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

[OAR Docket #18-701]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Student Assessment

210:10-13-4. Test security and validity [AMENDED]

SUMMARY:

A provision is being added to the administrative rule on "Test security and validity" for the Oklahoma School Testing Program (OSTP), to ensure the local school board is apprised in the event a school district is determined to have violated the security provisions of one or more OSTP assessments. The rule currently provides that such a violation shall be reported to the State Superintendent, and the proposed new language provides that such a violation shall also be reported directly to the school district's board of education.

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.505 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from December 3, 2018 until 4:30 p.m. on Wednesday, January 9, 2019.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 522-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Wednesday, January 9, 2019, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #18-701; filed 11-8-18]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #18-702]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Special Education

210:15-13-7. Lindsey Nicole Henry Scholarship for Students with Disabilities Program [AMENDED]

SUMMARY:

The rule outlining the Lindsey Nicole Henry scholarship program for students with disabilities is being updated to reflect changes to law since the rule's adoption, and to clarify the application process for parents/guardians of eligible

Notices of Rulemaking Intent

students. While the scholarship was initially limited to students with disabilities who have attended public school in Oklahoma and been served under the Individuals with Disabilities Education Act (IDEA), eligibility was later expanded to include students who have been served through the SoonerStart program for children with disabilities age birth through two, and most recently for students who have been in an out-of-home placement through the Department of Human Services (DHS), who have been in out-of-home placement with the Office of Juvenile Affairs, or who have been adopted while in the permanent custody of DHS. These eligibility categories must be added to the rule to reflect current law, along with updates necessary due to changes in practice, such as applications now being accepted by email.

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 13-101.2

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from December 3, 2018 until 4:30 p.m. on Wednesday, January 9, 2019.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 522-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

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REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #18-702; filed 11-8-18]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #18-703]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-102. Career development program for paraprofessionals [AMENDED]

SUMMARY:

The rule outlining qualifications for public school paraprofessionals, as well as the program through which paraprofessionals can become certified as teachers, is being updated to clarify federal requirements and state practice. The current language of the rule does not reflect the requirements for paraprofessionals in the special education context, which exceed the requirements for eligibility as a Title I or general elementary paraprofessional. The rule update will provide for a distinct credential for qualifying special education paraprofessionals, as well as clarify the process for how a paraprofessional credential may be obtained from the State Department of Education (OSDE).

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 6-127A

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from December 3, 2018 until 4:30 p.m. on Wednesday, January 9, 2019.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 522-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Wednesday, January 9, 2019, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #18-703; filed 11-8-18]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

[OAR Docket #18-704]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Additional Standards for Middle Level Schools
Part 9. Standard V: The School Staff

210:35-7-41. Staffing: pupil/professional staff ratio [AMENDED]

Subchapter 9. Additional Standards for Secondary Schools
Part 9. Standard V: The School Staff

210:35-9-41. Staffing: pupil/professional staff ratio [AMENDED]

SUMMARY:

The two rules addressing teacher planning time requirements are being amended to clarify the minimum compensation a teacher is entitled to when they voluntarily forgo the planning time they are entitled to through a written agreement with their school district. The rules currently state that a "stipend" must be provided to a teacher who forgoes their planning time. A statement will be added to the rules explaining that the stipend provided to a teacher who forgoes their planning time must be proportionate to the amount of compensation the teacher would be entitled to on the minimum salary schedule for the amount of planning time forgone.

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 18-114.14

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from December 3, 2018 until 4:30 p.m. on Wednesday, January 9, 2019.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 522-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Wednesday, January 9, 2019, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

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RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #18-704; filed 11-8-18]

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

[OAR Docket #18-694]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)

Part 5. Control of VOCs in Coating Operations
252:100-37-27. [NEW]

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Part 1. General Provisions
252:100-39-4. [AMENDED]

Part 3. Petroleum Refinery Operations
252:100-39-16. [AMENDED]

Part 7. Specific Operations
252:100-39-47. [AMENDED]

Appendix N. Specialty Coatings VOC Content Limits
[REVOKED]

Appendix N. Specialty Coatings VOC Content Limits
[NEW]

SUMMARY:

The Department is proposing to add a new section 252:100-37-27, Control of emission of VOCs from aerospace industries coatings operations, for existing or new aerospace vehicle and component coating operations at aerospace manufacturing, rework, or repair facilities. The new section would allow aerospace coating facilities throughout Oklahoma to be regulated under rules specific to the industry as is presently done in section 252:100-39-47 for Tulsa County. Currently, VOC emissions from coating operations at any type of industry are regulated under 252:100-37-25. The

new section would reference certain limits set forth in the aerospace National Emissions Standards for Hazardous Air Pollutants (NESHAP) 40 CFR Part 63, Subpart GG, which are more applicable for this particular industry than the current generic list in 252:100-37-25. Additionally, the Department is proposing to amend 252:100-39-47 to correct minor typographical errors, incorporate the latest changes to the aerospace NESHAP, and ensure regulatory consistency with proposed section 252:100-37-27. Lastly, the Department is proposing to revoke Appendix N and replace it with a new Appendix N to correct minor typographical errors and specify its intended use for both sections 252:100-39-47 and 252:100-37-27.

The gist of this rulemaking (252:100-37-27, 252:100-39-47, and Appendix N) is to provide the aerospace industry with updated requirements that better reflect current aerospace industry coating formulations and practices, and to make those rules applicable statewide. This rulemaking would ensure the aerospace industry in Oklahoma has the opportunity to operate as necessary with standards specific to the industry and consistent with rules already in place for Tulsa County to reduce the formation of ozone.

The Department is proposing to amend 252:100-39-4, Exemptions, to remove an incorrect citation to a revoked rule. The gist of this rulemaking is to remove an incorrect citation to a revoked rule.

The Department is proposing to amend 252:100-39-16, Petroleum refinery process unit turnaround, to update the timeframe listed as the non-oxidant season. The gist of this rulemaking is to ensure that the proper controls are used during scheduled refinery unit turnarounds during Oklahoma's current ozone season.

AUTHORITY:

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 3, 2018, through January 9, 2019. Oral comments may be made at the January 16, 2019 hearing (or on the alternate date of January 23, 2019 in the event of inclement weather) and at the February 15, 2019 Environmental Quality Board hearing.

PUBLIC HEARING:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 16, 2019, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102. In case of inclement weather, an alternate date is scheduled for Wednesday, January 23, 2019 at the same location. In the event the alternate date is needed, the comment period will extend to include that date.

If due to inclement weather the public hearing scheduled for January 16, 2019 is cancelled, notice announcing the hearing cancellation will be posted on the DEQ website

(http://www.deq.state.ok.us/aqdnew/RulesAndPlanning/index.htm) at least 24 hours prior to the scheduled time for the hearing. Interested parties may call (405) 702-4100 to find out if the hearing has been cancelled.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Friday, February 15, 2019, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

The Air Quality Advisory Council hearing shall also serve as the public hearing to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR Section 51.102 and 27A O.S. Section 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 CFR Part 70 and 27A O.S. Section 2-5-112(B)(9).

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. Section 303(D), a rule impact statement will be prepared and available on and after December 3, 2018 on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies may also be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for these proposals is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to AQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster. The Air Quality Division fax number is (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4172. For the hearing impaired, the TDD relay number

is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #18-694; filed 11-8-18]

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

[OAR Docket #18-695]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 252:301-1-3. Definitions [AMENDED]
 - 252:301-1-4. Terms [AMENDED]
 - 252:301-1-7. General water quality laboratory [AMENDED]
 - 252:301-1-9. Fees [AMENDED]
- Subchapter 3. Laboratory Accreditation Process
 - Part 1. Application
 - 252:301-3-3. Operational information [AMENDED]
 - Part 5. Grounds to Revoke
 - 252:301-3-51. Grounds to take enforcement action [AMENDED]
- Subchapter 5. General Operations
 - 252:301-5-4. On-site inspections [AMENDED]
- Subchapter 7. Proficiency Testing
 - 252:301-7-2. Participation required [AMENDED]
- Subchapter 9. Quality Assurance/Quality Control
 - Part 3. Standard Operating Procedures and Methods Manual
 - 252:301-9-37. Methodology incorporated by reference [AMENDED]
 - Part 5. QA/QC Program Requirements
 - 252:301-9-51. QA/QC program required [AMENDED]
 - 252:301-9-54. Inorganic/classic chemistry [AMENDED]
 - 252:301-9-57. Support equipment [NEW]

SUMMARY:

The gist of these rules and the underlying reason for this rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more closely approximate program costs for accreditation.

The Department is proposing to amend 252:301-1-3, Definitions, to correct typographical errors, and by inclusion of new definitions for the terms "finding" and "critical finding." Additionally, the Department is proposing to amend 252:301-1-7(b) to include escherichia coli among the basic environmental laboratory analytes for general water quality laboratories.

The Department is proposing to amend 252:301-1-9, Fees, adding a new fee to recover the actual cost for assessors' time

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and effort in performing on-site evaluations. The gist of this rule is to more accurately reflect the Department's full cost for performing laboratory accreditation and reduce reliance on State appropriated funds.

The Department is proposing, in 252:301-3-3 and thereafter throughout Chapter 301, to delete the word "inspection" and substitute the term "evaluation." Additionally, the Department is proposing to amend 252:301-5-4, On-site inspections, to clarify the circumstances and frequency for conducting on-site evaluations.

The Department is proposing to amend 252:301-7-2, Participation required, by deleting an unneeded reference to the National Environmental Laboratory Accreditation Conference.

The Department is proposing to amend 252:301-9-37, Methodology incorporated by reference, to incorporate the latest changes to EPA Primary Drinking Water Regulations, National Standards for Solid Waste Test Methods, and EPA Test Procedures for the Analysis of Pollutants. A significant result of the update to EPA Test Procedures for the Analysis of Pollutants is amendment of the procedure for the determination of the Method Detection Limit (MDL), which will apply to all permittees and accredited laboratories.

The Department is proposing to amend 252:301-9-51, QA/QC program required, to increase from three years to five years, the time that records of analyte accredited analyses be retained. This change is for consistency with all other DEQ, Laboratory Accreditation records retention requirements. Additionally, the Department is proposing to amend 252:301-9-54, Inorganic/classic Chemistry, deleting the unneeded reference to Inorganic Chemistry as "classic" chemistry, and to delete the option to test spike duplicates once per month.

The Department is proposing to add a new section, 252:301-9-57, Support equipment, to require that laboratory support equipment be calibrated at least annually using traceable references when available and bracketing the range of use. This change is consistent with EPA required test procedures.

AUTHORITY:

Environmental Quality Board; 27A O.S., Sections 2-2-101, 2-2-201, and 2-4-302.

Water Quality Advisory Management Council; 27A O.S., Sections 2-2-201 and 2-5-107.

Laboratory Certification Services; 27A O.S., Sections 2-5-301 through -306.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 3, 2018 through January 2, 2019. Oral comments may be made at the January 8, 2019 Water Quality Management Advisory Council meeting and at the February 15, 2019 Environmental Quality Board meeting.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council at 2:00 p.m. on Tuesday, January 8, 2019 at the DEQ Building 707 N Robinson, Oklahoma City, OK 73102. If the Council

recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, February 15, 2019, 707 N Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or reviewed on-line at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

CONTACT PERSON:

The contact person is David Caldwell, Environmental Programs Manager, who can be reached by phone at (405) 702-1000 or by fax at (405) 702-1001. Email comments may be directed to david.caldwell@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, State Environmental Laboratory Services Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: David Caldwell.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the contact person three (3) working days in advance at (405) 702-1000. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #18-695; filed 11-8-18]

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

[OAR Docket #18-696]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:302-1-4. Definitions [AMENDED]
252:302-1-5. Fees [AMENDED]

- Subchapter 3. Field Laboratory Accreditation Process
 - Part 1. Application
 - 252:302-3-4. Operational information [AMENDED]
 - Part 5. Grounds to suspend or revoke
 - 252:302-3-31. Grounds to take enforcement action [AMENDED]
- Subchapter 5. General Operations
 - 252:302-5-2. Laboratory technician [AMENDED]
 - 252:302-5-6. On-site inspections [AMENDED]
- Subchapter 7. Proficiency Testing
 - 252:302-7-1. Participation required [AMENDED]
- Subchapter 9. Quality Assurance/Quality Control
 - Part 3. Standard Operating Procedures and Methods Manual
 - 252:302-9-25. Methodology incorporated by reference [AMENDED]
 - Part 5. QA/QC Program Requirements
 - 252:302-9-32. QA/QC documentation
 - 252:302-9-33. Sample storage for pickup [AMENDED]

SUMMARY:

The gist of these rules and the underlying reason for this rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more closely approximate program costs for accreditation.

The Department is proposing to amend 252:302-1-4, Definitions, to correct typographical errors, and by inclusion of new definitions for the terms finding and critical finding. Additionally, the term interim accreditation is clarified.

The Department is proposing to amend 252:302-1-5, Fees, adding a new fee to recover the cost for assessors in performing on-site evaluations. The gist of this rule is to more accurately reflect the Department's full cost for performing laboratory accreditation and reduce reliance on State appropriated funds.

The Department is proposing, in 252:302-3-4 and thereafter throughout Chapter 302, to delete the word "inspection" and substitute the term "evaluation." Additionally, the language for conducting evaluations is clarified.

The Department is proposing to amend 252:302-5-2, Laboratory technicians, to delete redundant language and broaden the educational and training requirements of the laboratory technician.

The Department is proposing to amend 252:302-5-6, On-site inspections, to clarify the circumstances and frequency for conducting on-site evaluations.

The Department is proposing to amend 252:302-7-1, Participation required, by adding a requirement that Proficiency Tests must be provided by a National Environmental Laboratory Accreditation Program proficiency testing provider.

The Department is proposing to amend 252:302-9-25, Methodology incorporated by reference, to incorporate the latest changes to EPA Test Procedures for the Analysis of Pollutants. A significant result of the update to EPA Test Procedures for the Analysis of Pollutants is amendment of

the procedure for the determination of the Method Detection Limit (MDL), which will apply to all permittees and accredited laboratories.

The Department is proposing to amend 252:302-9-33, Sample storage for pickup, to include annual verification of all thermometers using a recognized national metrology institute such as National Institute of Standard and Technology (NIST). This change is consistent with EPA required test procedures.

AUTHORITY:

Environmental Quality Board; 27A O.S., Sections 2-2-101, 2-2-201, and 2-4-302.

Water Quality Advisory Management Council; 27A O.S., Sections 2-2-201 and 2-5-107.

Laboratory Certification Services; 27A O.S., Sections 2-5-301 through 306.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 3, 2018 through January 2, 2019. Oral comments may be made at the January 8, 2019 Water Quality Management Advisory Council meeting and at the February 15, 2019 Environmental Quality Board meeting.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council at 2:00 p.m. on Tuesday, January 8, 2019 at the DEQ Building 707 N Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, February 15, 2019, 707 N Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or reviewed on-line at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

CONTACT PERSON:

The contact person is David Caldwell, Environmental Programs Manager, who can be reached by phone at (405) 702-1000 or by fax (405) 702-1001. Email comments may be directed to david.caldwell@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, State

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Environmental Laboratory Services Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: David Caldwell.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the contact person three (3) working days in advance at (405) 702-1000. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #18-696; filed 11-8-18]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 307. TNI LABORATORY ACCREDITATION

[OAR Docket #18-697]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. Introduction
- 252:307-1-3. Definitions [AMENDED]
- 252:307-1-4. Incorporation by reference [AMENDED]
- 252:307-1-5. Accreditation classes and fields of accreditation [AMENDED]
- 252:307-1-7. Annual fees [AMENDED]
- Subchapter 7. Onsite Assessment Requirements
- 252:307-7-1. Reasons for an onsite assessment [AMENDED]
- Subchapter 9. Management and Technical Requirements
- Part 1. Proficiency Testing
- 252:307-9-8. Failure to perform [AMENDED]

SUMMARY:

The gist of these rules and the underlying reason for this rulemaking is to make the Laboratory Accreditation Rules internally consistent, to update accreditation requirements to reflect current EPA standards for analysis, and to make program fees more closely approximate program costs for accreditation.

The Department is proposing to amend 252:307-1-3, Definitions, to correct typographical errors, and by inclusion of new definitions. The definition for Basic Environmental Laboratory adds the analyte *Escherichia coli*. New definitions are added for "critical nonconformity" and "nonconformity."

The Department is proposing to amend 252:307-1-4, Incorporation by reference, to incorporate the latest changes to EPA Primary Drinking Water Regulations, National Standards for Solid Waste Test Methods, and EPA Test Procedures for the Analysis of Pollutants. A significant result of the update to EPA Test Procedures for the Analysis of Pollutants is the amendment of the procedure for the determination of the Method Detection Limit (MDL), which will apply to all permittees and accredited laboratories.

The Department is proposing to amend 252:307-1-5, Accreditation classes and fields of accreditation with the deletion of fields of accreditation in the heading.

The Department is proposing to amend 252:307-1-7, Annual fees, adding a new fee to recover the actual cost for assessors' time and effort in performing onsite evaluations. The gist of this rule is to more accurately reflect the Department's full cost for performing laboratory accreditation, and reduce reliance on State appropriated funds.

The Department is proposing to amend 252:307-9-8, Failure to perform, clarity to the suspension policy for proficiency testing failure. This language is added to meet TNI requirements.

AUTHORITY:

Environmental Quality Board; 27A O.S., Sections 2-2-101, 2-2-201, and 2-4-302.

Water Quality Advisory Management Council; 27A O.S., Sections 2-2-201 and 2-4-302.

Laboratory Certification Services; 27A O.S., Sections 2-5-301 through 306.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 3, 2018 through January 2, 2019. Oral comments may be made at the January 8, 2019 Water Quality Management Advisory Council meeting and at the February 15, 2019 Environmental Quality Board meeting.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council at 2:00 p.m. on Tuesday, January 8, 2019 at the DEQ Building 707 N Robinson, Oklahoma City, OK 73102. If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, February 15, 2019, 707 N Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or reviewed on-line at <http://www.deq.state.ok.us/WQDnew/wqmac/index.html>.

CONTACT PERSON:

The contact person is David Caldwell, Environmental Programs Manager, who can be reached by phone at (405) 702-1000 or by fax at (405) 702-1001. Email comments may be directed to david.caldwell@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, State Environmental Laboratory Services Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: David Caldwell.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the contact person three (3) working days in advance at (405) 702-1000. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #18-697; filed 11-8-18]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 653. AQUIFER STORAGE AND RECOVERY**

[OAR Docket #18-698]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 252:653-1-5. Definitions [AMENDED]
 - 252:653-1-10. [REVOKED]
 - 252:653-1-12. Fees [NEW]
- Subchapter 5. ~~ASR~~ Aquifer Storage and Recovery Treatment Plant Construction
 - 252:653-5-1.1. Notification [NEW]
- Subchapter 7. ~~ASR~~ Aquifer Storage and Recovery Water Delivery Construction
 - 252:653-7-5.1. Notification [NEW]
 - 252:653-7-7. Aquifer testing [AMENDED]

SUMMARY:

The gist of the proposed rulemaking is that the Department is updating the Aquifer Storage and Recovery rules. These updates include changes for clarity, reinserting the fee provision that was removed from the original proposed rules prior to submittal to the legislature, and to provide notification provisions.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 1-3-101(B)(4), 1-1-202(C)(4), 1-3-101(B)(7), 2-6-701, 2-6-110, and 2-6-310.1; Water Quality Management Advisory Council; 27A O.S. § 2-2-201.

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 3, 2018 through January 8, 2019. Oral comments may be made at the Water Quality Management Advisory Council meeting at 2:00 p.m. on

January 8, 2019 and at the Environmental Quality Board meeting at 9:30 a.m. on February 15, 2019.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council at 2:00 p.m. on January 8, 2019, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 15, 2019, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, may be viewed on the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm, or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person, or viewed on the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm.

CONTACT PERSON:

Hillary Young, Land Protection Division, Chief Engineer, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Hillary.Young@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

[OAR Docket #18-698; filed 11-8-18]

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

[OAR Docket #18-686]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions [AMENDED]

Notices of Rulemaking Intent

Subchapter 11. State Processes for Designating Areas

Unsuitable for Surface Mining Operations [AMENDED]

Subchapter 15. Requirements for Permits and Permit Processing [AMENDED]

Subchapter 17. Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights [AMENDED]

Subchapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plans [AMENDED]

Subchapter 29. Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources [AMENDED]

Subchapter 31. Underground Mining Permit Applications: Minimum Requirements for Reclamation [AMENDED]

Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards [AMENDED]

Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities [AMENDED]

Subchapter 63. Individual Civil Penalties [AMENDED]

SUMMARY:

In 2014, Oklahoma Department of Mines (ODM) promulgated permanent regulation amendments approved by the state. Most of the amendments were notifications of ODM's new OKC office address and phone number, tag lines, and grammatical corrections. There were some substantive amendments; additional blasting record reporting requirements were added to 460:20-43-23 and in 460:20-43-37, a paragraph (2) was added requiring annual reporting during contemporaneous reclamation. These 2014 approved permanent amendments are contained within the 2016 Edition of the Oklahoma Administrative Code. In 2015, ODM filed the 2014 approved amendments with our federal oversight agency, The Office of Surface Mining and Reclamation and Enforcement Agency (OSMRE). In January 2018, that filing became effective, but it included additional changes that need state approval be enforceable. ODM is now proposing these OSMRE changes as amendments to Chapter 20. These changes are mostly punctuation and grammatical errors corrections, with a few substantial additions included. A Subsection (e) has been added to 460:20-15-10.1 which allows any applicant or operator still aggrieved by a hearing decision to request a judicial review. In 460:20-17-5(d) (1), a reference Section, 460:20-15-6.8, has been added. In 460:20-27-14 (e), an incorrect reference to Section 460:20-43-20 has been changed to 460:20-43-29. In Subchapter 45, Permanent Program Performance Standards: Underground Mining Activities, the word temporary has been eliminated from the end of the Section heading and in Section 460:20-45-5 (c) the word temporary has been corrected to the word permanent.

AUTHORITY:

45 O.S. Sections 1.5 et seq.; Oklahoma Mining Commission

COMMENT PERIOD:

From December 4, 2018, through January 3, 2019, the public may present their views, either orally or in writing, to the below listed contact person.

PUBLIC HEARINGS:

Public hearings will be held on January 3, 2019, at the Wagoner Field Office, 1102 W. Cherokee St., Suite D., Wagoner, OK, beginning at 6:00 p.m., and at the Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK beginning at 2:00 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed changes are requested to provide the agency with information, in the dollar amounts if possible, about the increases in the level of direct costs or indirect costs, or other costs expected to be occurred by that business entity due to compliance with these proposed changes. Business entities may submit this information in writing from December 4, 2018 through January 3, 2019, to the below listed contact person.

COPIES OF THE PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person after December 3, 2018.

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained from the below listed contact person on and after December 18, 2018.

CONTACT PERSON:

Cathy Frank, Legal Officer, Oklahoma Department of Mines, Wagoner Field Office, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467, (918) 485-3999, Cathy.Frank@mines.ok.gov.

[OAR Docket #18-686; filed 11-6-18]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #18-706]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Regulation of Licensees

505:10-5-11. Authorized post-graduate educational work [AMENDED]

SUMMARY:

The proposed revisions to OAC 505:10-5-11 would increase the number of continuing education hours annually authorized for practice management from three to six. This change would not alter the total number of continuing education hours required each year.

AUTHORITY:

Oklahoma Optometry Act; 59 O.S. §§ 583, 587.

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 5:00 p.m. on January 7, 2019 at the following

address: 2008 S. Post Road, Suite 200, Midwest City, OK 73130, Attn: Mary Walker.

PUBLIC HEARING:

The Board of Examiners will hold a public hearing at 4:00 p.m. on Friday, January 11, 2019 at 528 N.W. 12th Street, Oklahoma City, OK 73103. Anyone who wishes to speak must sign in at the door by 4:00 p.m.

REQUESTS FOR COMMENT FROM BUSINESS ENTITIES:

N/A.

COPIES OF PROPOSED RULES:

Copies of the proposed rule may be obtained from the Board of Examiners in Optometry at 2008 S. Post Road, Suite 200, Midwest City, OK 73130, Attn: Mary Walker.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement has been prepared and may be obtained beginning immediately at the offices of the Board at 2008 S. Post Road, Suite 200, Midwest City 73130, Attn: Mary Walker.

CONTACT PERSON:

Mary Walker, Administrative Assistant to the Board, (405) 733-7836.

[OAR Docket #18-706; filed 11-13-18]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES**

[OAR Docket #18-687]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

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

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

785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

SUMMARY:

Staff proposes to recommend that the Oklahoma Water Resources Board ("Board") amend 785:5-1-9 to increase the existing amounts for filing fees for two categories of applications to construct, enlarge, alter, or repair dams based on an estimated cost of the project. The circumstances creating the need for the proposed amendments include the need to general additional revenues to maintain current level of effort to implement the program and process applications in an efficient manner.

A recommendation is also proposed to amend 785:5-1-11 to creating a new fee associated with the filing of an Intent to Drill for marginal water well construction. Marginal water well construction was recently authorized by new statutory provisions and the agency intends to review and process each

Intent to Drill and supporting documentation within two business days. The new fee will be based on the estimated staff time necessary to review and process documents submitted in support of the Intent to Drill.

A recommendation is also proposed relating to applications to amend groundwater permits to add fees based on the amount of additional water sought to be authorized under such amendment applications. The circumstances creating the need for the proposed amendments include the need to charge the same fees for applications to amend groundwater permits as are charged for new groundwater permit applications which seek to use the same amount of water. Amendments to groundwater permits which seek to add additional water require an identical amount of effort by staff as new applications for new groundwater permits, and the additional revenue to ensure uniform effort to implement the program and to continue to process amendment applications in an efficient manner.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1085.4.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma 73118, or by email to chrystal.krittenbrink@owrb.ok.gov. Comments must be received by the OWRB no later than the close of the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the Board which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB request that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chris Neel at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact

Notices of Rulemaking Intent

Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800 or chrystal.krittenbrink@owrb.ok.gov.

[OAR Docket #18-687; filed 11-6-18]

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

[OAR Docket #18-688]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:30-1-2. Definitions [AMENDED]

Subchapter 3. Permit Application Requirements and Processing

785:30-3-1. General application requirements [AMENDED]

785:30-3-5.1. Prohibition to issuance or amendment of permit and waiver [REVOKED]

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

Subchapter 7. Amendments to Groundwater Rights

785:30-7-4. Adding or replacing a well for the purpose of exercising prior rights or existing permits [AMENDED]

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

SUMMARY:

Staff proposes to recommend that the Oklahoma Water Resources Board ("Board") amend 785:30-1-2 to add a definition for "marginal water" and to expand the definition of "groundwater" to include marginal water. The changes are necessary to conform the administrative rules to recent statutory changes authorizing the Board to monitor and regulate marginal water wells.

A recommendation is also proposed to revoke 785:30 Appendix A and to amend 785:30-3-1 to remove a reference to Appendix A. Appendix A contains an outdated version of the Board's groundwater permit application form that is no longer being utilized by the Board to process groundwater applications. The current form can be found on the Board's website.

A recommendation is also proposed to revoke 785:30-3-5.1, which contained provisions regarding groundwater permits for swine animal feeding operations. The statutory provisions authorizing this section, 82 O.S. § 1020.11a, were repealed in 2011, and the section no longer has any application within the Board's implementation of the program.

A recommendation is also proposed to amend 785:30-3-6 to allow the Board to implement well spacing rules for unstudied groundwater basins. The changes are intended to implement

recent legislative amendments to Oklahoma Groundwater Law (Senate Bill 1294) which authorized the Board to enact well spacing rules over basins for which no maximum annual yield has been determined.

A recommendation is also proposed to amend 785:30-3-6 to expand the list of identified springs discharging more than 50 gallons per minute and emanating from a sensitive sole source groundwater basin to include springs identified in the United States Geologic Survey's National Water Information System database which were not listed in Appendix D.

A recommendation is also proposed to amend 785:30-7-4 to allow holders of groundwater permits to add additional wells to their existing permit on land owned or leased by the permit holder or with written permission from the landowner. This change is intended to reconcile differences in well location requirements between new permit applicants and existing permit holders in the Board's rules

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.7

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma 73118, or by email to chrystal.krittenbrink@owrb.ok.gov. Comments must be received by the OWRB no later than the close of the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the Board which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB request that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chris Neel at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact

Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800 or chyrstal.krittenbrink@owrb.ok.gov.

[OAR Docket #18-688; filed 11-6-18]

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

[OAR Docket #18-689]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
 - 785:35-1-2. Definitions [AMENDED]
 - 785:35-1-5. Indemnity Fund [AMENDED]
 - 785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]
- Subchapter 3. Licensing and Certifications
 - 785:35-3-1. Licensing procedures [AMENDED]
 - 785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
- Subchapter 7. Minimum Standards for Construction of Wells
 - 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
 - 785:35-7-1.1. Minimum standards for construction of heat exchange wells [AMENDED]
 - 785:35-7-3. Minimum standards for construction of marginal water wells [AMENDED]
 - 785:35-7-4. Variances to minimum standards for construction of wells [NEW]
- Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
 - 785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes [AMENDED]

SUMMARY:

Staff proposes to recommend that the Oklahoma Water Resources Board ("Board") amend 785:35-1-2 to add definitions of "cathodic protection" and "deep anode groundbed" to address confusion related to professional activities regulated by the Oklahoma Corporation Commission and which involve well drillers which are licensed by the Board. A definition was added for "marginal water" to clarify certain new activities authorized by recent statutory and regulatory amendments. Further definitions were added for "beneficial use," "groundwater," "soil boring," and "total dissolved solids" to clarify the meaning of terms which already appear in this chapter, but were defined elsewhere.

A recommendation is proposed to amend 785:35-1-5 to reduce the maximum amount of expenditures per well from fifteen thousand dollars to ten thousand dollars. This amendment is for the purpose of conforming the rules to recent legislative enactments.

A recommendation is proposed to amend 785:35-1-6 to change the terms for members of the advisory council to two years and directing that vacancies on the council be filled within sixty days. The proposed amendment is intended to give all members of the council the same term length.

A recommendation is proposed to amend 785:35-3-1 and 785:35-3-2 to add a new license category for marginal water well construction and continuing education requirements for the new category. The proposed amendments are for the purpose of administering new professional activities authorized by recent legislative enactments.

A recommendation is proposed to amend 785:35-7-1 to prohibit constructing fresh groundwater wells in marginal-quality water zones. This amendment is intended to protect against the contamination of fresh groundwater by comingling with marginal groundwater. Another proposed amendment to the same rule reduces the minimum amount of chlorine to be used in drilling fluids to a level recommended by industry experts. The reduced minimum chlorine concentration is intended to preserve the function of polymers commonly found in drilling fluids.

A recommendation is proposed to amend 785:35-7-1.1 to modify construction standards for heat exchange wells by changes which include references to new industry standards and material specifications. It is further recommended to amend 785:35-11-1 to add a provision identifying and referencing industry standards for the plugging of vertical closed loop heat exchange wells. The amendments are intended update the Board's rules to reflect current industry practices and available construction materials.

A recommendation is proposed to add a new section 785:35-7-3 which provides minimum construction standards for marginal water wells. The new section is necessary to administer professional activities authorized by recent legislative enactments. The section previously numbered 785:35-7-3 is proposed to be renumbered to 785:35-7-4.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.16.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma 73118, or by email to chyrstal.krittenbrink@owrb.ok.gov. Comments must be received by the OWRB no later than the close of the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the Board which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma, 73118.

Notices of Rulemaking Intent

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB request that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Chrystal Krittenbrink, Legal Secretary, 405-530-8800 or chrystal.krittenbrink@owrb.ok.gov.

[OAR Docket #18-689; filed 11-6-18]

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

[OAR Docket #18-690]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:45-1-2. Definitions [AMENDED]

Subchapter 5. Surface Water Quality Standards

Part 1. General Provisions

785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]

785:45-5-5. Water Quality Standards variance [NEW]

785:45-5-6. Compliance schedules [NEW]

785:45-5-7. Site-specific criteria [NEW]

Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]

Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

SUMMARY:

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

The proposed revision to the "variance" definition (785:45-1-2) will align the definition of "variance" with the proposed revision to Water Quality Standards variance process (785:45-5-5). The proposed revision to the Water Quality Standards Variance process will provide an effective standards tool that allows for both improved water quality over time and regulatory flexibility. The proposed change to 785:45-5-4 strikes the current variance procedures, which are restrictive and ineffective. Additionally, language addressing compliance schedule and site-specific criteria currently in 785:45-5-4 are moved to the new sections 785:45-5-6 and 785:45-5-7, respectively. This proposed revision provides improved clarity and utility of Oklahoma's Water Quality Standards. Moreover, the site-specific criteria (785:45-5-7) language is revised to clarify that site-specific criteria may be developed to address specific waterbody conditions on a case-by-case basis.

The proposed updates and new criteria in Appendix G, Numerical Criteria to Protect Beneficial Uses, include human health criteria for several pollutants in order to protect the Public and Private Drinking Water Supply and Fish Consumption beneficial uses. Additionally, the selenium criterion for the protection of the Fish and Wildlife Propagation beneficial use is revised in order to incorporate new scientific information regarding the toxicity and bioaccumulation of selenium in aquatic life. The revised selenium criteria includes both water and fish tissue elements. The proposed Appendix H, Beneficial Use Designations for Certain Limited Areas of Groundwater, corrects a site location legal description in the Arkansas River Alluvium aquifer.

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

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2019. Persons wishing to present oral comments to the OWRB may do so at the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the OWRB which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment

Period from December 3, 2018 through January 17, 2019, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Monty Porter at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2019.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Monty Porter, Assistant Chief of Water Quality Programs Division, 405-530-8800, Monty.Porter@owrb.ok.gov.

[OAR Docket #18-690; filed 11-6-18]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS**

[OAR Docket #18-691]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife from Toxicity Due to Conservative Substances
- 785:46-5-10. Implementation of multimedia criteria for bioaccumulative pollutants in permits [NEW]
- Subchapter 14. Implementation of Fish Tissue Criterion Element and Fish Tissue Monitoring to Protect the Fish and Wildlife Beneficial Use [NEW]
- 785:46-14-1. Applicability and scope [NEW]
- 785:46-14-2. Definitions [RESERVED]
- 785:46-14-3. Composite fish tissue sample minimum requirements [NEW]
- 785:46-14-4. Fish tissue special studies for NPDES Permits [NEW]
- 785:46-14-5. Fish Tissue Studies for Monitoring and Assessment [NEW]
- Subchapter 15. Use Support Assessment Protocols

- 785:46-15-3. Data requirements [AMENDED]
- 785:46-15-4. Default protocols [AMENDED]
- 785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
- 785:46-15-14. Assessment of Aesthetics support [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

The OWRB is proposing to revise the selenium criterion for the protection of the Fish and Wildlife Propagation beneficial use. The revised selenium criteria includes both water and fish tissue elements. This revision requires new implementation requirements for the new fish tissue criterion. For permitting, a new section 785:46-5-10 is proposed that describes how reasonable potential will be determined, relationship of the revised criterion to water quality based effluent limits, and necessary monitoring requirements. Additionally, a new subchapter 785:46-14 is proposed that provides for how fish tissue monitoring will occur. The various sections include minimum requirements for composite fish tissue samples, fish tissue special studies for NPDES permits, and fish tissue studies for monitoring and assessment. Finally, use support assessment protocols in 785:46-15 have been revised to include data requirements, default protocols, and assessment protocols for fish tissue assessments.

The use support assessment protocols in 785:46-15 have been revised to update and clarify data requirements. Additionally, the assessment of aesthetics support has been revised to clarify that nutrient thresholds and turbidity are considered as means for protocol implementation.

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

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2019. Persons wishing to present oral comments to the OWRB may do so at the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the OWRB which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment Period from December 3, 2018 through January 17, 2019, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting,

Notices of Rulemaking Intent

recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Monty Porter at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 17, 2019.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Monty Porter, Assistant Chief of Water Quality Programs Division, 405-530-8800, Monty.Porter@owrb.ok.gov.

[OAR Docket #18-691; filed 11-6-18]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #18-692]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:50-1-4. Application of rules [AMENDED]

Subchapter 5. Applications for Financial Assistance

785:50-5-1. Application form and required information [AMENDED]

Subchapter 6. Water and Sewer Program Emergency Grants Requirements and Procedures

785:50-6-1. Approval criteria [AMENDED]

785:50-6-3. Emergency grant priority point system [AMENDED]

Subchapter 7. Water and Sewer Program (State Loan Program Revenue Bond) Requirements and Procedures

785:50-7-2. Approval criteria [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-3. Application review and disposition [AMENDED]

785:50-8-5. REAP grant priority point system [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations

Part 3. General Program Requirements

785:50-9-23. Clean Water SRF Project Priority System [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review [AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") proposes to amend this Chapter of the Oklahoma Administrative Code ("OAC") as follows:

Section 785:50-1-4 is proposed to add language that allows the program to waive certain requirements for communities that have been declared to be in a state of emergency by the federal or state government. The intended effect is to allow the financial programs administered by the OWRB to be more efficient and effective in times of a declared emergency.

Sections 785:50-5-1, 785:50-6-1, 785:50-7-2, and 785:50-8-3 are proposed to update and correct language to reflect current procedure. The intended effect is to make the rules more cohesive.

Section 785:50-6-3 is proposed to remove Emergency Category #3. The intended effect is to remove language that is superfluous and to make the rules easier for applicants to understand.

Section 785:50-8-5 is proposed to add sustainability in the points system for REAP Grants. The intended effect is to add points for communities that are making long term planning for their water and wastewater systems.

Sections 785:50-9-23 and 785:50-9-60 are proposed to update language to reflect current Federal Law. The intended effect is to clarify and make the language easily understood for applicants while complying with Federal and State Law.

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

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51 et seq.; 62 O.S. § 2003.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so to Kate Burum at 3800 North Classen, Oklahoma City, Oklahoma 73118, or by email to Kate.Burum@owrb.ok.gov. Comments must be received by the OWRB no later than the close of the public hearing on January 15, 2019.

PUBLIC HEARING:

A public hearing will be held January 15, 2019 during the monthly meeting of the OWRB which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment,

construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Kate Burum at 3800 North Classen, Oklahoma City, Oklahoma 73118, during the comment period from December 3, 2018 to the close of the public hearing held on January 15, 2019.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Kate Burum, Assistant General Counsel and Funds Manager, 405-530-8800 or Kate.Burum@owrb.ok.gov.

[OAR Docket #18-692; filed 11-6-18]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 1. OPERATIONS AND
PROCEDURES**

[OAR Docket #18-679]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. General Course and Method of Operation
[AMENDED]

Subchapter 11. Publications [AMENDED]

SUMMARY:

These rule changes will allow the Wildlife Commission more flexibility on setting regular Commission meetings pursuant to HB 1501 passed during the 2017 Legislative Session. This rule change will also update the list of items and fees for sale by the Wildlife Department. Several items in this chapter are no longer available, and one item will be added. The new license database system provides us with the option to sell a collectible hard card version of hunting and fishing licenses. Card orders will be fulfilled by our vendor, Brandt, and will include license privileges for the given year. This rule proposal will add the hard card to the list of merchandise we offer, and establish the fee. This hard card is optional and not required to hunt or fish. All of the listed items are voluntary purchases.

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401 and HB 1501; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 4, 2019, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARINGS:

Date: January 3, 2019

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 3, 2019

Time: 7:00 p.m.

McAlester - Kiamichi Vo-Tech Center, 301 Kiamichi Drive, McAlester, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 7, 2018 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Corey Jager, ODWC Legislative Liaison, 405/521-4651 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #18-679; filed 10-30-18]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 10. SPORT FISHING RULES**

[OAR Docket #18-680]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Harvest and Possession Limits
[AMENDED]

SUMMARY:

These rules will remove harvest and possession limits on private ponds allowing landowners to manage fish populations and will simplify paddlefish angling by removing the requirement for anglers to complete the "Record of Game" section on their paddlefish permit.

Notices of Rulemaking Intent

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 4, 2019, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARINGS:

Date: January 3, 2019

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 3, 2019

Time: 7:00 p.m.

McAlester - Kiamichi Vo-Tech Center, 301 Kiamichi Drive, McAlester, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 7, 2018 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Barry Bolton, Chief of Fisheries Division, 405/521-3721 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #18-680; filed 10-30-18]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #18-681]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Migratory Bird Hunting Season [AMENDED]

Subchapter 7. General Hunting Seasons [AMENDED]

Subchapter 13. Commercial Hunt Areas [AMENDED]

Subchapter 19. Oklahoma Endangered Species [AMENDED]

Subchapter 24. Import of Cervids [AMENDED]

Subchapter 30. Wildlife Depredation on Agricultural Crops [AMENDED]

Subchapter 42. Director Authority for CWD Response [NEW]

SUMMARY:

Subchapter 5 - These rules changes will: Remove reference to the waterfowl hunting regulations booklet since they are now included in the general hunting booklet; eliminate the drawing process for permanent waterfowl hunting blinds on Corps of Engineers and Bureau of Reclamation reservoirs, and change all these reservoirs to temporary blinds only; require hunters to obtain a daily permit for blinds when hunting on Sooner Lake.

Subchapter 7 - These rule changes will ban the possession or use of natural cervid urine scents to avoid the spread of Chronic Wasting Disease (CWD). Remove the requirement for hunters to complete the "Record of Game" section on their annual license for all big game species. Open several counties and WMA's to fall turkey hunting; make several WMA's shotgun only for safety reasons. Allow any centerfire rifle, pistol, or shotgun firing a single projectile to be used for hunting deer. Change raccoon season to open year-round. Open all areas east of Highway 69 and South of Interstate 40 to bear hunting; and prohibit the harvest of collared bears. Open Deep Fork WMA deer gun season and close small game seasons during this time for safety reasons. Open waterfowl season on Sparrowhawk WMA. Establish hunting seasons and dates on two new Wildlife Management Areas: Neosho WMA and Thomas A. Bamberger Sr. WMA.

Subchapter 13 - Require commercial hunt areas to keep ID tags in all released animals until deceased.

Subchapter 19 - Update/correct names in the list of species of special concern.

Subchapter 24 - Restrict the import of live cervids and some cervid carcass parts to help protect Oklahoma's native deer and elk population from the threat of CWD.

Subchapter 30 - Remove rusty blackbird from the list of allowable species of take under the National Depredation Order due to population declines, but still allows for individual permits from USFWS.

Subchapter 42 - Add new subchapter that will allow the Director to implement or revoke CWD management actions as necessary.

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 4, 2019, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARINGS:

Date: January 3, 2019

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 3, 2019

Time: 7:00 p.m.

McAlester - Kiamichi Vo-Tech Center, 301 Kiamichi Drive, McAlester, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 7, 2018 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #18-681; filed 10-30-18]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT**

[OAR Docket #18-682]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Use of Department Managed Lands
[AMENDED]

SUMMARY:

This rule will add the recently acquired Thomas A. Bamberger Sr. WMA to the list of areas that do not allow overnight camping.

AUTHORITY:

Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 4, 2019, at the following address: Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105 (PO Box 53465, Oklahoma City, OK 73152) or online at www.wildlifedepartment.com.

PUBLIC HEARINGS:

Date: January 3, 2019

Time: 7:00 p.m.

Oklahoma City - OK Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK

Date: January 3, 2019

Time: 7:00 p.m.

McAlester - Kiamichi Vo-Tech Center, 301 Kiamichi Drive, McAlester, OK

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Blvd., Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 7, 2018 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #18-682; filed 10-30-18]

Emergency Adoptions

"If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated" if the Governor approves the rules after determining "that the rule is necessary as an emergency measure to do any of the following:

- a. protect the public health, safety or welfare,
- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, or
- e. avoid serious prejudice to the public interest." [75 O.S., Section 253(A)]

An emergency rule is considered promulgated immediately upon approval by the Governor, and effective immediately upon the Governor's approval or a later date specified by the agency in the emergency rule document. An emergency rule expires on September 15 following the next regular legislative session after its 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 cites to 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 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #18-700]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 16. Human Trafficking [NEW]
377:10-16-1. Human Trafficking [NEW]

AUTHORITY:

The Board of Juvenile Affairs; 10A O.S. Sections 2-7-101(H)(3) and 2-7-101(I)(1), and 75 O.S. Section 302(A)(1).

ADOPTION:

September 17, 2018

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 29, 2018

EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Effective November 1, 2018, pursuant to SB1005 and the signing statement issued by Governor Fallin, see attached documents, employees of the Office of Juvenile Affairs (OJA) will be required to take protective custody of juveniles who are suspected victims of human trafficking. Under current law, this falls outside of the authority OJA employees. Therefore, the Office of Juvenile Affairs created and adopted the rule so that the agency may substantially comply with the directives of SB1005.

GIST/ANALYSIS:

Creation of Subchapter 16 requires Office of Juvenile Affairs employees to request law enforcement to take juveniles, who the employee believes may be a victim of human trafficking, into protective custody and report the suspicion to the Oklahoma Department of Human Services hotline.

CONTACT PERSON:

Audrey Rockwell, (405) 530-2806, or audrey.rockwell@oja.ok.gov

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

SUBCHAPTER 16. HUMAN TRAFFICKING

377:10-16-1. Human Trafficking

Pursuant to 21 O.S. Section 748.2(E), any Office of Juvenile Affairs employee who reasonably suspects that a minor may be a victim of human trafficking, as defined by 21 O.S. Section 748, and is in need of immediate protection the employee shall take the following steps:

- (1) Call local law enforcement to take protective custody of the child pursuant to 10A O.S. Section 1-1-105(54) and 10A O.S. Section 1-4-201.
- (2) Immediately call in a referral to the OKDHS hotline.

[OAR Docket #18-700; filed 11-8-18]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 30. LABELING REQUIREMENTS

[OAR Docket #18-693]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

475:30-1-4. Manner of issuance of prescriptions [AMENDED]

AUTHORITY:

The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; 63 O.S. §§ 2-301, 2-309H.

ADOPTION:

October 29, 2018

APPROVED BY GOVERNOR:

October 30, 2018

EFFECTIVE:

Immediately upon Governor's approval or November 1, 2018, whichever is later.

EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

Emergency Adoptions

FINDING OF EMERGENCY:

On November 1, 2018, a new law will go into effect, 63 O.S. §2-309I, that sets limits on opioid prescriptions. The amendment to the rule is an effort to protect the public health, safety, and welfare by providing a subsequent prescription for qualifying opioids due to a major surgical procedure and/or "confined to home" status where the subsequent prescription includes a "do not fill until" date on the prescription.

GIST/ANALYSIS:

A new law, 63 O.S. §2-309I, goes into effect on November 1, 2018, that limits opioid prescriptions for acute pain. The new law allows for an initial seven (7) day prescription. It also allows the issuance of a second opioid prescription no less than seven (7) days after the initial prescription. The second opioid prescription shall not exceed seven (7) days. This rule allows practitioners who perform a major surgical procedure, and/or patients who are "confined to home" as defined in 42 U.S.C. §1395n(a), to issue the second prescription on the same day as the first prescription. The second prescription shall have written instructions indicating the earliest date on which the prescription may be filled (i.e. "do not fill until" date).

CONTACT PERSON:

Sunne Riedel Day, 405-521-2885

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR NOVEMBER 1, 2018, WHICHEVER IS LATER:

475:30-1-4. Manner of issuance of prescriptions

(a) The practitioner shall sign a written prescription in the same manner as he/she would sign a check or legal document and shall also type, stamp or print the practitioner's name on the face of each prescription. Where an oral order is not permitted, prescriptions shall be written with ink. All written prescriptions shall be manually signed by the practitioner. The prescriptions may be prepared by an agent for the signature of a practitioner, but the prescribing practitioner is responsible in the event the prescription does not conform in all essential respects to the Uniform Controlled Dangerous Substances Act and this Chapter.

(b) A resident or staff practitioner, an intern of a teaching hospital, or a limited institutional practitioner of a federal, state or local government hospital or institution, exempted from registration or registered in fee-exempt status with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, shall include on all prescriptions issued by him/her the hospital or institutional Federal Drug Enforcement Administration registration number with the special internal code number assigned by the hospital or other institution; or include on all prescriptions he/she issues his/her personal Federal Drug Enforcement Administration registration number. Such prescriptions issued by interns of a teaching hospital, if for outpatients, must be countersigned by a practitioner licensed by the practitioner's appropriate State of Oklahoma licensing board.

(c) A practitioner must state on a written prescription for any controlled dangerous substance the name, address and Federal Drug Enforcement Administration registration number of the practitioner; the date of delivery of the prescription; the name, dosage and strength per dosage unit of the controlled dangerous substance; the name and address of the patient, or if

it is a veterinary prescription, the species of the animal and the name and address of the owner; the directions for use and any cautionary statements required; and if allowable, the number of times to be refilled.

(1) The face of a prescription must not be materially altered; if an error is made in filling out the prescription, a new prescription must be written by the prescribing practitioner.

(A) A pharmacist may add to the prescription the patient's address or age, the prescribing practitioner's federal DEA number, or the generic drug name if used.

(B) After confirming with the prescribing practitioner, the pharmacist may add information indicating the strength, whether tablet or capsule form, and whether it is compounded if such additions would not materially alter the prescription.

(C) If omitted, the directions (Sig) or the quantity, may be added by the pharmacist after confirming with the prescribing practitioner.

(D) Documentation of contacting the prescribing practitioner will be noted on the back of the prescription regarding (B) and (C) above.

(2) A written prescription for a controlled dangerous substance in Schedule II becomes invalid thirty (30) days after the date of issuance, with day one (1) of the thirty (30) day period being the first day after the date of issuance. After issuing an initial prescription pursuant to Section 2-309I of Title 63, an individual practitioner may issue one (1) subsequent prescription for an immediate-release opioid drug in Schedule II in a quantity not to exceed seven (7) days if:

(A) The subsequent prescription is due to a major surgical procedure and/or confined to home" status as defined in 42 U.S.C. 1395n(a);

(B) The practitioner provides the subsequent prescription on the same day as the initial prescription;

(C) The practitioner provides written instruction on the subsequent prescription indicating the earliest date on which the prescription may be filled (i.e. "do not fill until" date); and

(D) The subsequent prescription is dispensed no more than five (5) days after the do not fill until" date indicated on the prescription.

(3) Each scheduled drug shall be written on a single prescription form, and no other prescriptions (controlled or non-controlled) shall be written on the same prescription form.

(d) Upon receiving an oral prescription, the pharmacist must reduce the oral prescription to the form specified in (c) of this Section, including the typewritten name of the prescribing practitioner. The pharmacist filling any prescription for any controlled dangerous substance must enter the date of filling and handwrite the initials of the pharmacist on the prescription. If the practitioner is not known to the pharmacist, he/she must make a reasonable effort to determine that the oral authorization came from a registered practitioner.

(e) Upon receiving an oral prescription, the pharmacist may use a computer printout label if the label meets all requirements for a prescription as set out by the Uniform Controlled Dangerous Substances Act and this Chapter. On computer labeling for oral prescriptions, it is not necessary that the Drug Enforcement Administration registration number be on the label used as an oral prescription, but it must be recorded on the document prepared by the pharmacist.

(f) Written prescriptions may be transmitted by a practitioner to a dispensing pharmacy by facsimile. In such cases, the prescribing practitioner shall print "FAXED" on the face of the prescription, and the facsimile received must be on non-fading standard paper. Thermographic paper is not acceptable for any prescriptions for drugs in any Schedule.

(1) For drugs in Schedules III, IV, and V, a facsimile of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription.

(2) For drugs in Schedule II, the original written prescription must still be presented and verified against the facsimile at the time the substance is actually dispensed and the original document must be properly annotated and retained for filing subject to the exceptions listed in (3) below.

(3) Exception to (2): A facsimile copy of a prescription for a Schedule II drug when sent by facsimile by the prescribing practitioner:

- (A) To a Home Infusion Pharmacy.
- (B) When the prescription is for a patient in a Long Term Care Facility.
- (C) When the prescription is for a patient in a Hospice program certified by Medicare under Title XVIII or licensed by the state.
- (D) If the facsimile is sent from a LTCF or hospice instead of the prescribing practitioner's office, the original must be presented at the time any CDS is dispensed.

(g) The pharmacist still bears the responsibility for ensuring that prescriptions for controlled substances have been issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his/her professional practice. This responsibility applies equally to an order transmitted by facsimile. Measures to be considered in authenticating prescriptions sent by facsimile equipment would include maintenance of a practitioner's facsimile number reference file, verification of the telephone number of the originating facsimile equipment and/or telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's agent.

(h) Electronic prescriptions are permitted as provided by 21 CFR §§ 1311 et. seq.

[OAR Docket #18-693; filed 11-6-18]

**TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #18-683]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
715:1-1-10. Grievances and complaints [AMENDED]

AUTHORITY:
70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees of Teachers' Retirement System

ADOPTION:
September 19, 2018

APPROVED BY GOVERNOR:
October 29, 2018

EFFECTIVE:
Immediately upon Governor's approval

EXPIRATION:
Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
None

INCORPORATIONS BY REFERENCE:
n/a

FINDING OF EMERGENCY:
These emergency rule promulgations are necessary to provide a process and clarity regarding recent statutory changes. Without providing a clear process there would be a serious prejudice to the public interest.

GIST/ANALYSIS:
715:1-1-10 is being amended per 2017 legislation to reflect a quorum (eight votes) is necessary to approve any motion, resolution or order under consideration on a grievance appeal.

CONTACT PERSON:
Phyllis Bennett (405) 521-4745, Phyllis.Bennett@trs.ok.gov

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(F):

715:1-1-10. Grievances and complaints

Grievances and complaints are usually settled by correspondence or informal conference between the member or beneficiary and the staff of the Teachers' Retirement System.

- (1) Any interested person with a grievance which cannot be settled in this manner may appeal the decision of the staff to the executive director of the Teachers' Retirement System. Request for an informal hearing before the executive director must be in writing and include a clear statement of the grievance or complaint. The executive director will provide a written response within thirty (30) days, stating the official position of Teachers' Retirement in the matter before appeal. The response will either grant or deny the appellant's request. If denied, the executive director shall provide to the member the applicable statutes, rules and administrative procedures used in reaching a decision to deny the appeal of the member. "Interested person" means any member of the Teachers' Retirement System; any beneficiary of a member; any retiree of the

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Teachers' Retirement System; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(2) Any decision of the executive director may be appealed to the Board of Trustees of the Teachers' Retirement System. The member must appeal the decision of the executive director within sixty (60) days of receipt of notification of denial by the executive director.

(3) All cases of appeals to the Board of Trustees will be assigned to an administrative hearing judge, who will conduct a hearing and prepare a proposed order to the Board of Trustees. The executive director shall appoint the administrative hearing judge from a list of individuals previously employed by the Board of Trustees to act in this role. Administrative Operations shall be conducted in the offices of the Teachers' Retirement System at a time and date agreed to by the parties. It is expected that any party to the hearing will provide timely notice to the other parties if a delay or failure to appear is anticipated.

(4) Hearings will be conducted under the provisions of the Administrative Procedures Act [75 O.S. 250 et. seq.]. Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved. The administrative hearing judge will have the authority to conduct the hearing and rule on the admissibility of all evidence. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents. Upon the completion of the hearing, the administrative hearing judge shall afford the appellant the opportunity to present a written brief and arguments to be included as part of the record. Legal counsel for Teachers' Retirement shall be provided an equal opportunity to respond to appellant's written brief and arguments if requested. Once all evidence, arguments and briefs are received by the administrative hearing judge the record shall be closed.

(5) At the close of the hearing, the administrative hearing judge shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. This proposed order shall include findings of fact, based exclusively on the evidence and on matters officially noted in the record of the hearing, conclusions of law and a recommended order to the Board of Trustees. A copy of this proposed order shall be provided to all parties by the executive director.

(6) The member shall have the right to file a written statement outlining any objections, exceptions and/or arguments he desires the Board of Trustees to consider in its consideration of the hearing judge's proposed order. This statement must be filed with the executive director within twenty (20) days of receipt of the hearing judge's proposed order. No additional evidence or materials may be introduced by the member which were not presented at the hearing. The executive director and/or TRS staff may prepare a written response in rebuttal to the member's

statement. A copy of any response by TRS will be provided to the member at least ten (10) days prior to the time the member's appeal is scheduled for consideration by the Board of Trustees. The member may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

(7) The executive director may, prior to submitting the hearing officer's report to the Board of Trustees, settle any grievance or complaint in a manner agreeable to the appellant. In settling any grievance the executive director shall not exceed the authority previously granted to him or her by the Board of Trustees. The executive director shall report to the Board of Trustees any settlement which occurs after the hearing officer's report is filed.

(8) Consideration of the member's case will be scheduled before the Board of Trustees as soon as possible after the proposed order and any additional written materials have been filed with the Board in accordance with this section. Unless mutually agreed to by all parties, no hearing before the Board will be scheduled within ten (10) working days of such filings.

(9) At the meeting at which the Board of Trustees will consider the proposed order, the member will be afforded an opportunity to make a brief statement to the Board concerning the facts and any arguments he wishes to present and will be allowed to respond to questions from Trustees. Failure of the member to appear at the Board hearing without prior notification will result in the member relinquishing his right to be heard by the Board. If such absence was unavoidable, the member may petition the Board for a rehearing. The Chairman of the Board of Trustees will have final authority to set the amount of time any party may have to present information to the Board.

(10) After consideration of all evidence and arguments, both oral and written, the Board will make a final determination on the proposed order. The Board of Trustees may accept, reject or accept as-modified the proposed order. The Board may make its own conclusions and issue an order in concert with those findings; or re-open the case and hear evidence themselves. If the Board decides to hear the case, it will determine whether to review the complete record, including a transcript of the original hearing conducted by the administrative hearing judge and all documentary evidence, or open the case to receive new evidence and testimony. As in all matters before the Board, ~~seven (7) votes are a quorum, as required by 70 O.S. §17-106,~~ is necessary to approve any motion, resolution or order under consideration. A copy of the Board's final order will be delivered via mail to the member and his representative by the executive director of TRS.

(11) Any member receiving an adverse ruling from the Board retains certain rights under the Administrative Procedures Act. The member may file an action for judicial review in District Court in Oklahoma County. Such action must be filed within thirty (30) days after the aggrieved party is notified of the Board's order. The member may also petition for a rehearing, reopening or reconsideration of the appeal by the Board. Such petition must be filed

with the executive director of TRS within ten (10) days from the date of the Board's decision and must be based on 75 O.S. 317.

(12) The Administrative Procedures Act prohibits direct or indirect communications by members and/or the representatives of members with the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Board, except upon notice which provides an opportunity for all parties to participate. The Board of Trustees will not consider any evidence or statements made to them by members in connection with a pending appeal.

[OAR Docket #18-683; filed 10-30-18]

**TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS**

[OAR Docket #18-684]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 5. Establishing Other Service Credits
- 715:10-5-4. Cost to purchase Oklahoma service [AMENDED]
- 715:10-5-37. Incentive service credit [NEW]
- Subchapter 9. Survivor Benefits
- 715:10-9-6. Probate waivers [AMENDED]
- Subchapter 13. Contributions for Membership Service
- 715:10-13-13. Contributions while receiving payments from Workers' Compensation [AMENDED]
- Subchapter 15. Service Retirement
- 715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP") [AMENDED]
- 715:10-15-15. Disability retirement; application; effective date [AMENDED]
- 715:10-15-16. Review by Medical Board [AMENDED]

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees of Teachers' Retirement System

ADOPTION:

September 19, 2018

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

October 29, 2018

EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These emergency rule promulgations are necessary to provide a process and clarity regarding recent statutory changes. Without providing a clear process there would be a serious prejudice to the public interest.

GIST/ANALYSIS:

715:10-5-4 is being amended to remove out-of-date language addressing the actuarially assumed interest rate for the purchase of service credit.

715:10-5-37 [NEW] is being added to implement processes for the purchase of up to two years of incentive credit for employees of participating institutions within The Oklahoma State System of Higher Education as an amendment to 70 O.S. § 17-116.2B passed during the 2018 legislative session (SB 527).

715:10-9-6 is being amended to reflect the statutory change in the maximum amount for a probate waiver from \$5,000 to \$25,000 in 70 O.S. § 17-105(13).

715:10-13-13 is being amended to remove out-of-date language addressing the actuarially assumed earnings rate for contributions while receiving payments from workers' compensation.

715:10-15-7.2 is being amended to implement changes to the Education Employees Service Incentive Plan ("EESIP") passed during the 2018 legislative session (HB 2553) to clarify that only years of employment worked beyond normal retirement age and while working for a participating remitting entity are used to wear away capped service.

715:10-15-15 is being amended to implement changes to disability retirement in 70 O.S. § 17-105 (5) passed during the 2018 legislative session (HB 2553) to reflect the Medical Board, rather than the Board of Trustees, may approve disability retirement.

715:10-15-16 is being amended to implement changes to disability retirement in 70 O.S. § 17-105 (5) passed during the 2018 legislative session (HB 2553) to reflect the appeals process if the Medical Board denies an application for disability retirement.

CONTACT PERSON:

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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(F):

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-4. Cost to purchase Oklahoma service

The purchase price for each year of Oklahoma service, unless otherwise specified, shall be based on the actuarial cost of the incremental projected benefits being purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost shall be based on the actuarial assumptions adopted by the Board of Trustees to be utilized in the actuarial valuation report for the Fiscal Year beginning each July 1. New actuarial assumptions approved by the Board subsequent to January 1, 1991, shall be incorporated into such tables with an effective date of the next January 1.

(2) The actuarial value shall be based upon the member's age, full-time equivalent salary and contribution level at the time of purchase (or the annual salary of the previous year, if greater), together with the earliest age for retirement with maximum benefits and actuarially assumed salary at time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be determined as the age of last birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be based upon mortality tables adopted by the Board of Trustees.

(5) The actuarial cost shall not be less than the contributions required of the member at a rate commensurate with the salary earned as a regular full-time employee the last preceding school year prior to the purchase. Individuals employed on a less than fulltime basis shall have their

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salary adjusted upward, in a pro rata manner, to the amount that would be earned if employed full-time.

(6) Payment may be made in a lump sum for all eligible years of service or in installments equal to establishing one (1) year of creditable service.

(7) A billing statement will be issued at the request of the member. The due date of payment shall be the date prior to the member's next birthday or June 30, whichever occurs first.

(8) A member may request payment of past service credits billed in accordance with provisions of 70 O.S. Section 17-116.8, as amended, to be amortized in monthly installments of not more than sixty (60) months. A payment schedule may be established allowing the member to make monthly payments directly to Teachers' Retirement or through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to Teachers' Retirement. Payments remitted by an employer for its employees must be kept separate from the employer's regular retirement contributions and tax sheltered annuity deposits. Effective January 1, 2002, installment payments made through employer payroll deductions qualify for special tax treatment. (See OAC 715:10-5-35.)

(9) The installment payment schedule provided for in this section must be in equal monthly increments of twelve-month periods not to exceed sixty (60) months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in paragraph (11) of this section.

(10) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. ~~The current interest rate is eight percent (8%).~~

(11) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated in whole years for only the principal amount paid. Any payment balance that is not used in crediting whole years will be refunded to the member.

(12) Credit will not be awarded for partial years of service unless the member's employment record is such that one-half (1/2) year of credit is included in the original service to be purchased.

(13) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in

paragraph (11) of this section. All payments must be completed ninety (90) days prior to the effective retirement date of the member.

715:10-5-37. Incentive service credit

(a) Pursuant to 70 O.S. §17-116.2B (7), beginning July 1, 2018, an active member of the Teachers' Retirement System of Oklahoma who is employed and participating with an entity or institution within The Oklahoma State System of Higher Education may purchase not to exceed two (2) years of incentive credit if:

(1) the member has reached his or her normal retirement date or is within two (2) years of reaching the member's normal retirement date as authorized in Section 17-105 of this title, or

(2) the member is eligible for or is within two (2) years of being eligible for early retirement pursuant to paragraph 1 of subsection A of Section 17-116.2 of this title.

(b) Purchased incentive credit may only be used as participation service to qualify the member for normal or early retirement and in the same period of time and with the same service credit which would have otherwise accrued if retirement had not occurred.

(c) The member shall notify TRS no later than sixty (60) days after the date of last employment indicating an intent to purchase the incentive credit.

(d) Upon receipt of notice of the member's intent to purchase incentive service credit, TRS shall calculate the purchase price for eligible incentive credit based upon actuarial costs as defined in OAC 715: 10-5-4 (subparagraphs 1-5) and notify the member, in writing, of the cost to purchase the credit.

(e) The member must make full payment in a lump sum to TRS of the cost to purchase the credit. Failure to make the full payment to TRS shall result in cancellation of the election and return of the purchase amount tendered, without interest.

(f) Complete payment for such service must be made ninety (90) days prior to the member's effective retirement date.

(g) If the member returns to employment with a participating employer of TRS prior to retirement, the purchase of incentive credit shall be void, and TRS will return the purchase amount tendered, without interest.

(h) In the event of the death of the member prior to retirement, the member's beneficiary, if eligible, may elect to receive benefits which include the incentive credit on the member's declared future retirement date, or may elect to receive a return of the purchase amount tendered, without interest.

(i) A member cannot purchase both credit for termination due to reduction in force and incentive credit.

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-6. Probate waivers

(a) In the event a member dies, leaving no living beneficiary or having designated his estate as beneficiary, the System shall require the judicial appointment of an administrator or executor

for the member's estate prior to payment of any benefits or unpaid contributions. However, this requirement may be waived by the System for any benefits or unpaid contributions in the amount of ~~\$5,000.00~~\$25,000.00 or less, upon presentation of:

- (1) the member's valid Last Will and Testament
- (2) an Affidavit of Heirship naming all heirs to the member's estate which must state:
 - (A) that the value of the deceased member's entire estate is subject to probate, and that the entire estate wherever located, less liens and encumbrances, does not exceed the amount permitted by law, including the payment of benefits or unpaid contributions from the System;
 - (B) a description of the personal property claimed (including the death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate; and
 - (C) a claim by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System.
- (3) a Hold Harmless Agreement signed by all heirs;
- (4) a Corroborating Affidavit from someone other than an heir who is familiar with the deceased member; and
- (5) proof of payment of expenses of last sickness, death and burial, including all medical, hospital and funeral expenses.

(b) The Executive Director of the Teachers' Retirement System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. If there is any question as to the validity of any document herein required, the judicial appointment requirement shall not be waived.

(c) After paying any death benefits or unpaid contributions to any claiming heirs as provided by this section, the Teachers' Retirement System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-13. Contributions while receiving payments from Workers' Compensation

Any member who is an active contributing member and receives temporary total disability benefits during the period of absence from a public school due to a work-related injury or illness and qualifies for payment pursuant to the Workers' Compensation Act shall receive credit for said period of absence, if contributions were not remitted on the member's regular annual compensation while the member is receiving

temporary total or partial disability benefits, subject to the following requirements:

- (1) the member was employed by the public school immediately prior to and during the period of absence,
- (2) the member must notify the System in writing not later than four (4) months after the member's return to his or her job duties with the public school, or termination of the temporary total disability benefits, whichever is earlier, of the member's desire to receive service credit for the period of absence,
- (3) the public school employer must certify to the System in writing the dates during which temporary total disability benefit payments were paid to the member, and
- (4) the member and the public school employer shall each pay the respective contributions required for the period of absence without interest within sixty (60) days of billing by the System, or with interest at a rate consistent with the actuarial assumed earnings rate adopted by the Board of Trustees (~~currently 8% per annum~~), compounded annually if paid after said sixty (60) days. Employee and employer contributions will be based on the member's regular annual compensation the member would have earned had the injury or illness not occurred.
- (5) All balances due must be paid in full at least 30 days prior to termination of employment or ninety (90) days prior to the effective date of a member's official retirement date.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP")

(a) Legislation enacted during the Special Session of the 2006 Legislature modified the standard retirement formula for TRS members employed by participating remitting entities under 70 O.S. § 17-108.1(A), which excludes other than comprehensive and regional four-year universities. ~~A member must have been employed by a participating remitting entity for at least one full school year (twelve months) immediately prior to termination of employment or retirement to qualify for this section.~~

(b) A TRS member who was employed prior to July 1, 1995, may have service credits performed prior to July 1, 1995, calculated in the member's retirement formula used for service performed after July 1, 1995, when the member's average salary at retirement is greater than \$40,000, and the member works for a participating remitting entity under Section 17-108.1(A) beyond the year in which he or she reaches normal retirement age. (The terms "average salary" and "normal retirement age" are defined in 70 O. S. § 17-101.)

(c) A member who works one year beyond the school year in which he or she reaches normal retirement age, and who is employed by a participating remitting entity under Section 17-108.1 (A) employer, may move two (2) years of service performed prior to July 1, 1995, to the retirement formula used

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to calculate service performed after July 1, 1995. For each additional year the member works beyond normal retirement age, employed by a participating remitting entity under Section 17-108.1 (A) employer, he or she may move two (2) additional years of service credit performed prior to July 1, 1995. Only years worked beyond normal retirement and while working for a participating remitting entity under Section 17-108.1 (A) shall be used to uncapped years of service.

(d) For members who retire on or after July 1, 2006, and before June 30, 2007, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is \$60,000. During this one-year period, a member whose average salary at retirement is greater than \$60,000 shall have benefits calculated in three steps: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x \$60,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(e) For members who retire on or after July 1, 2007, and before June 30, 2008, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is \$80,000. During this one-year period, a member whose average salary at retirement is greater than \$80,000 shall have benefits calculated in three steps: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x \$80,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(f) For members who retire on or after July 1, 2008, the average salary used to calculate the benefit for service credits that qualify to be moved under this section is the member's average salary at retirement. The member's retirement benefit will be calculated as follows: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; and 2% x the member's average salary for service performed prior to July 1, 1995, that qualifies as moved service and for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(g) A member whose Regular Annual Compensation was greater than \$40,000 during the school years 1987-88 through 1994-95 must make an additional contribution to qualify for movement of service provided for in this section. [See OAC 715:10-5-4.1. Payment of contribution deficit for Education Employees Service Incentive Plan]

(h) A member reaches Normal Retirement Age during the school year he or she reaches age 62, or when the member's age and total service equal 80 or more for those members whose official TRS membership date is prior to July 1, 1992, and when the member's age and total service equal 90 or more for those members whose official TRS membership date is on or after July 1, 1992.

(i) For this section, credit a member may receive for having 120 or more days of unused sick leave at retirement will be used in determining the school year in which a member reaches Normal Retirement Age.

(j) For this section, a member who reaches Normal Retirement Age by the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of that school year. A member who reaches Normal Retirement Age after the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of the next school year in which the member is employed.

(k) To qualify for a year of service beyond Normal Retirement Age, OAC 715:10-3-2 and OAC 715:10-3-3 will be used to determine credited service. However, a fractional year of service performed after reaching Normal Retirement Age cannot be combined with a fractional year of service performed prior to reaching Normal Retirement Age to qualify for a year of service credit under this section. Fractional years of service worked after reaching Normal Retirement Age can be combined to create a full year of credited service. If a member participates in ~~EESIP~~—and wears away at least two (2) years of capped service but has employment at a non-participating entity (comprehensive and regional four-year universities) after reaching Normal Retirement Age, service credit will be awarded for the employment for the non-participating entity, but the salary the member earned at the non-participating entity will not be applied to those years of service which qualify for the Education Employees Services Incentive Plan (EESIP).

(l) The provisions of subsections e and f of this section become effective only if additional employer contributions are funded as required by 70 O.S. § 17-116.2C.

715:10-15-15. Disability retirement; application; effective date

(a) Any member who is actively employed in the public schools of Oklahoma and is regularly contributing to the Teachers' Retirement System may be retired due to a medical disability, which renders the member unable to perform regular employment duties, provided such member:

- (1) has at least ten (10) years of Oklahoma contributory membership service,
- (2) submits a complete application for disability retirement, and,
- (3) is found by the Medical Board of Teachers' Retirement System, to be medically disabled to continue regular duties, or
- (4) meets the requirements of paragraphs (1) and (2) of this subsection, and files a Social Security Award Notice certifying the member has been approved for disability benefits by the Social Security Administration, U. S. Department of Health and Human Services,
- (5) however, a member who is eligible for unreduced regular retirement is not eligible for disability retirement benefits.

(b) A member who has terminated employment or is on leave without pay status shall be eligible for disability retirement by meeting the provisions of paragraph (a) of this rule, providing the disability existed at the time the leave without pay status commenced or the termination of employment from the public schools of Oklahoma occurred, and the disability was the reason for the leave status or termination of employment.

(c) The application for disability retirement required in paragraph (2) of subsection (a) of this section must include:

(1) a detailed statement by the member as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties of the member's current position,

(2) a detailed statement by the member's employer (chief administrative officer or personnel officer) as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties assigned to the position of employment, and

(3) a detailed report by the member's physician giving the medical nature of the disability. The attending physician's report should certify that the member, in the physician's judgment, is mentally or physically incapacitated from further performance of duty, that such incapacity is likely to be permanent and that the member should be retired. Any examination required to complete this report must be at the expense of the member.

(d) The Teachers' Retirement System must receive the complete application for disability retirement by the first day of the month for the Medical Board of Trustees to consider the application at its next regularly scheduled meeting.

(e) The effective date for disability retirement is the later of (1) or (2) below:

(1) the first day of the month in which the disability application is approved by the Medical Board of Trustees, and subsequent to termination of employment in the public schools, or

(2) the date determined by the Board of Trustees after an administrative review, if such review is requested by the member pursuant to the Administrative Procedures Act 75 O.S. 250 et seq., but in no instance will the effective date be prior to the first day of the month following receipt of the complete disability retirement application.

(f) The disability retirement becomes binding on the effective date specified in subsection (e) of this section and cannot be revoked except by written request from the member prior to the effective retirement date as provided by OAC 715:10-15-5 or by returning to employment as provided in OAC 715:10-15-21.

(g) The disability retirement benefit shall be calculated in the same manner as regular retirement benefits described in OAC 715:10-15-7, with the exception that no reduction will be made due to the age of the member. Providing that any member who qualifies for disability benefits after June 30, 2003, who is married at the time his or her disability benefits commence, may elect an actuarially reduced 100% joint survivor

retirement benefit based on factors provided by the Retirement System's consulting actuary.

(h) The disability retirement benefit is payable under the same provisions as the Maximum Retirement Plan or Retirement Option 2 explained in OAC 715:10-15-10. Payments are made monthly for the life of the retiree or until the member is able to return to employment (See OAC 715:10-15-21). The only survivor benefits available to a disabled member's beneficiaries or estate is a return of member contributions not paid to the member in the form of monthly benefits and the \$5,000 death benefit provided per statute, unless the disabled member elected the reduced benefit option to provide the spouse a monthly benefit as described in subparagraph (g) of this section.

(i) If the disabled member elects to receive an actuarially reduced 100% joint survivor retirement benefit, the surviving spouse will continue to receive the disabled member's monthly benefit for life. At the death of the disabled member, the surviving spouse will receive the \$5,000 death benefit provided by statute. If the disabled member's spouse should die before the disabled member, the disabled member's monthly disability benefit will be increased to the amount the disabled member would have been entitled to receive if the disabled member had elected the maximum disability benefit. The increased monthly benefit will become effective the first day of the month following the death of the disabled member's spouse providing proper notice is received by the Teachers' Retirement System, as provided in OAC 715:10-15-10.1.

715:10-15-16. Review by Medical Board

Upon receipt of the application for disability retirement, the Medical Board of the Teachers' Retirement System will review the application at its next monthly meeting. The Medical Board may approve ~~recommend to the Board of Trustees~~ a member for permanent disability retirement or for a temporary disability retirement when in its opinion the prognosis of the disability is of a temporary nature. Temporary disability retirement benefits may be provided for six (6) to twelve (12) months, subject to re-examination by the Medical Board at the end of the prescribed period. If a member is granted temporary disability the member may apply for permanent disability, or reapply for temporary disability, only within one (1) month of the expiration of the temporary disability. The member will be notified in writing of the recommendation of the Medical Board. If disability benefits are not recommended by the Medical Board, the reason will be provided to the member in writing. The member may then submit additional medical evidence for further review or request an administrative hearing pursuant to the Administrative Procedures Act, 75 O.S. Section 250 et seq., and OAC 715:1-1-10 (with the exception of subparagraphs 1 and 2) within sixty (60) days of notification of the Medical Board's adverse recommendation.

[OAR Docket #18-684; filed 10-30-18]

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

1:2018-28.

EXECUTIVE ORDER 2018-28

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property, and upon all public buildings and grounds in Oklahoma, at half-staff, until sunset November 10, 2018, as a mark of respect for the victims of the terrible act of violence perpetrated in Thousand Oaks, California, on November 7, 2018.

This Executive Order shall be forwarded to the Division of Capital Assets Management, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 8th day of November.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Melody Wright
Acting Assistant Secretary of State

[OAR Docket #18-699; filed 11-8-18]
