Applicant's response to the Review Report must identify with specificity the disputed matter, finding, determination, recommendation, scoring, etc., and the Applicant's reason for disputing same, including any evidence which controverts the Review Report. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(d) Failure to respond or dispute a finding or determination in the preliminary Review Report shall be deemed the acceptance of the finding or determination by the Applicant.

(e) The Applicant's response to the preliminary Review Report must be in writing. Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be reviewed. Applicants are encouraged to use certified mail, Federal Express or another carrier providing proof of timely delivery to OHFA.

330:36-2-13.1. Final Review Report

(a) The Staff of OHFA will consider the Applicant's response to the preliminary Review Report prior to issuing the final Review Report and making its recommendations to the

Trustees. The Applicant will be informed of Staff's recommendations prior to the meeting of the Trustees where the Application is being considered. ~~OHFA will mail a copy of the final Review Report and Staff's recommendations by certified mail with return receipt requested or other form of traceable delivery system to provide proof of transmission and receipt.~~OHFA will forward OHFA's final Review Report to the contact person identified by the Applicant in the Application.

(b) The final Review Report may be adopted by the Trustees, including Staff's recommendations and exclusion of any additional documentation proffered by the Applicant for consideration of the Application by the Trustees.

(c) In the event the Applicant disputes any matter contained in the final Review Report, Applicants must file ten (10) copies of any response(s) to the final Review Report or other information they wish the Trustees to consider not less than forty-eight (48) hours prior to the commencement of the meeting where the Application will be considered. In addition to the hard copies, Applicants must submit an electronic version of the response. If both the hard copy and the electronic version are not received, the responses~~Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and~~ will not be accepted or considered by the Staff or the Trustees.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-1.1. Bond financed Developments

(a) Tax-exempt bond Developments financed at least fifty percent (50%) with the proceeds of tax-exempt bonds subject to the private activity bond volume cap are required to comply with all the requirements of these Rules with the exception of the competitive selection process.

~~(b) Terms of the bond financing must be submitted at time of Application for Tax Credits, and Evidence of the bond financing must be submitted at least ten (10) business days before the Trustees meeting wherein the four percent (4%) Application is to be considered. Failure to comply with this requirement may result in no tax Credits being allocated.~~

(~~c~~b) Code requirements for bond financed Developments must be met in addition to the AHTC requirements, i.e., rental units, rents, student exemptions, Transfers on site, occupancy changes, verification of assets.

(~~d~~c) Deadlines for the submission of Applications for bond financed Developments will be established in the AP.

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain for any annual AP, criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application may result in the Application being rejected without further review. The Threshold Criteria may include, but are not necessarily limited to the following:

(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice. If the Application is considered at a different Trustees meeting than in the notice, this notification requirement is considered to be met.

(A) **Written Notices.** The Applicant must notify, in writing and by ~~certified mail~~ a form of traceable delivery, the local Mayor or highest elected official, or if neither of the aforementioned exist, the Chief Executive Officer of the Local Governing Body, Chairman of the appropriate county commissioners, and state legislators (or their successor) within whose district the Development is located at the time of Application regarding their intent to submit an Application. This written notice shall serve to provide a reasonable opportunity to comment on the Application. ~~All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice.~~

(B) **Additional notice requirements.** If the site for the Development is not located within the specific corporate limits of an incorporated town or city, but is within two (2) miles of an incorporated town(s) or city (ies) limits, Applicant must provide the same notice to each such town(s) and city (ies) as if the site was located within the corporate limits of each such town(s) and city (ies). ~~All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice.~~

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in ~~a newspaper of general circulation in~~the local newspaper of the area wherein the Development will be located. ~~All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each Application requires notice.~~ The requirements for the publication notice will be in the annual AP.

(2) **Market analysis.** All Applicants must submit a third party, independent housing market analysis conforming to the Threshold Criteria set forth in the annual AP, demonstrating and documenting the status of the market demand for the type and number of Housing Units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.

(3) **Nonprofit Owners.** Applicants proposing Developments under the Nonprofit set-aside must demonstrate and document that the Nonprofit Owner and/or Nonprofit ownership participant meet the definition of a Nonprofit Sponsored Development as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for Nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) is at least a minimum of fifty-one percent (51%) co-general partner, co-managing member, or a Controlling stockholder, or can otherwise demonstrate ownership;

(B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire Compliance Period pursuant to 26 CFR § 1.469;

(C) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(D) is duly authorized to do business within the State; and

(E) has at least one demonstrable year of affordable housing experience.

(4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is located at the time of Application, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA. If there are any conditions set forth in the resolution of support, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions. If a conditional resolution of support is submitted, it may result in a determination that the Application has not met Threshold Criteria.

(5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and Owner, the Development Team, general partner, and principals thereof in the use of TCAs ~~and~~in the ~~Development~~development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, Development Team members, general partners,~~and~~ their Affiliates, and principals thereof ~~including all Development Team members,~~ shall be examined in regard to their Placed-In-Service Developments, and the record of compliance performance within Oklahoma and other states in which the Applicants, Owners, Development Team members, general partners, and their Affiliates, and principals thereof have developed or are developing affordable housing. Applicants, Owners, Development Team members, general partners, their Affiliates, and principals thereof with existing Developments may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, Owner, the Development Team, general partners,~~or any of~~ their Affiliates, or principals thereof ~~and may include any of their Development Team instances~~. Instances of nonperformance ~~including~~include, but are not limited to:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) having been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;

(D) events of material uncorrected noncompliance with any Federal or State assisted housing programs within the prior seven (7) years;

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7) years;

(F) failure to comply with OHFA's requests for information or documentation on any Development funded or administered by OHFA; ~~or~~

(G) removal as a general partner~~.~~ ; or

(H) excessive late or incomplete reports to OHFA.

(6) **Acquisition Credits.** Applicants requesting acquisition Credits must provide an opinion of independent counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d) (2)(B) have been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, a copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the Applicant's Development proposal.

(7) **Financial feasibility and viability.** Applicants must demonstrate ~~with their financing~~ that there are Commitments to the Development's financial feasibility and viability as a qualified low-income housing Development. Applicants must demonstrate to OHFA's satisfaction that the Applicant has financing Commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. ~~Commitment letters must include loan amount, interest rate, loan term, debt service coverage ratio (permanent lender), loan amortization period (permanent lender), borrower, loan fees, collateral and conditions precedent to funding.~~Items required to be included in financing Commitments will be established in the annual AP. Requirements set out in 36-4-2.1 (b)(c) and (d) are part of the analysis for financial feasibility.

(8) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness may include but not be limited to:

(A) Site Control;

(B) preliminary plans or specifications;

(C) proper zoning for the proposed Development; and

(D) others as ~~defined~~established in the annual AP.

(9) **Public Housing Wait Lists.** ~~Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local or State public housing authority documents the presence of a client waiting list for affordable Housing Units in the locale of the proposed Development.~~Documents for this criterion will be established in the annual AP.

(10) **Capital Needs Assessment.** ~~No Allocations for rehabilitation will be made unless preceded by a Capital Needs Assessment as detailed~~All Applications for rehabilitation will be accompanied by a Capital Needs Assessment as established in the annual AP.

(11) **Development amenities.** Each Application will be analyzed and evaluated as to Commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the annual AP.

(12) **Family Developments including tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated the Development will provide amenities and a unit mix conducive to family Developments and tenant populations with children. Amenities and documentation requirements will be established in the annual AP.

(13) **Tenant Populations of Elderly Individuals.** Each Application will be analyzed and evaluated as to the extent to which it demonstrates the Development will provide amenities and a unit mix conducive to Elderly populations. Amenities and documentation requirements will be established in the annual AP.

(c) **Selection Criteria.** The Selection Criteria shall be set forth in the annual AP, and may include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a Commitment to target lower-income populations. ~~A sliding scale for points~~Points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any Commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Locations and points will be established in the annual AP.

(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost beneficial investments or contributions to the proposed Development. Points will be established in the annual AP.

(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed Development will be analyzed. Support must be directly related and of direct value to the proposed project. Eligible evidence of support and points will be established in the annual AP.

(6) **Development Team Experience.** Each Application will be analyzed and evaluated as to the experience of the Applicant and/or the Development Team in owning and successfully operating Developments in the LIHTC Program. Points will be established in the annual AP.

(7) **Management Experience.** Each Application will be analyzed and evaluated as to managing or providing management for Developments in the LIHTC Program. ~~Points will be established in the annual AP.~~ This evaluation will be based on the experience of the management team members. Changes in management may not occur after the Reservation without the prior written approval of OHFA and the payment of the management Transfer fee. Points will be established in the annual AP.

~~(8) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which Commitments are made therein to serve Special Needs populations. Points will be established in the annual AP.~~

(8) **Tenant/Targeted Populations.** Each Application will be analyzed and evaluated as to the extent to which Commitments are made therein to serve such Targeted Populations as are designated in the annual AP. Points will be established in the annual AP.

~~(9) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated the Development will provide amenities and a unit mix conducive to families/individuals with children. Points will be established in the annual AP. To be eligible, the market study must indicate a need for family units.~~

(~~10~~9) **Tenant ownership.** ~~Points available to~~ Applicants proposing ~~for~~ single family home ownership after the Compliance Period ~~will be established in the annual AP. Applicants~~ must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc., which will be evaluated for feasibility. Points will be established in the annual AP.

(~~11~~10) **Preservation of 15 year old affordable housing.** Points and criteria may be established in the annual AP for the preservation of affordable housing.

(~~12~~11) **Energy Efficiency/Green Building of a Development.** ~~Points will be established in the annual AP to encourage~~Applicants are encouraged to provide energy ~~efficiency~~efficient Developments and to utilize green building~~of Developments~~. This may be a separate point category, or it may be combined within another Threshold or Selection category. Points will be established in the annual AP.

(~~13~~12) **Historic Nature of a Development.** Points will be established in the annual AP regarding the historic nature of Developments. This may be a separate point category, or it may be combined within another Threshold or Selection category.

(~~14~~13) **Negative Points.** OHFA Staff ~~will~~may deduct points for records of poor performance. Point deductions will be established in the annual AP.

(~~15~~14) **Tie-breaker.** In case there are Applications with the same final score in any set-aside that will affect funding, thetie-breakerprocedure will be established in the annual AP.~~a drawing shall occur at the Trustees meeting in which the Applications are being considered for funding. The drawing will conform to the procedures set out in the annual AP.~~

(d) **OHFA Trustee discretion.** ~~Not withstanding~~Notwithstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2(c), the Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if Allocation is:

(1) in compliance with Code Section 42;

(2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted Resolution of the Trustees; and

(3) determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations

(a) **General. [Reserved]**

(b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be ~~limited to:~~ established in the annual AP.

~~(1) **Small Developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.~~

~~(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.~~

~~(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.~~

(c) **Contractor Fee limitation.** Allowable contractor fees shall be ~~limited to:~~established in the annual AP.

~~(1) **Small Developments.** Total allowable contractor fees may not exceed sixteen percent (16%) of the Hard Construction Costs. Allowable contractor fees are further limited as follows:~~

~~(A) general requirements may not exceed six percent (6%) of the Hard Construction Costs;~~

~~(B) general overhead may not exceed two percent (2%) of the Hard Construction Costs; and~~

~~(C) builders profit may not exceed eight percent (8%) of the Hard Construction Costs.~~

~~(2) **Large Developments.** Total allowable contractor fees may not exceed fourteen percent (14%) of the Hard Construction Costs. Allowable contractor fees are further limited as follows:~~

~~(A) general requirements may not exceed six percent (6%) of the Hard Construction Costs.~~

~~(B) general overhead may not exceed two percent (2%) of the Hard Construction Costs; and~~

~~(C) builders profit may not exceed six percent (6%) of the Hard Construction Costs.~~

(d) **Underwriting standards.**

(1) ~~**Operating and replacement**~~**Total reserves.**

(A) Minimum ~~operating~~ reserves must equal the sum of six months of each:

(i) projected operating expenses

(ii) debt service payments and

(iii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal $250.00 per unit annually for new construction and $300.00 for rehabilitation Developments.

(C) Developer guarantees or letters of credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The Developer must demonstrate financial capacity and liquidity. OHFA will also consider the Developer's performance record and the number of other guarantees outstanding.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio will be established in the AP.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic. Specific cost per unit criteria will be established in the annual AP.~~and consistent with prevailing market rates.~~ OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Minimum Hard Construction Costs per unit for rehabilitations.** No Allocations for rehabilitation will be made unless a minimum of $20,000 in Hard Construction Costs per unit will be expended or at least twenty percent (20%) of Eligible Basis, whichever is greater.

(6) **Buildings designated by OHFA to receive increase in Credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the annual AP.

(e) **Progress reports.** Progress reports must be filed by the Owner beginning with the calendar quarter following the approval of a Reservation Of Credits until the Final Allocation Application is submitted to OHFA. Due Dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each Building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement, or as OHFA may designate. Within thirty (30) calendar days after the Certificate of Occupancy is issued for ~~the last~~each Building in the project, the Owner must ~~notify OHFA and~~ submit a copy of the ~~Permanent~~ Certificate

of Occupancy and the Placed-In-Service Acknowledgement for ~~each~~that Building ~~in the Development~~. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.

(f) **Construction time period.** Construction~~, not including site prep work,~~ must begin within nine (9) months of the last calendar day of the month of the Credit Reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of Credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Owner, or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees, in any contract between the Applicant or Owner and OHFA, or in any other document deemed acceptable in OHFA's sole discretion.

(h) **Timeliness and completeness of filings.** Deadlines for filing Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the Application fee shall be $500.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the Application fee shall be $1,000.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the Application fee shall be $2,000.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the Application fee shall be $3,000.00;

(E) for scattered sites, the Application fee shall be $500.00 per site, up to a maximum of $3,000.00.

(F) For Nonprofit Sponsored Developments the Application fee shall be $500.00.

(2) **Allocation fee.** A nonrefundable Allocation fee shall be paid in an amount equal to eleven percent (11%) of the total TCA, but in any event not less than $1,000.00. The Allocation fee is due within fourteen (14) calendar days of notification from OHFA of the approval of a TCA. A Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA. Nonpayment may result in revocation of Credits.

(3) **Processing fee.** A nonrefundable processing fee of one percent (1%) of the TCA must accompany the request for a Final Allocation. A service fee of $100.00 must accompany the Request for Final Allocation of Credit. Form 8609(s) will not be issued unless this fee has been received by OHFA.

(4) **Regulatory Agreement filing fee.** An executed Regulatory Agreement must be submitted to OHFA, as part of the request for Final Allocation, and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of the county or counties.

(5) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the Compliance Period and Extended Use Period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the compliance fee is not paid within thirty (30) calendar days of the Due Date, then a Late Fee will be assessed. The Late Fee is equal to twenty five percent (25%) of the compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 (and otherwise qualify under the Code) receiving a TCA in 2011 or before where an agreement has been entered into between OHFA and RHS wherein the RHS agrees to provide OHFA with the required information respecting the Income and rent of the tenants in the Development, the fee shall be $240.00 per Development per year, plus 12.00 per OAHTC unit per year within any Building within the Development;

(B) For single site or contiguous site Developments of four units or less, the fee shall be $275.00 per Development per year.

(C) For all other Developments including those financed by RHS under Section 515 receiving a TCA in 2012 or later the fee shall be $375.00 per Development, plus $21.00 per OAHTC unit per year within any Building within the Development.

(6) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the Owner, any Building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or Owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed $35.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(7) **Ownership/General Partner Transfer fee.** In the event that the Owner submits a request for approval of a Transfer of Ownership/general partner of the Development or any of the Buildings therein, a nonrefundable

fee of three percent (3%) of the amount of ~~annual~~original Tax Credit Allocation, but no less than $2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be nonrefundable.

(8) **Management Transfer fees.** In the event that the Owner submits a request for approval of a Transfer of the management company of the Development, a $500.00 fee per Development shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be nonrefundable.

(9) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, must be paid by the Owner/Applicant as prescribed in the annual AP. Failure to do so may result in the rejection of consideration of the Application.

(10) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of $10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(11) **Compliance Workshops.** A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.

(12) **Qualified Contract fees.** Submission deadlines for these fees will be established in the Qualified Contract Application (QCA) materials. Qualified Contract Preliminary Application (QCPA) fee shall be $1,500.00 and is nonrefundable. Additionally, the nonrefundable Qualified Contract Application fee shall be $12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the Applicant.Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an ~~all-inclusive~~all-inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and Applicants will receive notice of the charge and reason.

~~(13) **Annual Owner Certification fees.** Failure to file the annual Owner Certification in the electronic format prescribed by OHFA will result in an administrative fee of $150 per unit being assessed.~~

(~~14~~13) **Late fees.** The Form 8609(s) will not be issued unless these fees have been received by OHFA.

(A) **Progress reports.** Progress reports as required in 36-4-2.1 when filed late will be assessed a late fee of $10.00 per calendar day, per each late report.

(B) **Carryover Allocations.** Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost Certifications, opinions and documents shall incur $100.00 late fee per calendar day.

(C) **Final Allocations.** Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost Certifications, opinions and documents shall incur $100.00 late fee per calendar day.

(D) **Transfer Documents.** Owners who fail to timely file all requirements in regard to the Transfer of Ownership or general partnership interest (or other type of entity) may incur $25.00 late fee per calendar day.

(E) **Acknowledgment of Placed-In-Service Form.** Owners who fail to timely file an Acknowledgment of Placed-In-Service Form in accordance to timelines established in the AP shall incur $10 late fee per calendar day.

(F) **Annual Owner Certifications.** Owners who fail to file ~~the annual~~a complete Annual Owner Certification as required in 36-6-7(c)(4) within thirty (30) days of the Due Date shall incur a $50 per Development late fee per calendar day for the signed certification and a $150 per unit late fee for failure to file in the electronic format prescribed by OHFA. ~~Negative points will also be given for failure to timely file the Certification.~~

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-1. Program violations and revocation.

(a) The following are violations of OAHTC Program policies and procedures and these OAHTC Program Rules:

(1) The filing of false information in an Application and/or a Development report;

(2) Failure of an Applicant or Owner, as the case may be, to satisfy any of the requirements of the Code, applicable State or federal statutes, rules or regulations, these OAHTC Program Rules, or any requirements contained in the annual AP, or any Commitments made in the Application upon which the award of a TCA was based;

(3) Breach of any of the terms, conditions, obligations, covenants, warranties, or representations of the Owner or Applicant contained in the Regulatory Agreement and/or the Carryover Allocation Agreement or the breach of any terms conditions, obligations or requirements set forth in any Resolution of the Trustees pertaining to the Applicant/Owner or the Development;

(4) Notice by OHFA to the Owner that significant corrective actions are necessary to protect the integrity of the Development and that such corrective actions have not been, or cannot be, effected within a reasonable time, in the judgment of OHFA staff;

(5) An administrative or judicial determination that the Applicant or Owner has committed fraud, waste, or mismanagement in any current or prior State or federally funded project;

(6) The housing of a person(s) convicted of a felony or engaged in any illegal or criminal activities as set forth in this subsection, if the Owner, or managers of the Development, or any of their Affiliates, have knowledge of or about, or by reasonable inquiry should have known

of same. The prohibition on housing shall apply to any person who:

(A) is currently engaged in, has been convicted of using, distributing, or manufacturing methamphetamine ~~or has engaged in Drug Related Criminal Activity~~. Housing of such person shall be prohibited for a period of ~~three (3)~~ten (10) years from the date of the conviction, or end of the incarceration, whichever is most recent.

(B) is currently engaged in, has been convicted of Violent Criminal Activity or Drug Related Criminal Activity. Housing of such person shall be prohibited for a period of ~~ten (10)~~three (3) years from the date of the conviction, or end of the incarceration, whichever is most recent.

(C) has been convicted of any other felonious activities other than Drug Related Criminal Activity or Violent Criminal Activity. Housing of such person shall be prohibited for a period of three (3) years from the date of the conviction or end of the incarceration, whichever is most recent.

(D) is subject to a lifetime registration requirement under a Federal or State sex offender registration program.

(E) is a sex offender, not subject to lifetime registration. Housing of such person shall be prohibited for a period of ten (10) years from the date of the arrest, conviction, or end of incarceration (whichever is later) or the period of required registration as a sex offender, whichever is greater.

(7) The prohibition on the housing of a convicted felon shall not apply to qualified tenants of Transitional Housing, except that the housing of a person in any Transitional Housing shall be prohibited if said person:

(A) is subject to a lifetime registration requirement under a Federal or State sex offender registration program, or

(B) is currently engaged in or has been convicted of a violent felony in the last three (3) years.

(8) From and after the date of the filing of the Application, failure to notify OHFA of any material changes effecting the proposed Development, including, but not limited to, modifications to any representations contained in the Application, any amendments or modifications of the financing plan, syndicators or equity partners or any other Threshold requirement and/or changes in Development Team Members, contractors, property managers, and the like. Notification must be filed with OHFA not less than sixty (60) calendar days prior to the proposed change. Approval by the Trustees is required for any changes or amendments involving the ownership or Control of the Development or the Owner after the Application is filed. This would include, but not be limited to, changes or Transfers of the Development, changes or modifications of the ownership or composition of the general partner entity (i.e. addition or removal of members, partners, stockholders, etc.), any addition, substitution, withdrawal or removal of any general partner. Other amendments may be handled administratively by staff, although staff reserves the right to refer any amendments to the Trustees for their consideration; or

(9) Failure to submit reports including but not limited to the timely filing of progress reports, updates, compliance reports, etc., and failure to provide OHFA with any additional information requested by OHFA within the period set forth in any request for information. Failure to pay fees when due. If payment is returned for insufficient funds, it will be deemed nonpayment and the amount to defray bank costs will be due.

(10) Little or no progress has been achieved with previous Tax Credit Reservations approved for the Applicant or Developer or any of the Principals of either. This would include, but not be limited to: failure to meet the minimum Carryover Allocation requirements resulting in the return of Credits; failure to ~~place a Development in service within twenty four (24) months receiving the Carryover Allocation~~have all Buildings Placed-In-Service no later than the close of the second calendar year following the calendar year in which the Allocation is made; or involvement of a foreclosure or deed-in-lieu of foreclosure within the past seven (7) years.

(b) Failure to follow all required procedures throughout the Allocation process could jeopardize the final Allocation or result in housing Credits being revoked.

330:36-6-7. OHFA monitoring procedures

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing Credit agencies monitor all Placed-In-Service tax Credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Regulatory Agreement provisions which contain additional Owner Commitments made to secure points in the project selection process, e.g. additional Low-Income Units or an Extended Use Period. OHFA has assembled and will make available to the Development Owners, a Compliance Manual explaining the OAHTC monitoring process in detail. An Owner representative and a management agent representative will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and Certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The Owner of a low-income housing project is required to keep records for each qualified low-income Building in the project showing:

(A) The total number of residential units in the Building (including the number of bedrooms and the size in square feet of each residential rental unit);

(B) The percentage of residential rental units in the Building that are Low-Income Units;

(C) The rents charged on each residential rental unit in the Building (including any utility allowances);
(D) The number of occupants in each Low-Income Unit;
(E) The Low-Income Unit vacancies in the Building and information that shows when, and to whom the next available units were rented;
(F) The initial Income Certification of each low-income tenant per unit, and any additional recertification that may be required;
(G) Documentation to support each low-income tenant's Income Certification;
(H) The Eligible Basis and qualified basis of the Building at the end of the first year of the Credit period;
(I) The character and use of the nonresidential portion of the Building included in the Building's Eligible Basis under Section 42(d) of the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project); and
(J) Copies of all correspondence with the IRS.

(2) The Owner is required to retain the records described in this section for each Building in the project for at least six (6) years after the Due Date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Credit period must be retained for at least six (6) years beyond the Due Date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the Building.

(c) **Certification and review provisions.**

(1) Between the Placed-In-Service date of a Building and the submission of an Application for a final Allocation of Credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7 (c)(6) of these Rules.

(2) In accordance with Section 42(l)(1), following the close of the first taxable year in the Credit period, the Owner must certify to the Secretary of the Treasury:

(i) the taxable year in which such Building was Placed-In-Service,
(ii) the adjusted basis and Eligible Basis as of the close of the first year of the Credit period,
(iii) the maximum applicable percentage and qualified basis, and
(iv) the election made for the low-income targeting threshold.
(v) This Certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA. The Due Date for submission is May 10, or as extended by The Service or Staff, of the year due to The Service for the first Credit year.

(3) Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last Building is Placed-In-Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The Owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever Minimum set-aside is applicable to the project, and, if ~~the~~ applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;
(B) There was no change in the Applicable Fraction (as defined in Section 42(c)(1)(B))of any Building in the project, or that there was a change and a description of the change;
(C) The Owner has received an Income Certification from each low-income tenant and documentation to support that Certification;
(D) Each Low-Income Unit in the project was Rent-Restricted under Section 42(g)(2);
(E) All units in the project were for use by the general public and used on a nontransient basis (except for Transitional Housing for the Homeless);
(F) Each Building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making building code inspections did not issue a report of a violation for any Building or Low-Income Unit in the project;
(G) There was no change in the Eligible Basis (as defined in Section 42(d)) of any Building in the project, or that there was a change, and the nature of that change;
(H) All tenant facilities included in the Eligible Basis under Section 42(d) of any Building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the Building;
(I) If a Low-Income Unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying Income before any units in the project were, or will be rented to tenants not having a qualifying Income;
(J) If the Income of the tenant of a Low-Income Unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying Income;
(K) An extended Low-Income Housing Commitment, as described in Section 42 (h)(6), was in effect;

(L) The project meets the additional requirements contained in the Regulatory Agreements;

(M) There was no change in the Owner entity (for example, Transfer of general partnership interest);

(N) If the Owner received its Credit Allocation from a portion of the State's ceiling set-aside for projects involving "qualified Nonprofit organizations" under Section 42(h)(5) of the Code, the Nonprofit organization has materially participated in the operation of the Development (within the meaning of CFR § 1.469)and complete the Nonprofit Addendum or other form prescribed by OHFA;

(O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgment from federal court; and

(P) An extended Low-Income Housing Commitment as described in Section 42(h)(6) was in effect, that an Owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.

(Q) Collect data required by HUD in a form prescribed by OHFA. In no way will the data collection be in violation of Fair Housing.

(5) OHFA will review the Owner Certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all Buildings in the project by the end of the second calendar year following the year the last Building in the project is Placed-In-Service, and for at least twenty (20) percent of the project's Low-Income Units, inspect the units and review the low-income Certifications, the documentation supporting the Certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the Extended Use Period, OHFA must conduct on-site inspections of all Buildings in the project and, for at least twenty percent (20%) of the project's Low-Income Units, inspect the units and review the low-income Certifications, the documentation supporting the Certifications, and the rent records for the tenants in those units.

(8) The Certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the Extended Use Period, and the Certifications are to be made under penalty of perjury.

(9) The Owner is required to provide to OHFA, for the first Credit year, a copy of the completed Part II 8609, 8609 Schedule A and Form 8586 that is submitted to the Internal Revenue Service.

(10) The Owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing/compliance provisions.** OHFA has the right to perform an audit and/or compliance inspection of any low-income housing project during the term of the Regulatory Agreement. An audit/compliance inspection includes physical inspection of any Building in the project, as well as a review of the records described in 330:36-6-7(c)(1) of these Chapter 36 Rules. The auditing/compliance inspection provisions of this paragraph is in addition to any inspection of low-income Certifications and documentation under 330:36-6-7(c)(7)of this Chapter 36 Rules.

(e) **Notification of noncompliance provisions.**

(1) OHFA will provide prompt written notice to the Owner of a low-income housing project if OHFA does not receive the Certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant Income Certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The Owner shall have a period of time, not to exceed thirty (30) calendar days, from the date of such notice (the "correction period") to supply any missing Certifications and bring the project into compliance. OHFA may extend, in its own discretion, the correction period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than forty-five (45) calendar days after the end of the correction period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the Owner has corrected the noncompliance or failure to certify. Any change in either the Applicable Fraction or Eligible Basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

SUBCHAPTER 8. QUALIFIED CONTRACT

330:36-8-5. Policies and Procedures

(a) LIHTC Developments that received an Allocation of Credits in 1990 or subsequent years are eligible to submit a Qualified Contract Preliminary Application (QCPA) ~~for up to one yearfollowing~~ after the end of year 14 of the Compliance Period. This is available unless the Owner voluntarily waives ~~it in the Regulatory Agreement.~~the right to a Qualified Contract in the Application.

(b) OHFA will develop a Qualified Contract Application (QCA) process to administer requests from eligible Owners for a Qualified Contract pursuant to Code Section 42(h)(6)(E)(i)(II).

(c) In keeping with the clear purpose of IRS Code Section 42, OHFA will resolve every case of doubt or interpretation in determining the Qualified Contract Price (QCP), both with regard to the overall process and for particular properties, in favor of a lower value.

330:36-8-11. Qualified Contract

(a) Under IRC §42(h)(6)(E)(i)(II), OHFA's only obligation is to present to the Owner a bona fide Qualified Contract to acquire the Development for the Qualified Contract Price. There is no requirement in the IRS Code that the prospective buyer actually purchase the Development. Whether or not the Owner and the prospective buyer execute a contract and close the transaction is beyond the responsibilities and control of OHFA.

(b) Presentation of a Qualified Contract by OHFA terminates any future possibility of terminating the Extended Use Period set forth in the Regulatory Agreement whether or not the Qualified Contract is executed and the transaction ~~close~~closed.

[OAR Docket #13-1100; filed 6-19-13]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 55. HOME INVESTMENT PARTNERSHIP PROGRAM RULES

[OAR Docket #13-1099]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
330:55-1-1. [AMENDED]
330:55-1-2. [AMENDED]
330:55-1-3. [AMENDED]
330:55-1-4. [AMENDED]
330:55-1-5. [AMENDED]
330:55-1-6. [AMENDED]
330:55-1-7. [AMENDED]
Subchapter 3. Funds
330:55-3-1. [AMENDED]
330:55-3-2. [AMENDED]
330:55-3-3. [AMENDED]
Subchapter 5. Project Application and Selection
330:55-5-1. [AMENDED]
330:55-5-2. [AMENDED]
Subchapter 7. Program Administration
355:55-7-1. [AMENDED]
355:55-7-2. [AMENDED]
355:55-7-3. [AMENDED]
355:55-7-4. [AMENDED]
355:55-7-5. [AMENDED]
AUTHORITY:
These Chapter 55 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
DATES:
Comment Period:
December 17, 2012 through January 25, 2013
Public Hearing:
January 22, 2013
Adoption:
March 27, 2013
Submitted to Governor:
March 28, 2013
Submitted to House:
March 28, 2013
Submitted to Senate:
March 28, 2013
Gubernatorial approval:
May 6, 2013
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.
Final Adoption:
May 23, 2013
Effective:
July 31, 2013
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Congress of the United States has created a special system for allocating HOME Funds in which an agency in each state the "Participating Jurisdiction" (PJ) decides which projects receive HOME funding each year. HOME Funds are limited, i.e. each State's formula grant is calculated based upon population. Accordingly, each PJ must develop a priority system to determine which projects should receive HOME Funding.

For Oklahoma, OHFA is the PJ. Thus, in order for HOME Funds to be available to developers (owners) of low-income housing located within Oklahoma, it is necessary for OHFA to develop a plan to carry out the intent of Congress and to develop a set of criteria for administering the plan. These Chapter 55 Rules adopted by the OHFA Board of Trustees embody such a plan, in compliance with the CFR, and provide guidelines for allocating Oklahoma's HOME formula grant and administering OHFA's HOME Program, in compliance with the CFR and the Oklahoma Administrative Procedures Act (the "APA"). Additionally, these rules are necessary to operate the program in a manner consistent with Oklahoma's Housing Antidiscrimination Act, 15 O.S., Sections 1451-1453 and all federal laws prohibiting discrimination, including 42 U.S.C., Section 1983 and the Fair Housing Act, as amended 42 U.S.C., Sections 3601 et seq.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 31, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

330:55-1-1. Purpose

The intent of the Home Investment Partnerships Program (HOME) Program is to strengthen public private partnerships~~, expand,~~ and increase the supply of decent, safe, sanitary, and affordable housing opportunities, for low-income and very low-income persons.

330:55-1-2. Authority

The HOME Program is authorized by the Cranston-Gonzalez National Affordable Housing Act (Title II, Pub. L. 101-625,42 U.S.C., 12701-12839). The Oklahoma Housing Finance Agency (OHFA) has been designated as the State~~State's~~Participating Jurisdiction ~~administrative agency~~ for the State of Oklahoma for purposes of administering the State's HOME Program.

330:55-1-3. Scope

(a) During each Program Year ~~program year~~, financial assistance will be made available to eligible units of local government, non-profit organizations and other eligible entities for the purpose of implementing specific activities that further the stated purpose of the HOME Program.

(b) Eligible units of local government are incorporated cities/towns and counties that are not designated Participating Jurisdictions in the HOME Program. Eligible non-profit organizations are Community Action Agencies and those entities which have been officially acknowledged by OHFA~~the Department~~ as Community Housing Development Organizations (CHDOs) pursuant to CFR Part 92.2~~.~~,and other nonprofit housing development organizations.

(c) Under certain circumstances, for-profit housing developers may be permitted to utilize HOME Program Funds as set forth in the Action Plan and/or the Annual HOME Program Application Packet. However, OHFA reserves the right to restrict for-profit developers from the use of some or all of OHFA's annual allocation of HOME Program funds as OHFA deems in the best interest of the State of Oklahoma.

330:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in this Chapter 55 Rules are defined in the Act. When a conflict exists between the following definitions and the Act, the Act shall control.

"Act" means the Cranston-Gonzalez National Affordable Housing Act (Title II, Pub. L. 101-625, 42 U.S.C., 12701-12839).

"Action Plan" means the State's Annual Program Description for the Administration of HOME Funds received by the State. The Action Plan is included in the Consolidated Plan and must be reviewed and approved by HUD.

"Annual Home Program Application Packet" means the packet of instructions and forms necessary to apply for an award of HOME Program funds. The Annual Home Program Application Packet will be updated annually for each successive Program Year. Notice will be provided to the public of any proposed changes and the public will have the opportunity to comment on said changes prior to their implementation.

"Annual Program Description" means the federally required program document stating the HOME Program objectives and method of distribution of HOME Program Funds (including Program ~~program~~Income ~~income~~ and recaptured funds). The Annual Program Description, as set forth in the annual Action Plan, must be reviewed by OHFA annually, included in the State's Consolidated Plan, and submitted to HUD for review.

"Applicant" means any eligible entity that applies for an award of HOME Program funds through OHFA.

"Awardee" means any eligible entity receiving an award of HOME Program funds through OHFA.

"CHDO" means a Community Housing Development Organization. To qualify as a CHDO an entity must be a private, nonprofit organization that meets the qualifications prescribed in the HOME Program Regulations at 24 CFR Part 92.2.

"Consolidated Plan" means a plan prepared in accordance with the requirements of 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including the HOME Program.

~~**"Contractor"** means any eligible entity receiving HOME Program Funds through OHFA.~~

"Final Rule" means the Final Regulations at 24 CFR, Part 92, as amended.

"HOME Funds" means all appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.

"HOME Program" means the HOME Investment Partnerships Program.

"HOME Program Regulations" means the regulations at 24 CFR Part 92.

"HUD" means the United States Department of Housing and Urban Development.

"IDIS" means HUD's Integrated Disbursement and Information System. As a nationwide database, IDIS provides HUD with current information regarding the program activities underway across the nation, including funding data. HUD uses this information to report to Congress and to monitor grantees. IDIS is the draw down and reporting system for the HOME Program and other Community Planning and Development formula grant programs.

"Implementation Manual" means the HOME Program Implementation Manual as set forth in these rules.

~~**"Jurisdiction"** means a state or unit of general local government.~~

"Low-income ~~Families~~ Households" means ~~families~~ households whose annual household incomes do not exceed eighty percent (80%) of the median household~~family~~ income for the area, as determined by HUD, with adjustments for household~~family~~ size.

"OHFA" means the Oklahoma Housing Finance Agency. OHFA has been designated by the Governor to administer the State's HOME Program on behalf of the State of Oklahoma.

~~**"Other Eligible Entities"** means Contractors, which are administering all or a portion of the HOME Program.~~

"Participating Jurisdiction" means any state or local government or consortium that has been designated by HUD to administer a HOME Program. HUD designation as a Participating Jurisdiction occurs if a state or local government meets the funding thresholds, notifies HUD that they intend to participate in the program and has a HUD-approved Consolidated Plan.

"Period of Affordability" means the time period, mandated by the HOME Program Final Rule during which any housing assisted by HOME Program funds is subject to the rent and income restrictions and occupancy requirements as set forth in the HOME Program Final Rule.

"Program Income" means gross income received by OHFA, a State recipient or a Subrecipient directly generated from the use of HOME funds or matching contributions, as further defined in 24 CFR Part 92.2.

"Program Year" means the period selected by the Participating Jurisdiction in which it shall administer its formula allocation for the Home Investment Partnerships Program, which for the State of Oklahoma HOME Program runs from April 1 through March ~~30~~31 of each calendar year.

"Project" means a site or sites, together with any building or buildings that are to be assisted with HOME Funds as a single undertaking.

"State" means the State of Oklahoma.

"State Recipient" means any ~~Unit of Local Government~~unit of local government designated by a state to receive HOME Funds. The state is responsible for ensuring that HOME funds allocated to state recipients are used in accordance with the HOME regulations at 24 CFR Part 92 and other applicable laws.

"Subrecipient" means a public agency or nonprofit organization selected by a Participating Jurisdiction to administer all or a portion of the Participating Jurisdiction's HOME Program. Subrecipients run programs, not projects, and therefore a public agency or nonprofit organization awarded funds for a single project is not a subrecipient.

~~**"Units of Local Government"** means incorporated cities/towns and counties, which are not Participating Jurisdictions, as designated by HUD.~~

"Very-low-income ~~Families~~ Households" means ~~families~~households whose annual incomes do not exceed 50% of the median ~~family~~household income for the area, as determined by HUD, with adjustments for ~~family~~household size.

"Written Agreement" means the contract between OHFA, as the Participating Jurisdiction, and an Awardee of HOME funds, setting forth the terms and conditions that must be met by the Awardee to satisfactorily complete a HOME Program Project and comply with the HOME Program Final Rule.

330:55-1-5. National standards incorporated by reference

(a) The national standards for development of the Annual~~HOME~~ Program Description are hereby incorporated by reference. The standards are codified at 42 U.S.C. 12701-12839; and in the regulations promulgated thereunder by HUD to implement the HOME Program, as amended, published at 24 CFR Part 92 Sections 92.1 et seq.

(b) Copies of these federal laws and regulations may be obtained from OHFA, during regular business hours Monday through Friday 8:00 a.m. to ~~5:00~~4:45 p.m., excluding legal holidays.

330:55-1-6. ~~Contractors~~ Implementation Manual

(a) ~~Contractors~~Awardees must enter into a Written Agreement ~~written agreement~~ with OHFA containing all requirements of the Final Rule. OHFA shall ~~provide~~make available to each ~~Contractor~~Awardee a HOME Program ~~Contractors~~ Implementation Manual. All or part of the Implementation Manual may be made available in the form of electronic documents if deemed appropriate by OHFA.

(b) Requirements, procedures, and processes provided in the HOME Program ~~Contractors~~ Implementation Manual, and amendments to same shall apply to all HOME Program funded Projects~~projects~~.

330:55-1-7. Technical assistance

OHFA shall designate staff members who shall be available to provide general HOME Program technical assistance regarding proposed Project concepts and HOME Program implementation. ~~The names of Staff members designated to provide technical assistance may be obtained by contacting OHFA's HOME Division.~~

SUBCHAPTER 3. FUNDS

330:55-3-1. Funds distribution

(a) HOME Funds allocated annually to the State by HUD shall be awarded to eligible Applicants ~~applicants~~ through a formal application process. Submission requirements for Project applications will be developed annually by OHFA in connection with the Annual Program Description and described in ~~Program application materials~~the Annual HOME Program Application Packet.

(b) HOME Funds will be awarded according to the Act, federal regulations and guidelines, ~~and~~ the Annual Program Description, and the Annual HOME Program Application Packet.

(c) The Annual Program Description and ~~application packets~~the Annual HOME Program Application Packet shall be made available to eligible Applicants ~~applicants~~ and interested parties upon request. The Annual HOME Program Application Packet will also be available on OHFA's website, www.ohfa.org. Requests for the Annual Program Description and/or application packets should be directed to OHFA HOME Program Staff.

330:55-3-2. Funding activities

(a) The annual allocation of HOME Program Funds made available to the State by HUD shall be divided into various eligible program activities. The amount of the annual~~Annual~~ State allocation devoted to each eligible activity will be determined by HUD and OHFA and will be set out in the Annual Program Description.

(b) Administrative funds will be used to support overall HOME Program delivery and operation activities.

330:55-3-3. Geographic allocation of funds

OHFA will make awards of HOME Program Funds throughout the State. OHFA will not award HOME funding to entitlement cities that receive their own annual allocation of HOME Program funds.

SUBCHAPTER 5. PROJECT APPLICATION AND SELECTION

330:55-5-1. Project applications

Eligible Applicants ~~applicants~~ seeking HOME Program funding must submit a written application in the form prescribed in ~~application packets~~the Annual HOME Program Application Packet. All applications will be required to contain sufficient information to permit OHFA to conduct a review and assessment, and selection as described in the ~~application packet~~Annual HOME Program Application Packet and Annual Program Description.

~~(1) Applicant capacity~~
~~(2) Financial feasibility~~
~~(3) Project leveraging~~
~~(4) Match resources~~
~~(5) Project partnerships~~

330:55-5-2. Applicant selection

(a) For the purpose of selecting HOME Applicants ~~applicants~~ for funding award, OHFA shall annually develop selection criteria, which conform to the program objectives and method of distribution described in The Annual Program Description.

(b) The criteria will be set forth in the Annual HOME Program Application Packet. The public will be informed of any proposed changes in the criteria and will have the opportunity to provide verbal and/or written comment on any changes prior to their implementation.

SUBCHAPTER 7. PROGRAM ADMINISTRATION

330:55-7-1. Program Income

(a) OHFA and all recipients of HOME ~~Funds~~funds shall comply with all federal regulations regarding Program Income.

(b) OHFA may restrict the use of Program Income as set forth in the Annual Program Description and/or the Annual HOME Program Application Packet.

330:55-7-2. Program violations

~~The following are~~ Violations ~~violations~~ of HOME Program policies and procedures include but are not limited to the following:

(1) The filing of false information in an application and/or Project~~project~~ report;

(2) Failure of an Awardee~~Contractor~~ to meet requirements of a federal statute, federal regulation, or these Title 330 Chapter 55 rules;

(3) Deviation from the ~~contract~~Written Agreement~~agreement~~;

(4) Notice by ~~the Department~~OHFA that significant corrective actions are necessary to protect the integrity of the Project~~project~~ funds, and that these corrective actions are not or cannot be effected within a reasonable time, in the judgment of ~~Department~~OHFA staff;

(5) An administrative or judicial determination that the Awardee~~Contractor~~ has committed fraud, waste, or mismanagement in any current or prior State or federally funded project.

330:55-7-3. Corrective and remedial actions

(a) Under any of the circumstances previously described as violations during the application stage or Written Agreement~~contract~~ execution, the actions OHFA may take ~~the following actions~~ include but are not limited to the following:

(1) Condition Written Agreements~~contracts~~;

(2) Withhold funds;

(3) Reduce the total amount of the HOMEProgram~~program~~ award;

(4) Require the return of unexpended funds;

(5) Cancel a Written Agreement~~contract~~ and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;

(6) Deny future HOMEProgram~~program~~ applications and participation in the HOME Program for a specified period of time as determined by OHFA.

(7) Indefinitely suspend from HOMEProgram ~~program~~ participation.

(8) Notify HUD of violation of HOME Program policies and procedures.

(b) Additionally, OHFA reserves the right under circumstances of possible HOMEProgram ~~program~~ violations to request any and all information necessary to fully determine the extent of any possible violations of federal law, contractual terms and/or rules and regulations pertaining to the HOME Program including but not limited to the following:~~information regarding:~~

(1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the HOMEProgram~~program~~ violation(s);

(2) Any activities undertaken that were not in conformance with the approved HOME Program~~program~~ or application process or that are in non-compliance with applicable laws or regulations;

(3) The Awardee's~~contractor's~~ capacity to carry out the approved or proposed ~~program~~ Project in a timely manner; and,

(4) Progress schedules for completing approved or proposed activities.

~~(c) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by OHFA. The contractor shall have ten (10) working days to appear and show cause as to why the corrective and/or remedial actions should not be taken.~~

330:55-7-4. ~~Contractor~~ Awardee responsibilities

Including but not limited to the following, ~~A contractor~~an Awardee under the HOME Program shall be responsible for:

(1) Taking all action necessary to enforce the terms of the ~~contract agreement~~Written Agreement against any private or public participant that fails to comply with applicable provisions of the ~~contract agreement~~Written Agreement or any subcontract or documents resulting

from it, and to recover on behalf of OHFA, any liabilities that may arise as a result of a breach of the ~~contract agreement~~Written Agreement by any participant. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms of any ~~contract agreement~~Written Agreement or any subcontracts or documents resulting from it, or to recover any sums that may become due as the result of a breach of such Written Agreements or subcontracts.

(2) Complying with all State~~state~~ and federal regulations, guidelines, circulars and notices as set forth in the Final Rule, these HOME Program Rules, the Action Plan, the Annual HOME Program Application Packet, the ~~contract~~Written Agreement between the Awardee~~Contractor~~ and OHFA and/or the HOME Program Implementation Manual, as well as any other guidance~~or~~ which may be released by HUD~~, the Internal Revenue Service~~ or OHFA from time to time.

(3) Maintaining records and accounts, including, but not limited to, property, personnel, and financial records that properly document and account for all Project~~project~~ funds. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the funds.

(4) OHFA may require the ~~contractor~~Awardee to provide special narrative and financial reports related to the elements of a ~~contract~~Written Agreement in the forms and at such times as may be necessary or required by OHFA.

(5) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to its ~~contract~~Written Agreement for at least three (3) years ~~from the date of submission of the final expenditures report or until any audit findings have been resolved, whichever is later~~ beyond the ending date of the Period of Affordability as specified in the Written Agreement and/or as mandated by the HOME Program Regulations.~~Contractor~~Awardee shall, as often as deemed necessary by OHFA, permit authorized representatives of OHFA, HUD, and the Comptroller General to have full access to and the right to fully examine all such materials. Records may be maintained electronically if permitted by HUD.

(6) Promptly returning to OHFA, any funds received under its ~~contract~~Written Agreement that ~~is~~are not obligated as of the final date of the ~~contract~~Written Agreement time period. Funds shall be obligated only if goods and services have been received as of the final date of the ~~contract~~Written Agreement time period.

(7) Complying with OHFA's audit policy including the single Audit Act of 1984 (P.L. 98-502, 31 U.S.C., 7501 et seq.), as applicable to the ~~contractor~~Awardee or as mandated by OHFA.

(8) Providing ~~the Department~~OHFA timely copies of reports on any audits that include funds received from OHFA.

(A) Audits shall be performed by a by a licensed public accountant or public accounting firm ~~licensed no later than December 31, 1970~~ or a certified public accountant or certified public accounting firm.

(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the American Institute of Certified Public Accountants; and OHFA.

~~(C) Complying with all applicable federal requirements.~~

(9) Complying with all applicable federal requirements.

330:55-7-5. Review and appeals process

(a) Applicants for HOME Program~~grants~~funding awards may review their applications and OHFA's application review documents any time after ~~the Department~~OHFA Staff has publicly released its funding recommendations~~decisions~~. Written notice must be given to OHFA, and OHFA will have at least three (3) working days to grant any such requests for review. Written notice may be in electronic form.

(b) OHFA's Board of Trustees makes the final decisions regarding awards of HOME Program funds. Therefore, appeals of the funding recommendations of OHFA Staff must be made at the Board of Trustees meeting at which the applications are considered. Appeals cannot introduce new documentation that was not included with the original application for funds.~~would change the basis on which a funding decision was made. Additionally, requests for appeals shall be made within thirty (30) days after the applicant has been notified that the application was not funded.~~

~~(1) Citizen appeals of local government decisions must be made at the local level. OHFA will consider appeals for its HOME funding applications only when the application of project selection criteria is at issue. Only the Applicant may file an appeal.~~

(c) The OHFA Board of Trustees will consider the Application, OHFA Staff's recommendations, the presentation of the Applicant, these HOME Program Rules (OAC 330:55), the Consolidated Plan, the HOME Program Description for the applicable Program Year, and the application process for the applicable Program Year for HOME funds. The procedures set forth in OAC 330:1 and Article II of the Oklahoma Administrative Procedures Act, 75 O.S., Sections 309, *et seq.* (the "OAPA") will be followed. The meeting will be considered an individual proceeding under the OAPA and the decision of the OHFA Board of Trustees will constitute a Final Order. No further appeals will be considered.

(d) The public may appear at any OHFA Board of Trustees meeting to speak on behalf of or in opposition to an award of HOME funds. Presentations by members of the public are subject to the limitations of time and scope imposed by the

OHFA Board of Trustees pursuant to the procedures set forth in paragraph (c) above.

[OAR Docket #13-1099; filed 6-19-13]

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

[OAR Docket #13-1064]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 14. Scheduled or Controlled Dangerous Substances Classifications or Exclusions
535:1-14-4. Exclusion of Rx Only products not federally scheduled from Oklahoma Controlled dangerous substances scheduling
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)
DATES:
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March 25, 2013
Legislative approval:
HJR 1054, Legislature approval on May 29, 2013
Final adoption:
May 29, 2013
Effective:
July 25, 2013
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The revision removes OAC 535:1-14-4 (b) since there are no longer any exempt butalbital products.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Blvd Ste 112, Oklahoma City, OK 73105-3488, Phone number 405 521-3815

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, 2013:

SUBCHAPTER 14. SCHEDULED OR CONTROLLED DANGEROUS SUBSTANCES CLASSIFICATIONS OR EXCLUSIONS

535:1-14-4. Exclusion of Rx Only products not federally scheduled from Oklahoma Controlled dangerous substances scheduling

~~(a)~~ "RX Only" products listed in this section shall be excluded from Oklahoma scheduling of controlled dangerous substances as long as they maintain, under the Federal Food Drug and Cosmetic Act and the Drug Enforcement Administration Act, an exemption from federal scheduling~~:~~.

~~(b) Butalbital (a derivative or a salt of barbituric acid) products mixed with APAP, which are exempt from federal Drug Enforcement Scheduling shall be excluded from Oklahoma scheduling. Examples of this exception include Fioricet or Esgic.~~

[OAR Docket #13-1064; filed 6-11-13]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 13. EMERGENCY / DISASTER PRESCRIPTION DRUG RULES ~~PHARMACY RESPONSE~~

[OAR Docket #13-1065]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
535:13-1-1. Purpose [AMENDED]
535:13-1-3. Declaration of emergency [AMENDED]
535:13-1-4. Pharmacy Emergency / Disaster Response [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)
DATES:
Comment period
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INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The revisions in 535:13-1-1, 535:13-1-3 and 535:13-1-4 allow medical gas suppliers and medical gas distributors to provide emergency prescription drug medical gases under these rules.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Blvd Ste 112, Oklahoma City, OK 73105-3488, Phone number 405 521-3815

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, 2013:

535:13-1-1. Purpose
(a) The rules of this chapter define what procedures pharmacies, ~~and~~ pharmacists, medical gas suppliers, and medical gas distributors may use to accommodate patient medication needs in the event of an emergency / disaster situation that ~~which~~ disrupts the normal prescription drug distribution channels.
(b) The rules of this chapter will maintain controls to protect public health while allowing emergency actions to accommodate patient medication needs during such emergencies or disasters.

535:13-1-3. Declaration of emergency
Emergency / disaster prescription drug ~~pharmacy response~~ rules may be used when the governor of Oklahoma makes a disaster or emergency declaration and the Board finds this disaster or emergency disrupts the normal prescription drug distribution channels in the state of Oklahoma.

535:13-1-4. Prescription Drug ~~Pharmacy~~ Emergency / Disaster Response
(a) If a patient from the area affected by the emergency / disaster declaration requests a refill of a non-controlled maintenance medication, the pharmacist, medical gas supplier, or medical gas distributor should make an attempt to contact the original prescribing practitioner for authorization to dispense refills.
(1) If the prescribing practitioner cannot be contacted; and if in the pharmacist's professional judgment, or in the medical gas supplier's or medical gas distributor's sound judgment, the dispensing of the medication is essential to the patient's health and safety, the pharmacist, or in the case of a medical gas supplier or medical gas distributor may dispense a one time emergency supply up to a 30-day supply of such medication.
(2) Only prescription medical gases may be dispensed by medical gas suppliers and medical gas distributors under these rules.
(3) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by such disaster.
(b) If a patient from the area affected by the emergency / disaster requests refills of controlled dangerous substance (CDS), the pharmacist should make an attempt to contact the original prescribing practitioner for authorization to dispense refills.
(c) If the pharmacist is unable to contact the prescribing practitioner regarding a CDS prescription, then they must check with the federal Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics (OBN) to see if they have approved an emergency dispensing of CDS for patients affected by the emergency / disaster.
(1) If the federal DEA and OBN approve dispensing CDS in an emergency or disaster situation; and, if in the pharmacist's professional judgment the dispensing of the medication is essential to the patient's health and safety, the pharmacist may dispense up to the allowed limit set by DEA and OBN not to exceed a ten (10) day supply of CDS medication.
(A) The patient should provide identification and a prescription vial or some means of determining the person has been prescribed such medication.
(B) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by the disaster.
(2) If emergency CDS dispensing is NOT approved by the federal DEA and OBN the patients will have to be referred to a healthcare professional.

[OAR Docket #13-1065; filed 6-11-13]

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

[OAR Docket #13-1066]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Pharmacies
535:15-3-12. Transfer of prescription refill information [AMENDED]
Subchapter 10. Good Compounding Practices
Part 1. Good Compounding Practices for Non-sterile Products
535:15-10-3. Pharmacist responsibilities [AMENDED]
Part 3. Good Compounding Practices for Sterile Products
535:15-10-64. Compounding for institution and/or practitioner administration [AMENDED]
Subchapter 16. Pharmacy Emergency Medication Kits for Use in a Facility
535:15-16-4. Policies and procedures for use of emergency medication kit drugs [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)
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n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
535:15-3-12 is revised to allow faxed documents to have a part in prescription transfers between pharmacies. 535:15-10-3 (c) (10) (D) removes "sterile" from the non-sterile compounding rules. 535:15-10-64 (c) removes "Compounding" from the Drug Supplier Permit. 535:15-16-4 (d) adds "a practitioners order" to order required for emergency medication from the medication kit. These revisions improve rule clarity.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Blvd Ste 112, Oklahoma City, OK 73105-3488, Phone number 405 521-3815

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, 2013:

SUBCHAPTER 3. PHARMACIES

535:15-3-12. Transfer of prescription refill information

For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies:

(A) for up to the number of originally authorized refills remaining on Rx Only drugs that are not controlled; or

(B) on a **one-time** basis only, the transfer of original prescription and refill information for a controlled dangerous substance **(CDS)** listed in Schedules III, IV or V for the purpose of refill dispensing. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) the transfer must be:

(A) communicated orally directly between two licensed pharmacists and/or licensed interns; or,

(B) the prescription transfer information shall be faxed from one pharmacy to another. Upon receipt of the faxed information, a licensed pharmacist or licensed intern at the receiving pharmacy shall communicate receipt of the prescription transfer information orally directly with a licensed pharmacist or licensed intern at the originating pharmacy; and shall document the communication The original prescription transfer faxed information shall be printed and stored for:

(i) a non-controlled drug substance prescription in the same manner as a non-controlled drug substance prescription or shall be electronically stored;

(ii) a controlled drug substance prescription in the same manner as a controlled drug substance prescription;

(3) both the original and the transferred prescription drug order must be maintained for a period of five years from the date of last refill;

(4) the pharmacist transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription drug order; and

(B) record on the reverse of the invalidated prescription drug order the following information:

(i) the name and address of the pharmacy to which such prescription drug order is transferred;

(ii) the last name and registration number of the pharmacist receiving the prescription drug order information;

(iii) the last name and registration number of the pharmacist transferring the prescription drug order information;

(iv) the date of the transfer; and

(v) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(5) the pharmacist receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the transferred prescription drug order, see 535:15-3-12 (8); and

(B) record on the transferred prescription drug order the following information:

(i) the date of the original prescription (refills are allowed only as prescribed for a one-year maximum from original prescription date on non-scheduled, as stated in 535:15-3-11 (b) et seq. and up to five refills for no more than six months on Schedule III-V, as stated in 475:30-1-11 (a));

(ii) the original prescription number and the number of refills authorized on the original prescription drug order;

(iii) the number of valid refills remaining and the date of last refill;

(iv) the name and address of the pharmacy from which such prescription information is transferred;

(v) the last name and registration number of the pharmacist transferring the prescription drug order information; and,

(vi) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(6) pharmacies with computer systems shall invalidate the prescription drug order in their system for purposes of filling or refilling, but shall maintain the information for refill history purposes;

(7) if the computer system has the capacity to store all of the information required in (4) and (5) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(8) the computer system used by the pharmacy receiving the transfer must be able to show that a CDS or scheduled prescription is a transferred prescription. (This is to prevent the possible second transfer of a Scheduled prescription in violation of federal law and 535:15-3-12 (1).)

SUBCHAPTER 10. GOOD COMPOUNDING PRACTICES

PART 1. GOOD COMPOUNDING PRACTICES FOR NON-STERILE PRODUCTS

535:15-10-3. Pharmacist responsibilities

(a) All Pharmacists who engage in drug compounding, shall be proficient in compounding and should continually expand their compounding knowledge by participating in seminars and/or studying appropriate literature.

(b) Every pharmacist engaging in drug compounding shall be familiar with all details of USP Compounding Standards and should be familiar with patent regulations.

(c) The pharmacist has the responsibility to:

(1) ensure the validity of all prescriptions

(2) certify all prescriptions.

(3) approve or reject all components, drug product containers, closures, in-process materials, and labeling.

(4) ensure preparations are of acceptable strength, quality, and purity.

(5) verify all critical processes to ensure that procedures will consistently result in the expected qualities in the finished preparation.

(6) prepare and review all compounding records to ensure that no errors have occurred in the compounding process.

(7) ensure appropriate stability evaluation is performed or determined from the literature for establishing reliable beyond-use dating.

(8) ensure the proper maintenance, cleanliness, and use of all equipment used in a prescription compounding practice; and,

(9) ensure only authorized personnel shall be in the immediate vicinity of the drug compounding operation.

(10) perform final check of preparations prior to their release from the pharmacy.

(A) A check for compounding accuracy must ensure accuracy of the label and volumes or quantities of all drugs and solutions

(B) A visual examination procedure must ensure:

(i) Comparison with original order for initial dispensing

(ii) Accuracy of calculations

(iii) Use of proper solutions, additives and equipment

(iv) Labels are complete

(v) Proper assignment of beyond use date and time

(vi) Integrity of the container, including visual defects

(vii) Proper storage

(viii) Absence of particulate matter, precipitates, turbidity, discoloration, evidence of contamination or other signs that the preparation should not be used

(C) The pharmacist shall reject and destroy all preparations that do not pass the final examination.

(D) Pharmacists shall document final preparation examinations prior to releasing the Compounded ~~Sterile~~ Preparations from the pharmacy.

(d) The pharmacist-in-charge has the responsibility to ensure that all compounders who compound pharmaceuticals meet all requirements for training, testing and education set forth in these regulations and contained in the regulations set forth in USP standards.

(1) Competency shall be demonstrated prior to preparing any products for patient use, and

(2) Whenever the quality assurance program yields unacceptable results, and

(3) Whenever unacceptable or questionable techniques are observed, and

(4) Evaluated at least annually.

(e) Pharmacist requirements. Any pharmacist in charge who performs or supervises the preparation of compounded medications shall:

(1) Have available written policies and procedures for all steps in the compounding of preparations. In addition, said policies and procedures shall address personnel education and training and evaluation, storage and handling, clothing, personal hygiene, hand washing, quality assurance, expiration dating, and other procedures as needed.

(2) Certify that all participating pharmacists and pharmacy technicians have completed training and testing program in product preparation. Documentation of training and testing shall be available for review.

(3) Develop policies and procedures to annually test and review the techniques of participating pharmacists and pharmacy technicians.

(f) Staff will be trained and evaluated according as follows:

(1) Training is required for any individual who prepares compounded products. This training must be completed before the employee is allowed to prepare compounded products.

(2) Training may consist of any combination of didactic and experiential methods which must convey proper technique, infection control procedures, etc. required by USP standards.

(3) A written test shall be administered and passed based on the material referenced above upon initial hire or prior to assignment to prepare compounded products.

(4) Testing will be conducted annually for every employee involved in product preparation. Compounding personnel who fail written tests shall be immediately reinstructed and reevaluated by expert compounding personnel to ensure correction of all practice deficiencies.

(5) An 'Individual Training Record' shall be maintained for every employee involved in sterile product preparation.

(6) Nothing in these regulations shall prohibit a licensed student pharmacy intern engaged in experiential classes from assisting a properly qualified pharmacist in preparing sterile products under that pharmacist's direct supervision.

(7) Complete documentation by a pharmacist of training and testing shall be available for inspection.

(g) Pharmacy technician requirements. Pharmacy technicians participating in the preparation of compounded products shall have completed a pharmacist supervised training and testing program in product preparation. Completed documentation by a pharmacist of training and testing shall be available for inspection.

PART 3. GOOD COMPOUNDING PRACTICES FOR STERILE PRODUCTS

535:15-10-64. Compounding for institution and/or practitioner administration

(a) The purpose of this section is to provide standards for the compounding of preparations pursuant to a prescription for a patient from a practitioner in a different health care facility or institutional pharmacy. Since compounding is already based on the practitioner /patient /pharmacist triad, this should be satisfied when a practitioner writes an order to administer the drug in the medical record.

(b) A compounded product shall NOT be sold to a third party for resale.

(c) A retail pharmacy that provides compounded preparations to an institutional pharmacy shall obtain a ~~Compounding~~ Drug Supplier Permit from the Board prior to such activity.

(d) A retail pharmacy that provides compounded preparations to practitioners for office use or to an institutional pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(1) Address acceptable standards of practice for each party entering into agreement and include a statement that the compounded preparation may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity

(2) Include liability language, references to performance improvement and quality controls

(3) require the practitioner or receiving pharmacy to include on patient's record, medication order, or medication administration record the batch number and BUD of the compounded preparation administered to a patient

(4) Describe the scope of services to be performed by the filling pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(A) A patient to report an adverse reaction or submit a complaint; and

(B) The pharmacy to recall compounded preparations.

(e) Records of orders and distributions of compounded preparations to a practitioner for office use or receiving pharmacy shall be kept by pharmacy for at least 5 years and be available for inspection. These records shall be maintained separately from the records of products dispensed pursuant to a prescription.

(f) Orders shall include the following information:

(1) Date of order

(2) Name, address and phone number of the practitioner who ordered the preparation and, if applicable, the name, address, and phone number of pharmacy to receive compounded preparation

(3) Name, strength, and quantity of preparation ordered.

(4) Patient name, when available.

(g) Distribution records shall include the following information:

(1) Date the preparation was compounded

(2) Date the preparation was distributed

(3) Name, strength, and quantity in each container of the preparation

(4) Lot number of the preparation

(5) Quantity of containers delivered

(6) Name, address, and phone number of the facility to whom the preparation is being distributed

(7) patient name, when available.

SUBCHAPTER 16. PHARMACY EMERGENCY MEDICATION KITS FOR USE IN A FACILITY

535:15-16-4. Policies and procedures for use of emergency medication kit drugs

(a) The drugs in the emergency medication kits shall remain the property of an Oklahoma licensed pharmacy.

(b) Only one Oklahoma licensed pharmacy may provide emergency medication kits to each facility.

(c) Emergency medications kits maintained by an Oklahoma licensed pharmacy within the facility shall be approved by the medical director of the facility and the facility's consultant pharmacist on at least an annual basis.

(d) Medications may be administered from the facility's emergency medication kit only upon a physician's or practitioner's order for the emergency medication; and must be administered by a licensed nurse, physician, or physician's assistant.

(e) The facility licensed nurse shall

(1) verbally transmit the order for an emergency drug requiring access to the emergency medication kit to an Oklahoma licensed pharmacist who is an employee of the Oklahoma licensed pharmacy and is physically located within the 50 United States at the time the order is transmitted prior to the removal of a medication from the emergency medication kit,

(2) or may electronically transmit the order to an Oklahoma licensed pharmacy and located within the 50 United States following all federal and state regulations and rules only if the Oklahoma licensed pharmacy is utilizing technology which requires the Oklahoma licensed pharmacist to release the medication from the emergency medication kit by electronic means.

(f) The facility and Oklahoma licensed pharmacy shall have a written agreement that clearly states these drugs should not be used for routine use, but for emergency use and the need of the patient for urgent care.

(1) This written agreement shall contain a policy for record keeping of medications removed from the emergency medication kit.

(2) The Oklahoma licensed pharmacy shall require the facility to maintain a readily retrievable log of usage from the emergency medication kit which shall include for each dose administered from the emergency medication kit, at a minimum:

(A) Name of ordering physician or practitioner,

(B) Date and time of order,

(C) Facility resident's name,

(D) Medication name and strength,

(E) Name of person administering medication, and date and time administered,

(F) Such log shall be maintained in the facility and the Oklahoma licensed pharmacy and shall be available for Board inspection.

(3) The facility and Oklahoma licensed pharmacy shall document the nature of the emergency.

(4) Name of person verbally notifying the Oklahoma licensed pharmacy shall be recorded by the Oklahoma licensed pharmacy,

(5) The agreement shall document the protocol for handling and storage of these drugs by authorized employees and shall be approved by the Oklahoma licensed pharmacy manager.

(6) The Oklahoma licensed pharmacy shall review the agreement, recordkeeping and drug storage and handling at a minimum of annually.

(7) The facility and Oklahoma licensed pharmacy shall have a policy on replacement of medication in a timely manner.

(A) Replacement of controlled drug substances (CDS) in the emergency medication kit in a facility may be done by an authorized licensed or permitted employee of the Oklahoma licensed pharmacy.

(B) Replacement of the non-controlled drugs from the licensed Oklahoma pharmacy in the emergency medication kit may be done by a licensed nurse, agent of the Oklahoma licensed pharmacy, licensed or permitted employee of the Oklahoma licensed pharmacy.

(g) The Oklahoma licensed pharmacy shall maintain the following records for each facility remote site where an emergency medication kit is maintained:

(1) A log of which facilities the Oklahoma licensed pharmacy provides emergency medications for;

(2) A log of medications stored at each facility;

(3) The Oklahoma licensed pharmacy shall require the facility to maintain a log of usage from the emergency medication kit; and

(4) The log of usage from the emergency medication kit shall be auditable and maintained in a readily retrievable manner by the facility.

(h) Expired medications shall be removed from emergency supply by a licensed or permitted employee of the Oklahoma licensed pharmacy; and shall not be dispensed or administered.

(i) Controlled Dangerous Substances (CDS) may be maintained only in a medication kit that is separate from non-controlled dangerous substances or within an electronic medication dispensing machine, if allowed, in accordance with Oklahoma Bureau of Narcotics and the federal Drug Enforcement Administration laws and rules.

(j) Emergency medication kits that do not contain controlled dangerous substances may be maintained in an electronic system or in a secure emergency medication kit. A list of drugs in the emergency medication kit shall be attached to the same.

(k) A record of transactions involving the controlled substance emergency medication kit shall be maintained for two (2) years in a readily retrievable manner by the Oklahoma licensed pharmacy and facility. This transaction record is separate from the prescription record which must be maintained for a minimum of 5 years.

[OAR Docket #13-1066; filed 6-11-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #13-1101]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 1. Organization of the Department of Public Safety
595:1-1-3 [AMENDED]

AUTHORITY:
Commissioner of Public Safety, 47 O.S. § 6-101 et seq.

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SUPERSEDED EMERGENCY ACTIONS:
N/A
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N/A
ANALYSIS:
Amendments to this chapter would modify and clarify the necessary documents and procedures to obtain a driver license or an identity card. Amendments would also change the name of the Drivers License Examining Division to Drivers License Services Division.
The proposed action is to amend existing rule.
The circumstance which created the need for this rule was the consolidation of three divisions within the agency.
The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT OF PUBLIC SAFETY

595:1-1-3. Function of each division which deals directly with and affects the public

(a) **Oklahoma Highway Patrol Division.** The Oklahoma Highway Patrol Division provides safety and protection for the citizens on the highways of Oklahoma. The headquarters of the Oklahoma Highway Patrol Division is located at the Department of Public Safety. Telephone: (405) 425-2424 [47 O.S. §2-103] The division is divided into the following field and specialty troops and sections located throughout the state:

(1) **Field troops.** Field troops of the Highway Patrol have primary law enforcement authority on state, federal, and interstate highways, excluding those portions within city limits. Following is a list of the field troops, the location of their headquarters, and their telephone numbers:

(A) Troop A: Oklahoma City, (405) 425-2285
(B) Troop B: Tulsa, (918) 627-3881
(C) Troop C: Muskogee, (918) 683-3256
(D) Troop D: McAlester, (918) 423-3636
(E) Troop E: Durant, (580) 924-2601
(F) Troop F: Ardmore, (580) 223-8800
(G) Troop G: Lawton, (580) 353-0783
(H) Troop H: Clinton, (580) 323-2424
(I) Troop I: Guymon, (580) 338-3366
(J) Troop J: Enid, (580) 234-6147
(K) Troop K: Perry, (580) 336-9880
(L) Troop L: Vinita, (918) 256-3388
(M) Troop M: Altus, (580) 477-2765

(2) **Turnpike troops.** Turnpike troops of the Highway Patrol have sole law enforcement authority on the turnpikes of this state. Following is a list of the turnpike troops, the turnpike each patrols, and their telephone numbers:

(A) Troop XA: Will Rogers, (918) 256-7476
(B) Troop XB: Muskogee, (918) 683-1782
(C) Troop XC: Indian Nation, (918) 548-3799
(D) Troop XD: Cherokee, (918) 868-2372
(E) Troop XE: Creek, (918) 355-9069
(F) Troop YA: Cimarron, (405) 425-3683
(G) Troop YB: Turner, (405) 425-3694
(H) Troop YC: H.E. Bailey, (405) 222-3165
(I) Troop YD: Chickasaw, (580) 223-8800
(J) Troop YE: Kilpatrick, (405) 425-3635

(3) **Speciality troops.** Specialty troops of the Highway Patrol perform specialized law enforcement functions within the scope of the mission and operation of the Department of Public Safety. Following is a list of the speciality troops, their functions, and their telephone numbers:

(A) Troop O: Aircraft, (405) 321-1831
(B) Troop P: Public Information [see (j) of this Section]
(C) Troop R: Capitol Patrol Section [see (4)(C) of this subsection]
(D) Troop S:
(i) Motor Carrier Safety, (405) 702-0813,
(ii) Hazardous Materials Transportation, (405) 702-0813,
(iii) Size and Weight Enforcement Section [see (4)(A) of this subsection]
(E) Troop SO: Special Operations, (405) 425-2473
(F) Troop T: Training, (405) 425-2410
(G) Troop W: Lake Patrol Section [see (4)(B) of this subsection]
(H) Troop Z: Investigations Division, (405) 425-2137
(I) Troop BT: Bomb Squad Section [see (4)(D) of this subsection]

(4) **Troops created by statute.** Following are sections within the Highway Patrol Division which are created by statute:

(A) **Size and Weight Enforcement Section (Troop S).** The Size and Weight Enforcement Section has the primary duty of enforcing the provisions of the size, weight and load laws [47 O.S. §14-101 et seq.] and rules [OAC 595:30]. Telephone: (405) 702-0813. [47 O.S. §116.11]

(B) **Lake Patrol Section (Troop W).** The Lake Patrol Section has the primary enforcement duty related to state boat registration laws [63 O.S. §4001 et seq. and §4101 et seq.], boating and water safety laws [63 O.S. §4200 et seq.], federal boating regulations, and Department of Public Safety or Department of Wildlife Conservation rules [OAC 595:45] pertaining to Oklahoma lakes, rivers and adjacent shores, and the duty of providing statutorily mandated boating safety education. The address for enforcement issues is at the Arcadia Lake office, 7000 East 2nd ST. Edmond, 73034; telephone: (405) 341-1893. The address for boating safety education, marine theft, HIN inspections, U.S. Coast Guard liaison and grants, and marine patrol-related training is at the Birch Lake office, 3156 CR 2409, Barnsdall, OK, 74002; telephone: (918) 847-2001. [47 O.S. §2-105.6]

(C) **Capitol Patrol Section (Troop R).** The Capitol Patrol Section has the primary duty of providing law enforcement services to all state buildings and properties within Oklahoma County, including the State Capitol Park and the Governor's mansion, and Tulsa County, including the State Capitol Complex, and enforcing all parking, traffic, and criminal laws within the boundaries of Oklahoma and Tulsa Counties. Oklahoma City telephone: (405) 702-0911. Tulsa telephone: (918) 581-2000 [47 O.S. §2-105.7]

(D) **Bomb Squad Section (Troop BT).** The Bomb Squad Section has the primary duty of carrying out the duties prescribed in 63 O.S. §122.2. Telephone: (405) 425-2435 [47 O.S. §2-105.4B]

(E) **Communications Section.** The Communications Section is the link between the general public and public safety services provided by the Department and other law enforcement agencies or emergency providers. These services may be obtained by telephone or in person at any of the thirteen Field Troop Headquarters statewide [see (1) in this subsection for telephone numbers]. [47 O.S. §2-105.8]

(b) **Legal Division.** The Legal Division provides legal services for the Department and administratively enforces Oklahoma's implied consent law [47 O.S. §751 et seq.]. Specific legal advice is not made available to the general public. The division is located at the Department of Public Safety. Telephone: (405) 425-2148. Associate Counsel is also currently located in Jenks, Oklahoma. [47 O.S. §2-121]

(c) **Records Management Division.** The Records Management Division is the designated repository for all official traffic accident reports and records required to be submitted by law enforcement officers of municipal, county and state agencies, and for court abstracts and other records concerning motor vehicle and related convictions and offenses required to be reported by municipal and district courts. This division also ensures that appropriate entries from the above documents are made to the respective individual driver's record master file. This division is also responsible for providing documents available to the public under the provisions of the Open Records Act [see 595:1-9-5 and 595:1-9-6 (relating to obtaining open records)]. The division is located at the Department of Public Safety. Telephone: (405) 425-2192. [47 O.S. §2-103]

(d) **Size and Weight Permit Division.** The Size and Weight Permit Division issues appropriate permits for eligible oversize and overweight vehicles and loads. The central location of the division is located at 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107. For information concerning operation and for addresses and telephone numbers of branch offices, call (405) 522-9006 or toll-free (877) 425-2390, or see OAC 595:30-3-3. [47 O.S. '2-103]

(e) **Driver License ~~Examining~~Services Division.** The Driver License ~~Examining~~Services Division issues permits for driver education instructors, administers tests for the purpose of issuing driver licenses, commercial driver credentialing, including driver qualification, HAZMAT Security Threat Assessment program and the licensing of truck driver training institutions, provides administrative services related to the issuance and renewal of driver licenses and identification cards, and coordinates the issuance of driver licenses and identification cards with motor license agents. The division is located at the Department of Public Safety. Telephone: (405) 425-7745. [47 O.S. §2-106]

(f) **Driver Compliance Division.** The Driver Compliance Division provides driver improvement and financial responsibility services, may suspend, deny, cancel, revoke, or disqualify individual driving privileges, subject to statutory authorization. The division administers rules relating to the point system and discretionary suspensions [OAC 595:10-7], medical aspects [OAC 595:10-5], alcohol and drug substance abuse courses [595:10-5-12], mature driver accident prevention [OAC 595:10-5], and issues parking permits for the physically disabled [OAC 595:50-3]. It also administers the *Driver License Compact* [47 O.S., § 781 et seq.] and the *Nonresident Violator Compact* [47 O.S., §§789 and 790]. This division is also charged with enforcement of the provisions of the financial responsibility laws of this state (47 O.S. § 7-101 et seq.) and the Compulsory Insurance Law (47 O.S. §7-600 et seq.). The division is located at the Department of Public Safety. For information concerning operation and the availability of branch office services, call (405) 425-2098. [47 O.S. § 2-106]

~~(g) **Commercial Driver License Program Administration.** The Commercial Driver License (CDL) Program Administration is responsible for commercial driver credentialing, including driver qualification, HAZMAT Security Threat Assessment program and the licensing of truck driver training institutions. The division is located at the Department of Public Safety. Telephone: (405) 425-2015. [47 O.S. §2-103]~~

(~~h~~g) **Identify Verification Unit.** The Identify Verification Unit is responsible for investigating identify fraud and theft. The division is located at the Department of Public Safety. Telephone: (405) 425-2477.

(~~i~~h) **Wrecker Services Division.** The Wrecker Services Division is responsible for the licensing and governance of wrecker or towing services [47 O.S. §951 et seq.]. The division provides notification to owners and lien holders of the location of vehicles impounded at the request of law enforcement

agencies within the state, and receives and maintains records of vehicles impounded from private property and of vehicles stored over thirty (30) days by wrecker or towing services. The division is located at the Department of Public Safety. Telephone: (405) 425-2312. [47 O.S. §2-103]

(~~j~~i) **Public Affairs Office.** The Public Affairs Office acts as the liaison between the Department and the public, the media, and other city, county, state, and federal agencies. Information provided includes traffic safety campaigns, press releases, traffic statistics, road conditions, and services provided by each of the Department's divisions. Telephone: (405) 425-7707. [47 O.S. §2-103]

(~~k~~j) **Oklahoma Highway Safety Office.** The Oklahoma Highway Safety Office (OHSO) is the state organization responsible for developing an annual statewide plan (Highway Safety Plan) to decrease fatalities and injuries on Oklahoma roadways. Each state has a highway safety program under the direction of the state governor. The OHSO administers federal highway safety funds in the form of highway safety projects with state and local agencies, nonprofit organizations, and private contractors. Project applications are normally due in February or March of each year for the following federal fiscal year, which begins on October 1. The OHSO is located at 3223 N. Lincoln, Oklahoma City, OK 73105. Telephone: 405-523-1570. Fax: 405-523-1586. [47 O.S. §2-106.2A et seq.]

(~~l~~k) **Oklahoma Law Enforcement Telecommunications System.** The Oklahoma Law Enforcement Telecommunications System (OLETS) is a statewide telecommunications network which serves city, county, state, federal, and military law enforcement and criminal justice agencies in Oklahoma. Additionally, OLETS provides direct computer interfaces to the computer systems of the Department of Public Safety, the Oklahoma Tax Commission, the Oklahoma State Bureau of Investigation, the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and the National Weather Service Computer System and Network in Oklahoma City, Oklahoma. OLETS is managed and operated by the Department of Public Safety. The division is located at the Department of Public Safety. Telephone: (405) 425-2224. [47 O.S. §2-124]

(~~m~~l) **Transportation Division.** The Transportation Division is responsible for the purchase, repair, and disposal of all Department vehicles. Repairs may be done at private facilities or at the Department garage with funding coordinated by the Division. Department vehicles are disposed of by sale to other law enforcement agencies in Oklahoma or by public auction. The location of the Transportation Division is at 2300 N.E. 36th Street at the Department of Public Safety. Telephone (405) 425-2129. [47 O.S. §2-103]

(~~n~~m) **Finance Division.** The Finance Division is responsible for paying the bills of the Department within its approved budget and accounting for and depositing receipts collected for fees, fines, penalties, and other monies as provided by law. The Division also processes sales of surplus and forfeited property as provided in Subchapter 15 of this Chapter. The location of the Finance Division is at the Department of Public Safety. Telephone (405) 425-2833. [47 O.S. §2-103]

[OAR Docket #13-1101; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #13-1104]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 2. Application for Initial Driver License
595:10-1-3 [AMENDED]
Part 13. Motor License Agents
595:10-1-51 [AMENDED]
Part 19. Driver License and Identification Card Content
595:10-1-92 [AMENDED]
AUTHORITY:
Commissioner of Public Safety, 47 O.S. § 6-101 et seq.
DATES:
Comment Periods:
December 17, 2012, through January 22, 2013
Public Hearing:
January 23, 2013
Adoption:
March 28, 2013
Submitted to Governor:
March 29, 2013
Submitted to House:
March 29, 2013
Submitted to Senate:
March 29, 2013
Gubernatorial approval:
May 13, 2013
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.
Final Adoption:
March 23, 2012
Effective:
July 25, 2013
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amendments to this chapter would modify and clarify the necessary documents and procedures to obtain a driver license or an identity card. Amendments would also change the name of the Drivers License Examining Division to Drivers License Services Division.

The proposed action is to amend existing rule.

The circumstance which created the need for this rule was the consolidation of three divisions within the agency.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

595:10-1-3. Procedures for obtaining an initial driver license

(a) **Application.** Every applicant for an initial Oklahoma driver license shall appear before a Driver License Examiner [47 O.S. §6-110]. An application for a driver license must be completed either by the applicant at the Driver License Examination Station or online, when an electronic process is made available by the Department of Public Safety, prior to the commencement of the required examination. An emergency contact name, address and phone number may be included on the application, which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only. Upon submitting a completed and approved application, providing proof of identity [see (b) regarding required identification documents] and proof that the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], meeting all statutory requirements, and successfully completing every required examination [see Subchapter 3 of this Chapter relating to examinations], the applicant may then proceed to a motor license agent or the Department of Public Safety Headquarters, Driver License Examining Division, with a DL-10 form with primary and secondary identification presented to the examiner, issued by the Driver License Examiner, and pay the required fees and be issued a driver license. A person who has been declared to be a disabled veteran in receipt of compensation at the 100% rate for a permanent disability shall receive an original, renewal, or replacement driver license or identification card at no charge, upon presentation of one of the following documents:

(1) proof of 100% status from the U.S. Department of Veterans Affairs, or

(2) a tax exempt card from the Oklahoma Tax Commission showing exemption from state tax based upon 100% status.

(b) **Required identification.** Every applicant must furnish both primary documentary proof of identity [47 O.S., § 6-106(A)(3)], to include whether the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], and secondary documentary proof of identity [47 O.S., § 6-106(A)(3)] and proof of full legal name and birth date beyond any reasonable doubt when applying for an initial Oklahoma driver license [47 O.S. § 6-101(L)]. Any document furnished must be either a certified or original copy and issued by the proper authority; notarized documents will not be accepted. Any document presented shall be unexpired unless otherwise noted in this Section. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that can not be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Examiner before acceptance. The Examiner may, at his or her discretion, request additional identification documentation of the applicant.

(1) **Primary proof of identification for original issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) A certified birth certificate, as issued by the appropriate state agency from the state of birth. A certified birth certificate issued by a city or county may be accepted if it is issued on secure document paper and if the certificate either is from a state which the Department has verified authorizes the issuance of birth certificates certified by a city or county or contains a statement indicating the record is a copy of the facts on file with the state agency responsible for maintaining and certifying vital records. The birth certificate shall include the person's name, date of birth, and sex, shall be signed and sealed, and shall include the certificate number. The following documents are not acceptable:

(i) a hospital birth certificate or record,

(ii) a birth registration, or

(iii) an abstract of birth, unless the abstract is issued on secure document paper and contains the following statement "I hereby certify that this abstract of birth facts has been provided to this office by the Department of Health, Bureau of Vital Statistics, from a document officially in its custody",

(B) A United States passport,

(C) For a United States citizen who is born in another country, a certification issued by the United States Department of State,

(D) For a naturalized citizen of the United States, a Certificate of Naturalization issued by the United States Citizenship and Immigration Service. The name on the document must be the same as the name used by the applicant on the driver license or identification card, and for every person born in another country and adopted as a minor child by a United States citizen parent, a Certificate of Citizenship issued by the United States Citizenship and Immigration Service,

(E) An Oklahoma driver license originally issued by Department of Public Safety on or after November 1, 2007,

(F) A State of Oklahoma identification card originally issued by the Department of Public Safety on or after November 1, 2007, or

(G) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(2) **Primary proof of identification for renewal or replacement issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) Finger image comparison, if a Department-generated finger image algorithm is already on file with the Department, or

(B) Any primary proof of identification listed in (1) of this subsection.

(3) **Primary proof of identification for original, renewal, or replacement issuance to a foreign national or legal permanent resident alien.** The following shall be presented by the applicant as primary proof of identification and proof of lawful presence in the United States for a foreign national or legal permanent resident alien:

(A) A passport issued by a country other than the United States and I-94 card, when applicable. The name on the passport shall be the same as the name used by the applicant on the driver license or identification card. An I-94 card, which shall be accompanied by the applicant's passport when applicable, shall not be considered a separate identification document. The following documents or passport classifications shall be accepted for the purpose of issuing a driver license or identification card:

(i) I-688 Temporary Resident Card,
(ii) I-688A/B Employment Authorization Card,
(iii) I-766 Employment Authorization Card,
(iv) I-551 Resident Alien/Permanent Resident Card [see (B)],
(v) Temporary I-551,
(vi) A-1,
(vii) A-2,
(viii) A-3,
(ix) DA,
(x) E-1,
(xi) E-2,
(xii) F-1, with Form I-20,
(xiii) F-2, with Form I-20,
(xiv) G-1,
(xv) G-2,
(xvi) G-3,
(xvii) G-4,
(xviii) G-5,
(xix) H-1A,
(xx) H-2A,
(xxi) H-1B,
(xxii) H-2B,
(xxiii) H-3,
(xxiv) H-4,
(xxv) I,
(xxvi) J-1, with IAP-66 or DS-2019,
(xxvii) J-2 (dependent of J-1 holder, must be accompanied by J-1 holder),
(xxviii) K-3,
(xxix) K-4,
(xxx) L-1(a/b),
(xxxi) L-2,
(xxxii) M-1, with I-20,
(xxxiii) M-2 (dependent of M-1 holder, must be accompanied by M-1 holder),
(xxxiv) NATO-1,
(xxxv) NATO-2,
(xxxvi) NATO-3,
(xxxvii) NATO-4,
(xxxvii) NATO-5,
(xxxix) NATO-6,
(xl) NATO-7,
(xli) O-1
(xlii) O-2
(xliii) O-3
(xliv) P-1
(xlv) P-2
(xlvi) P-3
(xlvii) P-4
(xlviii) Q-1
(xlix) R-1
(l) R-2
(li) T-1
(lii) T-2
(liii) T-3
(liv) T-4
(lv) TC, with I-94 or letter form I-797,
(lvi) TN-1,
(lvii) TN-2,
(lviii) TD,
(lix) V-1,
(lx) V-2,
(lxi) V-3; or

(B) A permanent resident alien registration card issued by the United States Citizenship and Immigration Service (USCIS) which shall include the name, sex, and date of birth of the person identified in the card. The name, sex, and date of birth on the card shall be the name, sex, and date of birth used by the applicant on the driver license or identification card. A permanent resident alien registration card holder shall be allowed to renew his or her driver license or identification card at a motor license agency, provided, no changes are made to the name, sex, or date of birth. If, pursuant to 8 C.F.R., Section 264.5, a permanent resident alien registration card holder requests a name, sex, or date of birth change to his or her driver license or identification card, the changes shall be made at a driver license exam site with the applicant showing approved documentation provided by USCIS verifying the changes; or

(C) If none of the forms of identification listed in this paragraph are available, any other documentation

as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(4) **Secondary proof of identification.** The following shall be presented by the applicant as secondary proof of identification and shall contain the name of the applicant:

(A) Any primary proof of identification listed in (1), (2), or (3), as applicable, of this subsection which is not used as the primary identification document of the applicant,

(B) For any person under the age of 18, an affidavit provided by the Department and signed by the parent or legal guardian,

(C) Photo identification card that is issued by an Oklahoma:

(i) public, private, or parochial secondary school,

(ii) institution of higher education,

(iii) technology center school, or

(iv) employer,

(D) Oklahoma gun permit,

(E) Pilot license,

(F) Oklahoma lifetime hunting or fishing license,

(G) Oklahoma voter identification card,

(H) Social Security card,

(I) Health insurance card,

(J) Motor vehicle registration or title,

(K) Marriage certificate,

(L) Separation or divorce judgment,

(M) High school, technology center school, college, or university diploma

(N) Professional degree, certificate, or license,

(O) Deed or title to property in Oklahoma, including a burial plot deed,

(P) Health, life, or home insurance policy issued to the applicant,

(Q) Automobile insurance policy or security verification form issued to the applicant,

(R) A valid U.S.D.O.T. health card, as required by 49 C.F.R. Part 391,

(S) Digital photograph comparison, if a Department-generated digital photograph is already on file with the Department,

(T) Identification documents issued by the United States Armed Services:

(i) Military discharge (DD-214), unless specified not to be used for identification,

(ii) Military identification card, or

(iii) Military dependent identification card,

(U) United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification card, approved by the Department of Public Safety (the Department shall maintain on its website a list of tribes which comply with this provision), which identifies the person and includes the following information:

(i) color photograph of the person,

(ii) full legal name of the person,

(iii) birth date of the person,

(iv) signature of the person,

(v) signature of person who verifies records, and

(vi) tribal seal,

(V) Expired Oklahoma Driver License,

(W) Expired Oklahoma Identification Card,

(X) Oklahoma Tax Commission Agricultural Exemption Permit (tax exempt card),

(Y) Department of Corrections ~~Consolidated Record Card.~~ cards including:

(i) Department of Consolidated Record Card

(ii) Department of Corrections Inmate Identification Card,

(Z) Transportation Worker Identification Credential (TWIC card), or

(AA) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(5) **Additional identification requirements.** The Department may require additional identification documents:

(A) when the Department is unable to determine the reliability or validity of the identification document(s) presented, or

(B) as provided in OAC 595:10-1-35.

(c) **Driver license numbers.**

(1) Driver license numbers shall be assigned by computer. Use of the applicant's Social Security number as the driver license number is prohibited [47 O.S. § 6-106(B)]; provided, every applicant shall provide the Department with the Social Security number of the applicant [47 O.S., § 6-106(B),12], which shall be verified before a driver license shall be issued to the applicant. Verification shall be accomplished using the Social Security On-line Verification (SSOLV) system. The Department shall refer any applicant to the Social Security Administration whenever the Social Security number can not be verified for the applicant.

(2) Any licensee may request to change his or her driver license number to any nine-digit number which is not in use or has not been previously used by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses]

PART 13. MOTOR LICENSE AGENTS

595:10-1-51. Operational procedures

(a) The driver license computer, camera, printer, and other hardware, software, and supplies (which may be referred to as driver license equipment) used in the production of driver licenses and identification cards shall be used solely for the issuance of Oklahoma driver licenses or identification cards.

Driver licenses shall be issued if the agency is open for business. If the agency is unable to issue licenses, the agent shall notify the Department why the agency is not issuing licenses.

(b) At the close of business each day, the agent shall remove the top "clam shell" and lock it in a safe place and shall also destroy all used color print ribbon.

(c)

(1) Only persons who have been issued a personal access code by the Department of Public Safety shall be authorized to operate driver license equipment and issue or make changes to driver licenses or identification cards.

(2) Agents shall not submit applications for personal access codes for employees who are not at least eighteen (18) years of age. Personal access codes shall not be assigned to anyone under the age of eighteen (18) or to any employee whose driver license is suspended, revoked, cancelled or denied. On and after the Commissioner's approval of this rule, each application for a personal access code shall be submitted by an agent to the Department, and the Department shall give temporary approval to the applicant to issue driver licenses and identification cards, pending an investigation of the applicant's complete national and state criminal records which must be completed within 90 days of the temporary approval. All completed documents necessary for the state background check shall be submitted by the agent to the Oklahoma State Bureau of Investigation and results of the investigation shall be forwarded to the Department indicating compliance with this requirement. The Department shall cancel the access code to issue driver licenses or identification cards upon determination the person's state criminal history does not warrant certification, based upon the presence in the history of a high misdemeanor conviction within the ten (10) years immediately preceding the application and of any felony conviction. If no record is found within state criminal records, the temporarily approved applicant shall submit to a national criminal history records search, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The Department shall cancel the access code to issue driver license or identification cards upon determination the person's national criminal history does not warrant certification, based upon the presence in the history of a high misdemeanor conviction with the ten (10) years immediately preceding the application and of any felony conviction. If no record is found within national criminal records, the applicant shall be given regular approval to issue driver licenses and identification cards. Persona access codes shall be kept confidential by the employee and agent. Personal access codes shall be used only by the person to whom the code has been assigned. New employees whose duties are intended to include the issuance of driver licenses and identification cards shall first apply for a personal access code from the Department of Public Safety as provided for in this subsection; provided, an employee shall not be authorized operate driver license equipment and to issue driver licenses and identifications cards unless approved by the Department and a personal access code has been issued to the employee by the Department. A criminal history investigation shall be required if an employee has any break in service and the result of the previous state criminal history investigation on file with the Department for the employee is more than one (1) year old, if the employee changes agents and it has been more than one (1) year since the last background was done, or if a criminal history investigation was not previously required of the employee. The Department may, at its discretion , require a current criminal history investigation of any individual operating the driver license equipment.

(3) The agent shall be responsible for training new employees. The Department may offer periodic training programs as needed.

(4) The agent shall be responsible for the conduct of the employee.

(d) Any substitution of equipment or alteration in the making of a driver license or identification card is prohibited by law, and may be subject to criminal prosecution. Licenses or cards shall be made in accordance with specifications as determined by the Department. If they do not meet these specifications, the agent or the employee shall not issue the license or card.

(e) Reports shall be forwarded to the Driver License Services Division in accordance with the rules of the Oklahoma Tax Commission or as prescribed by law.

(f) If the agency relocates, the agent shall immediately notify the Department of Public Safety in writing of the new address and telephone number. The Department will contact the agent and schedule a time to set up the agency at the new location and provide any training necessary to the agency.

(g) In the event of loss, theft, or misuse of any of the equipment, supplies, or documents, or any violation of state law, Department rule, or other improper conduct related to the issuance of driver license or identification cards, the Department of Public Safety, Driver License Examining Division, shall be notified immediately by telephone at (405) 425-7745. In case of loss or theft the agent shall take an immediate inventory of all driver license documents on hand and list all missing items and equipment by number, when applicable. A copy of missing inventory, police investigation, and/or incident report shall be immediately forwarded to the Department of Public Safety, Driver License Examining Division. In cases of misuse, the agent must immediately contact the Driver License Examining Division, Identity Verification Unit of the Department of Public Safety by telephone at (405) 425-2477. If the agent is unable to contact this unit, then the Driver License Examining Division shall be notified by telephone at the number listed above.

(h) Agents are prohibited from accepting an altered driver license application (DL-10 form) or any other altered or unapproved document for the issuance of an Oklahoma driver license or identification card.

(i) When an agency closes, any equipment, supplies, and documents issued to the agent by the Department of Public Safety must be accounted for and returned to the Department of Public Safety.

(j) Each employee is to be made aware by the agent of the penalties for misuse of driver license documents or identification cards and any production of fraudulent and erroneous driver licenses or identification cards.

(k) When it comes to the attention of the Department of Public Safety that any agent or an employee of an agency is in violation of any statute or rule or has committed any fraudulent act regarding the issuance of driver licenses or identification cards, after consultation with the Commissioner's office, the Director of the Driver License Examining Division may notify the motor license agent and the Tax Commissioner that the access code number(s) may be canceled or suspended and/or the camera may be removed. In accordance with the Administrative Procedures Act, a hearing before the Commissioner or the Commissioner's designee will be offered, provided the Director of the Driver License Services Division is notified in writing within fifteen (15) days of receipt of notification. The issue at the hearing will be whether or not a violation occurred and the severity of the sanction which should be imposed.

(l) The following changes or activities are not authorized at an agency without other authority:

(1) Driver license number or identification card number, except when changing to a computer generated number,

(2) Sex,

(3) Eye color,

(4) Race,

(5) Date of birth,

(6) Class of license,

(7) Endorsement,

(8) Extension of expiration on driver license or identification card,

(9) Temporary receipt or authorization to drive for lost license while application is in process,

(10) Taking photographs for other identification cards (for example: police, fire, sheriff, passport, etc.),

(11) Adding titles to names, such as Sheriff, Police Officer, Judge, Senator, Representative, Dr., Rev., Fireman, etc.,

(12) Adding addresses or information to indicate professional status on the face of the driver license or identification card such as JOHN DOE, OKLAHOMA HIGHWAY PATROL or ROBERT DOE, M.D. All addresses shall be the legal Oklahoma residence address or Oklahoma mailing address [47 O.S. § 6-106]. Display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this paragraph shall not be construed to prohibit display of a residence address if it is also the mailing address,

(13) Placing anything on a driver license or identification card, such as stickers of civic clubs, medical symbols, etc., except those approved by the Department of Public Safety,

(14) Producing more than one (1) driver license or identification card for the applicant at the time of application,

(15) Adding service charges to an application fee for any reason other than actual cost for telephone calls made for the applicant to obtain approval to issue the driver license or identification card, or

(16) Providing information from the driver license or identification card application to private businesses, government agencies, or persons other than the Department of Public Safety, unless authorized by the Department.

(m) No documents shall be removed from the office of the motor license agent by anyone unless authorized by the Driver License Examining Division. If a situation arises which warrants removal of documents, the motor license agent shall telephone the Division to explain the circumstances and obtain authority.

(n) During the issuance process for an original, renewal or replacement driver license or identification card, the motor license agency shall ask the applicant if he or she would like to donate One Dollar ($1.00) to the Oklahoma Organ Donor Education and Awareness Program [63 O.S., § 2220.5]. If the applicant consents to the donation, the agency ~~shall enter a "Y" in the appropriate field on the computer which~~ shall add the One-Dollar donation to the amount collected with the cost of the license or card. Each One-Dollar donation shall be recorded and shall be reflected on the semi-monthly reports of the motor license agency. The applicant shall be given the option to become or to decline becoming an organ donor by marking the "Yes" or "No" box, as appropriate, on the signature pad. A mark of "Yes" shall cause an organ donor symbol to be placed on the driver license or identification card. If the holder of a driver license or identification card wishes to remove the organ donor symbol from the license or card, the applicant shall make the request of the motor license agency and shall be asked to mark the "No" box on the signature pad. A license or card shall be issued without the organ donor symbol and the appropriate fee collected by the motor license agency. The holder of a Class A, B, or C commercial driver license shall be required to appear before a Driver License Examiner to remove or add the organ donor symbol.

(o) Rules in this Chapter regarding motor license agents are specific and limiting. Whenever an action either is not included or is not prohibited, it shall not be construed to convey authority to perform that action within the duties, responsibilities, or authority of the motor license agents.

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

595:10-1-92. Driving restriction codes

A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department [47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

(1) 1. Corrective lenses

(2) 2. Left outside rearview mirror

(3) 3. Restriction 1 or 2

(4) 4. Automatic transmission

(5) 5. Turn indicators, power steering, or steering knob

(6) 6. Food, fruit, or candy within reach of driver

(7) 7. Adequate artificial limbs
(8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
(9) 9. Accompanied by licensed driver age 21 or older in front seat
(10) 0. Motorcycle only - if under age 16, restricted to 250 cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
(11) A. Regardless of age, when operating a motorcycle must be in view of a person who is licensed to operate a motorcycle or motor-driven cycle and who is at least 21 years old
(12) E. When operating a commercial motor vehicle, restricted to automatic transmission
(13) G. Inquire of Oklahoma driver license file until age 17 or older
(14) K. CDL intrastate only
(15) L. When operating a commercial motor vehicle, restricted to a vehicle without air brakes
(16) M. When operating a passenger bus, restricted to Class B or C commercial motor vehicle
(17) N. When operating a passenger bus, restricted to a Class C commercial motor vehicle
(18) O. Restricted from operating tractor trailer vehicles
(19) R. Ignition interlock device
(20) V. Medical variance
(21) W. No Passengers (P or S) or Empty/Purged Tank Vehicle (N); provided, this restriction shall be used only on a commercial learner.
(22) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic

[OAR Docket #13-1104; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #13-1105]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 3. Driver License Renewal
595:10-1-12 [AMENDED]
Part 5. Driver License Replacement
595:10-1-19 [AMENDED]
AUTHORITY:
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ANALYSIS:
Amendments to this chapter would implement the provisions of new state law which requires a renewal of a license by mail to be done only if the preceding issuance was done in person.
The proposed action is to amend existing rule.
The circumstance which created the need for this rule was to comply with new state law.
The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 1. PURPOSE

595:10-1-12. Oklahoma licensee temporarily residing out of the state

(a) Any Oklahoma licensee who is temporarily residing out of the state may request the Department of Public Safety to renew his or her license by mail. The Oklahoma licensee shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned; therefore, original documents should not be sent), his or her driver license number, his or her signature, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a driver license

renewal along with his or her out-of-state address to Department of Public Safety, Driver License Examining Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(b) If the Department approves the renewal by mail, the Department shall create the renewal license using the most recent digital photograph and digital signature of the licensee available from the files of the Department. The Department shall not renew a license by mail unless the immediately preceding issuance was done in person by the applicant. {47 OS 6-122 effective November 1, 2012}

(c) The Department shall mail the renewal license to the out-of-state address provided by the licensee.

(d) If the Department denies the renewal by mail, the Department shall notify the licensee in writing of the denial and the reason for the denial.

PART 5. DRIVER LICENSE REPLACEMENT

595:10-1-19. Oklahoma licensee temporarily residing out of the state

(a) Any Oklahoma licensee who is temporarily residing out of the state may request the Department of Public Safety to replace his or her license by mail. The Oklahoma licensee shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned, therefore, original documents should not be sent), his or her driver license number, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a driver license replacement along with his or her out-of-state address to Department of Public Safety, Driver License Examining Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(b) If the Department approves the replacement by mail, the Department shall create the replacement license using the most recent digital photograph and digital signature of the licensee available from the files of the Department. The Department shall not issue a replacement license by mail unless the immediately preceding issuance was done in person by the applicant.

(c) The Department shall mail the replacement license to the out-of-state address provided by the licensee.

(d) If the Department denies the replacement by mail, the Department shall notify the licensee in writing of the denial and the reason for the denial.

[OAR Docket #13-1105; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #13-1102]

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Subchapter 5. Medical Aspects
Part 1. Medical Conditions
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12-838
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N/A
ANALYSIS:
Amendments to this chapter would provide procedures for determining if a person with controlled insulin-dependent diabetes may be issued a commercial driver license.

The proposed actions is to amend existing rule.

The circumstance which created the need for this rule was the filing of an EEOC complaint by an Oklahoma commercial driver license holder because a school district fired the license holder from a bus driver position because the license holder has controlled insulin dependent diabetes. The EEOC complaint named both the State Department of Education and the Department of Public Safety, and a decision in the EEOC complaint was made in favor of the license holder. The State Department of Education has amended its corresponding rule in OAC 210:30-5-1 [see attached].

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law and federal law and regulation without discriminating against any person based upon a specific medical disability.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 5. MEDICAL ASPECTS

PART 1. MEDICAL CONDITIONS

595:10-5-5. Metabolic diseases

(a) **Diabetes mellitus.**

(1) A person who has diabetes, about whom the Department has received a report from a law enforcement officer or from a licensed physician indicating the person is incapable of properly controlling a motor vehicle, must submit proof from his or her physician that the disease is under reasonable control without either hypoglycemic or hyperglycemic reactions severe enough to impair driving ability. Future periodic medical reports may be required.

(2) A person having been diagnosed by his or her physician as having insulin-dependent diabetes shall be required to have driving restriction code number six (6), "Food, fruit, or candy within reach of driver," on the person's driver license.

(3) A person who is a controlled insulin-dependent diabetic may obtain a Class A, B, or C intrastate commercial driver license provided the license bears driving restriction code number six (6), "Food, fruit, or candy within reach of driver~~,~~" ~~and driving restriction code number eight (8), "Precluding the operation of a school bus or commercial vehicle transporting passengers or dangerous or hazardous materials" on the person's driver license~~.

(4) The Department may adopt by reference and enforce all or any portion of the federal motor carrier safety regulations set forth under 49 C.F.R., Section 391.41, relating to medical conditions which preclude the safe operation of a commercial motor vehicle.

(5) The provisions in this section may be subject to the limitations imposed by 49 C.F.R., Section 391.64, which grandfathers certain drivers allowing the operation of a school bus or commercial motor vehicle by insulin-controlled diabetic drivers provided that:

(A) *The driver is physically examined every year, including an examination by a board- certified/eligible endocrinologist attesting to the fact that the driver is:*

(i) *Otherwise qualified under Section 391.41;*

(ii) *Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month);*

(iii) *Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and*

(iv) *Not likely to suffer any diminution in driving ability due to his/her diabetic condition.* [49 C.F.R., § 391.64(a)(1)]

(B) *The driver agrees to and complies with the following conditions:*

(i) *A source of rapidly absorbable glucose shall be carried at all times while driving;*

(ii) *Blood glucose levels shall be self-monitored one* (1) *hour prior to driving and at least once every four* (4) *hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;*

(iii) *Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by* the Department*;*

(iv) *Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and*

(v) *Provide a copy of the annual medical certification to* the Department and *the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.* [49 C.F.R, § 391.64(b)(2)]

(b) **Hypoglycemia.** A person with severe or uncontrolled hypoglycemia (diagnosed low blood sugar) shall not be licensed until proof has been submitted from his or her physician that the condition is under control by proper care and diet.

[OAR Docket #13-1102; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #13-1103]

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PERMANENT final adoption.

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Subchapter 11: Certified Schools and Designated Class D Examiners [NEW]

595:10-11-1 [NEW]
595:10-11-2 [NEW]
595:10-11-3 [NEW]
595:10-11-5 [NEW]
595:10-11-6 [NEW]
595:10-11-7 [NEW]
595:10-11-8 [NEW]
595:10-11-9 [NEW]
595:10-11-10 [NEW]
595:10-11-11 [NEW]
595-10-11-12 [NEW]
595:10-11-13 [NEW]
595:10-11-14 [NEW]
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595:10-11-16 [NEW]

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595:10-11-5 [NEW]
595:10-11-6 [NEW]
595:10-11-7 [NEW]
595:10-11-8 [NEW]
595:10-11-9 [NEW]
595:10-11-10 [NEW]
595:10-11-11 [NEW]
595-10-11-12 [NEW]
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595:10-11-14 [NEW]
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Amendments to this chapter would implement the provisions of new state law which allows for certified driver schools and designated examiners for driver license testing.
The proposed action is to amend existing rule.
The circumstance which created the need for this rule were changes in state law.
The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 11. CERTIFIED SCHOOLS AND DESIGNATED CLASS D EXAMINERS

595:10-11-1. Purpose

This Subchapter establishes requirements and procedures standards for the certification of designated examiners who are also certified driver education instructors. Certified designated examiners shall be authorized under 47 O.S. § 6-110(D) and this Subchapter to administer driving skills examinations, on routes approved by the Department, to qualified applicants for a Class D driver license.

595:10-11-2. Scope and application

The provisions of this Subchapter shall apply only to persons described under the provisions of 47 O.S. §6-110(D).

595:10-11-3. Definitions

In addition to terms defined in 47 O.S. §1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"Certified driver education instructor" means an instructor, as defined by 47 O.S. § 801(B) or 70 O.S. § 19-113 et seq., who is currently certified to instruct in a school students who are seeking a Class D driver license in a school, but shall not include an instructor who instructs for the operation of motorcycles only.

"Department" means the Department of Public Safety.

"Designated examiner" means a certified driver education instructor who has been approved and certified by the Department of Public Safety or State Department of Education to administer driving skills examinations, on routes approved by the Department and who is employed by or operating a school.

"Division" means the Driver License Examining Division of the Department.

"Driver education" or **"driver education course"** means

(A) a public secondary school driver education course [70 O.S. §19-113 et seq.],

(B) a parochial, private, or nonpublic secondary school driver education course, certified by the Department of Public Safety, or

(C) a commercial driver training course [47 O.S. §801 et seq.].

"Examination" means the driving skills examinations for an Oklahoma Class D driver license.

"School" means a:

(A) public school which is a secondary school, as defined in 70 O.S. §1-106, within a school district, as defined in 70 O.S. §1-108, which offers a prescribed secondary school driver education course, as defined by 70 O.S. §19-113,

(B) private school which is a secondary school, including parochial and other nonpublic schools, which offers a driver education course certified by the Department of Public Safety, or

(C) commercial driver training school, as defined in 47 O.S. §801(A).

595:10-11-5. Requirements for certification as a designated examiner; display of certificate; certification renewal

(a) **Requirements and application for certification.** A certified driver education instructor may apply for certification as a designated examiner. The applicant must meet the following requirements:

(1) Complete an application provided by the Department [see 595:10-11-12],

(2) Be employed by a school,

(3) Possess a portable computer which shall meet current specifications, as provided by the Department, to enable it to be loaded with software necessary to train the applicant and, upon certification as a designated examiner, to conduct examinations and report examination results electronically to the Department, and the applicant shall sign a user agreement with the Department regarding the installation, maintenance, and use of the software,

(4) Maintain throughout the time period to be covered by the certification all other certification requirements to be a certified driver education instructor, and

(5) Successfully complete a course of instruction prescribed by the Department [see 595:10-11-6].

(b) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver education instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a designated examiner, and upon completion to the satisfaction of the Department by the instructor or designated examiner of all other requirements for certification, the Department shall provide the designated examiner with:

(1) a certificate evidencing approval by the Department as a designated examiner, which shall be presented for inspection to each driver license applicant, and to the parent or legal guardian of any applicant under eighteen (18) years of age, before the applicant enters the vehicle in which the examination is to be administered. The certificate shall be carried in the vehicle in which any examination is being administered. The certificate shall be valid for the calendar in which it is issued, and

(2) an official seal to be used by the designated examiner as provided in 595:10-11-13.

(c) **Ineligibility.** Any person shall be deemed ineligible for certification as a designated examiner if the person is not a certified driver education instructor.

(d) **Renewal of certification.**

(1) A certified designated examiner shall be eligible for renewal of certification if the examiner:

(A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of each year [see 595:10-11-12],

(B) is currently employed by a school,

(C) currently meets the requirements and standards of the Department as prescribed by this Subchapter,

(D) administered twenty (20) or more examinations within the twelve (12) months immediately preceding the application for renewal of certification.

(2) Any driver education instructor who was previously certified as a designated examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.

595:10-11-6. Course of instruction for driver education instructors applying for certification as a designated examiner

(a) A driver education instructor applying for certification as a designated examiner shall enroll in and successfully complete a course of instruction as determined by the Department before the instructor will be considered for approval and certification as a designated examiner.

(b) The Department shall, from time to time, conduct a course of instruction for driver education instructors applying for certification as designated examiners. The Department shall determine the standards and requirements for the curriculum and successful completion of the course of instruction. The curriculum shall include, but not be limited to, the following subjects:

(1) Examination standards and scoring.

(2) Forms and reports.

(3) Oklahoma statutes.

(4) Department rules.

(5) Behind-the-wheel driving.

(6) Records and recordkeeping.

(c) The dates and locations of courses of instruction will be determined by the Department.

595:10-11-7. Examination requirements and standards

(a) **Application.** Before an examination may be given to a driver license applicant by a designated examiner, the applicant shall provide a valid Oklahoma learner permit for inspection by the designated examiner and completely fill out and submit to the examiner an Oklahoma skills examination application (DPS Form DL-18-DE) which shall be provided to the applicant by the examiner [see 595:10-11-12]. The examiner shall, by electronic means, verify with the Department on the day of the examination that the applicant is eligible to be administered the examination. If the applicant is not eligible, the examiner shall refer the applicant to a Driver License Examiner.

(b) **Standards.** Current minimum standards for the skills examination of applicants for an Oklahoma Class D intermediate license or driver license, as set forth in state statutes and Department rules shall be provided to all designated examiners by the Department.

(c) **Examinations.**

(1) The driving skills examination for an Oklahoma Class D intermediate license or driver license administered by a designated examiner shall:

(A) include all specified maneuvers as required by the Department, and

(B) meet or exceed all requirements of the Department for the Class D driver license.

(2) If an applicant fails a skills examination administered by the designated examiner, the examiner shall immediately notify the Division by electronic means of the failure. The notification shall include, at a minimum, the applicant's:

(A) name and date of birth,

(B) driver license number, if applicable;

(C) score on the failed examination, along with any details of the failure which the examiner deems pertinent to the Department's records.

(d) **Location of examination.** All skills examination shall be administered on the route approved for the designated examiner which shall be a different route than any route used for training the applicant being examined.

(e) **Vehicle used for driving skills examination.** The applicant or parent or legal guardian of the applicant may specify the vehicle in which the driving skills examination is administered. The vehicle shall meet the same requirements as any vehicle which is used for Class D driving skills tests administered by the Department of Public Safety.

(f) **Auditing.** An employee of the Department of Public Safety or the State Board of Education may, at any time and without prior notice, accompany a designated examiner and a driver license applicant while a skills examination is being administered for the purpose of auditing the performance and effectiveness of the designated examiner.

595:10-11-8. Reexamination upon failure of examination

(a) If the driver license applicant fails the skills examination administered by a designated examiner, the designated examiner may administer only one (1) subsequent examination to the applicant. The designated examiner shall wait the required amount of time before reexamining the applicant [see 595:10-3-7 and 595:10-3-9]. If the applicant fails the examination two (2) times, the designated examiner shall refer the applicant to the Department for any further examination.

(b) The designated examiner shall record each failed examination on the Oklahoma skills examination application (DL-18-DE) [see 595:10-11-12] and the examiner shall immediately notify the Division by electronic means of the failure, as provided in OAC 595:10-11-7(c).

595:10-11-9. Driver license applicant

(a) Any applicant who requests an examination from a designated examiner shall have passed the vision test and shall have enrolled in and successfully completed a driver education course and been issued an Oklahoma learner permit.

(b) Any applicant who does not pass an examination administered by a designated examiner:

(1) shall wait the required amount of time [see 595:10-3-7 and 595:10-3-9] before being reexamined, and

(2) may be given no more than one (1) subsequent examination by any designated examiner. Further examination of the driver license applicant shall be conducted by the Department.

(c) Enrollment in or successful completion of a driver education or training course, or successful passage of an examination administered by a designated examiner does not grant to the driver license applicant the privilege to operate any vehicle and does not ensure that a driver license will be issued to the applicant if the applicant is not otherwise eligible.

(d) No person shall knowingly apply to be administered the skills examination by a designated examiner when the person is not eligible to be issued an Oklahoma driver license.

(e) At its discretion, the Department may retest any applicant for any reason.

595:10-11-10. Records to be maintained by designated examiners

(a) A designated examiner shall be responsible for maintaining all records pertaining to:

(1) the certification of the examiner,

(2) examinations,

(3) Oklahoma skills examination application (DL-18-DE), and

(4) payments for examinations, which shall be itemized by individual examination which identifies the person by name, date of birth, and driver license number, and the date of examination, and which shall be posted into a ledger which can be provided in electronic format to the Department by e-mail or computer media.

(b) All records are to be kept for a period of three (3) years and open for audit and inspection by the Department and the State Board of Education. An employee of any of the foregoing entities shall not be required to give prior notice before appearing to examine the records of a certified school or a designated examiner.

595:10-11-11. Records to be maintained at the Department

(a) The following records shall be maintained by the Department at its headquarters for each designated examiner and for each driver education instructor who submitted an application for certification as a designated examiner but was denied certification by the Department:

(1) The original application and all subsequent renewal applications, including investigative reports.

(2) Evidence of approval or denial of the application by the Department.

(3) Annual quality inspection reports.

(4) Complaints received.

(5) Commendations received.

(6) Evidence of violation of any standard, requirement, state statute or Department rule relating to driver license examination.

(7) Correspondence.

(8) Canceled, suspended or revoked certifications.

(9) Individual files of audits.

(b) The Department shall make available to the public upon request a list of all current designated examiners.

595:10-11-12. Prescribed forms

(a) **Designated examiner application.** A driver education instructor may request an application form from the Department to apply for certification as a designated examiner. A designated examiner shall request an application form from the Department to apply for renewal of certification as a designated examiner. The application shall require the applicant to provide the following personal information:

(1) Date of application.

(2) Whether the application is an original or renewal application.

(3) Full name.

(4) Complete home address and mailing address

(5) Telephone numbers (residence and business).

(6) Name of the employing school.

(7) Name and number of the school district in which the employing school is located (when applicable).

(8) Date of birth.

(9) Social security number.

(10) Oklahoma driver license number.

(11) Any other information the Department deems necessary to process the application.

(12) Signature of applicant.

(b) **Designated examiner certificate.** The certificate for a designated examiner shall include, but not limited to, the following information:

(1) Official name and seal of the Department

(2) Full name of the designated examiner.

(3) Name, school district name and number (when applicable), city (when applicable), county, and certification number of each school employing the designated examiner.

(4) Type of certification.

(5) Date of certification.

(6) Expiration date of certification.

(7) A unique certification number.

(8) Name and signature of the Commissioner of Public Safety.

(c) **Oklahoma driver license application.** Oklahoma skills examination applications (DPS Form DL-18-DE) shall be provided by the Department to each designated examiner. Each portion of the application shall be completed by the applicant or designated examiner, as indicated on the application. The applicant shall complete the applicant's portion of the application and submit the application to the designated examiner. The designated examiner shall document on the application the results of the skills examination administered to the applicant, verifying all the information on the application, and certifying the examination administered and successfully passed by the applicant. If the applicant fails to pass the examination, the designated examiner shall indicate and certify the failure on the application and immediately notify the Department, as provided in OAC 595:10-11-7(c). Upon certification, the designated examiner shall affix the examiner's seal and certification number to the application. If the applicant passes the examination, the examiner shall refer the applicant to a motor license agent, if the applicant is otherwise eligible.

(d) **Where to obtain forms.** All forms are provided by the Department and can be obtained by a designated examiner from the Department's web site.

595:10-11-13. Official seal

(a) The Department will provide its official seal to each designated examiner. The seal shall be imprinted upon each approved Oklahoma skills examination application (DPS Form DL-18-DE) signed by the designated examiner as a part of the examiner's verification of each examination administered to the applicant whose name appears on the application form.

(b) If the designated examiner does not renew certification as a designated examiner, or leaves the employment of or is terminated from employment by the school, the official seal of the Department shall be surrendered by the examiner to the Department.

595:10-11-14. Prohibited acts; conduct

(a) **Prohibited acts.** A designated examiner shall not:

(1) use or permit to be used any form of alcoholic beverage or drugs in or about the examination route, or in any motor vehicle being used for the purpose of administering an examination,

(2) administer an examination to any driver license applicant with a physical disability,

(3) administer an examination on the same route on which the applicant was trained, or

(4) administer an examination to any applicant:

(A) who does not have a valid Oklahoma learner permit, or

(B) who does not fill out an Oklahoma skills examination application (DL-18-DE) issued by the Department of Public Safety,

(5) administer an examination to any applicant related by consanguinity (by blood relation) or affinity (by marriage) within the third degree,

(6) administer an examination to any applicant who has previously been a student of the designated examiner for any of the required six (6) hours of behind-the-wheel instruction in his or her capacity as a driver education instructor; provided, this paragraph shall not be construed to allow an examiner to give the applicant a practice examination or pre-examination instruction,

(7) accept any present or favor from an applicant or any other person who has or may have an interest in the outcome of an examination, or accept any employment which represents a conflict of interest to the examination process,

(8) use the designated examiner position for any personal advantage, or

(9) commit or omit any act which constitutes a violation of any of the rules of this subchapter or the laws of this state governing designated examiner certification.

(b) **Conduct.** A designated examiner shall:

(1) Recognize that his or her position is of the highest public trust and that, on the wisdom of his or her decision, the lives of many people daily depend,
(2) Impartially administer all official duties without regard to race, creed, position, or influence, according no applicant more reasonable treatment than any other,
(3) Conduct each examination in a manner which reflects:
(A) its importance to society,
(B) its seriousness to the individual, and
(C) the unquestioned competence of the examiner,
(4) Exercise only such legal authority as has been duly vested in the position of a designated driver examiner, and
(5) Fully appreciate and fulfill the responsibilities of his or her certification in order to strengthen public confidence in driver license examinations.

595:10-11-15. Termination, withdrawal, or denial of certification

(a) Certification granted under this Subchapter may be terminated by either the Department or the certified party, by giving written notice to the other party, stating cause or reason for termination
(b) The Department may:
(1) cancel, suspend, revoke, or refuse to renew the certification of a designated examiner for failure to comply with any provisions of state law, federal regulation, or Department rule.
(2) deny certification to any driver education instructor applying for certification as a designated examiner for failure to meet the requirements prescribed by this Subchapter.
(c) Where it is determined that a minor disqualification exists that may readily be rectified by the designated examiner, the Department may informally notify the designated examiner by mail or telephone of the minor disqualification with a request for compliance within a specified period of time. If such designated examiner fails to rectify the disqualification, the Department may proceed to deny, suspend, revoke or cancel certification.

595:10-11-16. Hearings

Any party aggrieved under this Subchapter may request a hearing with the Department pursuant to OAC 595:1-3.

[OAR Docket #13-1103; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #13-1106]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 1. Commercial Driver Licensing
Part 2. Application for Initial Commercial Driver License
595:11-1-15 [AMENDED]
595:11-1-16 [AMENDED]
595:11-1-17 [NEW]
595-11-1-18 [NEW]

AUTHORITY:
Commissioner of Public Safety, 47 O.S. § 6-101 et seq.

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Subchapter 1. Commercial Driver Licensing
Part 2. Application for Initial Commercial Driver License
595:11-1-15 [AMENDED]
595:11-1-16 [AMENDED]
595:11-1-17 [NEW]
595-11-1-18 [NEW]
Gubernatorial approval:
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Register publication:
30 Ok Reg 208
Docket number:
12-1090

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The rule would implement the provisions of Federal Motor Carrier Safety Administration regarding the medical certification of commercial drivers licenses issued by the department.

CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

SUBCHAPTER 1. COMMERCIAL DRIVER LICENSING

PART 2. APPLICATION FOR INITIAL COMMERCIAL DRIVER LICENSE

595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference

(a) **Applicability.** The licensing regulations found in 49 C.F.R., Parts 383 and 391, as adopted in OAC 595:11-1-14 are applicable to all applicants for Class A, B, and C commercial driver licenses.

(b) **Terminology substitutions.** Unless otherwise specified, the following terminology shall apply to federal rules adopted by referenced in OAC 595:11-1-14:

(1) "Department of Public Safety" shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner of Public Safety" shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(c) **Limitations to scope of definitions.** The definitions provided in (b) of this Section are limited in application to 47 O.S.§ 6-101 et seq. and the rules adopted by the Department to carry out the provisions those statutes. These definitions do not alter, replace, or change any definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Additional qualification of all classes of commercial drivers.** The following additions are made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older:

(1) A driver operating solely in intrastate commerce shall be at least eighteen (18) years of age; and

(2) Any person who is not at least twenty-one (21) years old shall not be licensed for:

(A) the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or

(B) transporting fifteen (15) or more passengers; provided, this subparagraph shall not apply to school bus drivers as provided in OAC 210:30-5.

(e) **Additional qualifications for non-excepted commercial drivers.** The following additions are made to the federal requirement in Commercial Driver's License Standards; Requirements and Penalties [49 CFR §384] relating to medical ~~examiner certification~~examiner's certificate:

(1) A non-excepted commercial driver operating solely in intrastate commerce shall meet the same qualifications as a driver operating in interstate commerce; and

(2) Current medical ~~examiner certification~~examiner's certificate, including any variance if applicable, shall be delivered to the Department of Public Safety by the driver ~~by~~:

(A) by mail to: Department of Public Safety, Attn: CDL Program Administration

(B) by fax to: ~~405-425-2060~~405-419-2196

(C) by e-mail to: mec@dps.state.ok.us

(D) in person to: the Department of Public Safety headquarters or any Department of Public Safety ~~Examine~~Examination Site

(3) Until January 30, 2014, the Department shall date stamp the medical examiner's certificate and return a copy, along with the variance if applicable, as a receipt to the driver; and the driver shall keep the copy of the medical examiner's certificate, and any variance if applicable, in his or her possession at all times when operating a commercial motor vehicle.

(4) Changes to the status of any driver from non-excepted status to excepted status or from excepted status to non-excepted status shall be made in writing to the Department by the driver, using one of the delivery methods described in paragraph (2).

595:11-1-16. Waiver of certain physical conditions for Class A, B, or C commercial driver license applicants

(a) **For interstate commerce.** An applicant who is non-excepted, who does not meet the physical requirements of 47 C.F.R.,§ 391.41, and who desires to be considered for an interstate commercial driver license~~,~~ shall apply for a variance under the alternative physical qualification standards under 49 C.F.R., Section 391.49, by contacting the Federal Motor Carrier Safety Administration, Oklahoma Division Office, 300 N. Meridian, Suite 106 North, Oklahoma City, OK 73107, (405) 605-6047. The variance along with the medical examiner's certificate shall be delivered in person by the applicant to the Driver Examiner of the Department of Public Safety prior to the skills examination being administered by the Department to the applicant.

(b) **For intrastate commerce.**

(1) **Applicability to certain applicants.** This subsection applies to an applicant who does not meet the requirements of 49 C.F.R.,§ 391.41, who will be operating solely in intrastate commerce, and who:

(A) has been continuously operating as a commercial motor vehicle driver with the proper type of commercial driver license prior to and since June 12, 1989, or

(B) is ~~exempt~~excepted from meeting the medical requirements as prescribed in 49 CFR §390.3(f).

(2) **Applicability to certain physical conditions.** This subsection shall apply to the following physical conditions:

(A) Metabolic diseases (see OAC 595:10-5-5)

(B) Cardiovascular diseases (see OAC 595:10-5-6)

(C) Musculoskeletal problems (see OAC 595:10-5-8)

(D) Neurological disorders (see OAC 595:10-5-9)

(3) **Application process.** Application for an intrastate waiver shall be made jointly by the applicant and the motor carrier employer of the applicant. Applications for this waiver are available through the Medical Desk, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136-0415, (405) 425-2083.

(4) **Determination by the Department.** The Medical Desk of the Department shall make the final determination as to whether the applicant may be further considered by the Department for an intrastate Class A, B, or C commercial driver license.

(A) If the Medical Desk authorizes the applicant for further consideration, the Medical Desk shall issue an authority letter to the applicant, to include any recommendations to the Driver License Examining Division as to driving limitations deemed necessary for the condition of the applicant.

(B) If the Medical Desk does not authorize the applicant for further consideration, the Medical Desk shall issue a letter to the applicant stating that authority is being denied. The applicant may appeal the denial pursuant to OAC 595:10-5-18.

(5) **Limitation of waiver.** If a waiver is granted by the Medical Desk, the waiver is only effective in intrastate commerce, subject to the restrictions imposed pursuant to (c) of this Section.

(c) **Restrictions.** The Department of Public Safety may impose restrictions on any applicant under (b) of this section to whom the Department issues an intrastate waiver restricting the operation of a commercial motor vehicle to specified area, time of day, streets and highways, speed limits and any other restriction deemed necessary by the Department for the safe operation of a commercial motor vehicle. An extended skills examination may be conducted to determine the appropriate restriction. The restrictions shall apply upon and be a condition of the applicant becoming licensed by the Department to operate a motor vehicle.

595:11-1-17. Medical examiner's certificate requirements

(a) **Definitions.** As used in this section: **"Licensed medical professional"** means one of the following:

(1) medical doctor (M.D.),

(2) doctor of osteopathy (D.O.),

(3) chiropractor,

(4) physician's assistant (P.A.), or

(5) advanced practical nurse (A.P.N.).

(b) **Submission of medical examiner certificate.** The following persons shall submit to the Department and maintain with the Department a current approved medical examiner's certificate, and any variance if applicable, signed by a licensed physician authorized to perform and approve medical examiner's certificates:

(1) Every applicant who is subject to the requirements of 49 C.F.R. Part 391 and is applying for an original, renewal, or replacement commercial license, and

(2) Every person who is currently the holder of a commercial driver license and is subject to the requirements of 49 C.F.R. Part 391 and who does not apply for a renewal or replacement license prior to January 30, 2014.

(c) **Retention of medical examiner's certificate.** The Department shall maintain medical examiner's certificates pursuant to the requirements in 49 C.F.R., Parts 383 and 384.

(d) **Failure to deliver or maintain medical examiner's certificate.**

(1) If a person fails to deliver to or maintain with the Department his or her medical examiner's certificate as provided in subsection (b):

(A) the person, if an applicant for a commercial driver license, shall not be granted commercial driving privileges; or

(B) the person, if currently the holder of a commercial driver license, shall be downgraded to a Class D driver license by the Department. The person shall surrender the commercial driver license to the Department.

(2) If any person in (d)(1) later delivers a medical examiner's certificate to the Department:

(A) the person, if an applicant for a commercial driver license, may be reconsidered by the Department for commercial driving privileges; or

(B) the person, if previously downgraded to a Class D driver license by the Department, shall be eligible to obtain commercial driving privileges, if the person is otherwise eligible.

(e) **Requirement to possess medical examiner's certificate.** Until January 30, 2014, any person required to maintain a medical examiner's certificate for the purposes of operating commercial motor vehicles shall have in his or her possession the date-stamped copy of the certificate, along with the variance if applicable, at all times when operating a commercial motor vehicle. [See OAC 595:11-1-15 regarding date-stamped copy]

595:11-1-18. Downgrade of commercial driver license to Class D driver license

(a) **Notice of pending downgrade.** Whenever any person required to maintain a medical examiner's certificate on file with the Department of Public Safety fails to do so, the Department shall send notice to the person advising that the person has thirty (30) days from the date of notice to provide a valid and current medical examiner's certificate to the Department, and that failure to do so will result in the loss of commercial driving privileges resulting in the downgrade of the person's license to a Class D driver license.

(b) **Avoiding downgrade.** To avoid and prevent downgrading of his or her commercial driver license to a Class D driver license, the person shall deliver to the Department a current and valid medical examiner's certificate.

(c) **Mandatory downgrade.** If a current and valid medical examiner's certificate is not received with the thirty (30) days as provided in the notice, the Department shall downgrade the person's license to a Class D driver license and shall send notice to the person of the downgrade. The person shall submit his or her commercial driver license to the Department and shall be issued a Class D license, after payment of appropriate fees and if the person is otherwise eligible to be granted driving privileges by the Department.

(d) **Removal of downgrade.** If the person submits a current and valid medical examiner's certificate to the Department after the thirty (30) days as provided in the notice, the Department shall review the person's driving record to determine if the person is eligible for removal of the downgrade and otherwise eligible to be granted commercial driving privileges. The Department shall send notice to the person stating the determination, and, if eligible for commercial driving privileges, the

person may obtain a commercial driver license, after payment of appropriate fees.

(e) **Hearing.** Any party aggrieved under this Section may request a hearing with the Department pursuant to OAC 595:1-3.

[OAR Docket #13-1106; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

[OAR Docket #13-1108]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
595:35-1-2 [AMENDED]
595:35-1-3 [AMENDED]
595:35-1-4 [AMENDED]
595:35-1-6 [AMENDED]
595:35-1-8 [AMENDED]
595:35-1-9 [AMENDED]
595:35-1-10 [AMENDED]
595:35-1-11 [NEW]
AUTHORITY:
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SUPERSEDED EMERGENCY ACTIONS:
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N/A
ANALYSIS:
Amendments to this chapter would modify and clarify the necessary language related to size and weights standards. A new rule would address intrastate compliance reviews related to size and weights.

The proposed action is to amend existing rule.

The circumstance which created the need for this rule was to create regulatory structure for intrastate compliance review of hazardous material motor carriers.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.

CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

595:35-1-2. Definitions

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

"Act" means the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act [47 O.S. § 230.1 et seq.].

"Commissioner" means the Commissioner of Public Safety.

"Compliance review" as defined by 49C.F.R. 385.3.

"Department" means the Department of Public Safety.

"Representative" means any employee of the Department authorized by the Commissioner to carry out the provisions of the Act or a rule adopted by the Commissioner to carry out the Act.

"Respondent" means the individual, corporation, or entity charged with a violation of the Act or of a rule adopted by the Commissioner to carry out the Act.

"Troop S" means the Oklahoma Highway Patrol Troop of the Department authorized by the Commissioner to enforce the provisions of the Act or of any rule adopted by the Commissioner to carry out the Act.

595:35-1-3. General

(a) Any statute, law, or regulation of the United States or statute of the State of Oklahoma now existent, or duly enacted in the future shall supersede any conflicting provision of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(b) Any violation of the rules of this Chapter or of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act may result in the assessment of an administrative penalty. [47 O.S. §§ 230.6 and 230.9]

(c) Interested parties may obtain information or make submission related to this Chapter by contacting: Commercial Vehicle Enforcement Section, Troop S, Department of Public Safety, ~~P.O. Box 11415~~200 NE 38th Terrace, Oklahoma City, Oklahoma ~~73136-0415~~73105, Phone: (405) 521-~~6103~~6060.

595:35-1-4. Adoption by reference

The Department of Public Safety adopts by reference the United States Department of Transportation regulations pertaining to motor carrier safety and hazardous materials transportation, as contained in Title 49 of the Code of Federal Regulations (49 CFR) [47 O.S. § 230.5(2)]. Information relative to this adoption is available through various sources,

such as the Labelmaster publication, "Federal Motor Carrier Safety Regulations." Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) ~~843~~525-9488. Those regulations pertaining to motor carrier safety and hazardous materials transportation adopted by reference under this Section are:

(1) Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs. [49 CFR § 40.1 et seq.]

(2) Part 107 Hazardous Materials Programs and Procedures. [49 CFR § 107.1 et seq.]

(3) Part 171 Hazardous Materials Regulations...General Information, Regulations, and Definitions. [49 CFR § 171.1 et seq.]

(4) Part 172 Hazardous Materials Tables and Hazardous Material Communication Regulations and Emergency Response Information Requirements. [49 CFR § 172.1 et seq.]

(5) Part 173 Shippers-General Requirements for Shipments and Packagings. [49 CFR § 173.1 et seq.]

(6) Part 177 Carriage by Public Highway. [49 CFR § 177.800 et seq.]

(7) Part 178 Shipping Container Specifications. [49 CFR § 178.0 et seq.]

(8) Part 180 Continuing Qualification and Maintenance of Packagings. [49 CFR § 180.00 et seq.]

(9) Part 382 Controlled Substances and Alcohol Use and Testing. [49 CFR § 382 et seq.]

(10) Part 383 Commercial Driver's License Standards; Requirements and Penalties [49 CFR § 383.1 et seq.], in so much as it does not conflict with state law

(11) Part 385 Safety Fitness Procedures. [49 CFR § 385.1 et seq.]

(12) Part 386 Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. [49 CFR § 386.1 et seq.]

(13) Part 390 Federal Motor Carrier Safety Regulations: General. [49 CFR § 390.1 et seq.]

(14) Part 391 Qualifications of Drivers. [49 CFR § 391.1 et seq.]

(15) Part 392 Driving of Motor Vehicles. [49 CFR § 392.1 et seq.]

(16) Part 393 Parts and Accessories Necessary for Safe Operation. [49 CFR § 393.1 et seq.]

(17) Part 395 Hours of Service of Drivers. [49 CFR § 395.1 et seq.]

(18) Part 396 Inspection, Repair, and Maintenance. [49 CFR § 396.1 et seq.]

(19) Part 397 Transportation of Hazardous Materials; Driving and Parking Rules. [49 CFR § 397.1 et seq.]

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

(a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.

(b) **Terminology.** Unless otherwise specified, the following terminology shall apply:

(1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.

(c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Exceptions in the transportation of hazardous materials.**

(1) Cargo Tank Specifications [49 CFR § 173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR § 173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§ 100 through 199 when transported by a farmer who is an intrastate private motor carrier.

(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§ 100 through 199 when:

(A) It is transported by a farmer who is an intrastate private motor carrier.

(B) The packaging conforms to the requirements of 49 CFR § 173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:

(i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.

(C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§ 100 through 199.

(D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.

(E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR § 173.315(m)].

(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR § 177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions, is available from:

(A) Department of Public Safety:

(i) in person: Troop S Headquarters, 220 NE 38th Terrace, Oklahoma City

(ii) by mail: Troop S, ~~P.O. Box 11415~~200 NE 38th Terrace, Oklahoma City, OK ~~73136-0415~~73105

(iii) by telephone: (405) ~~702-0813~~521-6060

(B) Corporation Commission:

(i) in person: 2101 N. Lincoln Blvd., Oklahoma City

(ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000

(iii) by telephone: (405) 521-2251

(C) Oklahoma Division Office of the Federal Motor Carrier Safety Administration:

(i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107

(ii) by telephone: (800) 823-5660

(iii) from the internet: *http//www.fmcsa.dot.gov/*

(3) **Filing.** The completed Motor Carrier Identification Report shall be filed:

(A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with either:

(i) Department of Public Safety, Commercial Vehicle Enforcement Section, ~~220~~200 NE 38th Terrace, ~~P.O. Box 11415~~, Oklahoma City, OK ~~73136-0415~~73105, or

(ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.

(B) **Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.

(4) **Motor carrier name.** Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.

(5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., § 230.9.

(6) **Issuance and display of USDOT number.** Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:

(A) the letters "USDOT",

(B) the identification number itself, and

(C) the suffix letters "OK".

(f) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR § 391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR § 177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(g) **Relief from regulations.**

(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:

(A) the type of emergency,

(B) if applicable, the company on whose behalf the requesting party is seeking the exception,

(C) the region the emergency covers,

(D) the type of work required to restore services in the area, and

(E) the approximate time to restore those services.

(2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the Troop Commander or duty supervisor.

(3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the

amount of accumulated on duty hours exceeds those allowed by 49 CFR § 395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of twenty-four (24) or more successive hours when taken at the end of any emergency restoration service.

(4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:

(A) Nature and extent of the emergency,

(B) Type of services restored during the emergency,

(C) Names and driver license numbers of those drivers for which the exemption was granted, and

(D) Total hours on duty during the declared emergency for each driver.

(5) Said report must be sent to the following address: Department of Public Safety, Troop S, ~~P. O. Box 11415~~200 NE 38th Terrace, Oklahoma City, OK ~~73136-0415~~73105.

595:35-1-8. Administrative penalty and notice of ~~probable violation~~claim

The Commissioner or the Commissioner's representative may assess an administrative penalty against a person or entity that the Commissioner or the representative has determined violated the Act [47 O.S. §§ 230.6 and 230.9].

(1) Where the Commissioner or the representative has determined that a minor violation or violations exist which may be readily corrected by the person involved, the Commissioner or the representative may informally notify such person by mail or telephone of the minor violation within a specified period of time. If the person does not correct the violation within the specified time, the Commissioner or the representative may then assess the administrative penalty with the procedure specified. However, whether the violation is one justifying an administrative penalty or a request for compliance is a decision purely within the discretion of the Commissioner or the representative.

(2) When the Commissioner or the representative has determined that a violation justifying the imposition of an administrative penalty has taken place, the Department shall send a Notice of ~~Probable Violation~~claim to the respondent at the respondent's last known address. The Notice of ~~Probable Violation~~claim shall contain:

(A) the amount of the administrative penalty that the Commissioner or the representative has assessed;

(B) a statement of the maximum civil penalty for which the respondent may be liable, and

(C) a description of the manner in which the respondent makes payment of the penalty to the Department,

(3) The administrative penalty shall be due and owing twenty-five (25) days after the date the Notice of ~~Probable Violation~~claim was sent, unless the concerned party requests a hearing as provided in 595:35-1-9.

595:35-1-9. Hearings

(a) In responding to the Notice of ~~Probable Violation~~Claim, the respondent may submit to the official who issued the notice written explanations, information, or arguments in response to the allegations or the amount of the assessed penalty set forth in the Notice of ~~Probable Violation~~ Claim. The contents of the informal response will be reviewed by the Commissioner's representative who may choose to amend, dismiss, or let the Notice of ~~Probable Violation~~Claim remain as issued. If the Commissioner's representative does not dismiss the administrative penalty in whole, the respondent shall be notified as soon as reasonably possible. The respondent shall then be given either the longer of the twenty-five (25) days still outstanding or at least ten (10) days to pay the penalty. Should a proposed settlement be rejected by the respondent, the amount of the assessed penalty set forth in the Notice of ~~Probable Violation~~Claim shall be reinstated.

(b) Any request for a hearing must be filed by the respondent with the Department of Public Safety, Troop S, ~~P.O. Box 11415~~200 NE 38th Terrace, Oklahoma City, OK ~~73136-0415~~73105 within twenty-five (25) days after the Notice of ~~Probable Violation~~Claim was sent.

(c) The request for a hearing must be in writing and must:

(1) state the name and address of the respondent and of the person submitting the request if different from the respondent,

(2) state which allegations of violations, if any, are admitted,

(3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and

(4) be addressed to the official who issued the notice.

(d) If the hearing is timely requested, such hearing shall be scheduled either at the Department or by telephone.

(e) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.

(f) The Commissioner or the hearing officer will determine, at his discretion, whether the hearing will be conducted in person or telephonically. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the respondent and the respondent's attorney, if designated, along with the notice letter confirming that the hearing has been scheduled.

(1) Within ten (10) days after receiving notice that the hearing is being held telephonically, the respondent must provide to the Department:

(A) the name, mailing address, and phone number of the respondent's attorney, if the respondent is being represented by an attorney,

(B) the name, mailing address(es), and telephone numbers of any witnesses on the respondent's behalf who the respondent desires to have present, and

(C) the telephone number at which the respondent will be available.

(2) If the respondent, the investigating officer, or a witness desires to have additional exhibits or documentary evidence included in the hearing, the exhibits or evidence must be delivered to the Department's Legal Division at least ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Department of Public Safety, Legal Division MCSAP Hearing Officer, P.O. Box 11415, Oklahoma City, OK 73136-0415.

(3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.

(A) All parties will be sworn in prior to testimony.

(B) If the rule of sequestration is invoked pursuant to 12 O.S. § 2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.

(4) When the respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the respondent to keep the line(s) open to receive the call from the hearing officer.

(5) Should a necessary witness adverse to the licensee, such as an officer, fail to provide a telephone number or to answer or the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.

(g) The hearing officer shall render a decision based upon the law and the evidence presented. Each party shall be promptly notified of the decision either personally or by mail.

(h) Unless the hearing officer timely receives a written request for a rehearing, reopening, or reconsideration of the decision as provided by the Administrative Procedures Act [75 O.S. § 317], the hearing officer shall, after twenty (20) days from the entry of the decision, enter an appropriate final order. Each party shall be notified of the final order personally or by mail.

(i) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date of twenty-five (25) days after the date of the Notice of ~~Probable Violation~~Claim in lieu of the decision and final order as described in (h) of this Section.

(j) If the representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice. However such a dismissal affects only those violations listed in the Notice of ~~Probable Violation~~Claim and does not affect the same or other violations occurring at another time.

(k) A party aggrieved with the hearing officer's decision may file an appeal with the Commissioner requesting reopening or reconsideration of the case [75 O.S. § 317]. Such an appeal must:

(1) be in writing,

(2) be within twenty (20) days of the entry of the decision by the hearing officer, and

(3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.

(l) Where a timely written request for a rehearing, reopening, or reconsideration of the case is received, the administrative penalty will be suspended until a final order has been entered. Grounds for rehearing are limited to those in the Administrative Procedures Act [75 O.S. § 317].

(m) The administrative penalty assessed shall be due immediately upon issuance of the final order. If, within twenty-five (25) days after the issuance of a final order, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed or correcting the violation, or both, if required, or by filing an appeal of the final order, the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.

(n) A respondent aggrieved with both the hearing officer's and the Commissioner's decisions may file an appeal with the Oklahoma County District Court.

(o) At any time prior to the Commissioner or the representative bringing an action in Oklahoma County District Court for enforcement of the final order, either the respondent or the Commissioner's representative, whose names appears on the Notice of ~~Probable Violation~~Claim, may recommend a compromise of the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise shall be submitted to the representative who may, after consultation with the Troop S Commander, accept or reject it.

(1) A compromise offer stays the running of any response period then outstanding.

(2) Any compromise agreed to by the parties is also subject to approval by the hearing officer. If a compromise is agreed to by the parties and approved by the hearing officer, the respondent will be notified in writing. Upon receipt of payment by the Department, the respondent will be notified in writing that acceptance of the payment is in full satisfaction of the administrative penalty proposed or assessed, and the Department closes the case with prejudice to the respondent.

(3) If a compromise cannot be agreed to, the respondent will be notified, either personally or by mail, and shall be given ten (10) days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action has been taken by Troop S or any other representative authorized to enforce the provisions of the Act.

(p) The administrative penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other

non-duplicative remedies, particularly if the Commissioner has determined an order requiring compliance is necessary under the circumstances. Money penalties are not fees allowing the concerned party to continue to operate in violation of the Act or of any rules adopted to carry out the Act. [47 O.S. § 230.9(F)]

595:35-1-10. Administrative penalty assessment guidelines [AMENDED]

(a) **General.** The Act does not recommend or suggest specific penalties for violation of the Act or any rules adopted to carry out the Act. Instead, the Act lists certain elements which the Commissioner or the Commissioner's representative may take into account in assessing penalties and establishes the maximum penalty for categories of violations. These guidelines serve to ensure the public and the respondent that assessment decisions will be made rationally and objectively on the merits of each case. [47 O.S. §§ 230.6 and 230.9]

(1) These guidelines are not meant to be used to determine when enforcement action will be taken, nor are they meant to be a rigid requirement. Instead, they are meant to assist the Commissioner or the representative in assessing each administrative penalty based on the seriousness of the underlying offense. For example, the fine for violations such as stop light violations or horn or other similar equipment failure violations would not exceed that authorized by statue if adjudged in a court of competent jurisdiction. However, repeated violations of this nature would evidence a pattern of safety violations which would fall within one of the categories set forth in (b) of this Section.

(2) If a hearing is necessary, the hearing officer may eventually assess an administrative penalty which is different than the original administrative penalty imposed in the Notice of ~~Probable Violation~~Claim.

(3) Because of the volume of violations, the examples in this section are not all inclusive; they are only intended to serve as a guide for the types of violation categories. The Code of Federal Regulations incorporated by reference contains the complete listing of all violations covered by this Act.

(b) **Categories of violations.** The Act separates the types of violations into the following four categories:

(1) **Record keeping violations.** [47 O.S. § 230.9(B)(1)] These are violations of the administrative requirements of the Act, including failure to make, require, or keep records, or the falsification of entries in the records required by the Department of Transportation regulations pertaining to motor carrier safety as adopted and contained in Title 49 of the Code of Federal Regulations (CFR).

(A) The Act provides for a penalty not to exceed one hundred dollars ($100.00) for each record keeping offense.

(B) The Act further provides that each day of a violation shall constitute a separate offense against any respondent, provided that the total penalties for all offenses relating to any single violation shall not exceed five hundred dollars ($500.00).

(C) Some examples of record keeping violations include:

(i) Failure to properly maintain complete driver qualification files on each driver employed [49 CFR § 391.51].

(ii) Record of duty status violations [49 CFR § 395.8].

(iii) Failure to keep maintenance and inspection records [49 CFR § 396.3].

(iv) Failure to prepare or retain driver's vehicle inspection reports. [49 CFR § 396.11].

(2) **Serious pattern of safety violations.** [47 O.S. § 230.9(B)(2)] The Act provides for a fine of Two Hundred Dollars ($200.00) for each offense not to exceed One Thousand Dollars ($1,000.00) for each serious pattern of safety violation. The Commissioner or the representative may find a serious pattern of safety violations exists if the respondent has repeatedly violated equipment and operational requirements of the Act, and such violations are of a nature which indicates they are not the result of isolated human error but are of a tolerated pattern which the respondent could have detected and corrected if he or she wanted to meet his or her full safety responsibility to the public. Although any single violation may not by itself have a high probability of causing an accident, the violations taken as a whole may collectively demonstrate the respondent's unwillingness to exercise proper safety supervision or control which will eventually lead to accidents. Examples of some violations which may be included in a serious pattern of safety violations are:

(A) Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed [49 CFR § 392.6].

(B) Light violations [49 CFR § 393.11].

(C) Failure to cover a battery [49 CFR § 393.30].

(D) Failure to protect or support electrical wiring [49 CFR § 393.28].

(E) Making detachable wiring connections by twisting together wires [49 CFR § 393.32].

(F) Failure to maintain a motor vehicle windshield free of prohibited damage, or using prohibited vision reducing matter upon windshield or windows [49 CFR § 393.60].

(G) Failure to mark push out or escape windows [49 CFR § 393.63].

(H) Sleeper berth violations [49 CFR § 393.76].

(I) Heater violations [49 CFR § 393.77].

(J) Failure to maintain a motor vehicle with:

(i) a defroster [49 CFR § 393.79],

(ii) two rear vision mirrors [49 CFR § 393.80].

(iii) an operative horn [49 CFR § 393.81], or

(iv) an operable speedometer [49 CFR § 393.82].

(K) Failure to mark bus emergency exits [49 CFR § 393.92].

(L) Violations of the driver's requirements including:

(i) hours of service violations [49 CFR § 395.3], or

(ii) failure to maintain a log book [49 CFR § 395.8].

(M) Inspection violations as per 49 CFR 396.3(A)(2), § 396.98.

(3) **Substantial health or safety violations.** [47 O.S. § 230.9(B)(3)] The Act provides for a penalty not to exceed One Thousand Dollars ($1,000.00) per violation. This category includes any violation which, if allowed to continue, would result in accidents, deaths, injuries, and public property damage. Acts which are substantial health or safety violations are of a nature so blatant that no carriers or drivers could have operated vehicles on the public highway without knowing the defects existed, and therefore chose to disregard public safety. Substantial health or safety violations are listed in the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria and include but are not limited to the following:

(A) Using a driver lacking training or experience to determine if the cargo or baggage has been properly located or secured [49 CFR § 391.11(b)(4) or (5)], or a physically unqualified or disqualified driver [49 CFR § 391.11(b)(6) and (9)].

(B) Brake violations:

(i) failure to maintain motor vehicle with adequate parking brake [49 CFR § 393.41],

(ii) brake hose or tubing violation [49 CFR § 393.45; § 393.46],

(iii) failure to maintain motor vehicle with operative brakes [49 CFR § 393.48],

(iv) failure to maintain motor vehicle with adequate brake linings [49 CFR § 393.47], or

(v) failure to securely attach air or vacuum reservoir to motor vehicle [49 CFR § 393.50].

(C) Fuel tank violations: Failure to securely attach fuel tank to motor vehicle [49 CFR § 393.65].

(D) Violations and defects of lower and upper fifth wheels and certain safety devices [49 CFR § 393.70].

(E) Violations of coupling devices and tow away methods [49 CFR § 393.71].

(F) Tire violations [49 CFR § 393.75].

(G) Exhaust system violations [49 CFR § 393.83].

(H) Failure to load or equip vehicle so as to prevent shifting or falling of cargo [49 CFR § 393.100].

(I) Failure to maintain vehicle with a header board or similar structure to prevent load shifting [49 CFR § 393.106].

(J) Failure to obey any hazardous material regulation [49 CFR § 397.2].

(K) Violations which would normally fall within the "serious pattern" category but which may be of such a severe nature that they constitute a substantial health or safety violation.

(4) **Gross negligence or reckless disregard.** [47 O.S. § 230.9(D)] The Act provides that, except for record keeping violations, an employee shall not be liable for a violation of the Act unless the Commissioner determines that such actions of the employee constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for an administrative penalty not to exceed One Thousand Dollars ($1,000.00). Gross negligence exists where the employee acts in such a way which indicates complete disregard or indifference to the safety of other people's property or welfare.

(5) **Certain misuses of vehicles or containers.** [47 O.S. § 230.6] The Act provides for a civil penalty assessed to an employee of not less that One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00). The Act also provides for a civil penalty assessed to an employer of not less that Two Thousand Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00). Some examples of certain misuses of vehicles or containers are:

(A) Operating, or requiring or permitting the operation of, a motor vehicle or container declared out of service before all required corrections are made [49 CFR § 396.9 (c)(2)].

(B) For a driver who is declared out of service, operating, or requiring or permitting the driver to operate, a motor vehicle before prescribed off duty or sleeper berth time has been accumulated [49 CFR § 395.13(c)].

(c) **Factors.** The Act requires that the Commissioner or the representative take into account the following factors [47 O.S. § 230.9(E)]:

(1) **Nature of the violation.** A consideration of the appropriate category of the violation.

(2) **Circumstances of the violation.** A broad consideration which includes both aggravating as well as mitigating factors known to the Commissioner or the representative at the time of the assessment.

(3) **Extent of the violation.** Requires the Commissioner or the representative to consider the magnitude, scope, frequency, and range of a violation. This is a major factor where there are numerous violations involving a large number of vehicles or employees of the respondent. It indicates that the respondent has a greater magnitude, frequency, and range of violations.

(4) **Gravity of the violation.** An evaluation of the seriousness of the violation. The seriousness is to be measured by the likelihood of the occurrence of the event, and the severity of the event if it occurred or were to occur. The gravity is not to be measured abstractly, but on a case-by-case basis taking into account all relevant factors.

(5) **Culpability.** The quality of the respondent's awareness of his or her actions, and the degree to which he or she was responsible for averting such violations. In determining the culpability of a respondent, ignorance is no excuse. Instead, culpability will be determined on the basis of whether the respondent knew or should have known of the violation, and to what extent the respondent had control of the violation.

(6) **History of prior offenses.** The Commissioner or representative will consider the respondent's performance record in terms of prior Notices of ~~Probable~~

~~Violation~~Claim, prior warnings, citations, and prior compliance efforts of the respondent. Both similar violations and different types of violations in the past should be taken into account, but the similar past violations should be given more weight.

(7) **Ability to pay and ability to do business.** The Commissioner or the representative may consider the respondent's inability to pay or whether the payment of such a penalty would affect the respondent's ability to do business.

(8) **Such other matters as justice and public safety may require.** These are other matters, not specifically covered by one of the other factors, which can be either aggravating or mitigating factors and should be taken into account by the Commissioner or the representative in setting the penalty if, in the interests of justice and public safety, a reduction or an increase in the amount of the assessment is required in order to achieve the purposes of the Act. Other matters might be either positive or negative, such as: cooperation or lack of cooperation; general attitude towards compliance; equities; institution or revision of a safety director or safety consultant; comprehensiveness of corrective action, such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern; compliance or noncompliance by the date set in the notice of claim; speed of compliance; and other matters. These matters, both negative and positive, are to be considered together, and they may cancel out one another.

595:35-1-11. Intrastate compliance reviews

(a) **Intrastate safety rating system.**

(1) The department may issue a safety rating to a motor carrier subject to the provisions of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in Oklahoma.

(2) The department shall use the safety standards and rating criteria in 49 C.F.R. 385 in issuing a safety rating.

(3) A motor carrier may request the department to conduct an administrative review if it believes the department has committed an error in assigning its proposed or final safety rating. The request and administrative review shall comply with the procedures in 49 C.F.R. 385.15 except that the request shall be submitted to: OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105

(4) A motor carrier that has taken action to correct deficiencies may request the department to change its proposed or final safety rating at any time. The request and determination shall comply with the procedures in 49 C.F.R. 385.17 except that the request shall be submitted to: OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105

(5) **Safety fitness information.**

(i) Final ratings shall be made available to other state and federal agencies in writing, telephonically, or by remote computer access.

(ii) The final safety rating assigned to a motor carrier shall be made available to the public pursuant to the Oklahoma Open Records Act [Title 51 O.S. Section 24A.1 et. al.]Any person requesting the rating shall provide the department with the motor carrier's name, principal office address, and if known, the Oklahoma DOT number.

(iii) Requests shall be addressed to: OHP Troop S, Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105

(b) **Penalties.**

(1) For violations by motor carriers in intrastate commerce resulting from an investigation, the department shall apply the system of administrative penalties and procedures in 49 U.S.C.521(b) and the U.S. Department of Transportation Uniform Fine Assessment program, subject to the provisions of this administrative regulation.

(2) A respondent shall be liable to the department for any civil penalty assessed. The administrative penalty shall be due and owing twenty-five (25) days after the date the Notice of Claim was sent, unless the concerned party requests a hearing as provided in 595:35-1-9.

(3) A respondent who does not pay the penalty or fails to arrange and abide by an acceptable payment plan for the penalty shall not operate in intrastate commerce beginning on the 91st day after the specified payment date.

(c) **Appeals process.** A respondent may ask for review of the assessed penalty by the Department. The request shall be made in accordance with AOC 595:35-1-9.

[OAR Docket #13-1108; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

[OAR Docket #13-1107]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
595:35-1-6 [AMENDED]
AUTHORITY:
Commissioner of Public Safety, 47 O.S. § 6-101 et seq.
DATES:
Comment Periods:
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March 29, 2013
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May 13, 2013

Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.
Final Adoption:
March 23, 2012
Effective:
July 25, 2013
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amendments to this chapter would modify the definitions regarding the transportation of hazardous materials, as required to be in compliance with the regulations of the Federal Motor Carrier Safety Administration.
The proposed action is to amend existing rule.
The circumstance which created the need for this rule was to comply with the regulations of the Federal Motor Carrier Safety Administration.
The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

(a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.

(b) **Terminology.** Unless otherwise specified, the following terminology shall apply:

(1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.

(c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Exceptions in the transportation of hazardous materials.**

(1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

~~(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.~~

(~~3~~2) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:

(A) It is transported by a farmer who is an intrastate private motor carrier.

(B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:

(i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.

(C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.

(D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.

(E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].

~~(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.~~

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier

Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions, is available from:

(A) Department of Public Safety:

(i) in person: Troop S Headquarters, 220 NE 38th Terrace, Oklahoma City

(ii) by mail: Troop S, P.O. Box 11415, Oklahoma City, OK 73136-0415

(iii) by telephone: (405) 702-0813

(B) Corporation Commission:

(i) in person: 2101 N. Lincoln Blvd., Oklahoma City

(ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000

(iii) by telephone: (405) 521-2251

(C) Oklahoma Division Office of the Federal Motor Carrier Safety Administration:

(i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107

(ii) by telephone: (800) 823-5660

(iii) from the internet: *http//www.fmcsa.dot.gov/*

(3) **Filing.** The completed Motor Carrier Identification Report shall be filed:

(A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with either:

(i) Department of Public Safety, Commercial Vehicle Enforcement Section, 220 NE 38th Terrace, P.O. Box 11415, Oklahoma City, OK 73136-0415, or

(ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.

(B) **Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.

(4) **Motor carrier name.** Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.

(5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., § 230.9.

(6) **Issuance and display of USDOT number.** Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:

(A) the letters "USDOT",

(B) the identification number itself, and

(C) the suffix letters "OK".

(f) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(g) **Relief from regulations.**

(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:

(A) the type of emergency,

(B) if applicable, the company on whose behalf the requesting party is seeking the exception,

(C) the region the emergency covers,

(D) the type of work required to restore services in the area, and

(E) the approximate time to restore those services.

(2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the ~~Troop Commander or duty supervisor.~~, Commissioner of Public Safety or the Commissioner's designee, the Governor, the appropriate Federal Motor Carrier Safety Administration Field Administrator, or the President of the United States.

(3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of ~~twenty-four (24)~~thirty-four (34) or more successive hours when taken at the end of any emergency restoration service.

(4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:

(A) Nature and extent of the emergency,

(B) Type of services restored during the emergency,

(C) Names and driver license numbers of those drivers for which the exemption was granted, and

(D) Total hours on duty during the declared emergency for each driver.

(5) Said report must be sent to the following address: Department of Public Safety, Troop S, P. O. Box 11415, Oklahoma City, OK 73136-0415.

[OAR Docket #13-1107; filed 6-19-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 70. SPECIAL TRAFFIC-RELATED ENFORCEMENT DESIGNATION

[OAR Docket #13-1109]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
595:70-1-1. Purpose [NEW]
595:70-1-2. Definitions [NEW]
595:70-1-3. Requesting an investigation [NEW]
595:70-1-4. Requirements of the request for investigation [NEW]
595:70-1-5. Conducting the investigation [NEW]
595:70-1-6. Cooperation in the investigation [NEW]
595:70-1-7. Reporting to the Attorney General and the Attorney General's determination [NEW]
595:70-1-8. Duration of special traffic-related enforcement designation [NEW]
595:70-1-9. Construction [NEW]
AUTHORITY:
Commissioner of Public Safety, 47 O.S. § 6-101 et seq.
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Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2013.
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Superseded rules:
595:70-1-1. Purpose [NEW]
595:70-1-2. Definitions [NEW]
595:70-1-3. Requesting an investigation [NEW]
595:70-1-4. Requirements of the request for investigation [NEW]
595:70-1-5. Conducting the investigation [NEW]
595:70-1-6. Cooperation in the investigation [NEW]
595:70-1-7. Reporting to the Attorney General and the Attorney General's determination [NEW]
595:70-1-8. Duration of special traffic-related enforcement designation [NEW]
595:70-1-9. Construction [NEW]
Gubernatorial approval:
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Register publication:
29 Ok Reg 1797
Docket number:
12-839
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Creation of this chapter would provide procedures for investigating allegations related to use of highways for the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality and designating such highways for special enforcement by the Oklahoma Highway Patrol.

The proposed actions is to create new rules.

The circumstance which created the need for this rule is, pursuant to 47 O.S., § 2-117, the Commissioner of Public Safety is required to designate any portion of the National System of Interstate and Defense Highways, and those portions of the federal-aid primary highways and the state highway system which are located within the boundaries of and on the outskirts of a municipality for special traffic-related enforcement by the Oklahoma Highway Patrol Division upon receipt of the Attorney General's determination that the traffic-related enforcement practices of the municipal law enforcement agency are being conducted within the boundaries of and on the outskirts of the municipality, and for the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality.

The Department is further required by this statute to adopt rules, in part to uniformly implement the procedures and the criteria for determining the length of time the designation of special traffic-related enforcement shall be in force. During such period of special designation, the affected municipal law enforcement agency shall be prohibited from regulating traffic and enforcing traffic-related statutes or ordinances upon such designated portion of highways without prior coordination and written approval of the Commissioner.

The Department has received written notice from the Attorney General on May 9 and May 16, 2012, making the determination that the traffic-related law enforcement practices of two towns are being conducted within the boundaries of and on the outskirts of the municipality, and for the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality. Therefore, the Commissioner is required to make a designation of special traffic-related enforcement; however, the Department lacks the rules to implement this designation as required by 47 O.S., § 2-117, thus resulting in an emergency. Before undertaking such a restrictive action against these two municipalities, the Department respectfully seeks the approval of the Governor to immediately approve its proposed rules.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law.
CONTACT PERSON:
Bruce Walker, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2173. Email: bwwalker@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 25, 2013:

595:70-1-1. Purpose

Pursuant to 47 O.S. § 2-117, the Department of Public Safety hereby adopts this Chapter to uniformly implement procedures relating to the traffic-related enforcement practices of a municipal law enforcement agency under the provisions of this Chapter, and for determining the length of time the designation of special traffic-related enforcement shall be in force. In connection with this section:

(1) *The Oklahoma Highway Patrol Division* of the Department of Public Safety *shall have primary law enforcement authority respecting traffic-related offenses upon the National System of Interstate and Defense Highways, and may have special law enforcement authority on those portions of the federal-aid primary highways and the state highway system which are located within the boundaries and on the outskirts of a municipality, and designated by the Commissioner of Public Safety for such special law enforcement authority*. [47 O.S.,§ 2-117(D)(2)]

(2) *The Commissioner* of Public Safety *may designate any portion of the National System of Interstate and Defense Highways, and those portions of the federal-aid*

primary highways and the state highway system which are located within the boundaries of and on the outskirts of a municipality for special traffic-related enforcement by the Oklahoma Highway Patrol Division. [47 O.S.,§ 2-117(D)(3)]

(3) *Upon receipt of such notice* of special traffic-related enforcement, *the affected law enforcement agency shall not regulate traffic nor enforce traffic-related statutes or ordinances upon* any portion *of the National System of Interstate and Defense Highways, the federal-aid primary highways and the state highway system* so designated for such special enforcement, *without prior coordination and written approval of the Commissioner.* [47 O.S.,§ 2-117(D)(3)]

595:70-1-2. Definitions

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

"Commissioner" means the Commissioner of Public Safety or the Commissioner's designee.

"National System of Interstate and Defense Highways", "federal-aid primary highways" and "state highway system" shall mean any part of the federal and state highway system in the State of Oklahoma.

"Outskirts of a municipality" *means and shall be determined by presence of the following factors:*

(A) *low land use density,*

(B) *absence of any school or residential subdivision requiring direct ingress or egress from the highway, and*

(C) *a scarcity of retail or commercial business abutting the highway.* [47 O.S.,§ 2-117(D)(2)]

595:70-1-3. Requesting an investigation

Only *the following persons may request the Commissioner to investigate the traffic-related enforcement practices of a municipal law enforcement agency* [47 O.S.,§ 2-117(E)(1)] and *the receipts and expenditures of the municipality* [47 O.S.,§ 2-117(E)(3)]:

(1) *The district attorney in whose jurisdiction the municipality is located,*

(2) *A majority of the county commissioners, by resolution, of the county in which the municipality is located,*

(3) *The State Auditor and Inspector,*

(4) *The State Attorney General, or*

(5) *A state legislator in whose district the municipality is located.* [47 O.S.,§ 2-117(E)(1)]

595:70-1-4. Requirements of the request for investigation

As a prerequisite to commencement of an investigation, the request for such investigation shall state that the requesting party believes the enforcement practices of the municipal law enforcement agency are being conducted:

(1) *Within the boundaries of and on the outskirts of the municipality, and*

(2) *For the purpose of generating more than fifty percent (50%) of the revenue needed for the operation of the municipality.* [47 O.S.,§ 2-117(E)(2)]

595:70-1-5. Conducting the investigation

Upon receipt of a request made in accordance with OAC 595:70-1-3 and 595:70-1-4, the Commissioner may order an investigation *of the traffic-related enforcement practices of the municipal law enforcement agency and the receipts and expenditures of the municipality* [47 O.S., § 2-117(E)(3)]. No part of this Chapter shall be construed to impose a mandatory requirement to conduct an investigation.

595:70-1-6. Cooperation in the investigation

The law enforcement agency, the municipality, and the requesting party shall each cooperate fully with any investigation ordered by the Commissioner [47 O.S.,§ 2-117(E)(3)]. If the Commissioner determines that the law enforcement agency or the municipality has failed to cooperate fully with the ordered investigation, the Commissioner may implement an indefinite period of designation of special traffic-related enforcement thereby prohibiting the affected law enforcement agency from regulating traffic and enforcing traffic-related statutes and ordinances upon such portions of the National System of Interstate and Defense Highways, the federal-aid primary highways and the state highway system designated for special traffic-related enforcement. This indefinite period of designation may be lifted by order of the Commissioner once full cooperation with the investigation has been obtained to the satisfaction of the Commissioner. If the requesting party fails to cooperate fully with any investigation ordered by the Commissioner, the Commissioner may order the investigation stopped until full cooperation has been obtained to the satisfaction of the Commissioner.

595:70-1-7. Reporting to the Attorney General and the Attorney General's determination

(a) Upon completion of the investigation, the results of such investigation shall be submitted by the Department to the Office of Attorney General. The Attorney General *shall make a determination within sixty (60) days of receipt* of the results of the investigation *as to whether the enforcement practices of the municipal law enforcement agency are being conducted as provided in* OAC 595:70-1-4(1) and (2) [47 O.S.,§ 2-117(E)(3)].

(b) *Upon a determination that the enforcement practices are not being conducted in such a manner, the Attorney General shall notify the Commissioner in writing, and the Commissioner shall take no action.* [47 O.S.,§§ 2-117(E)(3)]

(c) *Upon a determination that the enforcement practices are being conducted as provided in* OAC 595:70-1-4(1) and (2), *the Attorney General shall notify the Commissioner in writing, and the Commissioner shall make the designation of special traffic-related enforcement as provided in* OAC 595:70-1-1(2), *which shall stay in force for such time as determined by the Commissioner* as provided in OAC 595:70-1-8. [47 O.S.,§ 2-117(E)(3)]

(d) Within ten (10) business days of receipt of written notification by the Attorney General that the enforcement practices are being conducted as provided in OAC 595:70-1-4(1) and (2), the Commissioner shall make the designation of special traffic-related enforcement as provided in OAC 595:70-1-1(2), and provide written notification of such designation to the following:

(1) The affected law enforcement agency;

(2) The municipality;

(3) The requesting party;

(4) The sheriff of the county in which the special traffic-related enforcement will take place;

(5) The District Attorney within whose jurisdiction the special traffic-related enforcement will take place;

(6) The Chief of the Oklahoma Highway Patrol Division; and

(7) Other affected law enforcement agencies.

(f) The date that the period of special traffic-related enforcement by the Oklahoma Highway Patrol shall begin shall be stated in the written notice. The period of time for such special traffic-related enforcement shall be as provided in OAC 595:70-1-8. No special traffic-related enforcement by the Oklahoma Highway Patrol shall occur without prior notification and coordination with the affected law enforcement agency and the municipality.

595:70-1-8. Duration of special traffic-related enforcement designation

(a) Effective the date specified in the written notice of designation of special traffic-related enforcement, *the affected law enforcement agency shall not regulate traffic nor enforce traffic-related statutes or ordinances upon such designated portion of the National System of Interstate and Defense Highways or such designated portions of the federal-aid primary highways and the state highway system without prior coordination and written approval of the Commissioner* [47 O.S., § 2-117(D)(3)]for the following periods:

(1) If it is the first designation of a special traffic-related enforcement by the Commissioner then the period of designation shall be for no more than three (3) months.

(2) If it is the second designation of a special traffic-related enforcement by the Commissioner then the period of designation shall be for no more than six (6) months.

(3) If it is the third or subsequent designation of a special traffic-related enforcement by the Commissioner then the period of designation shall be for no more than twelve (12) months.

(b) The commencement date and duration of the period of designation shall be stated in the written notice sent to the law enforcement agency and the municipality. For good cause, the Commissioner may reduce the duration of those periods of designation specified in (1), (2) and (3) of (a).

595:70-1-9. Construction

Nothing in this Chapter *shall limit a member of the Oklahoma Highway Patrol Division from requesting assistance from any other law enforcement agency nor limit officers of such agency from rendering the requested assistance. The officer and the law enforcement agency responding to the request of the member of the Oklahoma Highway Patrol Division or sheriff's department shall have the same rights and immunities as are possessed by the Oklahoma Highway Patrol Division.* [47 O.S.,§ 2-117(F)]

[OAR Docket #13-1109; filed 6-19-13]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

[OAR Docket #13-1090]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:10-1-18. National Registry Fee [NEW]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)
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SUPERSEDED EMERGENCY ACTIONS:
Superseded Rules:
600:10-1-18. National Registry Fee
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#12-845
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed permanent amendment to rule 600:10 at 600:10-1-18 adds language to allow the Real Estate Appraiser Board to collect the National Registry Fee from licensed appraisers on an annual basis, in whatever amount is due, as required by the Appraisal Subcommittee, and in turn pay the National Registry Fee on behalf of Oklahoma appraisers.
CONTACT PERSON:
Christine McEntire, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, Five Corporate Plaza, 3625 N.W. 56th Street, Suite 100, Oklahoma City, OK 73112 (405) 522-2475.

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 JULY25, 2013:

600:10-1-18. National Registry Fee

(a) Pursuant to 59 O.S. 858-708, the Board will collect the National Registry Fee on an annual basis from each appraiser, at such time each appraiser renews their license. Said fee will be in whatever amount is currently required by the Appraisal Subcommittee. Notification of the Appraisal Subcommittee's then-current National Registry Fee will be transmitted to the appraiser on each year's renewal statement and provided to each appraiser approximately six weeks in advance of their renewal date.

(b) Payment of the National Registry Fee by the Board will be made to the Appraisal Subcommittee on a monthly basis, upon invoice from such amounts as are actually paid to the Board by each appraiser.

[OAR Docket #13-1090; filed 6-17-13]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #13-1085]

RULEMAKING ACTION:
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RULES:
Subchapter 1. General Provisions
605:1-1-4. [AMENDED]
AUTHORITY:
Title 59, Oklahoma Statutes, Section 858-208; Oklahoma Real Estate Commission
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
605:1-1-4. Operational procedures - Eliminating the reference that a hard copy directory of licensees will be made available to each licensee.
CONTACT PERSON:
Charla J. Slabotsky, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

605:1-1-4. Operational procedures

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled "Oklahoma Open Records Act" all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

(1) A fee of $.25 for each xerographic copy or micrographic image.

(2) A fee of $1.00 for each copy to be certified.

(3) A fee of $10.00 per hour for a record or file search.

(4) A fee of Forty Dollars ($40.00) per extract for License Data extract.

(5) A fee of Fifty Dollars ($50.00) every three (3) months for an Examinee Data extract.

(6) A fee of no more than Seven Dollars and Fifty Cents ($7.50) for a convenience fee for any electronic/on-line transaction.

~~(d) **Directory of Licensees.** One copy of the Directory of Licensees shall be provided each licensee if Commission funds permit. Additional copies shall be available to licensees and the public from the Commission upon payment of a charge based on actual cost of production and printing. Copies of the Directory may be furnished to governmental agencies without charge as inventory permits.~~

(~~e~~d) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

(1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:

(A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.

(B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.

(C) Considered by the Commission at its first meeting following such thirty (30) days.

(D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

(2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

(3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(~~f~~e) **Petition for declaratory ruling of any rule or order.**

(1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

(A) be in writing;

(B) be signed by the person seeking the ruling;

(C) state the rule or order involved;

(D) contain a brief statement of facts to which the ruling shall apply; and

(E) if known and available to petitioner, include citations of legal authority in support of such views.

(2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

(3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

(4) Declaratory rulings shall be available for review by the public at the Commission office.

(~~g~~f) **Contract Forms Committee.**

(1) The contract forms committee is required to draft and revise real estate purchase and/or lease contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 (14).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

[OAR Docket #13-1085; filed 6-13-13]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #13-1086]

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RULES:
Subchapter 1. General Provisions
605:10-1-2. [AMENDED]
Subchapter 5. Instruction and Entity Requirements and Standards
605:10-5-1. [AMENDED]
605:10-5-1.1 [AMENDED]
605:10-5-2. [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2. [AMENDED]
605:10-7-7. [AMENDED]
605:10-7-9. [AMENDED]
605:10-7-10. [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-4. [AMENDED]
Subchapter 15. Disclosures
605:10-15-2. [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-4. [AMENDED]
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N/A

ANALYSIS:

605:10-1-2. Definitions - Adding a definition for a branch office; and cleaning up and clarifying language.

605:10-5-1. Approval of prelicense course offerings - Amending the requirement for instructor orientation workshops from every 18 months to every 24 months; eliminating that school entities must submit a separate application and fee to get a facility approved in which to teach a prelicense course (instead, the facility questions will be included on the prelicense course application and thus eliminate the $75.00 fee); and cleaning up and clarifying language.

605:10-5-1.1 Approval of postlicense course offerings - Amending the requirement for postlicense instructors to take a Commission approved orientation workshop every 24 months instead of every 18 months; eliminating that postlicense course offerings must submit a separate application and fee to get a facility approved in which to teach a postlicense course (instead, the facility questions will be included on the postlicense course application and thus eliminating the $75.00 fee); cleaning up and clarifying language.

605:10-5-2. Approval of continuing education offerings - Extending the validity time period of continuing education school course approvals from 24 month to 36 months with no increase in fees; clarifying existing language; allowing a one clock hour course to count for continuing education; and changing requirement for offering entities to maintain enrollment records from number of hours attempted by each student to number of hours completed by each student.

605:10-7-2. License terms and fees; renewals; reinstatements - Eliminating obsolete language; specifying fees are non-refundable; changing the time period that a person can reinstate a license from 5 years to a 3 year period; clarifying language; specifying that applicants for a reinstated license that is still current are subject to the criminal history background check; adding language that makes reference to a new law that affords waivers of license fees, continuing education and other requirements for a license holder who is on active duty as a member of the Armed Forces; and adding language that makes reference to a law that affords waivers of license fees, continuing education and other requirements for a licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces.

605:10-7-7. Branch offices - Adding language that allows a branch office to utilize a trade name which is different than the main office so long as the broker registers the name(s) with the Commission.

605:10-7-9. Nonresident licensing - Cleaning up and clarifying language.

605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions - Cleaning up and clarifying language; adding language to implement a new law requirement to allow equivalent education, training and experience obtained by an applicant in the military to satisfy the applicant's qualifications for examination and license issuance; and adding language to implement a new law that requires the Commission to expedite the license issuance of a military spouse by providing them a temporary permit and additional time to submit to normal license qualifications and requirements.

605:10-9-4. Advertising - Adding language that states that a firm shall not register or use a trade name of another licensed firm; and cleaning up and clarifying language.

605:10-15-2. Broker Relationships Act to become effective November 1, 2000 - Deleting obsolete language and adding new rules due to a new law relating to broker services that goes into effect on November 1, 2013.

605:10-17-4. Prohibited dealings - Deleting an obsolete rule and adding a rule that pertains to the disclosure of family relationship in connection with a real estate transaction.

CONTACT PERSON:

Charla J. Slabotsky, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

605:10-1-2. Definitions

When used in this Chapter, masculine words shall include the feminine and neuter, and the singular includes the plural. The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication, to include social networking, to consumers for any purpose related to licensed real estate activity.

"Bona fide offer" means an offer in writing.

"Branch office" means an extension of a broker's main office location and normally is located at a different location than the main office. A branch office shall not be independently owned by any person other than the applicable broker or entity.

"Branch office broker" means a person who qualified for a broker license and who is designated by a broker to direct and supervise a branch office on behalf of the broker in conformance with Section 858-310 of the Code. A branch office broker is considered an associate of the broker ~~and a managing broker of the branch office~~.

"Broker" means a sole proprietor, corporation, managing corporate broker of a corporation, association, managing broker member or manager of an association, partnership, or managing partners of a partnership and shall be one and the same as defined as a broker in Section 858-102 of the Code and whom the Commission shall hold responsible for all actions of associates who are assigned to said broker.

"Code" when used in the rules of this Chapter, means Title 59, Section 858-101 et seq, Oklahoma Statutes as adopted 1974 and amended.

"Entity" means association, corporation and partnership.

"Filed" means the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

"Firm" means a sole proprietor, corporation, association or partnership.

"Inactive status" means a period in which a licensee is prohibited from performing activities which require an active license.

"Nonresident" means a person who is licensed to practice in this state, however, does not maintain a place of business in this state but maintains a place of business in another state and who periodically comes to this state to operate and perform real estate activities.

"Previously licensed applicant" means a person who has been licensed in another state and desires to obtain a resident license in this state.

"Provisional sales associate" shall be synonymous in meaning with sales associate except where it is specifically addressed in Subchapters 3, 5 and 7 of this Chapter.

"Rents or leases real estate" as referenced in Title 59, Section 858-101, subparagraph 2, means the licensed activities provided by a broker through a property management agreement with a ~~consumer~~party for a fee, commission or other valuable consideration, or with the intention or expectation

of receiving or collecting a fee, commission or other valuable consideration. Licensed property management activities may include, but shall not be limited to, showing real property for rent or lease; soliciting tenants and landlords; negotiating on behalf of the tenant or landlord; and complying with and maintaining the property in accordance with Title 41, Oklahoma Statutes, Non-Residential/Residential Landlord and Tenant Acts.

"Resident" means a person who is licensed in this state and operates from a place of business in this state.

"Sole proprietor" means a broker who is the sole owner of a real estate business.

"Trade name" means the name a firm is to be known as and which is used in advertising by the firm to promote and generate publicity for the firm. A firm may or may not do business in the name under which their license is issued but must register with the Commission all trade names used by the firm.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1. Approval of pre-license course ~~offerings~~

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this ~~Section~~section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission although such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Twenty-Five Dollar ($25.00) application fee and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) A bachelor's degree with a major in real estate from an accredited college or university.

(2) A bachelor's degree from an accredited college or university, and at least two (2) years of applicable active experience within the previous ten (10) years as a real estate broker or sales associate.

(3) A real estate broker or sales associate licensed in Oklahoma with a minimum of five (5) years applicable active experience within the previous ten (10) years as a real estate broker or sales associate and proof of high school education or its GED equivalent.

(4) An individual determined by the Commission to possess a combination of education and/or applicable active broker or sales associate experience in real estate or real estate related fields which constitutes an equivalent of one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has paid the appropriate examination fee and successfully completed an applicable examination with a passing score of 80% or more. If an instructor applicant has successfully taken an applicable license examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, the passing score may be utilized to meet the applicable examination requirement in this section.

(g) **Instructor renewal requirements.**

(1) In order to maintain approved status~~,~~ an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course every ~~eighteen (18)~~ twenty-four (24) months or successfully complete nationally recognized teacher modules consisting of at least 3 clock hours of credit as approved by the Commission.

(B) Complete one of the following:

(i) Furnish evidence that the instructor has taught a Commission approved pre-license course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period;

(ii) Successfully pass the applicable sales or broker examination with a score of 80% or more; or

(iii) Furnish evidence to the Commission that the instructor has audited an in-class pre-license course, in its entirety, that must be validated by the school instructor or director.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours ~~attempted~~completed by each student for seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility ~~approval~~requirements.** ~~Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.~~

~~(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.~~

~~(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.~~

~~(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.~~ The offering entity shall ensure that all classroom facilities have adequate lighting, seating space and technology to meet the needs of the student. The classroom area shall be free of distractions and noise.

(k) **Disciplinary action.** An approved course of study, director, and/or instructor ~~and/or facility~~ may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

605:10-5-1.1. Approval of a post-license course ~~offerings~~

(a) **Course approval.** In accordance with Section 858-302 of the License Code, the Commission shall determine and approve the education content of the forty-five (45) clock hour post-license course content or its equivalent. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, with the name, author and publisher of the primary textbook.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission although such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may be considered for approval as an instructor upon receipt of an application and evidence of education and/or experience. Each application must be accompanied by a One Hundred Dollar ($100.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this ~~Section~~section .

(f) **Instructor renewal requirements.**

(1) In order to maintain approved status~~,~~ an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course, or its equivalent, every ~~eighteen (18)~~twenty-four (24) months. An exception to this rule may be given by the Commission if such instructor is licensed or certified through another regulatory body.

(B) Instructors approved solely for distance education ~~offerings~~courses must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply ~~and~~as an original instructor applicant.

(g) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(h) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain ~~a record of~~ enrollment records and roll sheets which include number of hours ~~attempted~~completed by each student for a period of seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Course notification to Commission.** An entity conducting an approved post-license education offering shall, within five (5) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed said offering. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(5) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of ~~the~~an entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(6) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(7) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(i) **Facility ~~approval~~ requirements.** ~~Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.~~

~~(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.~~

~~(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.~~

~~(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.~~The offering entity shall ensure that all classroom facilities have adequate lighting, seating space and technology to meet the needs of the student. The classroom area shall be free of distractions and noise.

(j) **Disciplinary action.** An approved course of study, director, and/or instructor ~~and/or facility~~ may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

605:10-5-2. Approval of a continuing education ~~offerings~~course

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education ~~offering~~course shall make application for the approval or renewal of each ~~offering~~course. Such approval or renewal shall expire at the end of the ~~twenty-fourth (24)~~thirty-six (36) month including the month of issuance.

(b) **Application form.** ~~Each application by a sponsoring entity for approval of an offering a course or group of offerings courses not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable Seventy Dollar ($70.00) application fee~~. Entities seeking approval of a course or group of courses totaling thirty-six (36) hours or less shall submit an application on a form prescribed by the Commission along with a non-refundable fee of seventy dollars ($70.00). Each application is limited to thirty-six (36) hours and shall be submitted on a separate application and accompanied by a non-refundable fee of seventy dollars ($70.00). Such application shall be made on a form prescribed by the Commission. ~~The~~Each application shall include, but is not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the ~~offering~~course.

(2) The title(s) of the course ~~offering~~ or ~~offerings~~courses.

(3) The number of hours in each course ~~offering~~.

(4) A copy of each ~~offering's~~course's curriculum, ~~or revised curriculum with revisions noted,~~ including comprehensive course objectives, a ~~legible~~ detailed outline of the course subject matter and instructor(s) for each ~~segment~~course.

(5) The method ~~of evaluation of~~the entity will use to evaluate the course offering ~~which will be used by the entity~~.

(6) The procedure ~~for~~the entity will use to~~monitoring~~monitor attendance.

(7) A personal resume indicating name(s) and qualifications of the instructor(s).

(8) Any other relevant information useful in determining that the entity is presenting ~~an offering~~a course which will meet the definition, purposes, goals and objectives adopted by the Commission.

(9) A statement attesting to the fact that in accepting approval as a continuing education ~~offering~~ entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the ~~offering~~course has been approved, denied, or whether additional information is needed to determine the acceptability of the ~~offering~~ course.

(d) **Course renewal requirements.** ~~An~~Upon expiration of the time period, as stated in sub-paragraph (a) of this rule, an application for renewal of any ~~offering~~course or group of ~~offerings~~ courses by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollar ($70.00) for a ~~twenty-four (24)~~thirty-six (36) month period. Renewal applications shall be subject to the same requirements as original applications; however, the renewal application shall be submitted prior to expiration of the course(s).

(e) **Change of information notice requirement.** Whenever there is any change in ~~an offering~~ a course, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising ~~an offering~~a course as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit." No entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission.

(g) **Course requirements and limitations.**

~~(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.~~

(~~2~~1) ~~An offering~~A course will not be approved by the Commission if its duration is less than ~~two (2) consecutive~~

~~clock hours~~one (1) clock hour or its equivalent as determined by the Commission.

(~~3~~2) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(~~4~~3) An entity conducting an approved continuing education ~~offering~~course shall, within five (5) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed ~~said offering~~the course. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(~~5~~4) Each licensee successfully completing ~~an offering~~a course shall be furnished a completion certificate~~,~~ prescribed or approved by the Commission~~, certifying completion~~.

(~~6~~5) Each ~~offering~~course shall be presented in a facility necessary to safely and properly present the course ~~as determined by the Commission~~.

(~~7~~6) An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved in-class course offering which is delivered to the licensees by way of electronic means to receiving sites other than where the instructor is presenting, the Commission may require that each receiving entity site have an in-class person monitoring the class in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any firm. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate firm, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements~~:~~.** An individual may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an ~~approved~~ instructor for a three (3) year period including the month of approval. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission is of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after its decision. Upon written request from the denied party, filed within thirty (30) days after receipt of the notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of the request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

(l) **Retention of records.** An instructor/entity shall maintain ~~a record of~~ enrollment records and roll sheets which include number of hours ~~attempted~~completed by each student for seven (7) years.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who is the instructor of an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

(o) **Guest Instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code ~~on and after July 1, 1981,~~ shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code ~~on and after August 1, 2001,~~ shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. ~~On and after August 1, 2001~~Fees are non-refundable and are as follows:

(1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars ($210.00).

(2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars ($125.00). In order to activate such license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars ($130.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(3) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars ($150.00).

(4) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars ($95.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars ($100.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(5) For ~~a non-renewable~~an original provisional sales associate license that is non-renewable the fee shall be Seventy Dollars ($70.00).

(6) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars ($125.00).

(7) For each duplicate license or pocket card, where the original ~~license~~ is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents ($7.50) shall be charged.

(8) The Fifteen Dollar ($15.00) Education and Recovery Fund fee shall be added and payable with the license fee for an original license and for each subsequent license. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars ($5.00) for their twelve (12) month license term; and 2) a branch office shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of
the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date for all renewals except electronic online renewals wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars ($10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

(1) **Lapsed less than one year.** In the case of a license lapsed less than one year:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) Documents as required by the Commission.

(2) **Lapsed more than one year but less than ~~two~~three years.** In the case of a license lapsed more than one year but less than ~~two~~three years~~.~~:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) A completed reinstatement application.

(E) Successful completion of the appropriate licensing examination.

(~~E~~F) A statement that the applicant has read a current License Code and Rules booklet.

(~~F~~G) Documents as required by the Commission.

~~(3) **Lapsed more than two years.** In the case of a license lapsed more than two years.~~

~~(A) License and late penalty fee(s).~~

~~(B) Reinstatement fee(s).~~

~~(C) National criminal history check.~~

~~(D) A completed reinstatement application.~~

~~(E) Successful completion of the appropriate licensing examination.~~

~~(F) Documents as required by the Commission.~~

(~~4~~3) **Lapsed more than ~~five~~three years.** If an application is submitted more than ~~five (5)~~three (3) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.

~~(5) **May apply as an original if lapsed more than two years.** In the case of a license lapsed more than two (2) years but less than five (5) years, the applicant may at his or her option apply as an original applicant provided evidence is submitted to show that the applicant has successfully completed the appropriate pre-license course(s). A person who does not possess a valid license may be considered for re-license only through the provision for reinstatement unless such license has been lapsed more than two (2) years. In the case of a provisional sales associate, the applicant would be required to repeat and successfully complete the post-license requirement. If this option is elected by a previously licensed sales associate, the sales associate shall be regarded as an original applicant.~~

(g) **Reinstatement of a provisional sales associate license wherein post-license education was completed prior to license expiration date.** ~~On and after June 1, 1996, an~~An applicant who successfully completed the post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through ~~(5)~~(3).

(h) **Reinstatement of a provisional sales associate license wherein post-license education was not completed prior to license expiration date.** ~~On and after June 1, 1996, an~~An applicant who has not successfully completed the post-license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (f) of this ~~Section~~section. In addition, reinstatement will not be granted until all outstanding amounts due the Commission have been paid in full.

(k) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled license applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled license applicant whose license term is still current:

(A) Applicable reinstatement fee equal to the current examination fee.

(B) Re-issuance fee equal to the transfer of license fee.

(C) Documents as required by the Commission.

(D) Criminal history background check.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled license applicant whose license term has expired shall be required to comply with the requirements of (f) of this ~~Section~~section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

(A) If a provisional sales associate completed the post-licensing requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through ~~(5)~~(3).

(B) If a provisional sales associate did not complete the post-licensing requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(l) **Continuing education requirement.** ~~On and after July 1, 1984, each~~Each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that ~~he or she has~~they have completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. ~~Further, on and after July 1, 1984, an~~An applicant seeking active reinstatement of a lapsed license must submit evidence that ~~he or she has completed~~ all continuing education requirements have been completed~~. The applicant must meet the continuing education requirement~~ for each term in which an active license is requested.

(m) **Sales to broker license fee prorated.** If a real estate sales associate or provisional sales associate ~~shall qualify~~ qualifies for a license as a real estate broker, the unused license fee shall be credited to the broker license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(n) **License expires after effective date of national criminal history check.**

(1) Any licensee who allows their license to expire ~~after January 1, 2008,~~ shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If, the Commission does not receive a completed Part A of the application and completed finger print card and fee within thirty (30) days from the date of request of the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in these rules, have been received by the Commission.

(2) A provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew the license shall be eligible to apply under the requirement under the preceding paragraph. However, after a period of ~~five (5)~~three (3) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(o) **Issuance of license from provisional sales associate to sales associate ~~if licensed on and after August 1, 2001~~.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour post-license course requirement and submitted all required form(s) and fee(s) as required by the Commission.

(p) **Active sales associate to inactive broker license - no remaining credit to be given.** ~~On and after August 1, 2001, in~~In the event an active sales associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not refund the difference in the license fees.

(q) **Licensee on active duty as a member of the Armed Forces of the United States.**

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act while a licensee holder is on active duty the license may be renewed without payment of the license and education and recovery fund fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Commission prior to license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Commission evidence of successful completion of the continuing education requirement for the current license renewal term.

(2) If a licensee on active duty does not request such waiver in writing and the license expires, the applicant may, by written request provide the Commission documentation as required in subparagraph (1) of this subsection; however no later than one (1) year after discharge from active duty.

(3) In the event a license expires during the events as noted herein, the Commission shall waive the criminal history background check and license examination.

(4) **Member of the National Guard or reserve component of the armed forces.** In accordance with Title 72, Chapter 1, Section 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Commission receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all licensee fees and continuing education shall be waived for this time period as well as the criminal history background check and license examination.

605:10-7-7. Branch offices

(a) **Each additional office must be licensed.** If a broker desires to do business from more than one office location, the broker must license each additional office location as a branch office by submitting forms and fees as required by the Commission. The license shall be maintained in the branch office and available upon request.

(b) **Associate's license issued to branch office.** An associate's license shall be issued to and maintained in the office to which the associate is assigned.

(c) **Broker to designate a branch office broker to act.** A broker shall designate a branch office broker, other than himself or herself, to act as broker for each location, to supervise the activities of the branch office. The branch office shall be licensed in conformance with Section 858-310 of the Code. The branch office broker may be designated to perform all duties and sign documents ~~in~~on behalf of the broker with respect to ~~his or her~~the~~Branch Office~~branch office at the discretion of the broker. Such designation shall be in writing and filed with the Commission. The branch office broker assumes the responsibility in conjunction with the broker, for all associates assigned to the branch office.

(d) **Broker may act as branch office broker; restriction.** A broker may act as the branch office broker if the branch office is located at the same location as the main office upon the appropriate documents and fees being filed with the Commission.

(e) **Reappointment of branch office broker.** In the event of the death, disability, retirement or cessation of employment for any reason by the designated branch office broker, and the branch office is to continue business, the main office broker shall appoint a new branch office broker and file the appropriate documents with the Commission within ten (10) days of the occurrence of the event.

(f) **Branch office must utilize the same name or trade name of main office.** A branch office may utilize a ~~name or~~ trade name which is different than the main office ~~only if the branch office also utilizes, for identification and connection purposes, the name or trade name of the main office~~so long as the broker registers the name(s) with the Commission.

605:10-7-9. Nonresident licensing

(a) **Nonresident licensed in another jurisdiction.** A nonresident applicant may apply to the Commission for a license to operate as a nonresident by submitting all appropriate documents as required by the Commission and furnish evidence that the applicant possesses a current active license in ~~their~~the applicant's resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. All nonresidents shall be required to complete the appropriate examination as required by the Commission. If, in the opinion of the Commission, there is question as to the competence of the nonresident applicant, such individual shall be required to successfully complete additional educational courses. No inactive license experience may be credited to qualify under this ~~Section~~section. The Commission, at its discretion, may issue a nonresident license if, in the opinion of the Commission, such nonresident has qualified and maintains a license in another jurisdiction and meets the following qualifications:

(1) A nonresident applicant who has been actively licensed as a sales associate or broker respectively for a minimum of two (2) years out of the previous five (5) years.

(A) A nonresident applicant that applies under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) ~~Certification of licensure~~License certification(s) from the jurisdiction(s) in which the applicant has held and/or currently holds a license.

(iii) Criminal history background application, finger print card and fee.

(~~iii~~iv) Examination fee ~~and successfully complete~~and successful completion of the state portion of the examination.

(~~iv~~v) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the ~~following:~~

~~(i)~~ ~~Appropriate~~appropriate license application form(s) along with license and education and recovery fund fees.

(2) A nonresident applicant who has been actively licensed less than two (2) years as a sales associate or broker respectively out of the previous five (5) years must successfully complete the appropriate examination.

(A) A nonresident applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) ~~Certification of licensure from the jurisdiction~~License certification(s) from jurisdiction(s) in which the applicant has held and/or currently holds a license.

(iii) Criminal history background application, finger print card and fee.

(~~iii~~iv) Examination fee and ~~successfully complete~~successful completion of the entire appropriate examination.

(~~iv~~v) Consent for service of jurisdiction form.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the ~~following:~~

~~(i)~~ ~~Appropriate~~appropriate license application form(s) along with license and education and recovery fund fees.

(b) **Nonresident agreement.** The Commission may enter into a nonresident agreement with another jurisdiction and thereby qualify actively licensed nonresident applicants for licensing in this jurisdiction provided the Commission determines that the educational and experience requirements of the other jurisdiction are equivalent or equal to this jurisdiction; however, the applicant shall be required to comply with paragraph (a)(1)(A) and (B) of this section.

(c) **Nonresident applicant that is inactive or unlicensed in another jurisdiction.** A nonresident applicant ~~that~~who holds an inactive license in another jurisdiction and is unable to meet the requirement under paragraph (a) of this section or an applicant who is unlicensed in another jurisdiction may apply to the Commission for a license to operate as a nonresident provisional sales associate or broker by submitting all appropriate documents and successfully completing all requirements as required by the Commission.

(1) The nonresident applicant must complete and submit the following:

(A) Appropriate application(s).

(B) Criminal history background application, finger print card and fee.

(~~B~~C) Qualify as an original applicant by submitting proof of appropriate required education.

(~~C~~D) Examination fee and ~~successfully complete~~successful completion of the entire appropriate examination.

(~~D~~E) If applicable, ~~certification of licensure from the jurisdiction~~license certification(s) from jurisdiction(s) in which the applicant holds or has held a license.

(~~E~~F) Consent for service of jurisdiction form.

(2) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the ~~following:~~

~~(i)~~ ~~Appropriate~~appropriate license application form(s) along with license and education and recovery fund fees.

(d) **Consent for service of jurisdiction.** Prior to the issuance of a license to a nonresident, such nonresident shall file with the Commission a designation in writing that appoints the Secretary-Treasurer of the Commission to act as ~~his or her~~the licensed agent, upon whom all judicial and other process or legal notices directed to such nonresident licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the Secretary-Treasurer of the Commission, shall be deemed sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original thereof. In such written designation, the licensee shall agree and stipulate that any notice or instrument which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice the Secretary-Treasurer shall forthwith mail a copy of the same, by certified mail, to the last known business address of the licensee.

(e) **License history and application requirements.** Prior to the approval of the application, the nonresident must file with the Commission a certification of licensure from the real estate licensing jurisdiction of the licensee's resident jurisdiction and/or other jurisdictions in which the applicant has held or currently holds a license. The applicant shall pay the Commission the same examination fee and license fee as provided in the "Rules" for the obtaining of a resident sales associate or broker license in this jurisdiction. The certification of licensure shall be valid for sixty (60) days from date of issuance.

(f) **Approved application valid for ninety (90) days.** An approved application shall be valid for ninety (90) days.

(g) **Stipulations.** Nonresident licenses granted under the provisions of this ~~Section~~section shall remain in force, only as long as such nonresident remains licensed in good standing in this jurisdiction~~, in his or her resident jurisdiction and~~/or any other jurisdiction in which the nonresident is or has been licensed.

(h) **Co-brokerage arrangements.** A broker of this jurisdiction may participate in a cooperative brokerage arrangement with a broker of another jurisdiction provided that each broker conducts real estate activities only in the jurisdiction in which they are licensed.

(i) **Request for license transfer.** In the event a nonresident Oklahoma licensee desires to transfer the license and obtain a resident Oklahoma license or desires to transfer the license to another jurisdiction, the nonresident licensee shall be required to meet all applicable requirements and pay the appropriate change of address fee and submit all appropriate documents as required by the Commission. In the event a resident Oklahoma licensee desires to transfer the license and obtain a nonresident Oklahoma license, the licensee shall be required to pay the appropriate change of address fee and complete and submit all appropriate documents as required by the Commission.

(j) **Continuing education.** If a nonresident licensee completes ~~a~~the continuing education requirement of~~in~~ another jurisdiction for license renewal, the Commission will exempt the nonresident licensee from the continuing education requirement in this jurisdiction. If a nonresident licensee is exempt from meeting a continuing education requirement in another jurisdiction then the licensee must meet the Oklahoma continuing education requirement as follows:

(1) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education twelve (12) clock hours of required subject matter as directed by the Commission.

(2) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, and Current Issues including Code and Rule updates. The remaining nine (9) clock hours may consist of elective subject matter as approved by the Commission.

(3) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(4) Any Broker who holds or has held a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission, each license term beginning with those licenses that expire on June 30, 2012. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the four (4) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph ~~(3)~~(2) of this subsection.

(5) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation after June 30, 2012 and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the four (4) required subject matter totaling six (6) hours prior to their license being reinstated active or reactivating.

605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions

(a) **Requirements.** In order to qualify under previously licensed procedures, an applicant must complete and submit all appropriate documents as required by the Commission and furnish evidence that the applicant possesses or has possessed a license in good standing in another jurisdiction. The Commission, at its discretion, may issue the applicant a license if such previously licensed applicant meets all of the requirements of either paragraphs (1), (2), (3) or (4) of this subsection:

(1) If a nonresident agreement exists between Oklahoma and the respective state in which the applicant qualified for a license, the Commission shall qualify the licensed applicant through the nonresident agreement. In order to qualify under this paragraph an individual must

furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License ~~certification~~certifications(s) from the ~~jurisdiction~~ jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, finger print card and fee.

(~~iii~~iv) Examination fee and ~~successfully complete~~successful completion of the state portion of the examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(2) If a nonresident agreement does not exist, the applicant shall be required to furnish evidence of two (2) years of active experience respectively as a sales associate or broker out of the previous five (5) years. In order to qualify under this paragraph an individual must furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License ~~certification~~certification(s) from the ~~jurisdiction~~ jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, finger print card and fee.

(~~iii~~vi) Examination fee and ~~successfully complete~~successful completion of the state portion of the examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(3) An applicant who does not possess the required two (2) years active experience out of the previous five (5) years respectively as a sales associate or broker, or an applicant who does not meet all of the requirements of either paragraphs (1) or (2) of this subsection, ~~but obtained the appropriate license in the other jurisdiction within the past five (5) years,~~ shall be required to ~~take and successfully complete the entire appropriate examination~~apply as an original applicant.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) ~~Appropriate application(s)~~Qualify as an original applicant by submitting appropriate required education and application.

(ii) License ~~certification~~certification(s) from the ~~jurisdiction~~ jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, finger print card and fee.

(~~iii~~iv) Examination fee and ~~successfully complete~~successful completion of the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate~~sales associate~~, broker associate or broker license.

~~(4) An applicant who has not been actively licensed during any portion of the previous five (5) years in the other jurisdiction.~~

~~(A) An applicant applying under this paragraph must complete and submit the following:~~

~~(i) Appropriate application(s).~~

~~(ii) License certification certification(s) from the jurisdiction jurisdiction(s) in which the applicant has held or currently holds a license.~~

~~(iii) Qualify as an original applicant by submitting appropriate required education.~~

~~(iv) Examination fee and successfully complete the entire appropriate examination.~~

~~(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.~~

~~(C) An applicant qualifying under this paragraph will be issued a provisional sales associate, broker associate or broker license.~~

(4) In accordance with Title 59, O.S., Section 4100.4 of the Post-Military Service Occupation, Education and Credentialing Act, the Commission shall, upon satisfactory evidence of equivalent education, training and experience by an applicant for licensure, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license issuance.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) Satisfactory evidence of education, training and experience obtained by the applicant as a member of the military Armed Forces or Reserves of the United States.

(iii) License certification(s) from jurisdiction(s) in which the applicant has held or currently holds a license, if applicable.

(iv) Criminal history background application, finger print card and fee.

(v) Examination fee and successful completion of the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued a provisional sales associate, broker associate or broker license.

(b) **May be required to ~~submit to~~meet additional requirements.** If, in the opinion of the Commission, there is question as to the competence of the previously licensed applicant, ~~such~~the individual may be required to ~~submit to~~meet additional educational courses and/or successfully complete the Oklahoma examination.

(c) **Military spouse applicant - 120 day temporary permit.** In accordance with Title 59, O.S., Section 4100.5 the Commission shall expedite the issuance of a 120 day temporary permit to an applicant:

(1) Who is actively licensed in real estate in another jurisdiction;

(2) Whose spouse is an active-duty member of the Armed Forces or Reserves of the UnitedStates;

(3) Whose spouse is subject to a military transfer to this state; and

(4) Who left employment in another state to accompany their spouse to this state.

(d) Expedite licensure means to issue the applicant a temporary permit to perform licensed activities for a period of 120 days to allow the person to successfully complete all application requirements as required by the Commission and any specific requirements in this state that were not required in the jurisdiction in which the person was licensed, i.e., criminal history background check and successful passage of the Oklahoma portion of the examination. An extension of the 120 days may be granted up to 60 additional days if written justification is submitted by the applicant to the Commission and the delay of license issuance was not the fault of the applicant.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising, must use ~~his or her~~their registered business trade name or the name under which the broker is licensed; however, yard signs must also include the broker's office telephone number. A firm shall not register or use a trade name of another licensed firm.~~The~~ In addition, the advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, age or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(7) **Social networking.** A licensee who is engaged in licensed activities through social networking mediums must indicate their license status and include their broker's reference as required elsewhere in this rule.

(8) A licensee shall not use a yard sign at the licensee's personal residence as a marketing tool, to make it appear the real property is for sale, lease or rent when such is not the case.

(9) A broker may, or authorize an associate to, promote a seller incentive with the consent of the seller. The publicity must clearly indicate the incentive is being offered by the seller and not by the licensee and that the promotion only applies to a seller's particular property or properties.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only ~~his or her~~the associate's name.

(2) All advertising by an associate must be under the direct supervision of ~~his or her~~the associate's broker.

(3) In all advertising, the associate must include the name of ~~his or her~~the associate's broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. If ~~allowed~~approved by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a firm's name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a firm's name.

(C) An associate's contact information.

(D) A team name approved by the broker, as long as the broker's reference is prominent, conspicuous, and easily identifiable, and which cannot be construed as that of a firm's name. The broker's reference must be in close proximity to the team name reference.

(E) A slogan which cannot be construed as that of a firm's name.

(F) A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

(4) An associate's contact information may be added to a yard sign if the yard sign contains the registered name or trade name and office telephone number of the broker so long as it is approved by the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate firm, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed. On all purchase or lease contracts the licensee is to include their license number.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for an entity is not required to indicate in the advertising that he or she is licensed.

SUBCHAPTER 15. DISCLOSURES, BROKERAGE SERVICES AND STATUTE OF FRAUDS

605:10-15-2. Broker Relationships Act to become effective November 1, ~~2000~~ 2013

(a) **Broker Relationships Act effective November 1, ~~2000~~2013.** A new law, Title 59, O. S., Sections 858-351 through 858-363 of the License Code, becomes effective on November 1, ~~2000~~ 2013, which law shall be referred to as the Broker Relationships Act.

(~~1~~b) **Brokerage service agreement defined.** The term "brokerage service agreement" shall mean an oral or written agreement to provide brokerage services entered into by a real estate broker and a person who is a party to a real estate transaction and shall include, but not be limited to, listing agreements, buyer broker agreements and property management agreements.

(~~2~~c) **Validity of a brokerage service agreement existing before and on November 1, ~~2000~~ 2013.** A brokerage service agreement entered into prior to November 1, ~~2000~~2013, shall remain in full force and effect until the agreement expires or is otherwise terminated by ~~the parties to the agreement~~an agreement of the parties.

~~(3) **Addendum or attachment to a brokerage service agreement existing before and on November 1, 2000.** If a brokerage service agreement is entered into prior to November 1, 2000, it may contain an addendum or other attachment that allows the parties on or after November 1, 2000 to change their relationship with the real estate broker to those types of relationships permitted under the Broker Relationships Act. Such addendum or attachment must contain all relevant disclosures, consents and other requirements mandated by the Broker Relationships Act.~~

~~(4) **Real estate broker determines relationships under the Broker Relationships Act.** Under Title 59, O.S., Section 858-355, the relationship(s) with any party or parties to any transaction shall be determined by the real estate broker only and not by the associated broker associates, sales associates or provisional sales associates.~~

~~(b) **Delivery of a contract to broker after acceptance of a contract between the parties.** A single party broker is authorized to accept delivery of a contract between the parties to a transaction on behalf of the party for whom the broker is performing single party brokerage services. A transaction broker is not authorized to accept delivery of a contract between the parties to a transaction on behalf of the party for whom the broker is performing transaction brokerage services unless the contract between the parties authorizes such and the transaction broker agrees to accept delivery in writing.~~

~~(c) **Transaction broker may make a suggestion regarding value.** A transaction broker may provide market information and data which may indicate value and may make a suggestion regarding value, but shall not be an advocate for either party.~~

(d) **Providing services to more than one party to the transaction.** When a firm provides brokerage services to more than one party to the transaction, the broker shall provide written notice to those parties that the broker is providing brokerage services to more than one party. When a firm provides brokerage services to both sides of the transaction,

the firm shall ensure compliance with the duties and responsibilities in Title 59, O.S., Section 858-353 along with all other requirements of the License Code and Rules.

(e) **Services provided to a tenant.** When a broker provides brokerage services to a landlord under a property management agreement, the services provided to the tenant by the broker shall not be construed as creating a broker relationship between the broker and the tenant unless otherwise agreed to in writing; however, the broker owes to the tenant the duties of honesty and exercising reasonable skill and care.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-4. Prohibited dealings

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which ~~he or she has~~the licensee has an interest as defined in 605:10-15-1 (c), if such property is listed with the broker or ~~his or her~~the broker's firm, without first making full disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert ~~his or her~~the licensee's best ~~efforts~~effort in order to later purchase or acquire the property for ~~himself or herself~~themself or another entity in which ~~he or she has~~they have an interest as defined in 605:10-15-1 (c).

(3) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.

(4) Procuring the signature to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, possession date or property description.

(5) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.

(6) Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of ~~his or her~~the broker's license to enable an associate licensed ~~through him or her~~with the broker to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of ~~his or her~~the broker's sponsorship.

(7) Failure to make known in writing to any purchaser any interest the licensee has in the property ~~he or she is~~they are selling.

(8) Failure of the licensee to inform the buyer and seller in writing at the time the offer is presented that ~~he or she~~the buyer and seller will be expected to pay certain closing costs, such as discount points and approximate amount of said costs.

(9) Failing, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.

(10) Failure to reduce a bona fide offer to writing, where a proposed purchaser requests such offer to be submitted.

(11) Failure to submit all written bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

(13) Failing to act, in marketing ~~his or her~~a licensee's own property, with the same good faith as when acting in the capacity of a real estate licensee.

(14) An associate who does not possess the license of a broker or branch office broker but is intentionally acting in the capacity of a broker or branch office broker.

(15) Discouraging a party from obtaining an inspection on a property.

(16) Allowing access to, or control of, real property without the owner's authorization.

(17) Knowingly providing false or misleading information to the Commission during the course of an investigation.

(18) Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.

(19) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.

(20) ~~Failing to act in accordance with the broker relationship established and/or disclosed with a party~~Failing to disclose any known immediate family relationship to a party to the transaction for which the broker is providing brokerage services.

(21) Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.

(22) An associate shall not perform licensed activities outside their broker's supervision.

(23) Failing to maintain documents relating to a trust account or real estate transaction for the time period as required by Rule 605:10-13-1.

[OAR Docket #13-1086; filed 6-13-13]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #13-1111]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Individual Proceeding Practices and Procedures
660:2-9-3. [AMENDED]
660:2-9-4. [AMENDED]
660:2-9-6. [AMENDED]
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ANALYSIS:
The rule amendments address individual proceedings, to wit: requests to produce or permit inspection; notices to take depositions; replies to responses to written motions; failures to comply with discovery; computation of time; issuance and service of subpoenas to out-of-state witnesses; and testimony by telephone or other electronic means.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

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 1, 2013:

SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received, the Administrator, or Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and insure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. If the proposed scheduling order is acceptable to the Hearing Officer, no scheduling conference need be held. If the parties are unable to agree, the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order should establish at least the following:

(1) a schedule of discovery;

(2) any limitations to be placed on discovery;

(3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;

(4) identification of any expert witness intended to be called;

(5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and;

(6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.** Discovery may be obtained by one or both of the following methods:

(1) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are in the possession, custody or control of the party and relevant to the subject matter of the individual proceeding and are not privileged. The number of requests to produce or permit inspection shall not exceed thirty (30) in number except by agreement of the party being required to produce or by order of the Administrator, or Hearing Officer; and/or

(2) A party may take the testimony of a witness by oral deposition at the expense of that party. A party desiring to take the deposition of another party, or an employee thereof, shall serve written notice to the witness, or his counsel. The notice shall state the time and place for taking the deposition and shall be served at least three (3) days before the person is required to appear. A party desiring to take the deposition of a non-party witness shall serve the witness with a subpoena in accordance with 660:2-9-4. A copy of the notice or subpoena shall be served on~~and~~ all other parties to the proceeding by means specified in paragraph (h) below. Unless otherwise agreed by the parties or ordered by the Administrator or Hearing Officer, a deposition under this provision shall not last more than six (6) hours, exclusive of breaks, and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a day other than a legal holiday~~ in accordance with 660:2-9-4. Such notice shall state the time and place for taking the deposition and shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the date of service of the notice~~.

(c) **Motions in general.**

(1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions shall:

(A) be made in writing;

(B) state concisely the question to be determined and be accompanied by any necessary supporting documentation; and

(C) be served on all parties.

(2) A response to a written motion shall be filed within ten (10) days after receipt of the motion but no later than one day prior to the date and time of the hearing. A reply to a response to a written motion may be filed within five (5) days after receipt of the response but no later than the date and time of the hearing.

(3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to the Administrator, or the Hearing Officer, for a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator or the Hearing Officer.

(d) **Motions for summary decision.** A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.

(e) **Prehearing conference.**

(1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:

(A) simplification of issues;

(B) the final list of witnesses and exhibits to be utilized at the hearing;

(C) admissions and stipulations of fact;

(D) stipulations regarding admission and authenticity of documents;

(E) requests for official notice;

(F) discovery disputes;

(G) pending motions; and

(H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

(f) **Failure to appear or participate.** ~~Failure~~ A party's failure to participate ~~and cooperate~~ in good faith in the preparation of a scheduling order or prehearing conference order~~,~~; failure to comply with a scheduling order or prehearing conference order~~,~~; failure to comply with a written request for production or to appear to testify in a deposition under 660:2-9-3(b); or failure to appear at ~~any hearing or conference~~, ~~failure to appear~~ substantially ~~prepared~~prepare, or ~~failure to~~ participate in good faith in, any hearing or conference, may result in any of the following sanctions:

(1) striking of any pleading;

(2) a preclusion order;

(3) staying the proceeding;

(4) default judgment; or

(5) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.

(h) **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator within the applicable time for service. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number or electronic mail address to which service was made, if not made in person.

(i) **Signature and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state that counsel's business address and telephone number. A party who is not represented by counsel shall sign his individual name and state his address and telephone number on every filing. The signature of ~~a~~ counsel or a party shall constitute a certification that:

(1) the person signing the filing has read the filing;

(2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing 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 the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication; and

(3) If a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by the Securities Act or this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day

when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses

(a) **Subpoenas.**

(1) Any party to ~~a hearing~~ an individual proceeding shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator or the Hearing Officer~~,~~. The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, address and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, he may, in his discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, he may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(2) A party requesting the issuance of a subpoena to an out-of-state witness may be required to show the relevance of the information sought and the witness' contacts with this state as a condition precedent to the issuance of the subpoena. If after consideration of all circumstances, the Administrator, or the Hearing Officer, determines that the information sought is not relevant or the witness' contacts with the state are insufficient to establish jurisdiction over the witness, he may refuse to issue the subpoena.

(b) **Service.** Service of ~~the~~a subpoena in this state shall be by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. Service shall be made at least three (3) days before the person is required to appear. Service of a subpoena outside of this state shall be served by any person in any manner prescribed for the service of a subpoena in a civil action in the state in which the subpoena is being served. The party requesting the subpoena shall be responsible for, and bear the cost of, service. ~~Appropriate service shall be made at least three (3) calendar days before the person is required to appear.~~

(c) **Return of service.** The party requesting the subpoena shall promptly file a return of service with the Administrator including a certificate signed by the person making service.

(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) **Enforcement of subpoenas.**

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena as authorized by the Securities Act.

(f) **Fees.** Non-party witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued at the time their testimony is completed.

660:2-9-6. Conduct of individual proceeding

(a) **Order of proceeding.** The hearing shall proceed as follows:

(1) The Administrator, or the Hearing Officer, shall call the hearing to order;

(2) the Administrator, or the Hearing Officer, shall briefly explain the purpose and nature of the hearing;

(3) the Administrator, or the Hearing Officer, may allow the parties to present preliminary matters;

(4) the Administrator, or the Hearing Officer, may allow the parties to make opening statements;

(5) the Administrator, or the Hearing Officer, shall state the order of presentation of evidence;

(6) witnesses shall be sworn or put under affirmation to tell the truth; and

(7) the Administrator, or the Hearing Officer, may allow the parties to present summations and closing argument.

(b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator, or the Hearing Officer, during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, the admissibility of evidence shall be governed by the provisions of Section 310 of the Administrative Procedures Act.

(c) **Official notice.** Notice may be taken by the Administrator, or the Hearing Officer, of judicially cognizable facts. In addition, notice may be taken of generally recognized practices, procedures and facts relating to the securities industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity

to contest the material so noticed. The Administrator, or the Hearing Officer, shall utilize his experience, technical competence and specialized knowledge in evaluating the evidence presented.

(d) **Examination of witnesses.**

(1) Witnesses shall testify under oath or affirmation. If the Administrator, or the Hearing Officer, determines that a witness is hostile or unresponsive, the Administrator, or the Hearing Officer, may authorize the party calling the witness to proceed as if the witness were under cross-examination.

(2) A party may conduct direct examination or cross-examination of a witness without strict adherence to formal rules of evidence, particularly, the rules on hearsay, in order to obtain a full and fair disclosure of facts relevant to the matters at issue.

(3) Upon request by any party, the Administrator, or the Hearing Officer, may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during all testimony. The Administrator, or the Hearing Officer, may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(4) No witness shall testify by telephone or other electronic means unless by agreement of the parties or by order of the Administrator or the Hearing Officer.

[OAR Docket #13-1111; filed 6-20-13]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #13-1112]

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RULES:
Subchapter 1. General Provisions
660:11-1-3. [AMENDED]
Subchapter 5. Broker-Dealers and Agents
Part 1. General Provisions
660:11-5-1. [AMENDED]
660:11-5-2. [AMENDED]
Part 3. Licensing Procedures
660:11-5-11. [AMENDED]
660:11-5-12. [AMENDED]
660:11-5-13. [AMENDED]
660:11-5-14. [AMENDED]
660:11-5-16. [AMENDED]
Part 5. Reporting Requirements
660:11-5-31. [AMENDED]
Part 7. Record Keeping and Ethical Standards
660:11-5-42. [AMENDED]
Subchapter 7. Investment Advisers and Investment Adviser Representatives
Part 1. General Provisions
660:11-7-1. [AMENDED]
Part 3. Licensing Procedures
660:11-7-11. [AMENDED]
660:11-7-13. [AMENDED]
660:11-7-17. [NEW]
Part 5. Reporting Requirements
660:11-7-31 [AMENDED]
Part 7. Record Keeping and Ethical Standards
660:11-7-41. [AMENDED]
660:11-7-42. [AMENDED]
660:11-7-43. [AMENDED]
660:11-7-47. [AMENDED]
660:11-7-48. [AMENDED]
Part 9. SEC Covered Investment Advisers
660:11-7-51. [AMENDED]
Subchapter 13. Sales Literature
660:11-13-2. [AMENDED]
660:11-13-3. [AMENDED]
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ANALYSIS:
The rule amendments clarify requirements particularly in light of technological advances, reconcile inconsistent language, promote uniformity with other securities regulatory agencies, and address the change in name and structure of the former National Association of Securities, Inc. ("NASD") in light of its merger into the Financial Industry Regulatory Authority, Inc. ("FINRA"). The new rule provides an exemption from investment adviser registration patterned after SEC Rule 203(m)-1, 17 C.F.R. § 275.203(m)-1, for advisers to qualifying private funds.
CONTACT PERSON:
Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

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 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

660:11-1-3. Definitions

Unless the context otherwise requires, or unless defined in this section or in 660:11-5-2, terms used in this chapter, if defined in the Securities Act, shall have the meaning as defined in the Securities Act. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advisers Act" means the Investment Advisers Act of 1940.

"Authorized to do business in Oklahoma" means authorized to do business in Oklahoma pursuant to the Oklahoma Uniform Securities Act of 2004.

"Audited financial statements" means "Certified financial statements."

"Certified financial statements" means financial statements prepared in accordance with generally accepted accounting principles and examined by Independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion as described in 660:11-15-1.

"CFR" means the Code of Federal Regulations.

"CRD" means the NASAA/~~NASD~~FINRA Central Registration Depository System.

"Date of filing" means the date on which a proper registration statement is filed for purposes of determining the dates of the statements of financial condition to be filed with a registration statement. If amendments to a registration statement are necessary to comply fully with the registration requirements, "date of filing" means the date on which the last amendment is filed.

"FDIC" means the Federal Deposit Insurance Corporation.

"FINRA" means the Financial Industry Regulatory Authority, Inc., the successor to the NASD and NASDR.

"Financial statements" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles.

"Independent accountants" means independent certified public accountants. The concept of independence shall be that promulgated by the American Institute of Certified Public Accountants.

"Institutional account" means the account of:

(A) a bank, savings and loan association, insurance company or registered investment company;

(B) an investment adviser registered under the Securities Act, with another state securities commission (or any agency or office performing like functions), or with the SEC under Section 203 of the Advisers Act; or

(C) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

"NASAA" means the North American Securities Administrators Association.

"NASD" means the National Association of Securities Dealers, Inc.

"NASDR" means the National Association of Securities Dealers Regulation, Inc.

"1933 Act" means the Securities Act of 1933~~, as amended~~.

"1934 Act" means the Securities Exchange Act of 1934~~, as amended~~.

"1940 Act" means the Investment Company Act of 1940~~, as amended~~.

"Predecessor of an issuer" means:

(A) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or

(B) a person from which the issuer acquired directly or indirectly the major portion of its assets.

"Promotional or developmental stage company" means an issuer for which any of the following conditions exist:

(A) the company and any predecessors were formed within the twelve-month period ending on the date of the filing of the application for registration;

(B) the company has no significant revenues from the line of business being undertaken with the offering proceeds;

(C) the principal operations to be conducted with offering proceeds have not commenced or have been commenced within the twelve-month period ending on the date of the filing of the application for registration; or

(D) the principal operations to be conducted with offering proceeds have commenced, but the issuer has not demonstrated profitable operations for two of the three fiscal years prior to registration, evidenced by net income determined in accordance with generally accepted accounting principles after taxes, and excluding extraordinary items.

"Prospectus" means a prospectus in a form and containing such information as may be required by the Administrator, including a prospectus filed under the 1933 Act or an offering circular used in connection with an exempt security or transaction regardless of the designation of the document (i.e., prospectus, offering circular, memorandum, etc.).

"Registration statement" means an application for registration of securities under Sections 1-303 and 1-304 of the Securities Act and all documents and exhibits related thereto, including a Prospectus.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

"SIPC" means the Securities Investor Protection Corporation.

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 1. GENERAL PROVISIONS

660:11-5-1. Purpose

The rules in this subchapter have been adopted to provide procedures for complying with the provisions ~~of Sections 1-401 through 1-402~~ of the Securities Act relating to the ~~licensing~~registration of broker-dealers and agents and to establish post-registration requirements and standards of ethical practices for broker-dealers and agents~~under the Securities Act~~.

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Branch office" means any business location of a broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. "Customer" shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Investment company and variable contracts products" means:

(A) redeemable securities of companies registered pursuant to the 1940 Act;

(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and

(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any

other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or **"Office of supervisory jurisdiction"** means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;

(E) review and endorsement of customer orders pursuant to 660:11-5-42;

(F) final approval of advertising or sales literature for use by agents of the broker-dealer;

(G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

(A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or

(B) any person associated with a ~~non-NASD~~ non-FINRA applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"Selling syndicate" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-11. Initial registration

(a) **Broker-dealer.** Each broker-dealer applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) who is contemporaneously applying for ~~NASD~~FINRA membership or who is ~~an~~a ~~NASD~~FINRA member:

(A) shall file with the CRD:

(i) a completed Form BD, including Schedules A-E; and

(ii) the filing fee specified in Section 1-612 of the Securities Act.

(B) shall file with the Department, within 60 days of becoming registered, a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma.

(2) who is not a current ~~NASD~~FINRA member shall file with the Department:

(A) a completed Form BD, including Schedules A-E;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) audited financial statements as required by 660:11-5-45;

(D) documentation of compliance with the minimum capital requirement set forth in Section 1-406.E of the Securities Act and 660:11-5-17;

(E) designation, qualification and registration of a principal as defined in 660:11-5-2 pursuant to (c) of this section;

(F) a list of the addresses, telephone numbers and resident agents of all nonbranch sales offices located within the state of Oklahoma;

(G) a copy of the written supervisory procedures of the broker-dealer; and

(H) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(b) **Broker-dealer agent.**

(1) **Required documents.** Each broker-dealer agent applying for initial registration pursuant to Section 1-406 of the Securities Act shall file:

(A) a completed Form U-4;

(B) the filing fee specified in Section 1-612 of the Securities Act;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Where to file.** An agent applying for registration with ~~an~~a~~NASD~~FINRA member shall file the documentation required by (1)(A) through (C) of this subsection with

the CRD and shall file any additional documentation with the Department. Agents applying for registration with a non-~~NASD~~FINRA broker-dealer shall file the required documentation with the Department.

(c) **Broker-dealer principal.**

(1) **Required documents.** Each person applying for initial registration under the Securities Act as a principal of a broker-dealer who is not a member of ~~the NASD~~ shall file with the Department:

(A) a completed Form U-4;

(B) a $50.00 filing fee;

(C) proof of successful completion of the applicable examinations specified in 660:11-5-16;

(D) an executed Applicant/Management Certification for Non-~~NASD~~FINRA Principals Form; and

(E) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(2) **Effect of registration.** Registration under the Securities Act as a principal of a broker-dealer shall constitute registration as an agent.

(d) **Issuer agent.** Agents of issuers applying for initial registration in the state of Oklahoma pursuant to Section 1-406 of the Securities Act shall file the following with the Department:

(1) a completed Form U-4;

(2) the fee specified in Section 1-612 of the Securities Act;

(3) proof of successful completion of the applicable examinations specified in 660:11-5-16;

(4) an executed Applicant/Management Certification Form; and

(5) any additional documentation, supplemental forms and information as the Administrator may deem necessary.

(e) **Requirement for continued registration.** 660:11-5-42, adopted pursuant to Section 1-411.D.13 of the Securities Act, sets forth the standards of ethical practices for broker-dealers and their agents. Paragraph (22) of said rule requires that each broker-dealer establish, maintain and enforce written procedures that will enable it to supervise properly the activities of each registered agent to assure compliance with applicable securities laws, rules, regulations and statements of policy. Therefore, the initial and continued registration of a broker-dealer that is not ~~an~~a ~~NASD~~FINRA member is conditioned upon the designation, qualification and registration of a principal who shall be responsible for the supervision of all agents of the broker-dealer who are registered under the Securities Act. A broker-dealer applicant or registrant may apply for registration of more than one person as a principal of said broker-dealer.

660:11-5-12. Renewal

(a) **Broker-dealer.** ~~An~~A~~NASD~~FINRA member shall renew its registration by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. A non-~~NASD~~FINRA member shall renew its registration by submitting to the Department an Application for Renewal of Non-~~NASD~~FINRA Broker-Dealer Registration and the renewal fee specified in Section 1-612 of the Securities Act.

(b) **Broker-dealer agent.** Agents of ~~NASD~~FINRA members shall renew their registrations by submitting the renewal fee specified in Section 1-612 of the Securities Act to the CRD. Agents of non-~~NASD~~FINRA members shall renew their registrations by submitting an Application for Renewal of Non-~~NASD~~FINRA Broker-Dealer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(c) **Broker-dealer principal.** Principals of non-~~NASD~~FINRA members shall renew their registrations by submitting an Application for Renewal of Non-~~NASD~~FINRA Broker-Dealer Principal Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

(d) **Issuer agent.** Issuer agents shall renew their registrations by submitting an Application for Renewal of Issuer Agent Registration and the renewal fee specified in Section 1-612 of the Securities Act to the Department.

660:11-5-13. Agent transfer

An agent who wishes to terminate his employment with one registered broker-dealer and thereafter commence employment with another broker-dealer may do so without causing a suspension in the agent's registration if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of the ~~National Association of Securities Dealers, Inc.~~ Financial Industry Regulatory Authority, Inc.

(2) The transfer is effected in accordance with the terms and conditions of the NASAA/~~NASD~~FINRA Central Registration Depository Temporary Agent Transfer Program.

(3) The employing broker-dealer has executed and filed an "Undertaking for Participation in the NASAA/~~NASD~~FINRA Central Registration Depository TAT Program."

(4) The employing broker-dealer currently is not subject to an order of the Administrator which would otherwise make this section unavailable.

660:11-5-14. Agent termination

(a) **Filing requirement.** Termination notice pursuant to the requirements of Section 1-408.A of the Securities Act shall be given by filing within thirty calendar (30) days of termination, a completed Uniform Termination Notice For Securities Industry Registration, Form U-5. The Form U-5 for an agent terminating registration with a ~~NASD~~FINRA member shall be filed with the CRD. The Form U-5 for agents terminating registration with a non-~~NASD~~FINRA broker-dealer shall be filed with the Department.

(b) **Responsibility for filing.** A completed Form U-5 signed by the employer will be accepted as fulfilling the statutory requirements of both parties. Upon verification that the Form U-5 has not been filed by the broker-dealer, the agent shall notify the Department in writing of said termination.

(c) **Effect of failure to file.** In the event of termination, the filing of a future application for registration shall not be considered complete until compliance with the termination notice requirements of Section 1-408.A and this section.

660:11-5-16. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the examination requirements of this rule is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examination.** Each applicant for registration as a broker-dealer agent, broker-dealer principal or issuer agent must pass the applicable examinations for the desired category of registration. The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by ~~the NASDR~~FINRA as applicable to each individual registrant by category of registration as the required examinations.

(c) **Limitations on licenses.** Without regard to the category of registration of one's broker-dealer, if any, the activities of each person registered as a principal or agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.

(d) **Examination categories.** Examination categories are as follows:

(1) **General securities or government securities - ~~NASD~~FINRA members:**

(A) **Principals**--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66.

(B) **Agents**--Series 7 and 63 or 66

(2) **General securities - Non-~~NASD~~FINRA Members/Issuers:**

(A) **Principals**--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66

(B) **Agents**--Series 7 and 63 or 66

(3) **Investment company and variable contract products**:

(A) **Principals**--Series 6, 26 and 63 or 66

(B) **Agents**--Series 6 and 63 or 66

(4) **Direct participation programs**:

(A) **Principals**--Series 22, 39 and 63 or 66

(B) **Agents**--Series 22 and 63 or 66

(5) **Options**:

(A) **Principals**--Series 4, 7 and 63 or Series 4, 62 and 63 or 66

(B) **Agents**--Series 7 or 42 and 63 or 66

(6) **Municipal securities**:

(A) **Principals**--Series 52, 53 and 63 or 66

(B) **Agents**--Series 52 and 63 or 66

(7) **Limited agent - corporate securities**--Series 62 and 63 or 66

(8) **Assistant agent - order processing**--Series 11 and 63 or 66

(e) **Change in series number.** Should ~~NASDR~~FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(f) **Validity of prior examination scores.**

(1) The Department will not recognize for purposes of qualification for registration under the Securities Act any ~~NASDR~~ FINRA examination score ~~which~~ that predates an initial application for registration by more than two (2) years in the absence of ~~continuous NASD~~ registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative since examination.

(2) The Department will not recognize for purposes of qualification for registration under the Securities Act ~~in this state~~ the examination score(s) of any person whose most recent registration as an agent,~~or~~ principal, broker-dealer, investment adviser or investment adviser representative has been terminated ~~with FINRA~~ for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.

(g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

PART 5. REPORTING REQUIREMENTS

660:11-5-31. Post-registration reporting requirements

(a) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, all broker-dealers registered under Section 1-406 of the Securities Act who are not ~~NASD~~FINRA members must make post-registration filings with the Department. The Department will not accept incomplete or piecemeal filings. Failure to file a complete report when due may result in the suspension or revocation of registration.

(b) **Report content.** Such registered broker-dealers shall make one (1) post-registration filing each fiscal year. Said filing shall contain audited financial statements as of the broker-dealer's fiscal year end and the report filing fee specified in Section 1-612 of the Securities Act.

(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal period to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-42. Standards of ethical practices for broker-dealers and their agents

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified

in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) **Recommendations.**

(A) ~~In recommending to a customer the purchase, sale or exchange of any security, the~~ A broker-dealer and his agents shall have reasonable grounds for believing that ~~the~~a ~~recommendation~~ recommended transaction or investment strategy involving a security or securities is suitable for such customer based upon the ~~basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs~~customer's investment profile. ~~Prior to making a recommendation to a customer a broker-dealer shall also make reasonable efforts to obtain information~~ A customer's investment profile includes, but is not limited to, ~~concerning~~ the customer's age, other investments, financial ~~background~~ situation and needs, tax status, ~~and~~ investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and ~~such~~ any other information ~~used or considered to be reasonable and necessary by such~~ disclosed by the customer or known to the broker-dealer or ~~registered~~ agent ~~in making such recommendation~~.

(B) A broker-dealer and his agents fulfill the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if (i) the broker-dealer or agent has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (ii) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the broker-dealer or agent's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if a broker-dealer or agent of a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule

shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to himself or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which

are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:

(i) in the event such broker-dealer acts as an agent or broker in such transaction, he shall immediately, in the regular course of his business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of his business, take possession or control of such security and shall maintain possession or control thereof so long as he remains under obligation to delivery of the security to the customer;

(ii) in the event such broker-dealer acts as a principal in any such transaction, he shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as he remains under obligation to deliver the security to the customer; and

(iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.

(B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with his customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.

(18) The following standards shall apply to books and records:

(A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.

(19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.

(20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.

(21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 1. GENERAL PROVISIONS

660:11-7-1. Purpose

The rules in this subchapter are adopted to provide procedures for complying with the provisions ~~of Sections 1-403 and 1-404~~ of the Securities Act relating to the ~~licensing~~ registration of investment advisers and investment adviser representatives ~~under the Securities Act~~and the submission of notice filings by SEC covered investment advisers, and to establish post-registration requirements and standards of ethical practices for investment advisers and investment adviser representatives.

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

(A) a completed Form ADV~~, including Schedules A-I~~; and

(B) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department ~~within 30 days from the effective date of registration~~:

(A) ~~Part 2 of the Form ADV~~ a list of the addresses, telephone numbers and resident representatives of all branch offices located within the state of Oklahoma, and if the principal office of the investment adviser is located in Oklahoma, all branch offices located elsewhere;

(B) audited financial statements as required by 660:11-7-44 unless exempt therefrom;

(C) a copy of ~~the~~ each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

(1) shall file with the CRD:

(A) a completed or updated Form U-4~~ if the information on the Form U-4 is not maintained in current form on the CRD~~;

(B) the filing fee specified in Section 1-612 of the Securities Act; and

(C) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-13. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the written examination requirements of this rule is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** Any natural person seeking registration as an investment adviser or investment adviser representative must pass the Series 65, or both the Series 66 and Series 7, or such other examination(s) or certifications determined by the Administrator to be acceptable in lieu thereof. The Administrator adopts the examinations as administered by ~~the~~~~NASDR~~FINRA as the required examinations.

(c) **Change in series number.** Should ~~NASDR~~FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(d) **Validity of prior examination scores.**

(1) The Department will not recognize ~~For~~ for purposes of qualification for registration under the Securities Act,~~the Department will not recognize~~ any ~~NASDR~~FINRA examination ~~score~~ score(s) that predates an initial application for registration by more than two (2) years in the absence of~~:~~

~~(1) continuous~~ registration as an investment adviser representative, an investment adviser, agent, principal or broker-dealer~~in another jurisdiction~~ since examination.~~; or~~

~~(2) continuous registration as an agent with the NASD since examination.~~

(2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) of any person whose most recent registration as an investment adviser, investment adviser representative, agent, principal or broker-dealer has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.

(e) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-17. Registration exemption for investment advisers to qualifying private funds.

(a) **Definitions.** For purposes of this regulation, the following definitions shall apply:

(1) **"Private fund"** means an issuer that would be an investment company, as defined in section 3 of the 1940 Act, but for section 3(c)(1) or 3(c)(7) of the 1940 Act, as provided in Section 202(a)(29) of the Advisers Act.

(2) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds and has assets under management in the United States of less than $150,000,000.

(3) **"Qualifying private fund"** means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1. The term may include an issuer that may be treated as a private fund for purposes of the exemption provided by SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

(b) **Exemption for private fund advisers.** A private fund adviser shall be exempt from the registration requirements of Section 1-403 if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;

(2) the private fund adviser files with the state as a notice each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(3) the private fund adviser pays the fees specified in Section 1-612.A.5.

(c) **Federal covered investment advisers.** If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section 1-405.

(d) **Investment adviser representatives.** A person is exempt from the registration requirements of Section 1-404 if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this rule and does not otherwise act as an investment adviser representative.

(e) **Electronic filing.** The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section 1-612.A.5 are filed and accepted by the IARD on the state's behalf.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Form ADV Amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must

amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV. "Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

(b) **Financial Reports.**

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, ~~all~~ every investment ~~advisers~~adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client shall file a post-registration financial report with the Department each fiscal year. ~~The Department will not accept incomplete or piecemeal filings. The post-registration filing shall contain the financial or operating report fee set forth in Section 1-612 of the Securities Act. Failure to file a complete report when due may result in the suspension or revocation of registration. The Administrator will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.~~

(2~~b~~) **Report content.** ~~Registered investment advisers who have custody or possession of clients' funds or securities or require prepayment of advisory fees six (6) months or more in advance and in excess of $500.00 per client shall make one (1) post-registration report each fiscal year. Said filing~~A financial report shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3~~c~~) **Report filing dates.** ~~Post-registration filings~~ Financial reports become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made ~~by the last day of the fourth month following the close~~ within 90 days of the end of the registrant's fiscal year.

(4) **Amendment.** If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment. "Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

(c) **Incomplete or Delinquent Filings.** The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, an

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record

of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) When providing investment advice is the primary business of the investment adviser.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory

representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

(I) its total sales and revenues, and

(II) its income (or loss) before income taxes and extraordinary items.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(C) a copy of the solicitor's written disclosure statement.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) **Recommendations.**

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify the advisor of any changes to information contained in the account record as they occur in the future.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations. The following standards shall apply to supervisory procedures:

(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in

writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules of the Oklahoma Department of Securities. Ultimate responsibility for supervision rests with the investment adviser.

(B) Written supervisory procedures must identify who has supervisory responsibilities, a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible.

(C) All written supervisory procedures should specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(D) Every investment adviser must maintain a copy of each prior version of its written supervisory procedures for a minimum of five years.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep a ledger or other listing of all securities or funds held or obtained relating to the inadvertent custody disclosing the following information:

(A) issuer;

(B) type of security and series;

(C) date of issue;

(D) for debt instruments, the denomination, interest rate and maturity date;

(E) certificate number, including alphabetical prefix or suffix;

(F) name in which registered;

(G) date given to the adviser;

(H) date sent to client or sender;

(I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

(A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) **Special requirements due to type of custody.**

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

(A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) copies of confirmations of all transactions effected by or for the account of any client.

(E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) if applicable, evidence of the client's designation of an independent representative.

(2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) true, accurate and current account statements;

(B) When the exception set forth in (c)(3) of 660:11-7-48 applies, the records required to be made and kept shall include:

(i) the date(s) of the audit;

(ii) a copy of the audited financial statements; and

(iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) When the description set forth in (b)(7) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:

(i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) **Trustee.** If an investment adviser has custody because it is acting as the trustee for a beneficial trust as described in (c)(5) of 660:11-7-48 the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(A) a copy of the written statement given to each beneficial owner setting forth a description of the requirements of (b) of 660:11-7-48 and the reason why the adviser will not be complying with those requirements; and

(B) a written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under (A) of this paragraph.

(c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.

(d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) paper or hard copy form, as those records are kept in their original form; or

(B) micrographic media, including microfilm, microfiche, or any similar medium; or

(C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) provide promptly any of the following that the Administrator or his representatives may request:

(i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true, and complete printout of the record; and

(iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and

(C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and l7a-4 [17 C.F.R. 240.l7a-4] under the ~~Securities Exchange Act of~~ 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

660:11-7-42. Standards of ethical practices

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this section and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives.

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment ~~objectives~~profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known ~~by~~to the investment adviser or investment adviser representative.

(B) **Institutional clients.**

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Charging a client an unreasonable advisory fee.

(10) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees.

(11) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(12) Publishing, circulating and distributing any advertisement which does not comply with Reg. § 275.206(4)-1, under the ~~Investment~~ Advisers Act ~~of 1940~~.

(13) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(14) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action is subject to and does not comply with the requirements of Reg. § 275.206(4)-2 under the ~~Investment~~ Advisers Act ~~of 1940~~.

(15) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(16) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(17) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take

place and how the supervisor's review will be documented.

660:11-7-43. Disclosure requirements

(a) **Disclosure delivery requirement.** In furtherance of compliance with the standards of ethical practices specified in 660:11-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement. ~~which may be a copy~~ The disclosure statement must include ~~of~~ Part ~~II~~2A of its Form ADV ~~-~~(also known as a brochure) ~~including Schedule F~~and , if applicable, ~~or written documents containing at least the information then so required by~~ any Part ~~II~~2B of ~~the~~its Form ADV ~~-~~(also known as a brochure supplement) and Appendix 1 if offering a wrap fee program ~~including Schedule F, if applicable~~; provided however, delivery of the required statement need not be made in connection with entering into a contract with a client:

(1) that is an investment company; ~~contract or a contract~~

(2) for impersonal advisory services; or

(3) who is an officer, employee or other person related to the adviser that would be a qualified client of the adviser under 17 CFR § 275.205-3(d)(1)(iii).

(b) **Time of delivery.** An investment adviser shall deliver the statement required by (a) of this section to an advisory client or prospective advisory client:

(1) not less than 48 hours prior to entering into any written ~~or oral~~ investment advisory contract with such client or prospective client, or

(2) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) For purposes of this section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.

(d) **Annual delivery requirement.** Unless exempted as provided in (a) of this section, an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section. Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.

660:11-7-47. Payments for client solicitations

(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 1-403 of the Securities Act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) the investment adviser is registered under the Securities Act;

(2) the solicitor is registered as an investment adviser representative of this or another investment adviser registered under the Securities Act or separately registered as an investment adviser or under the Securities Act; ~~and~~

(3) such cash fee is paid pursuant to a written agreement to which the investment adviser is a party~~.~~; and

(4) the only compensation paid for a referral of investment advisory clients to a solicitor other than one registered as an investment adviser representative of this investment adviser is paid to an investment adviser registered under the Securities Act or a federal covered investment adviser who has filed a notice under Section 1-405 of the Securities Act.

(b) **Written agreement.** If soliciting clients is the only service rendered on behalf of an investment adviser, the written agreement required by (a)(3) of this section shall:

(1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

(2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder; and

(3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:11-7-43 and a separate written disclosure document described in (d) of this section.

(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written ~~or oral~~ investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to (b) of this section shall contain the following information:

(1) the name of the solicitor;

(2) the name of the investment adviser;

(3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate

the solicitor for soliciting customers for, or referring customers to, the investment adviser.

660:11-7-48. Custody requirements for investment advisers

(a) **Definitions.** For purposes of this ~~Section~~Subchapter:

(1) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Custody includes:

(i) possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under 660:11-7-41.

(2) **"Independent representative"** means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with you; and

(C) does not have, and has not had within the past two years, a material business relationship with you.

(3) **"Qualified custodian"** means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A registered broker-dealer holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) **Safekeeping required.** If you are an investment adviser registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for you to have custody of client funds or securities unless:

(1) **Notice to Administrator.** The investment adviser notifies the Administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

(2) **Qualified custodian.** A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(3) **Notice to clients.** If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you promptly notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, when the account is opened and following any changes to this information.

(4) **Account statements.** Account statements must be sent to clients, either:

(A) **by a qualified custodian.** The investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(B) **by the investment adviser.**

(i) The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; and

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the

Administrator within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Administrator within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator;

(C) **Special rule for limited partnerships and limited liability companies.** If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under (b)(4) of this Section must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(5) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under (b)(3) and (b)(4) of this Section.

(6) **Direct fee deduction.** An adviser who has custody as defined in (a)(1)(A)(ii) of this Section by having fees directly deducted from client accounts must also provide the following safeguards:

(A) **Written authorization.** The investment adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(B) **Notice of fee deduction.** Each time a fee is directly deducted from a client account, the investment adviser must concurrently:

(i) send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

(ii) send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(C) **Notice of safeguards.** The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.

(D) **Waiver of audited financial statements.** An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(ii) of this Section and who complies with the safekeeping requirements in (b)(1)-(6) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.

(7) **Pooled Investments.** An investment adviser who has custody as defined in (a)(1)(A)(iii) of this Section and who does not meet the exception provided under (c)(3) of this Section must, in addition to the safeguards set forth in (b)(1)-(5) of this Section also comply with the following:

(A) **Engage an Independent Party.** Hire an Independent Party to review all fees, expenses and capital withdrawals from the pooled accounts;

(B) **Review of fees.** Send all invoices or receipts to the Independent Party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the Independent Party can:

(i) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

(ii) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(C) For purposes of this paragraph, an "Independent Party" means a person that:

(i) is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(ii) does not control and is not controlled by and is not under common control with you; and

(iii) does not have, and has not had within the past two years, a material business relationship with you.

(D) **Notice of safeguards.** The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.

(E) **Waiver of audited financial statements.** An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (7) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.

(8) **Investment Adviser or Investment Adviser Representative as Trustee.** When a trust retains an investment adviser; investment adviser representative; or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will:

(A) [**Notice of safeguards**] notify the Administrator in writing that the investment adviser intends to use the safeguards provided in (B) and (C) of this paragraph. Such notification is required to be given on Form ADV.

(B) [**Invoice requirement**] send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser);

or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(C) [**Agreement requirement**] enter into a written agreement with a qualified custodian which specifies:

(i) [**Payment of fees**] that the qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor will transmit any funds to the investment adviser; any investment adviser representative or employee; director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

(I) the grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(II) the statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(III) the qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

(ii) [**Distribution of assets**] except as otherwise set forth in (b)(8)(C)(i) of this Section, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(I) to a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

(II) to the named grantors or to the named beneficiaries of the trust;

(III) to a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to:

a. attorney's, accountant's, or qualified custodian's fees for the trust; and

b. taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

(IV) to third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

(V) to a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(D) [**Waiver of audited financial statements**] not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31 if the investment adviser has custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (8) of this Section.

(c) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the ~~Investment Company Act of~~ 1940 Act [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with (b) of this Section;

(2) **Certain privately offered securities.**

(A) You are not required to comply with (b) of this Section with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding (A) of this paragraph, the provisions of this paragraph are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership

is audited, the audited financial statements are distributed as described in (3) of this Subsection, and the investment adviser notifies the Administrator in writing that the investment adviser intends to provide audited financial statements. Such notification is required to be given on Form ADV.

(3) **Limited partnerships subject to annual audit.** You are not required to comply with (b)(3) of this Section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the audit safeguards described in (2)(B) of this subsection. Such notification is required to be given on Form ADV.

(4) **Registered investment companies.** You are not required to comply with this Section with respect to the account of an investment company registered under the ~~Investment Company Act of~~ 1940 Act [15 U.S.C. 80a-1 to 80a-64].

(5) **Beneficial Trusts.** An investment adviser is not required to comply with safekeeping requirements of (b) of this Section or 660:11-7-31 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(A) The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee. These relationships shall include "step" relationships.

(B) For each account under (A) of this paragraph you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of (b) of this Section and the reasons why you will not be complying with those requirements.

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (i) of this subparagraph.

(iii) You maintain a copy of both documents described in (i) and (ii) of this subparagraph until the account is closed or you are no longer trustee.

(6) Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in (a) of this Section must first obtain approval from the Administrator and must comply with all of the applicable safekeeping provisions under (b) of this Section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

PART 9. SEC COVERED INVESTMENT ADVISERS

660:11-7-51. SEC covered investment adviser notice filing

(a) **Initial filing.** A federal covered investment adviser making its initial notice filing in the state of Oklahoma pursuant to Section 1-405 of the Securities Act:

(1) shall file with the IARD:

(A) a new or amended Form ADV~~, including Schedules A-I,~~ designating Oklahoma on Item 2.B of Part 1A; and

(B) the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act; and

(2) shall comply with existing federal requirements with regard to the Part 2 of the Form ADV.

(b) **Renewal.** Federal covered investment advisers who have made a notice filing pursuant to Section 1-405 of the Securities Act may renew their notice by submitting to the IARD the investment adviser notice filing fee set forth in Section 1-612 of the Securities Act.

SUBCHAPTER 13. SALES LITERATURE

660:11-13-2. Definitions

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

"Sales literature" means material published, or designed for use, in a newspaper, magazine or other periodical, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), website, other public media and any other written or electronic communication distributed or made generally available to customers or the public and used in connection with the offer or sale of securities or the services of a broker-dealer or investment adviser.Sales literature ~~including~~includes, but is not limited to, prospectuses, pamphlets, circulars, form letters, market letters, telemarketing scripts, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of any other advertisement, sales literature or published material ~~advertising to include publications in electronic format~~.

"Sales literature package" means all submissions of Sales Literature to the Department under one posting or delivery relating to a specific issue of securities or the services of one or more specific broker-dealers or investment advisers.

660:11-13-3. Filing requirements

(a) **Requirement of filing.** Section 1-504 of the Securities Act requires a filing of all Sales Literature for review and response by the Administrator before use or distribution in Oklahoma. A complete filing shall consist of:

(1) the Sales Literature Package,

(2) the fee specified in Section 1-612 of the Securities Act, and

(3) a representation:

(A) by the applicant, issuer or broker-dealer, that reads substantially as follows: "I ------hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Oklahoma Department of Securities on or about-----."; or

(B) by the applicant, broker-dealer or investment adviser, that reads substantially as follows: "I ------hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the provider's current information on file with the Oklahoma Department of Securities."

(b) **~~Exemption from filing~~ Exclusions.** The following types of Sales Literature are excluded from the filing requirements set forth in this Section:

(1) Sales Literature which does nothing more than identify a broker-dealer and/or offer a specific security at a stated price;

(2) Internal communications that are not distributed to the public;

(3) Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such;

(4) Sales Literature solely related to ~~changes in a~~ the name~~,~~of the entity and its personnel, location, ownership, offices, business structure, lines of business, officers or partners, ~~telephone or teletype numbers~~or contact information; and

(5) Sales Literature~~ filed with and approved by the NASD~~as defined in 660:11-13-2 that is subject to the regulation of FINRA or the SEC and in compliance with the pertinent regulatory requirements.

(c) **Piecemeal filings.** The Department will not approve any Sales Literature Package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith.

660:11-13-4. Content

(a) **Application of antifraud provisions.** Sales Literature used in any manner in connection with the offer and sale of securities or the offer of brokerage or advisory services is subject to the provisions of Section 1-501 and/or 1-502 of the Securities Act, whether or not such Sales Literature is required to be filed pursuant to Section 1-504 of the Securities Act or 660:11-13-3. Further, Sales Literature filed with the Department is subject to the provisions of Sections 1-501 and/or 1-502 and 1-505 of the Securities Act. Sales Literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor.

(b) **Prohibited disclosures.**

(1) Unless stating that the Commission, Administrator or Department has not approved the merits of the securities offering or the Sales Literature, no Sales Literature shall contain a reference to the Commission or the Department unless such reference is specifically required in a Departmental Prospectus Guide or requested by the Administrator.

(2) An investment adviser is prohibited from publishing, circulating or distributing any Sales Literature that:

(A) refers, directly or indirectly, to any testimonial concerning the investment adviser or any advice, analysis, report, or other service rendered by such investment adviser;

(B) refers to past specific recommendations of the investment adviser that were or would have been profitable unless the investment adviser provides:

(i) all past recommendations made during the immediately preceding period of not less than one year,

(ii) additional information sufficient for a reader to evaluate the adviser's performance to include, but not be limited to, the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and

(iii) a disclaimer to the effect that past performance does not guarantee future success;

(C) represents that any graph, chart, formula or other device offered can in and of itself be used to make trading decisions without prominently disclosing in the advertisement any limitations or difficulties in its use; or

(D) contains any statement to the effect that any report, analysis, or service is free unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly.

[OAR Docket #13-1112; filed 6-20-13]

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

[OAR Docket #13-1063]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-8 [REVOKED]
Subchapter 7. Duties and Liabilities
710:65-7-17 [AMENDED]
710:65-7-17.1 [AMENDED]
Subchapter 9. Permits
710:65-9-6 [AMENDED]

Subchapter 13. Sales and Use Tax Exemptions
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 31. "P"
710:65-19-263 [AMENDED]
Subchapter 21. Use Tax
710:65-21-5.1 [NEW]

AUTHORITY:
Oklahoma Tax Commission; 68 O.S. §§ 203 and 1354.18

DATES:
Comment Period:
January 2, 2013 to February 5, 2013
Public hearing:
February 7, 2013
Adoption:
March 12, 2013 [Commission Order No. 2013-03-12-03]
Gubernatorial approval:
April 18, 2013
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2013
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May 10, 2013
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SUBMITTED TO GOVERNOR:
March 13, 2013
SUBMITTED TO HOUSE:
March 13, 2013
SUBMITTED TO SENATE:
March 13, 2013
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Section **710:65-3-8** has been revoked as obsolete and unnecessary.
Sections **710:65-7-17, 710:65-7-17.1** and **710:65-13-275** have been amended to implement the provisions of Senate Bill 46 which expands the sales tax exemption for 100% disabled veterans to include sales to the surviving spouse of a deceased qualifying veteran if the surviving spouse has not remarried. **[68:1357(34)]**
New Section **710:65-21-5.1** has been added for purposes of Oklahoma's compliance as a member state with the Streamlined Sales and Use Tax Agreement.
Sections **710:65-9-6** and **710:65-19-263** have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

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, 2013:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-8. Change in tax period [REVOKED]

~~(a) A vendor wanting to report on other than the calendar period prescribed by statute must first obtain approval from the Commission. To obtain approval, the vendor must, in writing, notify the Commission of the days on which taxpayer's fiscal period will begin and end for the succeeding twenty-four (24) months. Once approval is obtained, the taxpayer must continue to notify the Commission of the days on which taxpayer's fiscal period begins and ends. Failure to notify the Commission of taxpayer's fiscal period ending date in advance of the fiscal period will result in taxpayer's approval to use a fiscal period in lieu of a calendar period being revoked. [**See:** 68 O.S. § 1352(26)]~~

~~(b) Once approved, the taxpayer is required to put the beginning and ending dates of the fiscal period on each report filed.~~

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-17. Vendors' responsibility - sales to disabled veterans receiving compensation at the 100% rate or surviving spouses of qualified deceased disabled veterans

In the case of a purchaser claiming exemption from sales tax pursuant to the exemption allowed by 68 O.S. §1357(34), the vendor must obtain either a copy of the exemption card issued the purchaser by the Tax Commission or the purchaser's name, address, and exemption number.

710:65-7-17.1. Vendors' fine for refusal to accept sales tax exemption claims of 100% disabled veterans or surviving spouses of qualifying deceased disabled veterans~~for sales tax exemption~~

A vendor who willfully or intentionally refuses to honor the sales tax exemption afforded a 100% disabled veteran's or the unremarried surviving spouse of a deceased qualifying disabled veteran~~sales tax exemption~~ is subject to punishment by an administrative fine for the first offense. A second or subsequent violation constitutes a misdemeanor punishable by a fine not to exceed Five Hundred Dollars ($500.00) per offense.

SUBCHAPTER 9. PERMITS

710:65-9-6. Subscription to sales tax permit list

(a) The Commission will provide on a subscription basis the following information contained in the master Sales and Use Tax Files:
(1) Permit number.
(2) Name in which permit is issued.
(3) Name of business operation if different from ownership (DBA).
(4) Mailing addresses.
(5) Business addresses.

(6) Business class,~~or~~ Standard Industrial Code (SIC) or classification under the North American Industry Classification System (NAICS).

(7) Effective date and expiration or cancellation date.

(b) The fee for this service is One Hundred Fifty Dollars ($150.00) per year. The lists will be updated periodically. It is to be used by the vendor for the purpose of determining the validity of sales tax permits presented to the vendor as proof of the purchaser's exemption as a reseller. [**See:** 68 O.S. §1364(N)]

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the one hundred percent rate and unremarried surviving spouses of qualifying veterans

(a) **General provisions for exemption afforded certain veterans.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service. The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) **General provisions for exemption afforded unremarried surviving spouse of deceased qualifying veteran.** Sales of tangible personal property or services are exempt from sales tax when made to a surviving spouse of a deceased veteran qualifying for the exemption set out in subsection (a) of this Section if the spouse has not remarried. The exemption includes sales to a household member where the surviving spouse of the deceased qualifying veteran resides who is authorized to make purchases on behalf of the spouse in his or her absence, so long as the purchase is for the benefit of the spouse.

(c) **Qualification to receive an exemption card.** To qualify for exemption under this Section and receive an exemption card ~~under this Section~~, a veteran or surviving spouse of the qualifying veteran must be an Oklahoma "resident" as defined in 68 O.S. §2353~~provide a letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and the veteran must be an Oklahoma "resident" as defined in 68 O. S. § 2353~~ and submit to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd, Oklahoma City Ok 73194 the following information:

(1) **Qualifying Veteran.** A letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate.

(2) **Unremarried surviving spouse.** A letter from the United States Department of Veterans Affairs, Muskogee, OK certifying that the applicant is the unremarried spouse of the qualifying veteran.

(~~c~~d) **Exemption ~~limitation~~limitations.** The authorized exemption in this Section is subject to the following limitations:

(1) **Disabled veterans in receipt of compensation at the one hundred percent rate.** The authorized exemption for a qualified veteran is limited to Twenty-five Thousand Dollars ($25,000.00) per year of qualifying purchases made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars ($25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(2) **Unremarried surviving spouse of qualifying disabled veteran.** The authorized exemption for the unremarried surviving spouse is limited to One Thousand Dollars ($1,000.00) per year of qualifying purchases made by the qualified surviving spouse. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amount for which the exemption is applicable has not exceeded the yearly limitation of One Thousand Dollars (1,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(~~d~~e) **Qualifying sales.** Sales are exempt if the qualified veteran or surviving spouse has an interest in the funds presented and the purchase is made on his or her behalf, and the qualified ~~veteran,~~veteran's spouse or household member or the surviving spouse's household member authorized to make purchases on behalf of the veteran or surviving spouse in ~~the veteran's~~their absence has presented the exemption card issued by the Oklahoma Tax Commission.

(f) **Denial of exemption by vendor.** All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran,qualified unremarried surviving spouse and persons making purchases for the benefit of the disabled

veteran or surviving spouse. Qualifying 100% disabled veterans and qualifying unremarried surviving spouses who have had claims for sales tax exemption denied by vendors may notify the Tax Commission of such denial by submitting to the Compliance Division a signed and completed OTC Form 13-37, which is available telephonically at (405) 521-3281 or online at www.tax.ok.gov.

(~~e~~g) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the one hundred percent (100%) rate or an unremarried surviving spouse of the qualifying veteran who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the one hundred percent rate.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 31. "P"

710:65-19-263. Plating

(a) Gross receipts from the sale of plating are not subject to sales tax if the sale is made to a person engaged in the business of manufacturing and the buyer delivers a ~~Manufacturer's Limited Exemption Certificate (MLEC)~~Manufacturers/Sales Tax Exemption Permit (MSEP).

(b) The purchaser claiming the exemption, by presenting a valid certificate of exemption, must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof, or he will be liable for the sales tax on the value of the plating.

SUBCHAPTER 21. USE TAX

710:65-21-5.1. Filing requirements for certain vendors registered under the Streamlined Sales and Use Tax Agreement

A seller that is registered under the Streamlined Sales and Use Tax Agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to Oklahoma under the Agreement is exempt from the filing of a return. A seller shall lose such exemption upon making any taxable sales into this state and shall file a return in the month following such sale.

[OAR Docket #13-1063; filed 6-10-13]

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

1:2013-22A.

AMENDED EXECUTIVE ORDER 2013-22

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. " 683.1 *et seq.*, 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 effort:

1. The requirements for size and weights permits of oversized vehicles under Title 47 whose sole purpose is transportation of materials and supplies used for storm relief;
2. The requirements under parts 390 through 399 pursuant to part 390.23 of Federal Motor Carriers Safety Administration Regulations;
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;

Because of the on-going state of emergency resulting from the tornados on May 19th, 20th, and 31st of 2013, this Executive Order shall be effective until the end of fourteen (14) days after the filing of this Executive Order.

This Executive Order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission, and the Commissioner of Public Safety, 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 21st day of June, 2013.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Chris Morriss
Assistant Secretary of State

[OAR Docket #13-1113; filed 6-21-13]

1:2013-26.

EXECUTIVE ORDER 2013-26

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the powers vested in me by the Oklahoma Statutes in 25 O.S. Section 82.1, hereby order the following dates be observed as holidays by the State of Oklahoma in 2014:

Wednesday	January 1, 2014	New Year's Day
Monday	January 20, 2014	Martin Luther King, Jr. Day
Monday	February 17, 2014	Presidents' Day
Monday	May 26, 2014	Memorial Day
Friday	July 4, 2014	Independence Day
Monday	September 1, 2014	Labor Day
Tuesday	November 11, 2014	Veterans Day
Thursday & Friday	November 27 & 28, 2014	Thanksgiving
Wednesday & Thursday	December 24 & 25, 2014	Christmas

This Executive Order shall be forwarded to the Director of the Office of Management and Enterprise Services who shall

cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of June, 2013.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Chris Morriss
Assistant Secretary of State

[OAR Docket #13-1115; filed 6-24-13]

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

PUBLICATION ERROR:

Due to technical error, some strikeouts in Sections 158:30-9-1(e) and 158:30-9-4(a)(1) were lost when the Sections were published in the July 1, 2013 issue of the *Register* [Docket # 13-1047, Page 1533].

159:30-9-1(e) should have read:

(e) ~~Attendance at an approved technical school with specialization in the plumbing skills may be substituted for experience or employment on an equal time basis. Substitution of education for experience shall be limited to a maximum of one-half the experience requirements. Applicants must present to the Administrator for approval records of schools attended, grades and/or certificates of completion if education is to be substituted for experience.~~An associate degree or Career Tech diploma certifying completion of a plumbing educational program consisting of a minimum of 1000 classroom from a school, approved by the Committee, and one (1) year of verifiable experience in the plumbing trade while employed by a licensed plumbing contractor, or

158:30-9-4(a)(1) should have read:

(a) **Continuing education requirements.**

(1) ~~No plumbing contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) instructional hours of continuing education on the revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code within one (1) year of adoption. Continuing Education requirements may also be fulfilled by a combination of not less than four (4) hours of plumbing related instruction, including revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code and at least two (2) hours of continuing education of manufacturers' installation of equipment or parts.~~ By July 1, 2014, no contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education; and thereafter, the licensee shall complete six (6) hours every three years or thirty-six (36) months. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Administrator, or trade section chief, within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the Oklahoma Uniform Building Code Commission, any other code approved by the Committee as an appropriate code for topics of continuing education for licensees, and/or other trade related subject matters approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing act, the trade regulations, and other trade or safety related subject matters approved by the Committee.