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**Brad Henry, Governor**  
**M. Susan Savage,**  
**Secretary of State**  
**Peggy Coe, Managing Editor**

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Department of <b>CORRECTIONS</b>	170	<b>COMPSOURCE</b> Oklahoma	
State Board of <b>COSMETOLOGY</b>	175	( <i>Formerly:</i> State <b>INSURANCE</b> Fund)	370
Oklahoma State <b>CREDIT</b> Union Board	180	Oklahoma State Bureau of <b>INVESTIGATION</b>	375
<b>CRIME</b> Victims Compensation Board	185	Council on <b>JUDICIAL</b> Complaints	376
Joint <b>CRIMINAL</b> Justice System Task Force Committee	190	Office of <b>JUVENILE</b> Affairs	377
Board of <b>DENTISTRY</b>	195	Department of <b>LABOR</b>	380
Oklahoma <b>DEVELOPMENT</b> Finance Authority	200	Department of the Commissioners of the <b>LAND</b> Office	385
Office of <b>DISABILITY</b> Concerns ( <i>Formerly:</i> Office of		Council on <b>LAW</b> Enforcement Education and Training	390
<b>HANDICAPPED</b> Concerns) - <i>See</i> Title 305		Oklahoma <b>LAW</b> Enforcement Retirement System	395
Board of Regents of <b>EASTERN</b> Oklahoma State College	205	Board on <b>LEGISLATIVE</b> Compensation	400
<b>EDGE</b> Fund Policy Board	208	Oklahoma Department of <b>LIBRARIES</b>	405
State Department of <b>EDUCATION</b>	210	<b>LIEUTENANT</b> Governor	410
<b>EDUCATION</b> Oversight Board	215	Oklahoma <b>LINKED</b> Deposit Review Board	415
Oklahoma <b>EDUCATIONAL</b> Television Authority	220	Oklahoma <b>LIQUEFIED</b> Petroleum Gas Board	420
[ <b>RESERVED</b> ]	225	Oklahoma <b>LIQUEFIED</b> Petroleum Gas Research, Marketing and Safety	
State <b>ELECTION</b> Board	230	Commission	422
		<b>LITERACY</b> Initiatives Commission	425

Agency	Title	Agency	Title
<b>LONG-RANGE</b> Capital Planning Commission	428	Oklahoma Commission on <b>SCHOOL</b> and County Funds Management	635
Oklahoma State Board of Examiners for <b>LONG-TERM</b> Care Administrators ( <i>Formerly</i> : Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators) - <i>See</i> Title 490		Advisory Task Force on the Sale of <b>SCHOOL</b> Lands ( <i>functions concluded 2-92</i> )	640
<b>LOTTERY</b> Commission, Oklahoma	429	The Oklahoma School of <b>SCIENCE</b> and Mathematics	645
Board of Trustees for the <b>MCCURTAIN</b> County Higher Education Program	430	Oklahoma Center for the Advancement of <b>SCIENCE</b> and Technology	650
Commission on <b>MARGINALLY</b> Producing Oil and Gas Wells	432	<b>SECRETARY</b> of State	655
State Board of <b>MEDICAL</b> Licensure and Supervision	435	Department of <b>SECURITIES</b>	660
<b>MEDICAL</b> Technology and Research Authority of Oklahoma	440	Board of Regents of <b>SEMINOLE</b> State College	665
Board of <b>MEDICOLEGAL</b> Investigations	445	<b>SHEEP</b> and Wool Commission	670
Department of <b>MENTAL</b> Health and Substance Abuse Services	450	State Board of Licensed <b>SOCIAL</b> Workers	675
<b>MERIT</b> Protection Commission	455	<b>SOUTHERN</b> Growth Policies Board	680
<b>MILITARY</b> Planning Commission, Oklahoma Strategic	457	Oklahoma <b>SOYBEAN</b> Commission ( <i>abolished 7-1-97</i> )	685
Department of <b>MINES</b>	460	Board of Examiners for <b>SPEECH-LANGUAGE</b> Pathology and Audiology	690
Oklahoma <b>MOTOR</b> Vehicle Commission	465	<b>STATE</b> Employee Charitable Contributions, Oversight Committee for ( <i>Formerly</i> : <b>STATE</b> Agency Review Committee)	695
Board of Regents of <b>MURRAY</b> State College	470	<b>STATE</b> Use Committee ( <i>Formerly</i> : Committee on Purchases of Products and Services of the Severely <b>HANDICAPPED</b> ) – <i>See</i> Title 304	
Oklahoma State Bureau of <b>NARCOTICS</b> and Dangerous Drugs Control	475	Oklahoma <b>STUDENT</b> Loan Authority	700
Board of Regents of <b>NORTHERN</b> Oklahoma College	480	<b>TASK</b> Force 2000	705
Oklahoma Board of <b>NURSING</b>	485	Oklahoma <b>TAX</b> Commission	710
Oklahoma State Board of Examiners for <b>LONG-TERM</b> Care Administrators ( <i>Formerly</i> : Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators)	490	Oklahoma Commission for <b>TEACHER</b> Preparation	712
Board of Regents of <b>OKLAHOMA</b> City Community College	495	<b>TEACHERS'</b> Retirement System	715
Board of Regents of <b>OKLAHOMA</b> Colleges	500	State <b>TEXTBOOK</b> Committee	720
Board of Examiners in <b>OPTOMETRY</b>	505	Oklahoma <b>TOURISM</b> and Recreation Department	725
State Board of <b>OSTEOPATHIC</b> Examiners	510	Department of <b>TRANSPORTATION</b>	730
<b>PARDON</b> and Parole Board	515	Oklahoma <b>TRANSPORTATION</b> Authority ( <i>Name changed to Oklahoma TURNPIKE Authority 11-1-05</i> ) - <i>See</i> Title 731	
Oklahoma <b>PEANUT</b> Commission	520	Oklahoma <b>TURNPIKE</b> Authority ( <i>Formerly</i> : Oklahoma <b>TRANSPORTATION</b> Authority AND Oklahoma <b>TURNPIKE</b> Authority) - <i>See</i> also Title 745	731
Oklahoma State <b>PENSION</b> Commission	525	State <b>TREASURER</b>	735
State Board of Examiners of <b>PERFUSIONISTS</b>	527	Board of Regents of <b>TULSA</b> Community College	740
Office of <b>PERSONNEL</b> Management	530	Oklahoma <b>TURNPIKE</b> Authority ( <i>Name changed to Oklahoma TRANSPORTATION Authority 11-1-99 - no rules enacted in this Title - See</i> Title 731)	745
Oklahoma State Board of <b>PHARMACY</b>	535	Board of Trustees for the <b>UNIVERSITY</b> Center at Tulsa	750
<b>PHYSICIAN</b> Manpower Training Commission	540	<b>UNIVERSITY</b> Hospitals Authority	752
Board of <b>PODIATRIC</b> Medical Examiners	545	<b>UNIVERSITY</b> Hospitals Trust	753
Oklahoma <b>POLICE</b> Pension and Retirement System	550	Board of Regents of the <b>UNIVERSITY</b> of Oklahoma	755
State Department of <b>POLLUTION</b> Control ( <i>abolished 1-1-93</i> )	555	Board of Regents of the <b>UNIVERSITY</b> of Science and Arts of Oklahoma	760
<b>POLYGRAPH</b> Examiners Board	560	Oklahoma <b>USED</b> Motor Vehicle and Parts Commission	765
Oklahoma Board of <b>PRIVATE</b> Vocational Schools	565	Oklahoma Department of <b>VETERANS</b> Affairs	770
State Board for <b>PROPERTY</b> and Casualty Rates ( <i>abolished 7-1-06; see also Title 365</i> )	570	Board of <b>VETERINARY</b> Medical Examiners	775
State Board of Examiners of <b>PSYCHOLOGISTS</b>	575	Oklahoma Department of <b>CAREER</b> and Technology Education ( <i>Formerly</i> : Oklahoma Department of <b>VOCATIONAL</b> and Technical Education)	780
Department of <b>CENTRAL</b> Services ( <i>Formerly</i> : Office of <b>PUBLIC</b> Affairs)	580	Oklahoma <b>WATER</b> Resources Board	785
<b>PUBLIC</b> Employees Relations Board	585	Board of Regents of <b>WESTERN</b> Oklahoma State College	790
Oklahoma <b>PUBLIC</b> Employees Retirement System	590	Oklahoma <b>WHEAT</b> Commission	795
Department of <b>PUBLIC</b> Safety	595	Department of <b>WILDLIFE</b> Conservation	800
<b>REAL</b> Estate Appraiser Board	600	<b>WILL</b> Rogers and J.M. Davis Memorials Commission	805
Oklahoma <b>REAL</b> Estate Commission	605		
Board of Regents of <b>REDLANDS</b> Community College	607		
State <b>REGENTS</b> for Higher Education	610		
State Department of <b>REHABILITATION</b> Services	612		
Board of Regents of <b>ROGERS</b> State College	615		
Board of Regents of <b>ROSE</b> State College	620		
Oklahoma <b>SAVINGS</b> and Loan Board ( <i>abolished 7-1-93</i> )	625		
<b>SCENIC</b> Rivers Commission	630		



# 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 5. OKLAHOMA ABSTRACTORS BOARD** **CHAPTER 2. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #09-42]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 2. Administrative Operations [NEW]

### **SUMMARY:**

The Oklahoma Abstractors Board is proposing its first permanent rules to replace the existing emergency rules in effect during its initial year in operation. The proposed permanent rules are intended to address formal procedures for the public and the regulated entities to follow in dealings and communications with the Board, its permanent office and staff, and current changes in the Oklahoma Abstractors Act, 1 O.S. §§20 through 43.

### **AUTHORITY:**

Oklahoma Abstractors Act, 1 O.S. §§20 through 43; Oklahoma Abstractors Board

### **COMMENT PERIOD:**

Persons may submit oral or written comments to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov no later than 4:30 p.m. during the period from January 9 to March 5, 2009.

### **PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. March 5, 2009, in the conference room of the Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing from January 9 to March 5, 2009 to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076,

Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov.

### **COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by visiting [www.abstract.ok.gov](http://www.abstract.ok.gov) or contacting Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement is available at the above website and address.

### **CONTACT PERSON:**

Glynda Reppond, (405) 522-5019, Glynda.Reppond@abstract.ok.gov.

*[OAR Docket #09-42; filed 1-9-09]*

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

*[OAR Docket #09-43]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 11. Administration of Abstractors Act [NEW]

### **SUMMARY:**

The Oklahoma Abstractors Board is proposing its first permanent rules to replace the existing emergency rules in effect during its initial year in operation. The rules provide for the process by which an interested party may apply to the Oklahoma Abstractors Board for a permit to develop an abstract plant, certificate of authority, or license. These rules also provide for the process by which an interested party may provide information regarding such applications. These permanent rules are necessary to establish minimum standards and uniformity within the abstracting industry in the State of Oklahoma and to provide the public with clear and concise rules for the application and licensing process. This chapter contains provisions relating to fees for applications for and renewals of certificates of authority, permits and abstract licenses. The fees provided for in this chapter are in the same

## Notices of Rulemaking Intent

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amount as authorized in the previous emergency rules. No fee increase is proposed.

**AUTHORITY:**

Oklahoma Abstractors Act, 1 O.S. §§20 through 43; Oklahoma Abstractors Board

**COMMENT PERIOD:**

Persons may submit oral or written comments to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov no later than 4:30 p.m. during the period from January 9 to March 5, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. March 5, 2009, in the conference room of the Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing from January 9 to March 5, 2009 to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov.

**COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by visiting [www.abstract.ok.gov](http://www.abstract.ok.gov) or contacting Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement is available at the above website and address.

**CONTACT PERSON:**

Glynda Reppond, (405) 522-5019,  
Glynda.Reppond@abstract.ok.gov.

*[OAR Docket #09-43; filed 1-9-09]*

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## **TITLE 5. OKLAHOMA ABSTRACTORS BOARD** **CHAPTER 21. COMPLAINTS AND ENFORCEMENT**

*[OAR Docket #09-44]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Chapter 21. Complaints and Enforcement [NEW]

**SUMMARY:**

The Oklahoma Abstractors Board is proposing its first permanent rules to replace the existing emergency rules in effect during its initial year in operation. These rules set forth the general procedures for the filing of a complaint, the investigation of a complaint, resolution of complaints, instituting a formal complaint, and the hearings process, including due process. These rules are necessary to establish the procedures for the public and other licensees to file a complaint, and the process for prosecution of same. These are necessary to establish the basic investigation, administrative hearing and resolution procedures.

**AUTHORITY:**

Oklahoma Abstractors Act, 1 O.S. §§20 through 43; Oklahoma Abstractors Board

**COMMENT PERIOD:**

Persons may submit oral or written comments to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov no later than 4:30 p.m. during the period from January 9 to March 5, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. March 5, 2009, in the conference room of the Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing from January 9 to March 5, 2009 to Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to Glynda.Reppond@abstract.ok.gov.

**COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by visiting [www.abstract.ok.gov](http://www.abstract.ok.gov) or contacting Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 Northwest 23<sup>rd</sup> Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076, (405) 522-5019, FAX (405) 522-5503 or via electronic mail to [Glynda.Reppond@abstract.ok.gov](mailto:Glynda.Reppond@abstract.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement is available at the above website and address.

**CONTACT PERSON:**

Glynda Reppond, (405) 522-5019,  
[Glynda.Reppond@abstract.ok.gov](mailto:Glynda.Reppond@abstract.ok.gov).

*[OAR Docket #09-44; filed 1-9-09]*

**TITLE 25. OKLAHOMA AERONAUTICS  
COMMISSION  
CHAPTER 25. AVIATION EDUCATION  
PROGRAM**

*[OAR Docket #09-24]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Chapter 25. Aviation Education Program [NEW]

**SUMMARY:**

The proposed new rules describe the requirements for participation in the Aviation Education Program, the criteria selection for applicants, and the procedures for awarding an Aviation Education Grant or Contract.

**AUTHORITY:**

3 O.S. Section 85 (L); Oklahoma Aeronautics Commission

**COMMENT PERIOD:**

Persons may submit written and oral comments to Treasure Tytenicz at the Oklahoma Aeronautics Commission at 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73102 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on Thursday, March 5, 2009 at the Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the contact person.

**RULE IMPACT STATEMENT:**

Copies of the Rule Impact Statement may be obtained from the contact person on or after February 17, 2009.

**CONTACT PERSON:**

Treasure Tytenicz, Government Affairs Liaison and Aviation Education Coordinator, Oklahoma Aeronautics

Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73102, (405) 604-6901.

*[OAR Docket #09-24; filed 1-8-09]*

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

*[OAR Docket #09-81]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 1. General Provisions [AMENDED]

Subchapter 5. Declaratory Ruling Procedures [AMENDED]

Subchapter 9. Individual Procedures [AMENDED]

Subchapter 10. Requirements for Department Programs [NEW]

Subchapter 11. Licensing Procedures [AMENDED]

**SUMMARY:**

The proposed rules add procedures for audits of out of state companies, dealing with repeat offenders, service of process for administrative hearings, declaratory rulings, and licensing procedures.

**AUTHORITY:**

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

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 3:00 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

## Notices of Rulemaking Intent

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### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

### **CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: teena.gunter@oda.state.ok.us

*[OAR Docket #09-81; filed 1-9-09]*

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

*[OAR Docket #09-80]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

### **PROPOSED RULES:**

Subchapter 3. Fee Schedules  
35:2-3-9 [AMENDED]  
35:2-3-16 [REVOKED]  
35:2-3-17 [AMENDED]  
35:2-3-27 [REVOKED]  
35:2-3-29 [AMENDED]

### **SUMMARY:**

The proposed rules amend or revoke fees. Revocations are to remove rules that are already contained in the various program requirements for their topic. The remainder of the amendments are to update the rules and require the Department to charge only the actual Department cost for most of the poultry fees.

### **AUTHORITY:**

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

### **COMMENT PERIOD:**

Persons may submit written to Teena Gunter at teena.gunter@oda.state.ok.us, or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

### **PUBLIC HEARING:**

A public hearing will be held at 1:00 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

### **CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: teena.gunter@oda.state.ok.us

*[OAR Docket #09-80; filed 1-9-09]*

### **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS**

*[OAR Docket #09-73]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions [AMENDED]

### **SUMMARY:**

The proposed rules update the dates of NIST Handbook incorporations by reference and adds a section for fees. No fee changes are proposed. The purpose of the fee rule is to bring all fees relating to the weights and measures program into a single rule.

### **AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 14-31 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

### **COMMENT PERIOD:**

Persons may submit written to Teena Gunter at teena.gunter@oda.state.ok.us, or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

### **PUBLIC HEARING:**

A public hearing will be held at 9:00 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us)

*[OAR Docket #09-73; filed 1-9-09]*

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 10. AGRICULTURAL PRODUCTS**

*[OAR Docket #09-75]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking **PROPOSED RULES:**

Subchapter 7. Public Warehouses  
35:10-7-2 [AMENDED]

**SUMMARY:**

The proposed rules incorporate fees for the grain warehouse program into the program rules rather than statute or Chapter 2 of the Department's rules. These rules do not result in fee increases or decreases. They are simply a copy of existing fees to ensure the public can view a program and know the fees associated with that program.

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 9-20 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 12:30 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing

to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us)

*[OAR Docket #09-75; filed 1-9-09]*

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

*[OAR Docket #09-79]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking **PROPOSED RULES:**

35:13-1-6 [NEW]

**SUMMARY:**

The proposed rules incorporate fees for the ethanol program into the program rules rather than statute or Chapter 2 of the Department's rules. These rules do not result in fee increases or decreases. They are simply a copy of existing fees to ensure the public can view a program and know the fees associated with that program.

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 11-20 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 11:30 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing

## Notices of Rulemaking Intent

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to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

### COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

### CONTACT PERSON:

Teena Gunter, (405) 522-4576, e-mail address: [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us)

*[OAR Docket #09-79; filed 1-09-09]*

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

*[OAR Docket #09-82]*

### RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

### PROPOSED RULES:

Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets [AMENDED]

Subchapter 17. Bovine and Bison Brucellosis [AMENDED]

Subchapter 40. Bovine Tuberculosis [AMENDED]

### SUMMARY:

The proposed rules provide cleanup and amendments to both the Brucellosis program and the Tuberculosis program. Emergency rules were approved to prepare for the impending loss of federal funding for Brucellosis at sale barns and to prepare for the potential loss of Tuberculosis free status for several states. In addition to making these changes permanent, neither programs rules have been fully cleaned up in a number of years. This cleanup will result in consistency between requirements in the programs and consistency in terminology.

### AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4 and 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

### COMMENT PERIOD:

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

### PUBLIC HEARING:

A public hearing will be held at 2:30 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

### COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

### CONTACT PERSON:

Dr. Becky Brewer-Walker, (405) 522-0270, e-mail address: [becky.brewer@oda.state.ok.us](mailto:becky.brewer@oda.state.ok.us)

*[OAR Docket #09-82; filed 1-9-09]*

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

*[OAR Docket #09-83]*

### RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

### PROPOSED RULES:

Subchapter 1. General Provisions [AMENDED]

### SUMMARY:

The proposed rules amend the definitions to use the term "official identification" rather than "official eartag." In addition, the rule requires that any owner that participates in a federal animal disease program through the Department must have a premise identification number.

### AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4 and 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

### COMMENT PERIOD:

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

### PUBLIC HEARING:

A public hearing will be held at 2:00 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Dr. Becky Brewer-Walker, (405) 522-0270, e-mail address: [becky.brewer@oda.state.ok.us](mailto:becky.brewer@oda.state.ok.us)

*[OAR Docket #09-83; filed 1-9-09]*

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

*[OAR Docket #09-84]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking **PROPOSED RULES:**

Subchapter 15. Equine Infectious Anemia (EIA)  
Part 3. Procedures [AMENDED]

**SUMMARY:**

The proposed rules amend the procedures for testing of horses for Equine Infectious Anemia (EIA). The rules will specify testing frequency requirements and procedures for EIA laboratories and will implement annual laboratory fees for approved EIA laboratories and owner fees for official sample analysis.

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4 and 6-281 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 1:30 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture,

Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Dr. Becky Brewer-Walker, (405) 522-0270, e-mail address: [becky.brewer@oda.state.ok.us](mailto:becky.brewer@oda.state.ok.us)

*[OAR Docket #09-84; filed 1-9-09]*

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 20. FORESTRY**

*[OAR Docket #09-85]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking **PROPOSED RULES:**

Subchapter 1. General Provisions [AMENDED]  
Subchapter 3. Rural Fire Protection Program Fund Act [AMENDED]  
Subchapter 17. Forest Resources Development Program [AMENDED]  
Subchapter 19. Prescribed Burns [NEW]

**SUMMARY:**

The purpose of the proposed rules is to revise the procedures for application and approval of 80/20 rural fire grants, as well as other grant programs. The rules will also clean up obsolete language. Finally, the rules will allow for a fee to be charged for Department assistance on a prescribed burn.

**AUTHORITY:**

State Board of Agriculture; 2 O.S. §§ 2-4 and 16-1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written comments to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

## Notices of Rulemaking Intent

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### **PUBLIC HEARING:**

A public hearing will be held at 3:30 p.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above address.

### **CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us)

*[OAR Docket #09-85; filed 1-9-09]*

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### **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION**

*[OAR Docket #09-74]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking  
**PROPOSED RULES:**

Subchapter 17. Combined Pesticide  
Part 17. Minimum Standard for Termite Work for  
Preconstruction (Pretreats)  
35:30-17-73 [AMENDED]

### **SUMMARY:**

The proposed rule relates to pretreatments of concrete slabs. Once a pretreatment is completed, a sticker, stencil, or tag is placed at the site that indicates the company, date of treatment, and termiticide. The new rule applies to those treatments where it is not able to be completed in a single day. It requires a similar notice to indicate the exact locations where treatment has already occurred and where it has not.

### **AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

### **COMMENT PERIOD:**

Persons may submit written comments to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

### **PUBLIC HEARING:**

A public hearing will be held at 9:30 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

### **CONTACT PERSON:**

Bill Taylor, (405) 522-6347, e-mail address: [bill.taylor@oda.state.ok.us](mailto:bill.taylor@oda.state.ok.us)

*[OAR Docket #09-74; filed 1-9-09]*

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### **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION**

*[OAR Docket #09-76]*

### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking  
**PROPOSED RULES:**

Subchapter 17. Combined Pesticide  
Part 1. Commercial and Non-Commercial Categories of  
Pesticide Application  
35:30-17-1.2 [NEW]  
Subchapter 25. Seed  
35:30-25-15 [NEW]  
Subchapter 27. Feed  
Part 1. Commercial Feed  
30-30-27-11 [AMENDED]  
Subchapter 29. Fertilizer  
Part 5. Licenses and Complaints  
35:30-29-51 [AMENDED]

Subchapter 31. Lime  
35:30-31-4 [NEW]  
Subchapter 37. Nursery Stock Sales  
35:30-37-12 [NEW]  
Subchapter 38. Apiaries  
35:30-38-13 [NEW]

**SUMMARY:**

The proposed rules incorporate fees for these programs into the program rules. At this time, the fees are in the statute or are in Chapter 2 of the Department's rules. None of these rules result in fee increases or decreases. They are simply a copy of existing fees to ensure the public can view a program and know the fees associated with that program.

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-31.1 et seq., 3-81 et seq., 3-100 et seq., 8-21 et seq., 8-41.1 et seq., 8-77.1 et seq., and 8-80.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at teena.gunter@oda.state.ok.us, or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 11:00 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Teena Gunter, (405) 522-4576, e-mail address: teena.gunter@oda.state.ok.us

[OAR Docket #09-76; filed 1-9-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 30. CONSUMER PROTECTION**

[OAR Docket #09-77]

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

**PROPOSED RULES:**

Subchapter 17. Combined Pesticide  
Part 5. Prerequisites for Licensing  
35:30-17-10 [AMENDED]

**SUMMARY:**

The proposed rule cleans up the provisions related to insurance for licensed applicators and changes the terminology to use current insurance terminology.

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

**COMMENT PERIOD:**

Persons may submit written to Teena Gunter at teena.gunter@oda.state.ok.us, or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Teena Gunter at the above address.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

**CONTACT PERSON:**

Bill Taylor, (405) 522-6347, e-mail address: bill.taylor@oda.state.ok.us

[OAR Docket #09-77; filed 1-9-09]

## Notices of Rulemaking Intent

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### **TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION**

*[OAR Docket #09-78]*

#### **RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking

#### **PROPOSED RULES:**

Subchapter 13. Imported Fire Ant Quarantine  
35:30-13-3 [AMENDED]

#### **SUMMARY:**

The proposed rule adds twelve new counties that are quarantined for fire ants. The new counties added to the rule mirror those that are already under federal quarantine for fire ants.

#### **AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.

#### **COMMENT PERIOD:**

Persons may submit written to Teena Gunter at [teena.gunter@oda.state.ok.us](mailto:teena.gunter@oda.state.ok.us), or 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from February 2, 2009 through March 4, 2009.

#### **PUBLIC HEARING:**

A public hearing will be held at 10:30 a.m., March 4, 2009, in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

#### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from February 2, 2009 through March 4, 2009.

#### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained by visiting [www.ag.ok.gov/proposedrules](http://www.ag.ok.gov/proposedrules) or by contacting Teena Gunter at the above address.

#### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above addresses.

#### **CONTACT PERSON:**

Jeanetta Cooper, (405) 522-5971, e-mail address: [jeanetta.cooper@oda.state.ok.us](mailto:jeanetta.cooper@oda.state.ok.us)

*[OAR Docket #09-78; filed 1-9-09]*

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### **TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS**

*[OAR Docket #08-1589]*

#### **INTENDED RULEMAKING ACTION:**

Notice of proposed Permanent rulemaking

#### **PROPOSED RULES:**

Chapter 1. Administrative Organization and Operations  
[AMENDED]

#### **SUMMARY:**

The proposed revisions to Chapter 1 include amending language to incorporate language that clearly defines certain definitions throughout the chapter.

#### **AUTHORITY:**

59 O.S. Supp. 2008, SEC. 161.2 et seq., 59 O.S. Supp 2008, SEC.; Board of Chiropractic Examiners

#### **COMMENT PERIOD:**

Written comments will be accepted February 2, 2009 through March 4, 2009 at: Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105, Attn: Beth Carter

#### **PUBLIC HEARING:**

Public hearing is scheduled on March 10, 2009 at 10:00 a.m., at the Office of the Board of Veterinary Medical Examiners and the Oklahoma Board of Dentistry conference room, 201 N.E. 38<sup>th</sup> Terrace, Suite 1 and 2, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

#### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

#### **COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained from the Oklahoma Board Of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

#### **RULE IMPACT STATEMENT:**

The rule impact statement may be obtained from the Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

#### **CONTACT PERSON:**

Beth Carter (405) 524-6223

*[OAR Docket #08-1589; filed 12-30-08]*

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**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS  
CHAPTER 3. DISCIPLINARY PROCEDURES**

*[OAR Docket #08-1590]*

**INTENDED RULEMAKING ACTION:**

Notice of proposed Permanent rulemaking

**PROPOSED RULES:**

Chapter 3. Disciplinary Procedures [AMENDED]

**SUMMARY:**

The proposed revisions to Chapter 3 include amending language in this rule to coincide with current statutes in Title 59 O.S. Section 161.6, and 161.12 sections of this law that relate to disciplinary and investigative procedures.

**AUTHORITY:**

59 O.S. Supp. 2008, SEC. 161.2 et seq., 59 O.S. Supp 2008, SEC.; Board of Chiropractic Examiners

**COMMENT PERIOD:**

Written comments will be accepted February 2, 2009 through March 4, 2009 at: Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105, Attn: Beth Carter

**PUBLIC HEARING:**

Public hearing is scheduled on March 10, 2009 at 10:00 a.m., at the Office of the Board of Veterinary Medical Examiners and the Oklahoma Board of Dentistry conference room, 201 N.E. 38<sup>th</sup> Terrace, Suite 1 and 2, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained from the Oklahoma Board Of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**RULE IMPACT STATEMENT:**

The rule impact statement may be obtained from the Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**CONTACT PERSON:**

Beth Carter (405) 524-6223

*[OAR Docket #08-1590; filed 12-30-08]*

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS  
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS**

*[OAR Docket #08-1591]*

**INTENDED RULEMAKING ACTION:**

Notice of proposed Permanent rulemaking

**PROPOSED RULES:**

Chapter 10. Licensure of Chiropractic Physicians [AMENDED]

**SUMMARY:**

The proposed revisions to chapter 10 include changes necessary to amend current language regarding licensure and amendments to definitions in the chapter.

**AUTHORITY:**

59 O.S. Supp 2008, SEC.; Board of Chiropractic Examiners

**COMMENT PERIOD:**

Written comments will be accepted February 2, 2009 through March 4, 2009 Oklahoma Board of Chiropractic Examiners. 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105, Attn: Beth Carter

**PUBLIC HEARING:**

Public hearing is scheduled on March 10, 2009 at 10:00 a.m., at the Office of the Board of Veterinary Medical Examiners and the Oklahoma Board of Dentistry conference room, 201 N.E. 38<sup>th</sup> Terrace, Suite 1 and 2, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained from the Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**RULE IMPACT STATEMENT:**

The rule impact statement may be obtained from the Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

**CONTACT PERSON:**

Beth Carter (405) 524-6223

*[OAR Docket #08-1591; filed 12-30-08]*

**TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS  
CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS**

*[OAR Docket #08-1592]*

**INTENDED RULEMAKING ACTION:**

Notice of proposed Permanent rulemaking

# Notices of Rulemaking Intent

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## PROPOSED RULES:

Chapter 15. Special Certificates and Miscellaneous Provisions [AMENDED]

## SUMMARY:

The proposed revisions to chapter 15 include changes necessary to amend current rules that the Board sees necessary to strengthen language as they relate to certifications, specialties and additional certifications that the Board feels is necessary to have new language promulgated into rules to ensure public safety, health, and welfare.

## AUTHORITY:

59 O.S. Supp 2008, SEC.; Board of Chiropractic Examiners

## COMMENT PERIOD:

Written comments will be accepted February 2, 2009 through March 4, 2009 at: Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105, Attn: Beth Carter

## PUBLIC HEARING:

Public hearing is scheduled on March 10, 2009 10:00 a.m. at the Office of the Board of Veterinary Medical Examiners and the Oklahoma Board of Dentistry conference room, 201 N.E. 38<sup>th</sup> Terrace, Suite 1 and 2, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

## REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

## COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Board Of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

## RULE IMPACT STATEMENT:

The rule impact statement may be obtained from the Oklahoma Board of Chiropractic Examiners, 201 N.E. 38<sup>th</sup> Terrace, Suite 3, Oklahoma City, Oklahoma 73105. Telephone 405-524-6223.

## CONTACT PERSON:

Beth Carter (405) 524-6223

*[OAR Docket #08-1592; filed 12-30-08]*

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## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 70. HOME INSPECTORS

*[OAR Docket #09-06]*

## RULEMAKING ACTION:

Notice of PERMANENT rulemaking

## PROPOSED RULES:

Subchapter 1. General Provisions [NEW]

158:70-1-1. Purpose [NEW]

158:70-1-2. Definitions [NEW]

158:70-1-3. Standards of Workmanship and Practice [NEW]

Subchapter 3. Procedures of the Committee [NEW]

158:70-3-1. Procedures of the Committee [NEW]

Subchapter 5. License Requirements, License Fees, License Period, Re-examination, Display and Insurance [NEW]

158:70-5-1. Home Inspection License Requirements [NEW]

158:70-5-2. License fees, license period, re-examination, display and insurance requirements [NEW]

Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity [NEW]

158:70-9-1. Qualifications and examination applications [NEW]

158:70-9-2. Examinations [NEW]

158:70-9-3. Course approval requirements [NEW]

158:70-9-4. Instructor qualifications [NEW]

158:70-9-5. Continuing education [NEW]

158:70-9-6. Denied application appeal [NEW]

158:70-9-7. Submission of records [NEW]

158:70-9-8. Substantial compliance and reciprocity [NEW]

Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts [NEW]

158:70-11-1. License revocation and suspension [NEW]

158:70-11-2. Additional prohibited acts [NEW]

## SUMMARY:

The proposed permanent rules herein are some what changed in substance in 158:70-1-3 to the existing rules regulating the Home Inspection Industry, which were promulgated by the Oklahoma State Department of Health, the agency which regulated the Home Inspection Industry and housed the Committee of Inspector Examiners prior to the enactment of SB2131. Rules 158:70-1-1; 158:70-1-2; 158:70-1-3 are general provisions which state the purpose of the rules, define material regulatory terms and establish the standards of workmanship and practice, respectively. Rule 158:70-3-1 establishes the procedures of the Committee of Home Inspector Examiners when conducting business. Rules 158:70-5-1 and 158:70-5-2 set forth home inspection license requirements and license fees, periods, re-examination procedures, license display and insurance requirements, respectively.

Rules 158:70-9-1, 158:70-9-2, 158:70-9-3, 158:70-9-4, 158:70-9-5, 158:70-9-6, 158:70-9-7, and 158:70-9-8 are identical to the State Department of Health rules governing licensed home inspectors with regard to qualifications and examination applications, examinations, course approval requirements, course instructor requirements, continuing education, denied application appeals, submission of records, substantial compliance and reciprocity. Rules 158:70-11-1 and 158:70-11-2 are the promulgation of the State Department of Health rules governing license and suspension proceedings and enumerating additional prohibited acts.

The fees and administrative costs established in these rules were previously promulgated by permanent rules and justified by the Oklahoma State Department of Health with the assistance of the Committee of Home Inspector Examiners. The Construction Industries Board will evaluate said fees and costs in the context of its administration of the Home Inspection Licensing Act and propose changes if necessary in a subsequent permanent rule making proceeding.

**AUTHORITY:**

Construction Industries Board Act, 59 O.S. §§ 1000.2 and 1000.4; Home Inspection Licensing Act, 59 O.S. §§ 858-622, 858-624, 858-626, 858-627, 858-629, 858-630, 858-631, 858-633 and 858-634.

**COMMENT PERIOD:**

Written and oral comments will be accepted between February 2, 2009 through March 17, 2009 during regular business hours at the office of the Administrator, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107.

**PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on March 4, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on March 17, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on March 17, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-06; filed 1-6-09]*

**TITLE 160. DEPARTMENT OF CONSUMER CREDIT  
CHAPTER 3. PROCEDURE**

*[OAR Docket #09-25]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

160:3-1-1.1 [AMENDED]

**SUMMARY:**

The proposed rule is to supersede the emergency rule that provided correct information about the Department of Consumer Credit by removing specific information, because the Department was relocating. With these amendments, the Department of Consumer Credit will not have to make future amendments whenever the specific information changes.

**AUTHORITY:**

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and 75 O.S., §302(A)(1)

**COMMENT PERIOD:**

Written and oral comments will be accepted until the conclusion of the public hearing on March 4, 2009 at the Department of Consumer Credit. Written comments may be mailed to the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, Attn: Roy John Martin.

**PUBLIC HEARING:**

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rule: 1:00 p.m., Wednesday, March 4, 2009, Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by the proposed rule are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing by the conclusion of the comment period and public hearing on March 4, 2009 at the Department of Consumer Credit at the above address.

**COPIES OF PROPOSED RULES:**

Interested persons may inspect the proposed rules at the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105. Copies of the proposed rules may be obtained at a cost of \$0.25 per page copying charge from the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, or they may be printed from the Department's web page at [www.okdocc.state.ok.us](http://www.okdocc.state.ok.us).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available on and after February 17,

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2009, at the same locations listed above for reviewing and obtaining copies of the proposed rules.

### CONTACT PERSON:

Roy John Martin, Legal Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-521-3653.

*[OAR Docket #09-25; filed 1-9-09]*

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

*[OAR Docket #09-26]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Subchapter 1. General Provisions

160:45-1-1 [AMENDED]

160:45-1-2 [AMENDED]

Subchapter 3. Open-End Credit

160:45-3-14 [AMENDED]

Subchapter 5. Closed-End Credit

160:45-5-1 [AMENDED]

160:45-5-3 [AMENDED]

160:45-5-7 [AMENDED]

160:45-5-8 [AMENDED]

Subchapter 9. Special Rules for Certain Home Mortgage Transactions

160:45-9-2 [AMENDED]

160:45-9-4 [AMENDED]

160:45-9-5 [NEW]

160:45-9-6 [NEW]

### SUMMARY:

The proposed rules incorporate federal changes to maintain Oklahoma's exemption from federal regulation.

### AUTHORITY:

Administrator of Consumer Credit; 14A O.S., §6-104(1)(e) and (2)

### COMMENT PERIOD:

Written and oral comments will be accepted until the conclusion of the public hearing on March 4, 2009 at the Department of Consumer Credit. Written comments may be mailed to the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, Attn: Roy John Martin.

### PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules: 1:00 p.m., Wednesday, March 4, 2009, Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by the proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by the conclusion of the comment period and public hearing on March 4, 2009 at the Department of Consumer Credit at the above address.

### COPIES OF PROPOSED RULES:

Interested persons may inspect the proposed rules at the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105. Copies of the proposed rules may be obtained at a cost of \$0.25 per page copying charge from the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, or the proposed rules may be printed from the Department's web page at [www.okdocc.state.ok.us](http://www.okdocc.state.ok.us).

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available on and after February 17, 2009, at the same locations listed above for reviewing and obtaining copies of the proposed rules.

### CONTACT PERSON:

Roy John Martin, Legal Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-521-3653.

*[OAR Docket #09-26; filed 1-9-09]*

## TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 55. MORTGAGE BROKERS

*[OAR Docket #09-27]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Subchapter 3. Licensing

160:55-3-1.2 [AMENDED]

160:55-3-1.4 [AMENDED]

Subchapter 9. Enforcement

160:55-9-10 [NEW]

### SUMMARY:

The proposed licensing rules are to supersede the emergency rules that provided regulations for the change in pre-licensing and continuing education requirements pursuant to Senate Bills 1927 and 1928 from the 2008 Second Regular Session of the 51st Legislature.

The proposed enforcement rule is to supersede the emergency rule that established a procedure for expending

monies from the Oklahoma Mortgage Brokers Recovery Fund in connection with reimbursement of approved claims.

**AUTHORITY:**

Administrator of Consumer Credit; 59 O.S., §2085(A)(1)(b) and (L)(5), §2091(A)(2) and §2093(A)

**COMMENT PERIOD:**

Written and oral comments will be accepted until the conclusion of the public hearing on March 4, 2009 at the Department of Consumer Credit. Written comments may be mailed to the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, Attn: Roy John Martin.

**PUBLIC HEARING:**

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules: 1:00 p.m., Wednesday, March 4, 2009, Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by the conclusion of the comment period and public hearing on March 4, 2009 at the Department of Consumer Credit at the above address.

**COPIES OF PROPOSED RULES:**

Interested persons may inspect the proposed rules at the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105. Copies of the proposed rules may be obtained at a cost of \$0.25 per page copying charge from the Department of Consumer Credit, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, OK 73105, or they may be printed from the Department's web page at www.okdocc.state.ok.us.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available on and after February 17, 2009, at the same locations listed above for reviewing and obtaining copies of the proposed rules.

**CONTACT PERSON:**

Roy John Martin, Legal Counsel, Department of Consumer Credit, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, OK 73105, 405-521-3653.

[OAR Docket #09-27; filed 1-9-09]

**TITLE 170. DEPARTMENT OF CORRECTIONS  
CHAPTER 35. EMPLOYEE RECRUITMENT  
REFERRAL INCENTIVE PROGRAM**

[OAR Docket #09-106]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

- 170:35-1-1 [AMENDED]
- 170:35-1-2 [AMENDED]
- 170:35-1-3 [AMENDED]
- 170:35-1-4 [AMENDED]
- 170:35-1-5 [AMENDED]
- 170:35-1-6 [AMENDED]
- 170:35-1-7 [AMENDED]
- 170:35-1-8 [AMENDED]
- 170:35-1-9 [AMENDED]

**SUMMARY:**

The amendments to these rules modify the eligibility conditions and payment conditions and amounts for referring employees and the referred eligible applicant hired by the agency. The modified language allows for payment via payroll incentive in addition to U.S. Savings Bonds. Limitations related to continued employment beyond the revised payment conditions have been removed.

**AUTHORITY:**

Oklahoma Department of Corrections; 57 O.S. § 510(A)(18)

**COMMENT PERIOD:**

Interested persons may present their views orally or in writing to the Administrator of the Personnel, 3400 Martin Luther King Ave., Oklahoma City, Oklahoma, 73136-0400, until March 5, 2009.

**PUBLIC HEARING:**

Public hearing will be conducted at the Department of Corrections Administrative Offices, General Counsel's conference room, at 3400 Martin Luther King Avenue at 10:00 o'clock a.m. on the 5<sup>th</sup> of March, 2009.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed revised rules may be obtained at the Department of Corrections Personnel Unit, 3400 Martin Luther King Ave., Oklahoma City, Oklahoma, 73136-0400.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review after January 30, 2009. Copies may be obtained at the Personnel Unit at the above address.

# Notices of Rulemaking Intent

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**CONTACT PERSON:**

Linda Parrish, Administrator of Personnel, (405) 425-2844.

*[OAR Docket #09-106; filed 1-9-09]*

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

*[OAR Docket #09-92]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Priority Academic Student Skills

Part 7. Mathematics

210:15-3-41. Mathematics content standards grade 1  
[AMENDED]

210:15-3-42. Mathematics content standards grade 2  
[AMENDED]

210:15-3-43. Mathematics content standards grade 3  
[AMENDED]

210:15-3-44. Mathematics content standards grade 4  
[AMENDED]

210:15-3-45. Mathematics content standards grade 5  
[AMENDED]

210:15-3-47. Mathematics content standards grade 6  
[AMENDED]

210:15-3-48. Mathematics content standards grade 7  
[AMENDED]

210:15-3-49. Mathematics content standards grade 8  
[AMENDED]

210:15-3-51. Mathematics content skills algebra I  
[AMENDED]

210:15-3-52. Mathematics content standards geometry  
[AMENDED]

210:15-3-53. Mathematics content standards algebra II  
[AMENDED]

**SUMMARY:**

The proposed rule amendments provide additional clarity, organization, rigor, and detail to the mathematics standards of the *Priority Academic Students Skills*, Oklahoma's core curriculum. Changes will be made to meet requirements in coordination with the existing textbook adoption six-year cycle. The changes will provide public school educators with the guidance necessary to achieve further improvements in the quality of education for Oklahoma students.

**AUTHORITY:**

70 O.S. § 3-104, State Board of Education

**COMMENT PERIOD:**

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., March 25, 2009, at the following address: Office of the State Board of Education,

Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

**PUBLIC HEARING:**

A public hearing will be held at 9:30 a.m. on Thursday, March 26, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on February 17, 2009.

**CONTACT PERSON:**

Connie Holland, 405-521-3308

*[OAR Docket #09-92; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 10. THE COUNTY ELECTION  
BOARD**

*[OAR Docket #09-30]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 7. General Administration of the County Election Board [AMENDED]

**SUMMARY:**

The State Election Board is in the process of upgrading both computer hardware and software in the County Election Board offices. Part of the upgrade includes the migration of certain functions to a personal computer-based platform. For the first time, the County Election Board offices have the capability to provide certain reports and information to the public on compact disks and by e-mail in addition to paper printouts. The State Election Board is establishing a fee schedule for reports and other information provided to the public on compact disks. The purpose of these fees is to ensure that these items are provided to the public by the County Election Board in a uniform manner at a uniform cost statewide.

**AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

**COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

**PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

**ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-30; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 15. VOTER REGISTRATION**

*[OAR Docket #09-31]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Application for Voter Registration [AMENDED]

Subchapter 9. Receiving and Processing Voter Registration Applications [AMENDED]

**SUMMARY:**

An amendment proposed in Subchapter 5 concerns persons permitted to apply for voter registration prior to becoming eligible to vote. Title 26, Section 4-103 says, "Any person who will become a qualified elector before the next ensuing election at which he could vote shall be entitled to become a registered voter of the precinct of his or her residence not more than sixty (60) and not less than twenty-four (24) days prior to said election." In other words a person whose eighteenth birthday occurs on or just before election day is entitled to register prior to his or her actual birthday. Such voter registration applications are accepted beginning 60 days prior to the election through the deadline for voter

registration for the election 24 days prior to the election. One proposed amendment clarifies the procedure for processing and activating such voter registration applications. These applications are entered into OEMS upon receipt. The computer program flags the applications and activates them only after either the applicant's birthday or the application deadline has passed. This is not a new procedure. However, these details have never been expressly stated in the rules and the State Election Board is responding to questions and requests for this clarifying language received from County Election Board personnel during the 2008 election season.

Another proposed amendment in Subchapter 5 concerns the state Address Confidentiality Program (ACP). Supervision of this program was transferred from the office of the Secretary of State to the office of the Attorney General on July 1, 2008. The amendment reflects this change of supervision. A second Section concerning the ACP located in Subchapter 9 also is amended.

Also in Subchapter 5, one Section is amended to correct the name of a state agency identified as a discretionary voter registration agency. The Oklahoma Office of Handicapped Concerns has changed its name to the Oklahoma Office of Disability Concerns. This is the only amendment in the Section.

In Subchapter 9, a Section concerning the administrative processing of certain voter registration applications received at polling places on election day is amended to eliminate the term "transfer of address on election day." The "transfer of address on election day" procedure dates from the days when all voter registration transactions were conducted by deputy Voter Registrars, when the voter registration rolls closed only 10 days before an election, and, with very few exceptions, elections could be scheduled on any Tuesday. Transfer on election day enabled a voter to change his or her address within a precinct at the polls and to have that change processed and in effect for the next election in which the voter was eligible to vote - which may well have been the following Tuesday. When Oklahoma implemented the National Voter Registration Act in the mid-1990s, it required among many other things both registration by mail and a "fail-safe" voting procedure. In the course of implementing mail registration, deputy Voter Registrars were eliminated. It was decided that the transfer of address on election day procedure would accommodate the fail-safe voting requirement if it were no longer limited only to changes of address within a precinct.

When transfers on election day are entered into the OEMS computer, they are "flagged" within the program as transfers. This allows them to be activated even if voter registration is closed for a subsequent election. However, since there is no longer a circumstance in which elections conducted by the County Election Board are scheduled less than 24 days apart, this procedure is no longer necessary. We are, therefore, eliminating the term from our rules and will no longer flag these applications for special processing in OEMS. Voters still are entitled both by state and federal law and by State Election

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Board rules to submit applications to change their addresses at the polling place on election day.

Some persons are permitted under state law to conceal their residence addresses on their voter registration records. We refer to these voters as "restricted records status voters." Information about restricted records status voters has not been entered into the OEMS computer system and their names have not appeared on any report produced by the system, including Precinct Registries. County Election Board personnel have been required to maintain information about restricted records status voters manually and to provide a list of their names and appropriate district information, but not their addresses of residence, to Precinct Officials on election day. A feature of the new MESA (Modern Election Support Application) software is the ability to enter the names and district information of restricted records status voters into a separate computer program that will result in placing the voters' names in the appropriate Precinct Registry. Their addresses are not entered. The Section that concerns processing applications for restricted records status is amended to include information about the MESA functionality and instructions that should be provided to Precinct Officials on election day.

Finally a Section that concerns rejected voter registration applications is amended to clarify part of the procedure. One type of rejection notice, called an Insufficient Information Rejection Notice, is sent to voter registration applicants who fail to provide certain information on their application forms. The referenced rejection notice is a letter asking the voter to provide the missing information so that the application can be completed and activated. If the additional information is received by the County Election Board 24 days or less before an election, the information is entered into the computer, but the application is not completed and activated until the election date has passed. Language has been added to the Section to clarify this fact. During the 2008 election season, the State Election Board received many questions from County Election Board personnel about this process and it was determined that this clarification is necessary.

### **AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

### **COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

### **PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

### **COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

### **CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

### **ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-31; filed 1-9-09]*

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## **TITLE 230. STATE ELECTION BOARD CHAPTER 20. CANDIDATE FILING**

*[OAR Docket #09-32]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Filing for State and County Office  
[AMENDED]

### **SUMMARY:**

Amendments proposed in this subchapter are intended to expand and clarify the instructions for County Election Board personnel who receive Declarations of Candidacy. The added instructions and information reflect common practice by State Election Board personnel who perform the same tasks. New language instructs county personnel to read each line of the Declaration form aloud to the candidate and to spell the candidate's name aloud, to make a specific notation on the form when a Declaration is not received personally from the candidate, and to permit only the candidate to make corrections on a Declaration of Candidacy. Other new language provides clarification on the way a candidate chooses to enter his or her name on the Declaration of Candidacy form.

### **AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

### **COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

### **PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

**ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-32; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 30. ABSENTEE VOTING**

*[OAR Docket #09-33]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 11. Receiving and Processing Absentee Ballots [AMENDED]

**SUMMARY:**

The amended Section concerns receiving ballots by fax from uniformed services and overseas voters. New language clarifies when these voters may return a federal write-in absentee ballot by fax. The federal write-in absentee ballot is a blank ballot for federal offices provided by the Federal Voting Assistance Program in the United States Department of Defense. Oklahoma accepts this write-in ballot by mail and by fax. During the 2008 election season, County Election Board personnel had questions about the earliest time before an election that they could accept the write-in ballot by fax for a specific election. There is no earliest time. Uniformed services and overseas voters may submit their federal write-in absentee ballot by fax at any time prior to an election involving federal offices.

These voters also are permitted to fax their ballots either to the State Election Board office or to the County Election Board office in the county of their residence. When the State Election Board receives a faxed ballot, it is immediately faxed to the appropriate County Election Board, and the hard copy is mailed to that county. However, we discovered in 2008 that the instruction to mail the hard copy did not appear in the procedure. We are adding it now.

**AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

**COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

**PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

**ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-33; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 35. ELECTION CONDUCT**

*[OAR Docket #09-34]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. County Election Board Responsibilities [AMENDED]

**SUMMARY:**

Several amendments are proposed in Subchapter 3. One Section which concerns a list of voters in restricted records status is amended to include information about a function of the new MESA (Modern Election Support Application) software being implemented by the State Election Board. "Restricted records status" is the term used to refer to voters covered by the provisions of Title 26 § 4-115.2. These voters are entitled to apply to conceal their residence and mailing address information in their voter registration records. Since the effective date of the referenced statute (June 5, 2003), and upon application by these voters for restricted records status, information on these voters has been removed from the County Election Board computer system and their records have been maintained manually. One functionality of MESA permits

## Notices of Rulemaking Intent

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the County Election Board Secretary to maintain a list of these voters and their applicable district information, but not their address information, so that their names can be printed in the appropriate Precinct Registry for elections. A Section is amended to include information about the MESA function and to remove references to the manual process of maintaining these records.

There is a special procedure for the Secretary of the County Election Board to follow in certain limited circumstances when a precinct polling place must be open for an election, but there are no voters eligible to vote in the election. When this circumstance occurs, the Secretary may choose not to issue a voting device to the precinct on election day and instead provide Precinct Officials only with provisional voting materials in the event a voter appears claiming to be eligible to vote in the election. The Section detailing this procedure is amended to include a Ballot Accounting Form among the supplies for the precinct and instructions for completing and returning it to the County Election Board office.

At every election, but especially at state and federal elections, questions arise about how and to whom to report suspected election law violations. For many years, County Election Board Secretaries have been verbally instructed to notify the County Sheriff when they receive complaints of possible violations. A new Section codifies this long-standing instruction.

Two Sections are amended to reflect slight changes in the procedures for processing voter registration application forms at the polling place on election day.

One Section concerning provisional ballots is amended to clarify instructions concerning the generation of Totals Printouts from the voting devices used to count provisional ballots, instructions concerning the storage of counted provisional ballots, and instructions concerning reading voting device memory packs into the computer and printing and proofreading reports.

### **AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

### **COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

### **PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

### **COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

### **CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

### **ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-34; filed 1-9-09]*

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## **TITLE 230. STATE ELECTION BOARD CHAPTER 40. TYPES OF ELECTIONS**

*[OAR Docket #09-35]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 5. Municipal Elections [AMENDED]

### **SUMMARY:**

One Section is amended only to reflect the change in the name of the agency that maintains mapping information for the State Election Board. The Geo Information Systems Department at the University of Oklahoma is now called the Center for Spatial Analysis.

One Section is amended to include information about a statutory provision concerning special elections for municipal office. Title 11 § 8-109 provides that if a vacancy occurs or if a special election to fill a vacancy would occur within 120 days of the filing period for the next regular municipal election, a special election shall not be held. The vacancy shall appear on the ballot for the regular election as an unexpired term. This statutory language is not new, but due to an oversight, it has not appeared in the State Election Board rules until now.

### **AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

### **COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P. O. Box 53156, Oklahoma City, OK 73152.

### **PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

**ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-35; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 45. CONTESTS OF ELECTION**

*[OAR Docket #09-36]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Instructions for Counters for Manual Recount [AMENDED]

**SUMMARY:**

One Section concerning counting ballots manually in a recount is amended to remove a reference to an obsolete item. In the days when most counties in Oklahoma counted all ballots manually, the State Election Board provided special pencils with red lead on one end and blue lead on the other. At any time that Counters completed a count or took a break from counting, they changed the color lead they were using to tally the count. At the advent of voting devices statewide in 1992, the State Election Board stopped providing the pencils and in the ensuing years most counties have exhausted their supplies of them. Other references to the pencils in the rules have long since been removed. However, this one reference remained and is now being removed.

**AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

**COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P.O. Box 53156, Oklahoma City, OK 73152.

**PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

**CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board. scox@elections.ok.gov (405)521-2391.

**ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-36; filed 1-9-09]*

**TITLE 230. STATE ELECTION BOARD  
CHAPTER 50. AUTOMATED SYSTEMS**

*[OAR Docket #09-37]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Voting Devices and Data Processing [AMENDED]

**SUMMARY:**

One new Section is added to describe the new Modern Election Support Application (MESA) software currently being developed and implemented by the State Election Board and to authorize its use. MESA represents the first steps toward a new generation of the Oklahoma Election Management System and the migration of its functions to a personal computer-based platform.

One Section concerning counting telephone voting system ballots is amended to make the process of counting these ballots more similar to the process of counting provisional ballots. Minor inconsistencies between these two procedures were sources of confusion for some County Election Board personnel during the 2008 election season, especially since the two procedures are conducted almost simultaneously.

**AUTHORITY:**

Title 26 O.S. Supp. 2009, Section 2-107. Secretary of the State Election Board.

**COMMENT PERIOD:**

Written comments will be accepted until the conclusion of the public hearing on Friday, March 6, 2009. Written comments may be delivered to the State Election Board office

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or may be mailed. Comments also may be presented orally during the hearing. Mailing Address: State Election Board, P.O. Box 53156, Oklahoma City, OK 73152.

### **PUBLIC HEARING:**

A public hearing will be held Friday, March 6, 2009, at 10 a.m. in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

### **COPIES OF PROPOSED RULES:**

Copies of the proposed amendments are available in the office of the State Election Board, Room B6, State Capitol Building, Oklahoma City.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available in the State Election Board office on and after February 17, 2009.

### **CONTACT PERSON:**

Suzanne Cox, Publications Editor, State Election Board.  
scox@elections.ok.gov (405)521-2391.

### **ADDITIONAL INFORMATION:**

n/a

*[OAR Docket #09-37; filed 1-9-09]*

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## **TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #09-28A]*

### **INTENDED RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

235:1-1-2 [AMENDED]

### **SUMMARY:**

The proposed rules make the rules consistent with the statutes, provide clarity on the ownership of establishments, clarify the grandfather clause, establish fees for various licenses, prohibit selling of body parts, set standards for licensees, increase the standards of continuing education, and add cremation requirements to the rules which had been only in statutes.

### **AUTHORITY:**

Oklahoma Funeral Board;  
Title 59 O.S. Section 396.17;  
Title 75 O.S. Section 302(A)(1);  
Title 75 O.S. Section 307

### **COMMENT PERIOD:**

Persons wishing to present their views regarding this action may do so by delivering or mailing their written comments to the Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma 73105, from February 2, 2009 to March 10, 2009.

### **PUBLIC HEARING:**

The public hearing will be held on Thursday, March 12, 2009, at 10:00AM, at the Lincoln Plaza Office Building, 4545 N. Lincoln Blvd, Suite 269, Oklahoma City, Oklahoma.

### **REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

The Oklahoma Funeral Board request that business entities affected by these proposed rules provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct cost, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Lloyd Brown, at the above address, before the close of the comment period on March 10, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained for review at the office of the Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and be available on and after January 10, 2009, at the office of the Oklahoma Funeral Board.

### **CONTACT PERSON:**

Lloyd Brown, Executive Director, Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma 73105, (405) 522-1790.

*[OAR Docket #09-28A; filed 1-9-09]*

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## **TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 10. FUNERAL SERVICES LICENSING**

*[OAR Docket #09-28]*

### **INTENDED RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

235:10-1-2 [AMENDED]

Subchapter 3. Qualification and Requirements  
Requirements for Licensure

235:10-3-1 [AMENDED]

235:10-3-2 [AMENDED]

235:10-3-5 [AMENDED]

Subchapter 5. Licensing fees

235:10-5-1 [AMENDED]

Subchapter 7. Licensure Renewal, Revocation, and  
Suspension

235:10-7-2 [AMENDED]

Subchapter 11. Minimum Standards of Performance

235:10-11-1 [AMENDED]

Subchapter 13. Continuing Education

235:10-13-10 [AMENDED]

Subchapter 14. Crematories [NEW]

235:10-14-1 [NEW]

**SUMMARY:**

The proposed rules make the rules consistent with the statutes, provide clarity on the ownership of establishments, clarify the grandfather clause, establish fees for various licenses, prohibit selling of body parts, set standards for licensees, increase the standards of continuing education, and add cremation requirements to the rules which had been only in statutes.

**AUTHORITY:**

Oklahoma Funeral Board;  
Title 59 O.S. Section 396.17;  
Title 75 O.S. Section 302(A)(1);  
Title 75 O.S. Section 307

**COMMENT PERIOD:**

Persons wishing to present their views regarding this action may do so by delivering or mailing their written comments to the Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma 73105, from February 2, 2009 to March 10, 2009.

**PUBLIC HEARING:**

The public hearing will be held on Thursday, March 12, 2009, at 10:00AM, at the Lincoln Plaza Office Building, 4545 N. Lincoln Blvd, Suite 269, Oklahoma City, Oklahoma.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

The Oklahoma Funeral Board request that business entities affected by these proposed rules provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct cost, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Lloyd Brown, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained for review at the office of the Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and be available on and after January 10, 2009, at the office of the Oklahoma Funeral Board.

**CONTACT PERSON:**

Lloyd Brown, Executive Director, Oklahoma Funeral Board, 4545 N. Lincoln Blvd, Suite 175, Oklahoma City, Oklahoma 73105, (405) 522-1790.

*[OAR Docket #09-28; filed 1-9-09]*

**TITLE 304. STATE USE COMMITTEE  
CHAPTER 10. OPERATIONAL  
PROCEDURES**

*[OAR Docket #09-96]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Chapter 10. Operational Procedures [AMENDED]

**SUMMARY:**

Additions, revocations and amendments are proposed necessitating permanent rulemaking action. Proposed changes may include modifying and clarifying the process of the determination of fair market value for products and services, and of the development and implementation of the procurement schedule. These proposals are designed to make the administration of State Use more efficient and effective and to balance the needs of State Use vendors, non-State Use vendors, and state agencies.

**AUTHORITY:**

State Use Committee; 74 O.S., Section 3009(A)

**COMMENT PERIOD:**

Persons may submit written and oral comments to Gerry Smedley before 5:00 p.m. on March 5, 2009, at P.O. Box 53218, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73152-3218.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door by 8:55 a.m. on that day. The public hearing will be held on March 5, 2009 at 9:00 a.m. in Rooms 102/104 of the Will Rogers Building located at 2401 N. Lincoln, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Gerry Smedley at the above address by 5:00 p.m. on March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Department of Central Services' office located at 2401 N. Lincoln Blvd, Suite 116, Oklahoma City, OK. Copies may also be obtained by written request mailed to the attention of Gerry Smedley, P. O. Box 53218, Oklahoma City, OK 73152-3218.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review on and after February 17, 2009 at the above address for the Department of Central Services' offices.

# Notices of Rulemaking Intent

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**CONTACT PERSON:**

Gerry Smedley (405) 522-8519

*[OAR Docket #09-96; filed 1-9-09]*

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

*[OAR Docket #09-49]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Required Information

310:9-3-1 [AMENDED]

Subchapter 5. Collection and Release of Information

310:9-5-2.1 [AMENDED]

**SUMMARY:**

This rule change will provide the department more flexibility to remain current with national discharge data collection standards by eliminating the detailed data elements to be submitted and instead providing reference to current national standards and state-issued submission manuals. The second rule change will provide for the addition of facility identifiers to the public use data files.

**AUTHORITY:**

Oklahoma State Board of Health; OS63 §1-118 C.1. The State Board of Health shall adopt rules governing the acquisition, compilation and dissemination of all data collected pursuant to the Oklahoma Health Care Information System Act.

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Kelly Baker, Health Care Information Division; or may before March 12, 2009, submit written comment to Kelly Baker, Health Care Information Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Kelly Baker, Health Care Information Division, Oklahoma State Department of Health, 1000 N.E.

10th Street, Oklahoma City, OK 73117-1299, or by e-mail to kellyb@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Health Care Information Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

Kelly Baker, Health Care Information, (405) 271-6225

*[OAR Docket #09-49; filed 1-9-09]*

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**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 205. ALARM AND LOCKSMITH  
INDUSTRY**

*[OAR Docket #09-50]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. License Requirements

310:205-3-5 [AMENDED]

**SUMMARY:**

The proposed rule would adopt an Enhanced Call Verification method which would require facilities that provide monitoring of Burglar Alarms, Electronic Access Control and Closed Circuit Television to take additional steps to assure that first responders (police, fire departments, rescue and emergency personnel) are actually needed when summoned by one of these systems. The proposed rule is necessary due to the excessive number of false alarms generated by these systems. The proposed language requires that monitoring facilities attempt to verify the validity of an activated signal from an alarm system designed to detect and signal an unauthorized intrusion or entry, before requesting a response from law enforcement. This would be accomplished by first calling the alarm user at the alarm system site. If the alarm user cannot be reached, a designated alternate individual that the alarm user has authorized to cancel a response would be contacted for signals indicating an unauthorized intrusion.

**AUTHORITY:**

Oklahoma State Board of Health, 63 O.S. § 1-104; Alarm and Locksmith Industry Act, 59 O.S., Sections 1800.1 et seq.

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may informally discuss the proposed rules with Protective Health Services staff; or before March 12, 2009, may submit written comments to Matt Schue, Director of Occupational Licensing Division, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma

City, OK 73117-1299; or before March 12, 2009, may send electronic mail to matts@health.ok.gov or may ask to present written or oral views at the hearing.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 NE 10th Street, Oklahoma City, OK 73117-1299.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules.

Business entities may submit this information in writing before March 12, 2009, to Matt Schue, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; or may send electronic mail to matts@health.ok.gov

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Occupational Licensing Division at the above address or by electronic mail request to matts@health.ok.gov

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

Matt Schue, Oklahoma State Department of Health, (405) 271-9444.Ext 57905

*[OAR Docket #09-50; filed 1-9-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 315. PUBLIC BATHING PLACE  
FACILITY STANDARDS**

*[OAR Docket #09-51]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
  - 310:315-1-1 [AMENDED]
  - 310:315-1-2 [AMENDED]
  - 310:315-1-3 [NEW]
- Subchapter 3. Plan Documents
  - 310:315-3-1 [AMENDED]
- Subchapter 7. Construction and Operation
  - 310:315-7-2 [AMENDED]
  - 310:315-7-6 [AMENDED]
  - 310:315-7-9 [AMENDED]
  - 310:315-7-10 [AMENDED]
  - 310:315-7-11 [AMENDED]

- 310:315-7-12 [AMENDED]
- 310:315-7-14 [AMENDED]
- 310:315-7-15 [AMENDED]

**SUMMARY:**

310:315-1-2 The current rule does not define "unblockable drain" and language will be added to define this term. This proposal establishes definition not stated in previous Rule. This proposal adds the language to comply with the requirements described in the Consumer Product Safety Commission, Virginia Graeme-Baker Pool and Spa Safety Act that goes into law on December 19, 2008. The proposed language will specify that swimming pool and spa drain cover devices or systems shall be designed to prevent entrapment or creation of a suction entrapment hazard. This change is necessary because currently pools license by the Department do not meet this requirement to prevent main drain entrapment. The effect of the Rule change could cause a reduction in license issued to operators by the Department if they cannot comply with the Act. 310:315-3-1, 310:315-7-9, 310:315-7-10, 310:315-7-11, 310:315-7-12 and 310:315-7-14 will provide the language necessary to set forth the parameters of equipment that will be allowed to retrofit or install the new safety system(s). The proposed rule change will clarify the required equipment.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Section 1-104 and 59 O.S. Section 1905(A)

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Tressa Madden, Director, Consumer Protection Division; or may before March 12, 2009, submit written comment to Tressa Madden, Director, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

A hearing will be held as part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Tressa Madden, Director, Consumer Protection Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to tressam@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Consumer Protection Division, Oklahoma State

## Notices of Rulemaking Intent

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Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299 or via electronic mail request to tressam@health.ok.gov.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement has been prepared and is available at the location listed above for obtaining copies of the rule.

### **CONTACT PERSON:**

Tressa Madden, Director, Consumer Protection Division, (405) 271-5243

*[OAR Docket #09-51; filed 1-9-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 345. REGISTRATION OF  
SANITARIANS AND ENVIRONMENTAL  
SPECIALISTS**

*[OAR Docket #09-52]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Applications

310:345-3-1 [AMENDED]

Subchapter 7. Revocation and Reinstatement

310:345-7-2 [AMENDED]

### **SUMMARY:**

310:345-3-1(b) The proposed language will amend the rule that limits a certificate of registration for Sanitarians-In-Training or Environmental Specialist-In-Training to a maximum time period of 30 months. Additional language would allow for the reinstatement of a Sanitarian-In-Training or Environmental Specialist-In-Training for just cause shown as determined by the Council. 310:345-7-2 The proposed rule language will clearly outline that a Sanitarian-In-Training or Environmental Specialist-In-Training shall not be eligible for reinstatement except as provided in section 310:345-3-1(b).

### **AUTHORITY:**

Oklahoma State Board of Health, 63 O.S. § 1-104; Sanitarians and Environmental Specialist Registration Act Title 59 O.S., Sections 1150.1 et seq.

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may informally discuss the proposed rules with Protective Health Services staff; or before March 12, 2009, may submit written comments to Matt Schue, Director of Occupational Licensing, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; or before March 12, 2009, may send electronic mail to matts@health.ok.gov or may ask to present written or oral views at the hearing.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009 which begins at 11:00 a.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 NE 10th Street, Oklahoma City, OK 73117-1299.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009, to Matt Schue, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; or may send electronic mail to matts@health.ok.gov

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Occupational Licensing Division at the above address or by electronic mail request to matts@health.ok.gov

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Matt Schue, Oklahoma State Department of Health, (405) 271-9444. Ext 57905

*[OAR Docket #09-52; filed 1-9-09]*

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

*[OAR Docket #09-53]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

310:400-1-3 [AMENDED]

Subchapter 5. Rules of Professional Conduct

310:400-5-3 [AMENDED]

Subchapter 7. Application for Licensure

310:400-7-2 [AMENDED]

310:400-7-2.1 [AMENDED]

Subchapter 9. Licensure Examinations

310:400-9-4 [AMENDED]

310:400-9-7 [REVOKED]

Subchapter 11. Supervised Experience Requirements

310:400-11-3 [AMENDED]

310:400-11-4 [AMENDED]

310:400-11-5 [AMENDED]

Subchapter 13. Fees

310:400-13-2 [AMENDED]

### Subchapter 15. Issuance and Maintenance of License

310:400-15-3 [AMENDED]

310:400-15-4 [AMENDED]

#### **SUMMARY:**

310:400-1-3 The current Rule provides definitions. The proposal provides additional definitions and clarification. The effect of the Rule will provide clarification regarding the definitions for home-study or technology-assisted distance learning, technology-assisted therapy, and on-site supervisor. 310:400-5-3 The current Rule describes professional competence and integrity. The proposed Rule establishes requirements for LMFT's who provide technology-assisted therapy services. The effect of the Rule will increase the ability for citizens in Oklahoma to receive therapy services via technology, especially in rural parts of the state. The proposed Rule also establishes a prohibition for non-licensed individuals to practice privately or independently or open a facility with the intent of providing private or independent therapy practice. The effect of the Rule will ensure that non-licensed individuals are not opening their own therapy practices or practicing independently. 310:400-7-2 The current Rule describes the Evaluation of Supervised Experience document. The proposed Rule changes the documentation of percentages of time spent in counseling activities to the number of supervised hours spent with different population. The effect of the Rule will allow for documentation of hours spent with clients. 310:400-7-2.1 The current rule describes reapplication procedures. The proposed Rule establishes procedures for re-application following permanent expiration of licensure and voided application. The effect of the Rule will clarify the requirements for re-application. The proposed Rule also establishes re-application requirements for approved supervisors whose status has been revoked by administrative action. The effect of the Rule will ensure that approved supervisors have been rehabilitated before supervising licensure candidates. 310:400-9-4 The current Rule requires notification be sent to applicant of test eligibility 60 days before the exam. The proposed Rule requires notification be sent to applicant 60 days after the Department receives the completed application. The effect of the Rule will allow the Department to schedule the exams in a timely fashion. The proposed Rule also establishes a timeline for the Department to schedule the oral examination as well as a timeline for the applicant to pass the oral exam. The effect of the Rule will ensure that LMFT applicants are familiar with the Oklahoma LMFT Act and psychopathology as they begin accruing supervised experience. The proposed Rule also establishes a time limit to pass the national examination before the application is voided and establishes requirements to re-apply for licensure. The effect of the Rule will ensure that licensure applicants complete the examination requirements within the allotted time period. 310:400-9-7 The current language establishes penalties for licensure applicants who fail to apply for the exams. The proposed Rule deletes the current language since it has been added to another section. The effect of the Rule will provide consistency in the rule language. 310:400-11-3 The current

Rule describes supervisor qualifications. The proposed Rule establishes requirements for approved supervisors to meet the therapy supervision continuing education requirement. The proposed Rule also establishes requirements for approved supervisors to place their supervisor status on inactive or retired status and to re-activate their approved status. The proposed Rule also establishes a time limit for re-application of a revoked approved supervisor status. The effect of the Rule provides clarification regarding the continuing education requirements for approved supervisors and provides approved supervisors a mechanism to retire, inactivate, and re-activate their status. 310:400-11-4 The current Rule establishes requirements regarding the duration of supervised experience. The proposed Rule requires the accrual of 250 relational hours as a part of the supervised experience and establishes a four-week time period to complete a designated number of hours. The effect of the Rule will ensure that marital and family licensure candidates are gaining supervised experience with members of a relational system. 310:400-11-5 The current Rule establishes requirements for documentation of supervised experience. The proposed Rule requires the evaluation form to be complete before being accepted by the Department. The effect of the Rule will ensure that all requirements are complete before documentation is submitted for review. 310:400-13-2 The current Rule requires an examination processing fee paid by the applicant if the national examination was taken prior to application in Oklahoma. The proposed Rule eliminates the processing fee. The effect of the Rule will allow the licensure applicant to bypass paying fee since there is no charge to the Department to collect the test scores. 310:400-15-3 The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LMFT to also carry a current verification card on their person anytime therapy services are being provided. The effect of the Rule ensures the current status of licensees when therapy services are being provided. 310:400-15-4 The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home study and technology-assisted distance learning programs.

#### **AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1925.5(A)

#### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Nena West, Director, Professional Counselor Licensing Division; or may before March 12, 2009, submit written comment to Nena West, Director, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

## Notices of Rulemaking Intent

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### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Nena West, Director, Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to [nenaw@health.ok.gov](mailto:nenaw@health.ok.gov).

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Nena West, Director, Professional Counselor Licensing Division, (405) 271-6030

*[OAR Docket #09-53; filed 1-9-09]*

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

*[OAR Docket #09-54]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

310:403-1-2 [AMENDED]

Subchapter 7. Rules of Professional Conduct

310:403-7-2 [AMENDED]

310:403-7-3 [AMENDED]

Subchapter 15. Supervised Experience Requirements

310:403-15-7 [AMENDED]

Subchapter 21. Continuing Education Requirements

310:403-21-1.1[NEW]

310:403-21-3 [AMENDED]

Subchapter 25. License and Specialty Renewal

310:403-25-8 [AMENDED]

Subchapter 27. Licensure by Endorsement

310:403-27-1 [AMENDED]

### **SUMMARY:**

310:403-1-2 The current Rule provides definitions. The proposal provides additional definitions. The effect of the Rule will provide clarification regarding the definitions for face-to-face and home-study or technology-assisted distance learning. 310:403-7-2 The current Rule describes competence. The proposed Rule establishes requirements for LBP's to report knowledge of sexual exploitation of other mental health professionals. The effect of the Rule will ensure that impaired mental health professionals will be reported to the appropriate licensure authority. 310:403-7-3 The current Rule describes client welfare. The proposed Rule establishes a prohibition for non-licensed individuals to practice privately or independently or open a facility with the intent of providing private or independent behavioral health services practice. The effect of the Rule will ensure that non-licensed individuals are not opening their own behavioral health services practice or practicing independently. 310:403-15-7 The current Rule establishes requirements for documentation of supervised experience. The proposed Rule requires the evaluation form to be complete before being accepted by the Department. The effect of the Rule will ensure that all requirements are complete before documentation is submitted for review. 310:403-21-1.1 The new proposed Rule describes the documentation of attendance for continuing education. The effect of the Rule will ensure that LBP's retain proper verification of attendance of continuing education documents in order to renew the license. 310:403-21-3 The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home study and technology-assisted distance learning programs. 310:403-25-8 The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LBP to also carry a current verification card on their person anytime behavioral health services are being provided. The effect of the Rule ensures the current status of licensees when behavioral health services are being provided. 310:403-27-1 The current Rule establishes requirements for licensure by endorsement. The proposed Rule establishes additional requirements for full endorsement and clarifies the requirements for licensure by endorsement and establishes a time limit to meet the current licensure requirements in order to gain full endorsement. The effect of the Rule will ensure LBP's licensed by endorsement will be afforded the opportunity to practice behavioral health services in Oklahoma while completing the current licensure requirements.

### **AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1934(A)

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Nena

West, Director, Professional Counselor Licensing Division; or may before March 12, 2009, submit written comment to Nena West, Director, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Nena West, Director, Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to nenaw@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

Nena West, Director, Professional Counselor Licensing Division, (405) 271-6030

*[OAR Docket #09-54; filed 1-9-09]*

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

*[OAR Docket #09-55]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking  
**PROPOSED RULES:**

- Subchapter 1. General Provisions
- 310:405-1-2.1 [AMENDED]
- Subchapter 3. Rules of Professional Conduct
- 310:405-3-2 [AMENDED]
- 310:405-3-3 [AMENDED]
- 310:405-3-6 [AMENDED]
- Subchapter 7. Application Procedures
- 310:405-7-8.1 [NEW]
- Subchapter 11. Supervised Experience Requirement

- 310:405-11-2 [AMENDED]
- 310:405-11-4 [AMENDED]
- Subchapter 13. Fees
- 310:405-13-2 [AMENDED]
- Subchapter 15. Licensure Examinations
- 310:405-15-2 [AMENDED]
- Subchapter 17. Continuing Education Requirements
- 310:405-17-2 [AMENDED]
- 310:405-17-3 [AMENDED]
- 310:405-17-4.1 [AMENDED]
- Subchapter 21. License and Specialty Renewal
- 310:405-21-6 [AMENDED]
- Subchapter 27. Licensure by Endorsement
- 310:405-27-3 [AMENDED]

**SUMMARY:**

310:405-1-2.1 The current Rule provides definitions. The proposal provides additional definitions. The effect of the Rule will provide clarification regarding the definitions for face-to-face, approved supervisor, on-site supervisor, home-study or technology-assisted distance learning, and technology-assisted counseling. 310:405-3-2 The current Rule describes competence. The proposed Rule establishes requirements for LPC's who provide technology-assisted counseling services. The effect of the Rule will increase the ability for citizens in Oklahoma to receive counseling services via technology, especially in rural parts of the state. The proposed Rule establishes requirements for LPC's to report knowledge of impairment or knowledge of sexual exploitation of other mental health professionals. The effect of the Rule will ensure that impaired mental health professionals will be reported to the appropriate licensure authority. 310:405-3-3 The current Rule describes requirements for maintaining records. The proposal expands the requirements to include maintaining accurate and truthful records. The effect of the Rule will ensure that LPC's and licensure candidates keep correct and honest records. 310:405-3-6 The current Rule describes an LPC who is non-compliant with the Rules of Professional Conduct will be found guilty of unprofessional conduct prior to disciplinary action. The proposal establishes a requirement indicating that an LPC who is non-compliant with the Rules of Professional Conduct will be subject to disciplinary action. The effect of the Rule will allow LPC's due process in the event of alleged unprofessional conduct. 310:405-7-8.1 The new proposed Rule establishes re-application requirements for approved supervisors whose status has been revoked by administrative action. The effect of the Rule will ensure that approved supervisors have been rehabilitated before they begin to supervise licensure candidates. 310:405-11-2 The current Rule has a misspelled word that prevents enforcement of the Rule regarding responsibility of supervisors and supervisees. The proposal replaces the word with "shall." The effect of the Rule allows for enforcement. 310:405-11-4 The current Rule allows an LPC licensed by endorsement to become an approved supervisor after one year of licensure in Oklahoma. The proposed Rule requires an LPC licensed by endorsement

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to be licensed in Oklahoma for two years before being eligible to become an approved supervisor. The effect of the Rule will ensure that LPC's licensed by endorsement will have adequate time to learn the Oklahoma LPC Act and Regulations prior to eligibility to become an approved supervisor. The proposed Rule also establishes requirements for approved supervisors to meet the counseling supervision continuing education requirement. The proposed Rule also establishes requirements for approved supervisors to place their supervisor status on inactive or retired status and to re-activate their approved status. The proposed Rule also establishes a time limit for re-application of a revoked approved supervisor status. The effect of the Rule provides approved supervisors a mechanism to retire, inactivate, or reactivate their status. 310:405-13-2 The current Rule requires an examination processing fee if the national examination was taken prior to application in Oklahoma. The proposed Rule eliminates the processing fee. The effect of the Rule will allow the licensure applicant to bypass paying the fee since there is no charge to the Department to collect the test scores. 310:405-15-2 The current Rule lists the name of the licensure examination incorrectly. The proposed Rule correctly identifies the licensure examination. The effect of the Rule will provide consistency regarding the name of the exam. 310:405-17-2 The current Rule describes the ethics requirement for continuing education. The proposed Rule clarifies that counseling ethics must be the sole focus of the program in order for it to meet the continuing education requirements. The effect of the Rule will ensure that LPC's are completing the ethics continuing education requirement through programs that are teaching counseling ethics as they pertain to the counseling profession. 310:405-17-3 The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home study and technology-assisted distance learning programs. 310:405-17-4.1 The current Rule allows for acceptable continuing education from distance learning courses. The proposed Rule clarifies distance learning courses to include home study and technology-assisted courses. The effect of the Rule will allow LPC's to accrue continuing education hours by the most current medium. 310:405-21-6 The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LPC to also carry a current verification card on their person anytime counseling services are being provided. The effect of the Rule ensures the current status of licensees when counseling services are being provided. 310:405-27-3 The current Rule establishes requirements for licensure by endorsement. The proposed Rule establishes additional requirements for full endorsement and clarifies the requirements for licensure by endorsement and establishes a time limit to meet the current licensure requirements in order to gain full endorsement. The effect of the Rule will ensure LPC's

licensed by endorsement will be afforded the opportunity to practice counseling in Oklahoma while completing the current licensure requirements.

### **AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1905(A)

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Nena West, Director, Professional Counselor Licensing Division; or may before March 12, 2009, submit written comment to Nena West, Director, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Nena West, Director, Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to nenaw@health.ok.gov.

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Professional Counselor Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Nena West, Director, Professional Counselor Licensing Division, (405) 271-6030

*[OAR Docket #09-55; filed 1-9-09]*

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

*[OAR Docket #09-56]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking intent

**RULES:**

- Subchapter 1. General Provisions
  - 310:531-1-1 [AMENDED]
  - 310:531-1-3 [AMENDED]
- Subchapter 3. Advisory Committee
  - 310:531-3-1 [AMENDED]
- Subchapter 5. Vision Screening Standards for Children
  - 310:531-5-1 [AMENDED]
  - 310:531-5-2 [AMENDED]
  - 310:531-5-3 [AMENDED]
  - 310:531-5-4 [NEW]
  - 310:531-5-5 [NEW]
- Subchapter 7. Registry Enforcement for Vision Screening Providers [NEW]
  - 310:531-7-1 [NEW]
  - 310:531-7-2 [NEW]
  - 310:531-7-3 [NEW]
  - 310:531-7-4 [NEW]
  - 310:531-7-5 [NEW]
  - 310:531-7-6 [NEW]

**SUMMARY:**

This proposal amends the existing rule. The proposed amendments to the rule will clarify definitions, disciplinary process, appeals and registry enforcement for vision screening providers.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. 2002, Sections 1-533 et. seq.

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Suzanna Dooley, MS, ARNP Chief, Maternal and Child Health Service; or may before March 12, 2009, submit written comment to Suzanna Dooley, MS, ARNP Chief, Maternal and Child Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Suzanna Dooley, MS, ARNP Chief, Maternal and Child Health Service, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to [suzannad@health.ok.gov](mailto:suzannad@health.ok.gov).

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of Maternal and Child Health Service, Family Health Services, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

Suzanna Dooley, MS, ARNP Chief, Maternal and Child Health Service, (405) 271-4480

*[OAR Docket #09-56; filed 1-9-09]*

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

*[OAR Docket #09-57]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 3. Adult Immunizations
  - 310:535-3-2 [AMENDED]

**SUMMARY:**

This rule change allows for an increase in the administration fee charged for vaccination of adults in county health department facilities. The administration fee will be used to help cover the costs of immunizing adults including: initial cost of vaccine purchase; nursing and clerical staff time for ordering, monitoring, and tracking vaccine inventory; costs for purchasing and maintaining refrigerators, freezers, temperature monitoring devices, and generators to provide continual electrical supply in emergency situations; nursing staff time to counsel vaccinees and administer vaccines; medical supply costs (e.g., syringes, needles, alcohol swabs, band-aids, vaccine information sheets, and needle disposal equipment; clerical staff time record-keeping, cost of vaccine wastage of at least 5% of the cost of vaccines due to patients reconsidering, loss due to leakage, dropped vials, and temperature variation.

**AUTHORITY:**

Oklahoma State Board of Health; 70 O.S. §§ 1210.191 et seq., 63 O.S. § 1-106.1

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Susan Mendus, Immunization Service, Director of Education and Training; or may before March 12, 2009, submit written comment to Susan Mendus, Director of Education and Training, Immunization Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK

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73117-1299; or may at the hearing ask to present written or oral views.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Susan Mendus, Immunization Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to Susanm@health.ok.gov.

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Immunization Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Susan Mendus, Immunization Service, (405) 271-4073

*[OAR Docket #09-57; filed 1-9-09]*

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### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 546. FEE SCHEDULE FOR PUBLIC HEALTH LABORATORY SERVICE**

*[OAR Docket #09-58]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

310:546-1-2 [AMENDED]

### **SUMMARY:**

These rules are being amended to reflect changes to the fee schedule.

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S., § 1-106.1

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Garry L. McKee, Ph.D., Chief, Public Health Laboratory; or may before March 12, 2009, submit written comment to Garry L. McKee, Ph.D., Oklahoma State Department of Health, 1000

N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Dr. Garry L. McKee, Chief, Public Health Laboratory, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to GarryM@health.ok.gov.

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Public Health Laboratory, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

Garry L. McKee, Ph.D., Chief, Public Health Laboratory (405) 271-5070

*[OAR Docket #09-58; filed 1-9-09]*

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

*[OAR Docket #09-59]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions [NEW]

310:551-1-1 [NEW]

310:551-1-2 [NEW]

Subchapter 2. Research on Human Tissue Regeneration and Human Diseases [NEW]

310.551-2-1 [NEW]

Subchapter 3. Reporting of Stem Cell Research [NEW]

310:551-3-1 [NEW]

### **SUMMARY:**

This proposal establishes a reporting system to the Oklahoma State Department of Health as defined by House

Bill 3126 "The Advancement in Stem Cell Cures and Therapies Act".

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Sections 1-105 and 1-2710 et seq.

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with John Corpolongo, MS, Screening, Special Services, and Soonerstart; or may before March 12, 2009, submit written comment to John Corpolongo, MS, Chief, Screening, Special Services, and Soonerstart, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to John Corpolongo, MS, Screening, Special Services, and Soonerstart, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by e-mail to John@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of Screening, Special Services, and Soonerstart, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

John Corpolongo, MS, Chief, Screening, Special Services, and Soonerstart, (405) 271-6617

*[OAR Docket #09-59; filed 1-9-09]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE**

*[OAR Docket #09-60]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
  - 310:661-1-2 [AMENDED]
- Subchapter 2. Licenses
  - 310:661-2-1 [AMENDED]
  - 310:661-2-4 [AMENDED]
- Subchapter 3. Administration
  - 310:661-3-2 [AMENDED]
  - 310:661-3-3.1 [NEW]
- Subchapter 5. Minimum Standards
  - 310:661-5-1.1 [NEW]
  - 310:661-5-1.2 [NEW]
  - 310:661-5-1.3 [NEW]
  - 310:661-5-2 [AMENDED]
  - 310:661-5-2.1 [NEW]
  - 310:661-5-2.2 [NEW]
  - 310:661-5-2.3 [NEW]
  - 310:661-5-2.4 [NEW]
  - 310:661-5-3.1 [NEW]
  - 310:661-5-4.1 [NEW]
  - 310:661-5-6 [NEW]
  - 310:661-5-7 [NEW]
  - 310:661-5-8 [NEW]
  - 310:661-5-9 [NEW]
- Subchapter 6. Hospice Inpatient Service Requirements
  - 310:661-6-7 [AMENDED]

**SUMMARY:**

The proposed amendments to Subchapter 1 add certain definitions in order to clarify and provide standard meanings for terms used in proposed new language contained in subsequent sections of this rule; new terms include "Alternate administrative office", "Bereavement counseling", "Clinical note", "Comprehensive assessment", "Dietary counseling", "Employee", "Initial assessment", "Palliative care", and "Physician designee". Conforming changes have been made throughout the rule and obsolete language has been removed.

The existing rule language of Chapter 2 describes the licensure application and issuance process and establishes the fee structure. The amendments to Subchapter 2 add a new fee requirement of \$500.00 for each alternate administrative office requested as part of a licensed hospice. This new fee will help defray the Department's expenses associated with providing oversight for these additional licensed hospice locations.

The current rule language contained in Subchapter 3 explains the required elements for the administration and business practices of a licensed hospice. The proposed amendments add new language to give a more complete description of some of these required elements, removes obsolete and potentially contradictory language, and better defines certain practices such as those associated with the required initial certification of a terminal illness and training of personnel. Amendments to this Subchapter also add a new section of rule that specifies the content of clinical records, describes how these records are protected, transferred, and retrieved, as well as how entries are authenticated.

## Notices of Rulemaking Intent

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Existing rule language in Subchapter 5 sets forth "minimum standards" for the operation and clinical care practices of a licensed hospice. The proposed language provides for a significant expansion of existing requirements for quality assurance/performance improvement functions, patient rights and responsibilities, and as well as the implementation of new concepts and standards including initial and comprehensive assessments, interdisciplinary groups and care planning, core services, infection control, supervision of hospice aides, and rules concerning drugs and biologicals.

These changes are necessary in order to align state licensure rules with the new Conditions of Participation for hospice providers issued by the Centers for Medicare & Medicaid Services (CMS) that became effective on December 2, 2008. By aligning the state licensure rules with the CMS Conditions of Participation, hospice providers in Oklahoma will not be subject to disparate and potentially conflicting standards issued by two separate regulatory bodies allowing them to operate in a more effective and efficient manner while providing high quality hospice services to their patients.

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Section 1-104 and Section 1-860.1 et seq.

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Tom Welin, Chief, Medical Facilities Service; or may before March 12, 2009, submit written comment to Tom Welin, Chief, Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

### **PUBLIC HEARING:**

A hearing will be held as part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 Northeast 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Tom Welin, Chief, Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299, or by electronic mail to tomw@health.ok.gov.

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 or via electronic mail request to medicalfacilities@health.ok.gov or tomw@health.ok.gov.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available at the location listed above for obtaining copies of the rule.

### **CONTACT PERSON:**

Tom Welin, Chief, Medical Facilities Service, Telephone: (405) 271-6576, electronic mail: tomw@health.ok.gov

*[OAR Docket #09-60; filed 1-9-09]*

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

*[OAR Docket #09-61]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 5. Compliance with Federal, State, and Local Laws

310:667-5-4 [AMENDED]

Subchapter 59. Classification of Hospital Emergency Services

310:667-59-1 [AMENDED]

310:667-59-3 [AMENDED]

310:667-59-5 [AMENDED]

310:667-59-20 [NEW]

### **SUMMARY:**

310:667-5-4 The current rule outlines the requirements licensed hospitals must meet related to "Employee and/or worker health examinations" in order to establish a environment that will help protect hospital patients and staff from the risks associated with some common vaccine preventable diseases and tuberculosis. This proposal adds a requirement that hospitals implement an annual influenza vaccination program and offer influenza vaccine to all hospital workers onsite at no cost to the worker when seasonally appropriate. Hospitals would also be required to obtain a signed declination statement from each employee who does not have a medical contraindication yet chooses to decline the influenza vaccine. This rule is necessary to help protect vulnerable patients and hospital staff from being exposed to the influenza virus during influenza season and will help to improve health care worker influenza vaccination rates.

310:667-59 Additional amendments to OAC 310:667 create a new section of rule within SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES to establish classification standards for "Primary Stroke Center" and "Secondary Stroke Facility." These standards are intended to stratify hospitals into those hospitals capable of administering an intravenous thrombolytic agent within three hours of the onset of ischemic stroke symptoms and those hospitals that are not able to provide this therapeutic intervention for stroke.

The rules allow OSDH to recognize verification as a Primary Stroke Center by The Joint Commission for the purposes of state classification. The proposed rule requires a Primary Stroke Center to provide an organized emergency department with a physician on call and immediately available; an identified stroke team with documented response time criteria; standard practice protocols specifying the appropriate administration of an FDA-approved thrombolytic agent within sixty minutes of the arrival of the patient at the emergency department; the availability of computerized tomography diagnostic imaging services and certain laboratory services twenty-four hours a day; as well as the availability of certain supplies and equipment.

These proposed amendments are the first steps in creating an organized system of stroke care in Oklahoma and will help ensure that those patients whose onset of ischemic stroke symptoms is recognized immediately are directed to a hospital willing and able to provide peripheral thrombolytic therapy in order to provide the patient with the greatest chance of achieving a positive outcome.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Section 1-104, 1-270, 1-705, and 1-707.

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may discuss informally the proposed rules with Tom Welin, Chief, Medical Facilities Service; or may before March 12, 2009, submit written comment to Tom Welin, Chief, Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; or may at the hearing ask to present written or oral views.

**PUBLIC HEARING:**

A hearing will be held as part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the Oklahoma State Department of Health Building, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009 to Tom Welin, Chief, Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299, or by electronic mail to tomw@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Medical Facilities Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 or via electronic mail request to medicalfacilities@health.ok.gov or tomw@health.ok.gov.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available at the location listed above for obtaining copies of the rule.

**CONTACT PERSON:**

Tom Welin, Chief, Medical Facilities Service, Telephone: (405) 271-6576, electronic mail: tomw@health.ok.gov

[OAR Docket #09-61; filed 1-9-09]

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

[OAR Docket #09-62]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 3. Licenses
  - 310:675-3-1.1 [AMENDED]
  - 310:675-3-5 [AMENDED]
  - 310:675-3-5.1 [AMENDED]
  - 310:675-3-8 [AMENDED]
- Subchapter 7. Administration
  - 310:675-7-4 [AMENDED]
  - 310:675-7-12.1 [AMENDED]
  - 310:675-7-20 [AMENDED]
- Subchapter 11. Intermediate Care Facilities for the Mentally Retarded (16 beds and less (ICF/MR-16)
  - 310:675-11-1 [AMENDED]
  - 310:675-11-5 [AMENDED]
  - 310:675-11-8 [AMENDED]
  - 310:675-11-9 [AMENDED]
- Subchapter 13. Staff Requirements
  - 310:675-13-8 [AMENDED]
  - 310:675-13-9 [AMENDED]
- Subchapter 19. Feeding Assistants
  - 310:675-19-6 [AMENDED]

**SUMMARY:**

The proposed rule changes address Department course approval requirements, ownership disclosure requirements; removal or reduction of duplicative facility programmatic regulations, and reductions in the application review burden of the Department.

Language regarding filing a certification of tax compliance with initial and renewal applications at 310:675-3-1.1(g) and (h) is stricken to eliminate a conflict with the supporting statute, 63 O.S. § 1-1930.1, which requires notification of certain tax events within twenty-four hours of their occurrence. A scrivener's error is addressed at 310:675-3-5.

Amendments are proposed to OAC 310:675-5.1 pertaining to ownership disclosure when applying for initial and renewal licenses. Added detail is provided on who is to be disclosed

## Notices of Rulemaking Intent

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in the Disclosure Statement and Detail Attachment and limits the disclosure to those with a five percent (5%) or greater ownership interest. Industry representatives petitioned the Department for this change to address disclosures where there are multiple and diluted ownership interests. Rule language in this section pertaining to the Department's use of the form, Certification of Tax Liens and Timely Payment of Taxes, and notification of changes in such filings are removed from the rule to eliminate a conflict with the statute at , 63 O.S. § 1-1930.1. This change reduces the filing burden on the industry.

Language at 310:675-3-8(a)(6) is struck regarding filing a notice of change to the certification of tax compliance. As noted above, striking the certification requirement is proposed to correct a conflict with statute and a desire to reduce the filing burden.

Section 310:675-7-4, Involuntary transfer or discharge, the current rule provides for the procedure and terms of involuntary transfer or discharge by the facility. This proposal establishes timing of the notice made by the facility before the transfer or discharge of the resident and clarifies the timing of notice procedures. This change is necessary because state law does not distinguish that the current requirement is only applicable to state licensed facilities. The effect of the rule change will be consistent language in both state law and the Code of Federal Regulations. The proposal provides residents with ample time to identify alternative accommodations.

Section 310:675-7-12.1, Incident reports, addresses who is responsible for preparing and signing an incident report. The proposed rule change clarifies who may sign and the allowable form of signature. This change is necessary to expedite electronic filing of incident reports.

Amendments at 310:675-7-20 are in response to a change in statute in 2003 which removed language specifying the method to determine the financial resources to operate a facility. The references in rule to this methodology are removed.

Subchapter 11, Intermediate care facilities for the mentally retarded (16 beds and less (ICF/MR-16)), contains the rules specific to the sixteen (16) bed or less ICF/MR facility. The rule change updates 310:675-11-1 to include the Chapter definitions that were excluded in error. This change is necessary to provide definitions to terms used in Subchapter 11. The proposed change at 310:675-11-5, Physical plant, updates the reference to the Food Service Establishment Regulations from Chapter 255 to Chapter 257. The proposed change at 310:675-11-8, Administration, corrects a scrivener's error that referred to Subchapter 11 instead of Subchapter 7, the subchapter providing the applicable rules for the administration of facilities. The rule at 310:675-11-9, Resident care services, identifies the language in Subchapter 9, Resident Care Services, as applicable to the 16-bed or less ICF/MR. The reference is updated to reflect changes to the applicable section numbers in Subchapter 9 and the addition of section 310:675-9-31, Influenza and pneumococcal vaccinations, to Subchapter 9. As currently written, the rule reference is not inclusive to this section on influenza and pneumococcal

vaccinations. The rules on these vaccinations are intended for residents in all nursing and specialized facilities regardless of size.

The changes to subchapter 13 address an industry request to specify criteria for Department approval of courses qualifying Activity and Social Services Directors at OAC 310:675-13(8) and (9). The current rule provides that activities and social services directors shall be qualified by, among others, successful completion of a Department approved training course. The current rule does not provide criteria for Department approval of a training course. This request is based in part on the desire of the industry to ensure training programs met certain minimum requirements. The Long Term Care Advisory Board created an ad-hoc committee to assist the Department in developing criteria, for adoption in rule, for the approval of training courses to qualify Activities and Social Services Directors for employment in Nursing Homes. The proposed rules address the application, course, and certificate content; entities eligible to provide training; restrictions on advertisement; instructor requirements; course length; renewal requirements; and a fee.

Section 310:675-19-6 sets forth the requirement for feeding assistants to register with the Department prior to providing services and to renew their registration every twenty-four (24) months. The proposed rule would create a fee of ten dollars (\$10) for the initial and renewal registration. The fee increases are requested to cover a greater portion of program operating costs while the Department simultaneously looks to greater efficiencies in operations to reduce costs.

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104; and Title 63 O.S. §§ 1-1901 et seq.

### **COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may informally discuss the proposed rules with staff. Before March 12, 2009, interested persons may submit written comments to James Joslin, Chief, Health Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, or before March 12, 2009, may send electronic mail to james@health.ok.gov, or may ask to present written or oral views at the hearing.

### **PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing before March 12, 2009, to James Joslin, Chief, Health

Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, or by electronic mail to james@health.ok.gov.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Health Resources Development Service, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, or by electronic mail request to james@health.ok.gov.

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

James Joslin, Chief, Health Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 405-271-6868

*[OAR Docket #09-62; filed 1-9-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 677. NURSE AIDE TRAINING  
AND CERTIFICATION**

*[OAR Docket #09-63]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
  - 310:677-1-3 [AMENDED]
  - 310:677-1-6 [AMENDED]
- Subchapter 3. Nurse Aide Training and Competency Examination Program
  - 310:677-3-2 [AMENDED]
- Subchapter 5. Nurse Aide Registry
  - 310:677-5-2 [AMENDED]
- Subchapter 7. Hearings
  - 310:677-7-5 [NEW]
- Subchapter 11. Long Term Care Aides
  - 310:677-11-4 [AMENDED]
- Subchapter 13. Certified Medication Aides
  - 310:677-13-8 [AMENDED]
  - 310:677-13-12 [AMENDED]

**SUMMARY:**

310:677-1-3, 310:677-5-2, and 310:677-13-8 - The current rules provide fees for certain initial and renewal certifications for Home Health, Residential Care, Adult Day Care, Developmentally Disabled, and Medication aides. The proposed rule amendments would increase those fees. 310:677-1-6, 310:677-3-2 and 310:677-13-12 - The current rules set fees and processes for the processing of facility nurse aide temporary emergency waiver (NATEW) applications, applications to approve training and competency evaluation programs and certified medication aide continuing education

programs. The proposed rule amendments increase fees for the processing of these applications for the certifications cited.

The fee increases are requested to cover a greater portion of program operating costs while the Department simultaneously looks to greater efficiencies in operations to reduce costs. These rule amendments correct scrivener's errors in numbering beginning at 310:677-1-3(i).

310:677-7-5, Petition for removal of finding of neglect, this new section of rule implements requirements in federal statute at 42 USC 1396r(g)(1)(D) which requires the State to establish a procedure to permit a nurse aide to petition the State to have the finding of neglect removed from a nurse aide's registry record. The nurse aide may not petition to remove the finding until at least one (1) year has passed from the order issuing the notation of neglect and must show the incident does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a singular occurrence.

310:677-11-4, This rule section provides the curriculum requirements to be addressed in the long term care aide training program. The proposed change removes some existing language and creates a reference to language in the Code of Federal Regulations at 42 CFR 483.152(b)(2) through (7). The amendment replicates the specific requirements in the Code of Federal Regulations at 42 CFR 483.152(b) and are necessary to ensure the state training program rules fully implement the federal statute and rule as required in federal statute at 42 U.S.C. 1396r(e)(1)(B) and rule at 42 CFR 483.152(a)(2). The rule is amended to add the statutory requirement at 63 O.S. 1-1951(A)(3) that training programs include a minimum of ten (10) hours of training in the care of Alzheimer's patients.

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. §§ 1-104 and 106.1; and 63 O.S. §§ 1-1950.1 through 1-1950.9, and Section 1-1951

**COMMENT PERIOD:**

February 2, 2009 through March 12, 2009. Interested persons may informally discuss the proposed rules with staff. Before March 12, 2009, interested persons may submit written comments to James Joslin, Chief, Health Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, or before March 12, 2009, may send electronic mail to james@health.ok.gov, or may ask to present written or oral views at the hearing.

**PUBLIC HEARING:**

Part of the regular meeting of the State Board of Health, March 12, 2009, which begins at 11:00 a.m. in Room 307 of the State Health Department Building, 1000 N.E. 10th Street, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed

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rules. Business entities may submit this information in writing before March 12, 2009, to James Joslin, Chief, Health Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, or by electronic mail to james@health.ok.gov.

### COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from staff of the Health Resources Development Service, 1000 N.E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299, or by electronic mail request to james@health.ok.gov.

### RULE IMPACT STATEMENT:

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

### CONTACT PERSON:

James Joslin, Chief, Health Resources Development Service, Protective Health Services, Oklahoma State Department of Health, 405-271-6868

*[OAR Docket #09-63; filed 1-9-09]*

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## TITLE 380. DEPARTMENT OF LABOR CHAPTER 70. ELEVATOR SAFETY ACT

*[OAR Docket #09-41]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Subchapter 1. General Provisions

380:70-1-2 [AMENDED]

Subchapter 3. Administration

380:70-3-4 [AMENDED]

Subchapter 5. Licenses

380:70-5-1 [AMENDED]

380:70-5-3 [AMENDED]

### SUMMARY:

A limited elevator contractor license is created in OAC 380:70-5-1 to allow facilities which had an elevator maintenance program prior to November 1, 2006 utilizing trained elevator mechanics employed by the facility to continue to perform minor repairs to the facility's elevators.

OAC 380:70-5-3 is amended to implement the provisions of SB 1529 which amended 59 O.S. §3023 to allow for inspections by licensed third party inspectors. The proposed rules increase the required experience to two years and require a training session and exam before an elevator inspector license will be issued. The rules also address possible conflicts of interest by prohibiting an elevator inspector from also holding an elevator contractor or mechanic license. The provision

prohibiting elevator inspectors from having any financial interest in a business or operation which manufactures, installs, repairs, modifies or services elevators, escalators, or other such conveyances is clarified by adding that no inspector may be employed by or under contract to these parties.

The purpose of the proposed amendment to OAC 380:70-1-2 is to establish additional definitions. The amendment to OAC 380:70-3-4 is to clarify that OAC 380:70 will control when in conflict with adopted standards.

### AUTHORITY:

Department of Labor; 59 O.S. §§ 3023 and 3024, Elevator Safety Act

### COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by 5:00 p.m., March 4, 2009, at the Oklahoma Department of Labor, Office of the General Counsel, 4001 North Lincoln Boulevard, Oklahoma City, OK 73105.

### PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules: 10:00 a.m., March 4, 2009, at the Concourse Theater, Tunnel Level, Will Rogers Building, Oklahoma State Capital Complex, 2401 North Lincoln Boulevard, Oklahoma City, OK 73105.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by 5:00 p.m., March 4, 2009, at the Oklahoma Department of Labor, Office of the General Counsel, 4001 North Lincoln Boulevard, Oklahoma City, OK 73105.

### COPIES OF PROPOSED RULES:

Copies of proposed rules are available at the Oklahoma Department of Labor, 4001 North Lincoln Boulevard, Oklahoma City, OK.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning February 16, 2009 at the same locations listed above for reviewing and obtaining copies of the proposed rules.

### CONTACT PERSON:

Tiffany J. Wythe, Assistant General Counsel, (405) 528-1500 ext. 231 or Tom Monroe, Safety Standards Director, (405) 528-1500 ext. 242.

*[OAR Docket #09-41; filed 1-9-09]*

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**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 1. AGENCY AUTHORITY AND OBJECTIVES**

[OAR Docket #09-97]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

390:1-1-4 [AMENDED]

390:1-1-12 [NEW]

**SUMMARY:**

Amended rules would correct statutory references as a result of legislative changes and implement a formula based fee for event and course fees permitted by statute.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311(L)(2); 70 O.S., Section 3311(M)(2); and 70 O.S., Section 3311(B)(13).

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

[OAR Docket #09-97; filed 1-9-09]

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

[OAR Docket #09-98]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

390:10-1-6 [AMENDED]

**SUMMARY:**

The process for an officer seeking Oklahoma Peace Officer Certification, who has been certified as a peace officer in another state or as a federal peace officer, will be amended to require all applicants to attend the legal block of instruction, modify testing requirements, and allow the Director to exercise discretion to award a certification, if in the opinion of the Director, the requirements for certification equal or exceed the qualifications required in Oklahoma.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O. S., Section 3311(B)(2); 70 O.S., Section 3311(E)(4); and 70 O.S., Section 3311 et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

## Notices of Rulemaking Intent

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**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-98; filed 1-9-09]*

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

*[OAR Docket #09-99]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 1. Basic Academy Programs  
390:15-1-19 [AMENDED]

**SUMMARY:**

Amendments are non-substantial and are required to correct statutory references in the rules as a result of legislative changes that resulted in re-numbering of the statute.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., Section 3311.5(H)(I) and 70 O.S., Section 3311, et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-99; filed 1-9-09]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 25. CONTINUING LAW  
ENFORCEMENT EDUCATION**

*[OAR Docket #09-100]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

390:25-1-8 [AMENDED]  
390:25-1-11 [AMENDED]  
390:25-1-13 [AMENDED]

**SUMMARY:**

Language will be amended to require verification by the agency head of training records submitted to CLEET for data entry into the centralized peace officer training records and allow the Director to grant a waiver for comparable training for specialized instructor certification. New language would establish requirements for instructor certification for non-law enforcement personnel. At this time specialized instructor certification is only recognized upon successful completion of a CLEET recognized instructor school, this change would consider comparable training for specialized instructor certificates. The change to provide an avenue to recognize CLEET instructor certification for non-law enforcement personnel would allow civilian staff to conduct training for CLEET recognition.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., Section 3311 (B)(2) and 70 O.S., Section 3311, et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance

with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-100; filed 1-9-09]*

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 30. CDS DETECTOR DOG CERTIFICATION**

*[OAR Docket #09-101]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- 390:30-1-5 [AMENDED]
- 390:30-1-6 [AMENDED]

**SUMMARY:**

Amendments would clarify that CLEET or OBNDD will conduct certification trials for CDS Detector Dog certification, it would remove the requirement to publish dates and locations for certification trials annually, clarify the passing score, and specify that CLEET relies upon the test reports of OBNDD or their designee conducting tests. Amendments would allow CLEET to schedule dates for certification trials upon demand to better meet the needs of our clients and clarify how test information is evaluated by CLEET.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., Section 3311 (B)(9) and 70 O.S., Section 3311, et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-101; filed 1-9-09]*

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

*[OAR Docket #09-102]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 5. License Requirements
- 390:35-5-1 [AMENDED]
- 390:35-5-2 [AMENDED]
- 390:35-5-13 [AMENDED]

**SUMMARY:**

Amendments would clarify that notices of address or telephone changes will not be accepted over the phone by agencies or individuals, change a statutory reference, and establish a time frame for accepting college credit hours towards mandated training required for license renewal.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 59 O.S., Section 1750.3(B)(4); 59 O.S., Section 1750.1 et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

## Notices of Rulemaking Intent

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### **PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at [www.ok.gov/cleet](http://www.ok.gov/cleet).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

### **CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-102; filed 1-9-09]*

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

*[OAR Docket #09-103]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

390:50-1-3 [AMENDED]

### **SUMMARY:**

Currently CLEET is allowed to make rounding adjustments to correct errors in amounts on court reports up to \$ .25 per error. Calculation errors occur in reports from the courts for Penalty Assessment Fees due to the different methods of rounding used by the various court reporting systems. This amendment would increase the amount from \$ 0.25 to \$ 1.00 to be adjusted off as rounding errors because the costs for labor, postage and envelope to notify the court of an error and the court cost to respond exceed \$ 1.00. Based on the current rounding adjustments, increasing the allowed rounding adjustments to \$ 1.00 should have a negligible effect

on collections as both positive and negative errors occur and they should offset each other over time.

### **AUTHORITY:**

Council on Law Enforcement Education and Training; 20 O.S., Section 1313.2

### **COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to [rules@cleet.state.ok.us](mailto:rules@cleet.state.ok.us).

### **PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at [www.ok.gov/cleet](http://www.ok.gov/cleet).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

### **CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-103; filed 1-9-09]*

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### **TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 55. FACILITIES MANAGEMENT**

*[OAR Docket #09-104]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

390:55-1-15 [AMENDED]

### **SUMMARY:**

This amendment would clarify the liability agreement for sponsors entering into agreements to use the facilities at the K.O. Rayburn Training Center in Ada, Oklahoma.

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S. 3311(B)(13) and 70 O.S. 3311 et seq.

**COMMENT PERIOD:**

Persons wishing to make written or oral comments may do so by 4:00 p.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, Attn: Janet Ingram, or by e-mail to rules@cleet.state.ok.us.

**PUBLIC HEARING:**

Public hearings will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door. The public hearing will be held at 10:00 a.m. on March 10, 2009, at CLEET, 2401 Egypt Road, Ada, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

CLEET requests that business entities affected by these proposed rule changes provide CLEET, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as labor, reporting, professional services or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Janet Ingram, at the above address, before the close of the comment period on March 10, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by contacting Janet Ingram at CLEET, 2401 Egypt Road, Ada, Oklahoma 74820-0669, (405) 239-5158, or from the CLEET web site at www.ok.gov/cleet.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be issued and made available on February 3, 2009, at the CLEET offices and web address listed above.

**CONTACT PERSON:**

Janet Ingram, Business Manager, (405) 239-5158.

*[OAR Docket #09-104; filed 1-9-09]*

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION  
CHAPTER 10. PHYSICIANS AND SURGEONS**

*[OAR Docket #09-45]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 7. Regulation of Physician and Surgeon Practice  
435:10-7-2. Use of Board certification [AMENDED]

**SUMMARY:**

The proposed rule amendments set out which allopathic physicians may claim to be "Board Certified" or "Certified by" or a "Diplomat" or "Fellow"

**AUTHORITY:**

TITLE 59 O.S., Section 489, State Board of Medical Licensure and Supervision

**COMMENT PERIOD:**

The comment period will run from February 2, 2009 to March 4, 2009. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 6, 2009, 9:00 a.m. at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 2, 2009.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and available on and after February 17, 2009 at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma 73118.

**CONTACT PERSON:**

Kathy Plant (405) 848-6841, ext. 122

*[OAR Docket #09-45; filed 1-9-09]*

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION  
CHAPTER 55. LICENSED ORTHOTISTS AND PROSTHETISTS AND REGISTERED TECHNICIANS AND ASSISTANTS**

*[OAR Docket #09-46]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Annual Renewal/Continuing Education  
435:55-5-3. Continuing education requirements for renewal [AMENDED]

**SUMMARY:**

The proposed amendment changes the continuing education requirement to accept current certification by the two national certifying organizations. Continuing education is required in order to maintain current certification by these organizations. Licensees will avoid duplication of continuing education hours if they maintain current certification. Those not maintaining current certification will still have the opportunity to provide proof directly to the Board of meeting continuing education hours.

## Notices of Rulemaking Intent

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### **AUTHORITY:**

TITLE 59 O.S., Section 489, State Board of Medical Licensure and Supervision

### **COMMENT PERIOD:**

The comment period will run from February 2, 2009 to March 4, 2009. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

### **PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 26, 2009, 9:00 a.m. at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 19, 2009.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and available after February 2, 2009 at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma 73118.

### **CONTACT PERSON:**

Kathy Plant (405) 848-6841, ext. 122

*[OAR Docket #09-46; filed 1-9-09]*

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### **TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 60. RADIOLOGIST ASSISTANTS**

*[OAR Docket #09-47]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 60. Radiologist Assistants [NEW]

### **SUMMARY:**

HB 1647 created the Radiologist Assistant Licensure Act. These rules have been created to regulate the implementation of that law, including qualifications for licensure, requirements for renewal of licensure and grounds for disciplinary action.

### **AUTHORITY:**

TITLE 59 O.S., Section 489, State Board of Medical Licensure and Supervision

### **COMMENT PERIOD:**

The comment period will run from February 2, 2009 to March 4, 2009. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

### **PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 26, 2009, 9:00

a.m. at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 19, 2009.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and available after February 2, 2009 at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma 73118.

### **CONTACT PERSON:**

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

*[OAR Docket #09-47; filed 1-9-09]*

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### **TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 65. ANESTHESIOLOGIST ASSISTANTS**

*[OAR Docket #09-48]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

435:65-1-1. Purpose [NEW]

435:65-1-2. Interpretation of Rules and Regulations [NEW]

435:65-1-3. License required [NEW]

435:65-1-4. Application for initial licensure/renewal of license [NEW]

435:65-1-5. Supervision [NEW]

435:65-1-6. Disciplinary action [NEW]

435:65-1-7. Student anesthesiologist assistants [NEW]

435:65-1-8. Fees [NEW]

### **SUMMARY:**

HB 1577 created the Anesthesiologist Assistant Act. These rules have been created to regulate the implementation of that law.

### **AUTHORITY:**

TITLE 59 O.S., Section 489, State Board of Medical Licensure and Supervision

### **COMMENT PERIOD:**

The comment period will run from February 2, 2009 to March 4, 2009. Written comments may be sent to the office of the Board, PO Box 18256, Oklahoma City, OK 73154-0256.

### **PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 26, 2009, 9:00 a.m. at the office of the Board, 5104 North Francis Avenue,

Suite C, Oklahoma City, Oklahoma. Written notice of intent to make oral comment must be received by this office no later than March 19, 2009.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

n/a

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and available after February 2, 2009 at the office of the Board, 5104 North Francis Avenue, Suite C, Oklahoma City, Oklahoma 73118.

**CONTACT PERSON:**

Kathy Plant, Executive Secretary (405) 848-6841, ext. 122

*[OAR Docket #09-48; filed 1-9-09]*

**TITLE 455. MERIT PROTECTION COMMISSION  
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION**

*[OAR Docket #09-94]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
  - 455:10-1-2. Definitions [AMENDED]
  - 455:10-1-5. Review of Commission records [AMENDED]
  - 455:10-1-7. Organization [AMENDED]
  - 455:10-1-10. Forms and instructions [AMENDED]
- Subchapter 3. Jurisdiction, Rights and Processes
  - 455:10-3-1.1. Time [AMENDED]
  - 455:10-3-2. Determining jurisdiction; "file" defined [AMENDED]
  - 455:10-3-3.3. No jurisdiction over designation of worksite [NEW]
  - 455:10-3-4.1. Notice of appeal [AMENDED]
  - 455:10-3-6. Alleged violations of employee's freedom of expression [AMENDED]
  - 455:10-3-15. Transcripts [AMENDED]
  - 455:10-3-17. Continuances [AMENDED]
- Subchapter 7. Investigations
  - 455:10-7-2. Directed investigation [AMENDED]
  - 455:10-7-4. Investigative report [AMENDED]
  - 455:10-7-6. Investigative file [AMENDED]
- Subchapter 9. Hearing Process
  - 455:10-9-1. Prehearing conference [AMENDED]
  - 455:10-9-2. Hearing [AMENDED]
- Subchapter 11. Discipline
  - 455:10-11-1. General [AMENDED]
  - 455:10-11-4. Progressive discipline [AMENDED]

- 455:10-11-14. Causes for discharge, suspension without pay or involuntary demotion [AMENDED]
- 455:10-11-17. Discharge [AMENDED]
- Subchapter 15. Attorney Fees and Costs
  - 455:10-15-4. Request [AMENDED]
- Subchapter 19. Internal Agency Grievance Resolution Procedures
  - Part 1. General Provisions
    - 455:10-19-1. General [AMENDED]
  - Part 5. Grievance Provisions
    - 455:10-19-35. Grievance [AMENDED]

**SUMMARY:**

The proposed revisions to Subchapter 10 are the administrative rules of the Oklahoma Merit Protection Commission (Commission) which govern appeals and associated processes before the Commission. These rules establish procedures and standards necessary for the Commission to perform its duties and functions. The commission has adopted the rules in this Chapter.

**AUTHORITY:**

The authority for these rules is Section 840-1.9 of Title 74 of the Oklahoma Statutes. The primary basis is the Oklahoma Personnel Act, Section 840-1.1 et seq. of Title 74 of the Oklahoma Statutes.

**COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so before 5:00 p.m. on March 4, 2009 at the Oklahoma Merit Protection Commission, 3545 NW 58<sup>th</sup> Street, Suite 360, Oklahoma City, Oklahoma, 73112, Attn: Susan Bussey

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views. Each person will be allowed a maximum of 5 minutes to speak. Public hearings will be held Thursday, March 5, 2009 at 3:00 p.m. at the Oklahoma State & Education Employees Group Insurance Board, 5<sup>th</sup> floor, 3545 NW 58<sup>th</sup>, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 3:05 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The MPC requests that business entities affected by these proposed rules provide the MPC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Susan Bussey, at the above address, before the close of the comment period from February 2, 2009 through March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Oklahoma Merit Protection Commission, 3545 NW 58<sup>th</sup>, Suite 360, Oklahoma City, Ok, 73112.

## Notices of Rulemaking Intent

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### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., Section 303 (D), a rule impact statement will be prepared and may be obtained from the Merit Protection Commission at the above address.

### **CONTACT PERSON:**

Carol Shelley, Rules Liaison/Personnel Programs Analyst II, (405) 525-9144 or cshelley@mpc.ok.gov .

*[OAR Docket #09-94; filed 1-9-09]*

### **TITLE 460. DEPARTMENT OF MINES CHAPTER 10. NON-COAL RULES AND REGULATIONS**

*[OAR Docket #09-21]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Chapter 10. Non-Coal Rules And Regulations  
[AMENDED]

### **SUMMARY:**

In May of 2008, the Legislature passed SB 1697, allowing Limited use permits. The Department is proposing an amendment adding the definition of Limited use permit to 460:10-1-5 and a new Subchapter 10, Limited use surface mining permit applications and bonding requirements, which contains information needed on the purpose of a Limited use permit, who qualifies, and the application and review processes. The other proposed amendments are to integrate the allowance or disallowance of this new type of permit into the different sections of Chapter 10, such as the application, permitting, revisions, bonding and bond release process sections, that already apply to non-coal permits. Also, the Department is proposing an amendment to 460:10-37-2, which reworks fines assessed on Cessation orders issued for mining without a permit and an address change in 460:10-37-6.

### **AUTHORITY:**

45 O.S. Section 1.5, 45 O.S Section 732, and Section 940; Oklahoma Mining Commission

### **COMMENT PERIOD:**

From February 2, 2009, through March 4, 2009, the public may present their views orally or in writing to the below listed contact person.

### **PUBLIC HEARING:**

Public hearings will be held on March 5, 2009, at 6:00 p.m. at the Department of Mines, 209 E. Wyandotte, Suite 500 at McAlester, OK, and on March 5, 2009, at the Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106, beginning at 2:00 p.m.

### **REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct

costs, indirect costs, or other costs expected to be incurred by the business entity due compliance with the proposed rules. Business entities may submit this information in writing from February 2, 2009, through March 4, 2009, to the contact person listed below.

### **RULE IMPACT STATEMENT:**

Copies of the Rule Impact Statement may be obtained from the contact person by February 17, 2009.

### **COPIES OF THE PROPOSED RULES:**

Copies of the proposed rules may be obtained from the contact person.

### **CONTACT PERSON:**

Cathy Frank, Legal Officer, Oklahoma Department of Mines, Wagoner Field Office, 29858 E. 690 RD, Wagoner, OK 74467, (918) 485-3999.

*[OAR Docket #09-21; filed 1-7-09]*

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

*[OAR Docket #09-93]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Affirmative Action and Equal Employment Opportunity

Part 2. Discrimination Complaints Investigations

530:10-3-26 [AMENDED]

Part 3. Affirmative Action

530:10-3-33.3 [AMENDED]

530:10-3-33.6 [AMENDED]

### **SUMMARY:**

The proposed amendments to 530:10-3-26 is to clarify the reporting of annual training requirements. The proposed amendments to 530:10-3-33.3 is to clarify the requirements for dissemination of affirmative action plans. The proposed amendments to 530:10-3-33.6 modifies the availability analysis component of affirmative action plans.

### **AUTHORITY:**

The Administrator of the Office of Personnel Management: 74 O.S., §§ 840-1.6A and 840-2.1.

### **COMMENT PERIOD:**

Persons wishing to present their views may submit written comments to the Office of Personnel Management. Written comments should be addressed to Mr. Oscar B. Jackson, Jr., Administrator, ATTENTION: Kara I. Smith, Oklahoma Office of Personnel Management, 2101 North Lincoln Boulevard, Room G-80, Oklahoma City, OK 73105, or may be sent via email to [kara.smith@opm.ok.gov](mailto:kara.smith@opm.ok.gov). The comment period will begin on Monday, February 2, 2009. To be assured of consideration prior to the adoption of permanent rules, written

comments must be received no later than 5:00 p.m., Thursday, March 5, 2009.

**PUBLIC HEARING:**

A public hearing will be held to provide a means by which persons may offer suggested input on the content of the proposed rules at 2:00 p.m., Wednesday, March 4, 2009, at the State Office of Personnel Management, Jim Thorpe Building, 2101 N. Lincoln, OPM Conference Room, Fifth Floor, Room 560, Oklahoma City, Oklahoma.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained beginning Monday, February 2, 2009, between 8:00 a.m. and 5:00 p.m. Monday through Friday at the Office of Personnel Management, 2101 N. Lincoln Blvd., Suite G-80, Oklahoma City, OK 73105. Telephone (405) 521-2177.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available beginning Tuesday, February 17, 2009. Copies may be obtained at the Office of Personnel Management, address and telephone listed above.

**CONTACT PERSON:**

Kara I. Smith, General Counsel, (405) 522-1736.

*[OAR Docket #09-93; filed 1-9-09]*

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

*[OAR Docket #09-86]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

- Subchapter 5. General Course in Method of Operations
  - 535:1-5-5.1. Complaint confidentiality [AMENDED]
- Subchapter 7. Individual Proceedings
  - 535:1-7-2. Serving of notices [AMENDED]
  - 535:1-7-4. Failure to appear or failure to comply [AMENDED]
  - 535:1-7-5. Subpoenas [AMENDED]
  - 535:1-7-7. Final orders [AMENDED]

**SUMMARY:**

The revisions in 535:1-5-5.1 describe complaint confidentiality, and 535:1-7-2 changes in the serving of notices, 535:1-7-4 Failure to appear or failure to comply language cleanup, 535:1-7-5 subpoenas add "any scheduled" to hearing, and the revision in 535:1-7-7 Final orders language cleanup. All are at the recommendation of our Assistant Attorney General.

**AUTHORITY:**

Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210. Title 51 Sec. 24 A.5(3) and Title 59 O.S. Sec. 353.7(15).

**COMMENT PERIOD:**

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

**COPIES OF PROPOSED RULES:**

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

**CONTACT PERSON:**

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-86; filed 1-9-09]*

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

*[OAR Docket #09-87]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

# Notices of Rulemaking Intent

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## PROPOSED RULES:

- Subchapter 3. Pharmacists
- 535:10-3-4. Uniform pharmacy continuing education [AMENDED]
- Subchapter 5. Interns, Preceptors and Training Areas
- 535:10-5-1.1. Purpose [AMENDED]
- 535:10-5-1.2. Definitions [AMENDED]
- 535:10-5-3. Intern requirements; licenses [AMENDED]
- 535:10-5-4. Intern practice requirements [AMENDED]
- 535:10-5-5. Intern credit hours; computation [AMENDED]
- 535:10-5-9. Training area requirements [AMENDED]
- 535:10-5-13. Intern file destruction [AMENDED]
- Subchapter 7. Pharmacist Licensure
- 535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]

## SUMMARY:

The rule change in 535:10-3-4 corrects "schools" to "college" of pharmacy. The purpose statement in 535:10-5-1.1 expands on the purpose of the required practical experience requirements. In 535:10-5-1.2 a definition of currently enrolled is added, the definition of Intern is updated regarding currently enrolled, and "school" replaced by "college" in "pro-practice definition. In 535:10-5-3 updated intern requirements, licenses to clarify requirements for practical experience. In 535:10-5-4, 535:10-5-5, 535:10-5-9 and 535:10-5-13 references to "school" is changed to "college" of pharmacy. The revision in 535:10-5-9 corrects "it's" to "its" to correct grammar. In 535:10-5-13 it adds to transfers "by reciprocity or score transfer".

The change in 535:10-7-8 takes emergency rules to permanent. They allow foreign graduates once they have met the requirements in of this section to apply for licensure.

The revisions in 535:10-11-3 clarify (b), the revision in 535:10-11-5 correct for the change in ACPE's name to Accredited Council for Pahrmary.

## AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

## COMMENT PERIOD:

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

## PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

## REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period,

in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

## COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

## RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

## CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-87; filed 1-9-09]*

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

*[OAR Docket #09-88]*

## RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

## PROPOSED RULES:

- Subchapter 3. Pharmacies
- 535:15-3-4.1. Pharmacy licensing requirement [AMENDED]
- 535:15-3-9. Non-resident pharmacies [AMENDED]
- 535:15-3-10. Inventory [AMENDED]
- 535:15-3-13. Pharmacist's responsibility in a pharmacy [AMENDED]
- Subchapter 6. Hospital Drug Room
- 535:15-6-4. Staffing requirements [AMENDED]
- 535:15-6-11. Administration of drugs to patients [AMENDED]

## SUMMARY:

The revision in 535:15-3-4.1 further described the pharmacy licensing requirement, change recommended by our AG liaison. The revision in 535:15-3-9 corrects "OSTAR" to "Oklahoma Control Reporting". The revision in 535:15-3-10 allow a board requested inventory of a pharmacy.

The revision in 535:15-3-13 (d) recommended by Attorney General Liaison cleans up the valid patient practitioner relationship.

The revision in 535:15-6-4 corrects the cite to Oklahoma Health Department rules. The revision in 535:15-6-11 described "administration only" in a hospital drug room.

**AUTHORITY:**

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

**COMMENT PERIOD:**

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

**COPIES OF PROPOSED RULES:**

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

**CONTACT PERSON:**

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-88; filed 1-9-09]*

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

*[OAR Docket #09-91]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking  
**PROPOSED RULES:**

Subchapter 10. Good Compounding Practices  
Part 1. Good Compounding Practices for Non-sterile Products [NEW]

- 535:15-10-1. Purpose [AMENDED]
- 535:15-10-2. Definitions [AMENDED]
- 535:15-10-3. Pharmacist responsibilities [AMENDED]
- 535:15-10-4. Drug compounding facilities [AMENDED]
- 535:15-10-5. Compounding equipment [AMENDED]
- 535:15-10-6. Component selection requirements [AMENDED]
- 535:15-10-7. Control of drug product containers [AMENDED]
- 535:15-10-8. Drug compounding controls [AMENDED]
- 535:15-10-8.1. Transfer of compounded prescription [AMENDED]
- 535:15-10-8.2. Beyond use dating [AMENDED]
- 535:15-10-9. Labeling [AMENDED]
- 535:15-10-10. Records and reports [AMENDED]
- 535:15-10-11. Pharmacy generated product requirements [AMENDED]
- 535:15-10-12. Compounding for a prescriber's office use [AMENDED]
- 535:15-10-13. Compounding veterinarian products [AMENDED]
- 535:15-10-14. Compounding non-sterile hazardous drugs [NEW]
- 535:15-10-15. Compounding non-sterile radiopharmaceuticals [NEW]
- Part 3. Good Compounding Practices for Sterile Products [NEW]
- 535:15-10-50. Purpose [NEW]
- 535:15-10-51. Definitions [NEW]
- 535:15-10-52. Pharmacist responsibilities [NEW]
- 535:15-10-53. General requirements [NEW]
- 535:15-10-54. CSP microbial risk levels [NEW]
- 535:15-10-55. Drug compounding facilities [NEW]
- 535:15-10-56. Compounding equipment [NEW]
- 535:15-10-57. Component selection requirements [NEW]
- 535:15-10-58. Control of drug product containers [NEW]
- 535:15-10-59. Drug compounding controls [NEW]
- 535:15-10-5-60. Transfer of compounded prescription [NEW]
- 535:15-10-5-61. Beyond use dating [NEW]
- 535:15-10-5-62. Labeling [NEW]
- 535:15-10-5-63. Records and reports [NEW]
- 535:15-10-5-64. Compounding for institution and practitioner administration [NEW]
- 535:15-10-5-65. Compounding hazardous drugs [NEW]
- 535:15-10-5-66. Compounding radiopharmaceuticals [NEW]
- 535:15-10-5-67. Compounding allergen extracts [NEW]

**SUMMARY:**

The revisions in 535:15-10-1 through 535:15-10-15 for non-sterile and the new language in 535:15-10-50 through 535:15-10-67 for sterile compounding will bring Oklahoma's compounding rules up to federal USP compounding standards.

**Part 1. Good Compounding Practices for Non-sterile Products.** These revisions include 535:15-10-1 purpose, 535:15-10-2 definitions, 535:15-10-3 pharmacist

## Notices of Rulemaking Intent

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responsibilities, 535:15-10-4 drug compounding facilities, 535:15-10-5 compounding equipment, 535:15-10-6 component selection requirements, 535:15-10-7 control of drug product containers, 535:15-10-8 drug compounding controls, 535:15-10-8.1 transfer of compounded prescription, 535:15-10-8.2 beyond use dating, 535:15-10-9 labeling, 535:15-10-10 records and reports, 535:15-10-11 pharmacy generated product requirements, 535:15-10-12 compounding for a prescriber's office use, 535:15-10-13 compounding veterinarian products, 535:15-10-14 compounding non-sterile hazardous drugs, 535:15-10-15 compounding non-sterile radiopharmaceuticals revised for non-sterile compounding

**Part 3. Good Compounding Practices for Sterile Products.** These new rules add 535:15-10-50 purpose, 535:15-10-51 definitions, 535:15-10-52 pharmacist responsibilities, 535:15-10-53 general requirements, 535:15-10-54 CSP microbial risk levels, 535:15-10-55 drug compounding facilities, 535:15-10-56 compounding equipment, 535:15-10-57 component selection requirements, 535:15-10-58 control of drug product containers, 535:15-10-59 drug compounding controls, 535:15-10-60 transfer of compounded prescription, 535:15-10-61 beyond use dating, 535:15-10-62 labeling, 535:15-10-63 records and reports, 535:15-10-64 compounding for institution and practitioner administration, 535:15-10-65 compounding hazardous drugs, 535:15-10-66 compounding radiopharmaceuticals, 535:15-10-67 compounding allergen extracts for sterile products.

### **AUTHORITY:**

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

### **COMMENT PERIOD:**

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

### **PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

### **REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

### **COPIES OF PROPOSED RULES:**

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

### **RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and will be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

### **CONTACT PERSON:**

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-91; filed 1-9-09]*

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

*[OAR Docket #09-89]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Manufacturers

535:20-3-1. Manufacturer permit [AMENDED]

535:20-3-1.1. Purpose [NEW]

535:20-3-1.2. Definitions [RESERVED]

535:20-3-2. Registration; manufacturer licensing, registration or permit requirement [AMENDED]

535:20-3-3. Minimum required information for licensure [AMENDED]

535:20-3-4. Minimum qualifications [AMENDED]

535:20-3-5. Personnel [AMENDED]

535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [AMENDED]

535:20-3-6.1. Facility requirements [NEW]

535:20-3-6.2. Multiple Licensing [NEW]

535:20-3-6.3. Security [NEW]

535:20-3-6.4. Storage [NEW]

535:20-3-6.5. Examination of materials [NEW]

535:20-3-6.6. Returned, damaged, and outdated drugs [NEW]

535:20-3-6.7. Recordkeeping [NEW]

535:20-3-6.8. Written policies and procedures [NEW]

535:20-3-6.9. Responsible persons [NEW]

535:20-3-6.10. Compliance with federal, state and local laws [NEW]

535:20-3-6.11. Salvaging and reprocessing [NEW]

535:20-3-9. Prohibited conduct [NEW]

Subchapter 5. Packagers

535:20-5-1. Definitions [AMENDED]

- 535:20-5-1.1. Purpose [NEW]
- 535:20-5-2. Registration; packager permit requirement [AMENDED]
- 535:20-5-3. Minimum required information for licensure [AMENDED]
- 535:20-5-4. Minimum qualifications [AMENDED]
- 535:20-5-5. Personnel [AMENDED]
- 535:20-5-6. Minimum requirements for storage, handling, maintenance and records [AMENDED]
  - 535:20-5-6.1. Facility requirements [NEW]
  - 535:20-5-6.2. Multiple Licensing [NEW]
  - 535:20-5-6.3. Security [NEW]
  - 535:20-5-6.4. Storage [NEW]
  - 535:20-5-6.5. Examination of materials [NEW]
  - 535:20-5-6.6. Returned, damaged, and outdated drugs [NEW]
  - 535:20-5-6.7. Recordkeeping [NEW]
  - 535:20-5-6.8. Written policies and procedures [NEW]
  - 535:20-5-6.9. Responsible persons [NEW]
  - 535:20-5-6.10. Compliance with federal, state and local laws [NEW]
  - 535:20-5-6.11. Salvaging and reprocessing [NEW]
- 535:20-5-9. Prohibited conduct [NEW]
- Subchapter 7. Wholesalers and Pedigree Rules
  - 535:20-7-7.7. Recordkeeping; including pedigree requirement [AMENDED]
- Subchapter 9. Medical Gas Suppliers and Distributors
  - 535:20-9-3. Medical gas suppliers [AMENDED]
  - 535:20-9-4. Medical gas distributors
  - 535:20-9-6. Prohibited Conduct [NEW]

**SUMMARY:**

**Subchapter 3. Manufacturers.** The revisions in 535:20-3-1 through 535:20-3-9 take emergency manufacturer rules to permanent. Because manufacturer rules previously referred to wholesaler rules the revision in wholesale rules affected manufacturer's unintentionally. These rules revisions allow manufacturer rules to stand on their own.

The revision in 535:20-3-1. Manufacturer permit [AMENDED], added 535:20-3-1.1 purpose and 535:20-3-1.2 definitions, 535:20-3-2 amendments describe registration; manufacturer licensing, registration or permit requirement, 535:20-3-3. Minimum required information for licensure are updated, 535:20-3-4 minimum qualifications are updated, and 535:20-3-5 personnel eliminates an unnecessary reference in (b).

The requirements in 535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records correct references. Added new are 535:20-3-6.1 through 535:20-3-6.11 and 535:20-3-9. Changes in multiple licensing 535:20-3-6.2, 535:20-3-6.3 security, 535:20-3-6.4 Storage, 535:20-3-6.5 examination of materials, 535:20-3-6.6 Returned, damaged, and outdated drugs, 535:20-3-6.7 Recordkeeping, 535:20-3-6.8 Written policies and procedures, 535:20-3-6.9 Responsible persons, 535:20-3-6.10 Compliance with federal, state and local laws, 535:20-3-6.11 Salvaging and reprocessing and 535:20-3-9 Prohibited conduct

**Subchapter 5. Packagers.** The revisions amend definitions in 535:20-5-1, they add a purpose statement in 535:20-5-1.1, and 535:20-5-2, Registration; packager permit requirement language is cleaned up to improve clarity. 535:20-5-3. Minimum required information; 535:20-5-4 Minimum qualifications for licensure; 535:20-5-5 Personnel; and 535:20-5-6 Minimum requirements for storage, handling, maintenance and records are described in manufacturer rules instead of referencing wholesaler rules. Added new are 535:20-5-6.1 Facility requirements, 535:20-5-6.2 Multiple Licensing, 535:20-5-6.3 Security, 535:20-5-6.4 Storage, 535:20-5-6.5. Examination of materials, 535:20-5-6.6 Returned, damaged, and outdated drugs, 535:20-5-6.7 Recordkeeping, 535:20-5-6.8 Written policies and procedures, 535:20-5-6.9 Responsible persons, 535:20-5-6.10 Compliance with federal, state and local laws, and 535:20-5-6.11 Salvaging and reprocessing, these subject areas were formerly referenced to wholesaler rules (see section 535:20-5-6). Added is prohibited conduct in 535:20-5-9.

**Subchapter 7. Wholesalers and pedigree rules.** The revision in 535:20-7 takes the emergency rule to delay the pedigree requirement date until January 1, 2011.

**Subchapter 9. Medical gas suppliers and distributors.** The revisions in 535:20-9-3 and 535:20-9-4 bring into the medical gas supplier and distributor rules the requirements and remove references to the wholesale rules. They add prohibited conduct rules for medical gas suppliers and distributors to protect the drug supply chain.

**AUTHORITY:**

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

**COMMENT PERIOD:**

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

**PUBLIC HEARING:**

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

## Notices of Rulemaking Intent

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### COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

### RULE IMPACT STATEMENT:

A rule impact statement will be prepared and will be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

### CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-89; filed 1-9-09]*

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

*[OAR Docket #09-90]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

### PROPOSED RULES:

Subchapter 3. Applicants, Registrants, and Applications  
535:25-3-4. Requirements for applicants or registrants who have had action against any license, permit or certificate  
[AMENDED]

Subchapter 9. Violations of the Rules of Registrant Conduct  
535:25-9-8. Failure to maintain effective controls  
[AMENDED]

### SUMMARY:

The revision in 535:25-3-4 corrects the numbering from (c) to (b) as there is no (b).

The revision in 535:25-9-8 expands registrant's responsibility to establish and maintain effective controls on prescription drugs to protect drug safety and security.

### AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

### COMMENT PERIOD

The comment period will run from February 2, 2009 through March 13, 2009, at 1:00 p.m. Written comments may be sent to the offices of the Board, 4545 N Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488.

### PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on March 25, 2009, at 1:00 p.m. in our office at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Written notice of intent to

make oral comment must be received by this office no later than March 13, 2009, at 1:00 p.m.

### REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Board, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees and indirect costs such as record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred due to compliance with the proposed rule(s).

### COPIES OF PROPOSED RULES:

Proposed rules are available for review in our office at 4545 N Lincoln Blvd, Suite 112, Oklahoma City, OK 73105-3488. Copies may be provided at a cost of 25 cents per page.

### RULE IMPACT STATEMENT:

A rule impact statement will be prepared and be available on and after February 2, 2009, at the location listed above for copies of the proposed rules. It may be reviewed in our office or copies may be obtained for 25 cents per page.

### CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

*[OAR Docket #09-90; filed 1-9-09]*

## TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 3. ELECTION PROCEDURES

*[OAR Docket #09-108]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Chapter 3. Election Procedures [AMENDED]

### SUMMARY:

Last year the OSRC undertook a comprehensive review of all but chapter 3 of its regulations, to make them clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. For consistency with last year's comprehensive review, similar revisions are now proposed in this chapter. No material changes are proposed.

### AUTHORITY:

Scenic Rivers Commission; 82 O.S., § 1461.

### COMMENT PERIOD:

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through March 4, 2009. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to [osrc@fullnet.net](mailto:osrc@fullnet.net).

The OSRC will then consider adopting the changes at a special meeting at 5:30 p.m. on Tuesday, March 17, 2009, at

the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

**PUBLIC HEARING:**

A public hearing to take comments will convene during the March 17 special meeting.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this rulemaking action is expected to adversely impact small business, the OSRC requests that any business entity affected by these proposed changes provide the OSRC with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred due to compliance with the proposed rules.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at [www.oklahomascenicrivers.net](http://www.oklahomascenicrivers.net).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by February 17, 2009.

**CONTACT PERSON:**

Ed Fite, (918) 456-3251.

*[OAR Docket #09-108; filed 1-14-09]*

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 10. LICENSING AND USE  
PERMITS**

*[OAR Docket #09-109]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions and Licensing
  - 630:10-1-4. User fees [REVOKED]
  - 630:10-1-5. Commercial licensing procedures, requirements, and annual use fees [AMENDED]
  - 630:10-1-7. Limitation on licensing of flotation devices [AMENDED]
- Subchapter 2. Public Access Areas
  - 630:10-2-2. Camping fees [AMENDED]
  - 630:10-2-4. Use of public access areas [AMENDED]

**SUMMARY:**

The user fees specified in 630:10-1-4 were based on paragraph (B) of 82 O.S. § 1470, which was repealed effective January 1, 2009, and thus this rule is no longer applicable. The change to 10-1-5 would require an operator to complete all outstanding obligations to the OSRC before new licenses are issued. The change proposed to 10-1-7 is to clarify the summer weekend restriction on commercial flotation devices floating through commercial float area two. The change in

10-2-2 would simply make OSRC camping fees the same as that charged by the Oklahoma Department of Tourism and Recreation. Finally, three new areas (Lake Francis Dam Public Access Site, US 59 Illinois River Bridge Crossing Access Area, and Carnes Ford Area) would be added to the public access areas where the consumption of alcohol is prohibited.

**AUTHORITY:**

Scenic Rivers Commission; 82 O.S., §§ 1451 - 1471.

**COMMENT PERIOD:**

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through March 4, 2009. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to [osrc@fullnet.net](mailto:osrc@fullnet.net).

The OSRC will then consider adopting the changes at a special meeting at 5:30 p.m. on Tuesday, March 17, 2009, at the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

**PUBLIC HEARING:**

A public hearing to take comments will convene during the March 17 special meeting.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this rulemaking action is expected to adversely impact small business, the OSRC requests that any business entity affected by these proposed changes provide the OSRC with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred due to compliance with the proposed rules.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at [www.oklahomascenicrivers.net](http://www.oklahomascenicrivers.net).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by February 17, 2009.

**CONTACT PERSON:**

Ed Fite, (918) 456-3251.

*[OAR Docket #09-109; filed 1-14-09]*

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 15. PROTECTION OF NATURAL  
RESOURCES**

*[OAR Docket #09-110]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- 630:15-1-14. Ice chest ~~restriction~~ restrictions [AMENDED]

## Notices of Rulemaking Intent

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### SUMMARY:

This proposal would add a requirement that ice chests be secured to prevent the spilling of their contents in a scenic river.

### AUTHORITY:

Scenic Rivers Commission; 82 O.S., §§ 1451 - 1471.

### COMMENT PERIOD:

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through March 4, 2009. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to [osrc@fullnet.net](mailto:osrc@fullnet.net).

The OSRC will then consider adopting the changes at a special meeting at 5:30 p.m. on Tuesday, March 17, 2009, at the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

### PUBLIC HEARING:

A public hearing to take comments will convene during the March 17 special meeting.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the OSRC requests that any business entity affected by these proposed changes provide the OSRC with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred due to compliance with the proposed rules.

### COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at [www.oklahomascenicrivers.net](http://www.oklahomascenicrivers.net).

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by February 17, 2009.

### CONTACT PERSON:

Ed Fite, (918) 456-3251.

*[OAR Docket #09-110; filed 1-14-09]*

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### TITLE 650. OKLAHOMA CENTER FOR THE ADVANCEMENT OF SCIENCE AND TECHNOLOGY CHAPTER 18. OKLAHOMA NANOTECHNOLOGY APPLICATIONS PROJECT

*[OAR Docket #09-29]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### RULES:

- 650:18-1-1. [NEW]
- 650:18-1-2. [NEW]
- 650:18-1-3. [NEW]
- 650:18-1-4. [NEW]

- 650:18-1-5. [NEW]
- 650:18-1-6. [NEW]
- 650:18-1-7. [NEW]
- 650:18-1-8. [NEW]
- 650:18-1-9. [NEW]
- 650:18-1-10. [NEW]
- 650:18-1-11. [NEW]
- 650:18-1-12. [NEW]
- 650:18-1-13. [NEW]
- 650:18-1-14. [NEW]
- 650:18-1-15. [NEW]

### SUMMARY:

The Oklahoma Nanotechnology Applications Project Rules and Regulations are intended for compliance by the Oklahoma Center for the Advancement of Science and Technology (OCAST) with the Administrative Procedures Act, 75 O. S., Section 250 et seq. House Bill No. 2356 of the 2006 Legislative Session enacted the Oklahoma Nanotechnology Applications Project, amending 74 O.S. 2001, Sections 5060.43, creating a program with components in applied nanotechnology research. The Oklahoma Nanotechnology Applications Project is designed to assist Oklahoma companies, universities, and non-profit organizations who are developing new nanotechnology applications as well as those with existing applications. The Project requires that the research lead to innovation, new knowledge or technology, have a high probability of leading to commercially successful, products, processes or services within a reasonable period of time, are technically sound and will produce a measurable result, and have a reasonable probability to enhance employment opportunities within Oklahoma.

### AUTHORITY:

Powers of Oklahoma Science and Technology Research and Development Board; Title 74 O.S., Section 5060.9.

### COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 5:00 pm on March 4, 2009 at the following address: Jessica Vinson, Oklahoma Center for the Advancement of Science and Technology, 755 Research Parkway, Suite 110, Oklahoma City, OK 73104-3612.

### PUBLIC HEARING:

A public hearing will be held at 2:00 pm on Wednesday, March 4, 2009, at the Oklahoma Center for the Advancement of Science and Technology, 755 Research Parkway, Suite 110, Oklahoma City, OK 73104-3612. Anyone who wishes to speak must sign in at the door by 2:05 pm.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

OCAST requests that business entities affected by these proposed rules provide OCAST, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by recordkeeping, equipment, construction, labor, expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information

in writing to Jessica Vinson, at the above address, before the close of the comment period on March 4, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Oklahoma Center for the Advancement of Science and Technology, 755 Research Parkway, Suite 110, Oklahoma City, OK 73104-3612.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O. S., 303(D), a rule impact statement will be prepared and may be obtained from the Oklahoma Center for the Advancement of Science and Technology at the above address beginning February 3, 2009.

**CONTACT PERSON:**

Jessica Vinson, 405-319-8412

*[OAR Docket #09-29; filed 1-9-09]*

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

*[OAR Docket #09-23]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking.

**PROPOSED RULES:**

- Subchapter 2. Cigarette Stamp Tax
  - Part 1. General Provisions
  - 710:70-2-11 [AMENDED]
  - 710:70-2-12 [REVOKED]
  - 710:70-2-13 [REVOKED]
- Subchapter 5. Excise on Tobacco Products
  - 710:70-5-12 [AMENDED]
  - 710:70-5-13 [AMENDED]

**SUMMARY:**

Sections 710:70-2-11 and 710:70-5-13 were amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

Sections 710:70-2-12 and 710:70-2-13 have been revoked because they are no longer necessary as a compliance tool due to the new compacts signed by the Governor.

Section 710:70-5-12 has been amended consistent with statutory provisions relating to tax rates imposed on Class B cigars and Commission policy regarding classification of little cigars.

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. §§ 203 and 322

**COMMENT PERIOD:**

Persons wishing to make written submissions may do so by 4:30 p.m., March 6, 2009, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request

placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 521-3133.

**PUBLIC HEARING:**

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing are as follows: March 9, 2009, 10:00 a.m. in the 4<sup>th</sup> floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors' building must be made through the doors located on the east side of the building. In order to gain access to the 4<sup>th</sup> floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with 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:**

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us) or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared and will be available for review from and after February 17, 2009, at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Lisa R. Haws, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: [lhaws@oktax.state.ok.us](mailto:lhaws@oktax.state.ok.us)

*[OAR Docket #09-23; filed 1-8-09]*

## Notices of Rulemaking Intent

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

*[OAR Docket #09-38]*

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

Subchapter 3. State Technical Assistance, Supervision, and Services [AMENDED]

Subchapter 5. Finance [AMENDED]

Subchapter 7. Local Programs: Application; Student Accounting; Evaluation [AMENDED]

#### **SUMMARY:**

The rule amendment assures consistency with the terminology and current practices that are being used since the implementation of the career cluster instructional framework, recognizes that staff in more than one operational unit may perform tasks that need to be done to support and/or monitor financial aid programs, and accurately reflect current staff job assignments. Clarifies policy for instructional delivery methods.

#### **AUTHORITY:**

Oklahoma State Board of Career and Technology Education; 70 O.S. Supp. 2008, § 14-103, 70 O.S. 2001 § 14-104, as amended.

#### **COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so from February 2 through March 23, 2009, to Connie Holland, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105-4599.

#### **PUBLIC HEARING:**

Hearings will begin at 9:30 a.m., Thursday March 26, 2009, in Room 1-20, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

#### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

#### **COPIES OF PROPOSED RULES:**

Copies will be on file for public viewing beginning February 2, 2009, in the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

#### **RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared as required by law, and will be available beginning February 2, 2009, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma.

#### **CONTACT PERSON:**

Judy Draper, Administrative Assistant, 405-743-5437

*[OAR Docket #09-38; filed 1-9-09]*

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

*[OAR Docket #09-39]*

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

Subchapter 3. Technology Centers Education [AMENDED]

#### **SUMMARY:**

The rule amendment provides first-year technology center superintendents more relevant professional development opportunities that are provided and/or coordinated by the department, provides the Oklahoma State Department of Education documentation to maintain certificate validity for second-year technology center superintendents. Clarifies when an architect must be engaged for construction project. Clarifies how technology center board member training and training for State Board of Career and Technology Education board members will be provided, documented, and reported. Assures consistency with current practices to implement data based school improvement strategies.

#### **AUTHORITY:**

Oklahoma State Board of Career and Technology Education; 70 O.S. Supp. 2008; § 5-110 and 5-110.1, § 14-102.1, § 14-103, as amended.

#### **COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so from February 2 through March 23, 2009, to Connie Holland, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105-4599.

#### **PUBLIC HEARING:**

Hearings will begin at 9:30 a.m., Thursday March 26, 2009, in Room 1-20, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

#### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

#### **COPIES OF PROPOSED RULES:**

Copies will be on file for public viewing beginning February 2, 2009, in the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared as required by law, and will be available beginning February 2, 2009, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Judy Draper, Administrative Assistant, 405-743-5437

*[OAR Docket #09-39; filed 1-9-09]*

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

*[OAR Docket #09-40]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Secondary, Full-Time and Short-Term Adult  
*Career*Tech Programs [AMENDED]

**SUMMARY:**

The rule amendment clarifies the new name of the division.

**AUTHORITY:**

Oklahoma State Board of Career and Technology Education; 70 O.S. 2001, § 14-104, as amended.

**COMMENT PERIOD:**

Persons wishing to present their views orally or in writing may do so from February 2 through March 23, 2009, to

Connie Holland, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105-4599.

**PUBLIC HEARING:**

Hearings will begin at 9:30 a.m., Thursday March 26, 2009, in Room 1-20, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies will be on file for public viewing beginning February 2, 2009, in the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

**RULE IMPACT STATEMENT:**

A Rule Impact Statement will be prepared as required by law, and will be available beginning February 2, 2009, at the Office of the State Board of Career and Technology Education, Rm. 1-18, Oliver Hodge Memorial Building, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma.

**CONTACT PERSON:**

Judy Draper, Administrative Assistant, 405-743-5437

*[OAR Docket #09-40; filed 1-9-09]*



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# Cancelled Hearings/Comment Periods

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

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

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

*[OAR Docket #08-1600]*

**RULEMAKING ACTION:**

Cancelled comment period and public hearing relating to a proposed PERMANENT rulemaking action

**PROPOSED RULES:**

Subchapter 5. Regulation of Licensees  
505:10-5-11 [AMENDED]

505:10-5-18 [NEW]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of rulemaking Intent for this action was published at 26 Ok Reg 146-47.

**CANCELLED COMMENT PERIOD:**

November 7, 2008 to January 5, 2009

**CANCELLED PUBLIC HEARING:**

10:00 a.m., January 10, 2009, at 14701 N. Santa Fe, Edmond, OK 73013.

*[OAR Docket #08-1600; filed 12-31-08]*

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# Continued Hearings/Comment Periods

If an agency continues a hearing or comment period announced in a published Notice of Rulemaking Intent, the agency may submit a notice of such continuation to the Office of Administrative Rules (OAR). The OAR publishes the continuation notice in the *Register* if such publication can be achieved at least five days prior to the announced date of the continued hearing or closing date of the continued comment period.

*For additional information on continued hearings and comment periods, see OAC 655:10-7-28.*

## **TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD**

*[OAR Docket #09-07]*

### **RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

### **PROPOSED RULES:**

Subchapter 3. General operation and procedures

158:1-3-8. Fee for dishonored checks [NEW]

### **REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking intent for this action was published at 26 OK Reg 275

### **CONTINUED COMMENT PERIOD:**

#### **Original Comment Period:**

January 2, 2009 through February 2, 2009

#### **Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

### **PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to February 11, 2009, and may be obtained from the Construction Industries Board at the above address.

### **CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-07; filed 1-6-09]*

## **TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 10. FINE SCHEDULE**

*[OAR Docket #09-08]*

### **RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

### **PROPOSED RULES:**

Subchapter 3. Administrative Fine Schedule

158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act and the Plumbing License Law of 1955. Addition of the Home Inspectors Licensing Act pursuant to SB 2131 [AMENDED]

### **REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking Intent for this action was published at 26 OK Reg 133

### **CONTINUED COMMENT PERIOD:**

#### **Original Comment Period:**

December 1, 2008 through January 2, 2009

#### **Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107.

### **PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping,

## Continued Hearings/Comment Periods

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equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

### CONTACT PERSON:

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-08; filed 1-6-09]*

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## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 10. FINE SCHEDULE

*[OAR Docket #09-09]*

### RULEMAKING ACTION:

Continued comment period relating to a proposed PERMANENT rulemaking action

### PROPOSED RULES:

Subchapter 3. Administrative Fine Schedule  
158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act and the Plumbing License Law of 1955 [AMENDED]

### REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking Intent for this action was published at 26 OK Reg 133

### CONTINUED COMMENT PERIOD:

#### Original Comment Period:

December 1, 2008 through January 2, 2009

#### Continued to:

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107.

### PUBLIC HEARING:

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period

set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

### CONTACT PERSON:

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-09; filed 1-6-09]*

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## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

*[OAR Docket #09-10]*

### RULEMAKING ACTION:

Continued comment period relating to a proposed PERMANENT rulemaking action

### PROPOSED RULES:

Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses  
158:30-9-2. Fee schedule for contractors, journeymen, and apprentices [AMENDED]

### REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking intent for this action was published at 26 OK Reg 138

### CONTINUED COMMENT PERIOD:

#### Original Comment Period:

December 1, 2008 through January 2, 2009

#### Continued to:

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

### PUBLIC HEARING:

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-10; filed 1-6-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS**

*[OAR Docket #09-11]*

**RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

**PROPOSED RULES:**

Subchapter 1. GENERAL PROVISIONS  
158:30-1-4. Standard of installation [AMENDED]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking intent for this action was published at 26 OK Reg 276

**CONTINUED COMMENT PERIOD:**

**Original Comment Period:**

January 2, 2009 through February 2, 2009

**Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

**PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5,

Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-11; filed 1-6-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS**

*[OAR Docket #09-12]*

**RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action.

**PROPOSED RULES:**

Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses  
158:30-9-2. Fee schedule for contractors, journeymen, and apprentices [AMENDED]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking intent for this action was published at 26 OK Reg 134

**CONTINUED COMMENT PERIOD:**

**Original Comment Period:**

December 1, 2008 through January 2, 2009

**Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

## Continued Hearings/Comment Periods

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### **PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

### **CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-12; filed 1-6-09]*

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## **TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS**

*[OAR Docket #09-13]*

### **RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

### **PROPOSED RULES:**

Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals  
158:40-9-3. License and registration fees and renewals  
[AMENDED]

### **REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking Intent for this action was published at 26 OK Reg 135

### **ORIGINAL COMMENT PERIOD:**

December 1, 2008 through January 2, 2009

### **CONTINUED TO:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5.

### **PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

### **CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-13; filed 1-6-09]*

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## **TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS**

*[OAR Docket #09-14]*

### **RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

### **PROPOSED RULES:**

Subchapter 5. Licensing Requirements, Display of License and Firm Name, and Bond Requirements  
158:40-5-1. Apprentice requirements [AMENDED]  
158:40-5-2. Journeyman requirements [AMENDED]  
158:40-5-3. Contractor requirements [AMENDED]  
Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals

158:40-9-3. License and registration fees and renewals  
[AMENDED]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking Intent for this action was published at 26 OK Reg 136

**ORIGINAL COMMENT PERIOD:**

December 1, 2008 through January 2, 2009

**CONTINUED TO:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5.

**PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-14; filed 1-6-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS**

*[OAR Docket #09-15]*

**RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action.

**PROPOSED RULES:**

Subchapter 1. General Provisions

158:50-1-4. Adopted references and standard of workmanship [AMENDED]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking intent for this action was published at 26 OK Reg 276

**CONTINUED COMMENT PERIOD:**

**Original Comment Period:**

January 2, 2009 through February 2, 2009

**Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

**PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to January 10, 2009, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-15; filed 1-6-09]*

**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS**

*[OAR Docket #09-16]*

**RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action

### PROPOSED RULES:

Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration

158:50-9-2. License and registration fees and renewals [AMENDED]

### REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking intent for this action was published at 26 OK Reg 137

### CONTINUED COMMENT PERIOD:

#### Original Comment Period:

December 1, 2008 through January 2, 2009

#### Continued to:

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

### PUBLIC HEARING:

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

### COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

### CONTACT PERSON:

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-16; filed 1-6-09]*

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## TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

*[OAR Docket #09-17]*

### RULEMAKING ACTION:

Continued comment period relating to a proposed PERMANENT rulemaking action

### PROPOSED RULES:

Subchapter 1. General Provisions

158:50-1-2. Definitions [AMENDED]

Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name

158:50-5-1. License types [AMENDED]

158:50-5-2. Limitations of licenses [AMENDED]

Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration

158:50-9-2 License and registration fees and renewals [AMENDED]

### REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking intent for this action was published at 26 OK Reg 138

### CONTINUED COMMENT PERIOD:

#### Original Comment Period:

December 1, 2008 through January 2, 2009

#### Continued to:

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

### PUBLIC HEARING:

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-17; filed 1-6-09]*

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**TITLE 158. CONSTRUCTION INDUSTRIES BOARD  
CHAPTER 60. INSPECTORS REGULATIONS**

*[OAR Docket #09-18]*

**RULEMAKING ACTION:**

Continued comment period relating to a proposed PERMANENT rulemaking action.

**PROPOSED RULES:**

Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses

158:60-5-5. Continuing education courses [AMENDED]

**REGISTER PUBLICATION OF NOTICE:**

The Notice of Rulemaking intent for this action was published at 26 OK Reg 138

**CONTINUED COMMENT PERIOD:**

**Original Comment Period:**

December 1, 2008 through January 2, 2009

**Continued to:**

4:00 p.m. February 27, 2009, Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma 73107

**PUBLIC HEARING:**

A public hearing on these proposed rules will be held at 1:30 p.m. on February 11, 2009, at a regular meeting of the Construction Industries Board at 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 1:35 p.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The Construction Industries Board requests that business entities affected by these proposed rules provide the Construction Industries Board, within the comment period set forth and described above, in dollar amounts if possible, the increase in the level of direct costs, such as administrative fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs that the business entity expects to be incurred due to compliance with the proposed rules. Business entities may submit this information in writing to Jeanne Britt at the above address, before the close of the comment period on February 27, 2009.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Construction Industries Board, 2401 N.W. 23, Suite 5, Oklahoma City, Oklahoma, 73107, before the close of the comment period on February 27, 2009.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303 (D), a rule impact statement will be prepared prior to December 10, 2008, and may be obtained from the Construction Industries Board at the above address.

**CONTACT PERSON:**

Jeanne Britt, Liaison Officer, 405.271.2771

*[OAR Docket #09-18; filed 1-6-09]*



# Submissions for Review

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

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

## **TITLE 155. OKLAHOMA CONSERVATION COMMISSION CHAPTER 1. OPERATION OF THE COMMISSION**

*[OAR Docket #09-01]*

### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

### **RULES:**

155:1-1-1 [AMENDED]  
155:1-1-2 [REVOKED]  
155:1-1-3 [AMENDED]  
155:1-1-4 [AMENDED]  
155:1-1-5 [AMENDED]  
155:1-1-6 [REVOKED]  
155:1-1-7 [REVOKED]  
155:1-1-8 [REVOKED]  
155:1-1-9 [REVOKED]  
155:1-1-10 [AMENDED]  
155:1-1-11 [REVOKED]  
155:1-1-12 [REVOKED]  
155:1-1-13 [REVOKED]  
155:1-1-14 [REVOKED]

### **SUBMITTED TO GOVERNOR:**

January 5, 2009

### **SUBMITTED TO THE HOUSE:**

January 5, 2009

### **SUBMITTED TO THE SENATE:**

January 5, 2009

*[OAR Docket #09-01; filed 1-5-09]*

## **TITLE 155. OKLAHOMA CONSERVATION COMMISSION CHAPTER 10. CONSERVATION DISTRICTS**

*[OAR Docket #09-02]*

### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

### **RULES:**

155:10-1-1 [AMENDED]  
155:10-1-2 [REVOKED]  
155:10-1-3 [REVOKED]  
155:10-1-4 [REVOKED]  
155:10-1-5 [AMENDED]  
155:10-1-6 [AMENDED]  
155:10-1-7 [REVOKED]

155:10-1-8 [AMENDED]  
155:10-1-9 [REVOKED]  
155:10-1-10 [AMENDED]  
155:10-1-11 [AMENDED]  
155:10-1-12 [AMENDED]  
155:10-1-13 [REVOKED]  
155:10-1-14 [REVOKED]  
155:10-1-16 [REVOKED]  
155:10-1-17 [REVOKED]  
155:10-1-18 [REVOKED]  
155:10-1-19 [AMENDED]  
155:10-1-20 [AMENDED]  
155:10-1-21 [AMENDED]

### **SUBMITTED TO GOVERNOR:**

January 5, 2009

### **SUBMITTED TO THE HOUSE:**

January 5, 2009

### **SUBMITTED TO THE SENATE:**

January 5, 2009

*[OAR Docket #09-02; filed 1-5-09]*

## **TITLE 155. OKLAHOMA CONSERVATION COMMISSION CHAPTER 20. CONSERVATION COST-SHARE PROGRAM**

*[OAR Docket #09-03]*

### **RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

### **RULES:**

155:20-1-3 [AMENDED]  
155:20-1-4 [AMENDED]  
155:20-1-5 [AMENDED]  
155:20-1-6 [REVOKED]  
155:20-1-7 [REVOKED]  
155:20-1-8 [REVOKED]  
155:20-1-9 [REVOKED]  
155:20-1-10 [REVOKED]

### **SUBMITTED TO GOVERNOR:**

January 5, 2009

### **SUBMITTED TO THE HOUSE:**

January 5, 2009

### **SUBMITTED TO THE SENATE:**

January 5, 2009

*[OAR Docket #09-03; filed 1-5-09]*

## Submissions for Review

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**TITLE 155. OKLAHOMA CONSERVATION  
COMMISSION  
CHAPTER 35. COORDINATION  
OF OKLAHOMA'S GEOGRAPHIC  
INFORMATION**

*[OAR Docket #09-04]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

155:35-1-1 [NEW]

155:35-1-2 [NEW]

155:35-1-3 [NEW]

155:35-1-4 [NEW]

**SUBMITTED TO GOVERNOR:**

January 5, 2009

**SUBMITTED TO THE HOUSE:**

January 5, 2009

**SUBMITTED TO THE SENATE:**

January 5, 2009

*[OAR Docket #09-04; filed 1-5-09]*

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**TITLE 730. DEPARTMENT OF  
TRANSPORTATION  
CHAPTER 30. HIGHWAY DESIGN**

*[OAR Docket #09-105]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**PROPOSED RULES:**

Subchapter 5. Consulting Engineer Services

730:30-5-1 [AMENDED]

**SUBMITTED TO GOVERNOR:**

January 9, 2009

**SUBMITTED TO HOUSE:**

January 9, 2009

**SUBMITTED TO SENATE:**

January 9, 2009

*[OAR Docket #09-105; filed 1-9-09]*

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# Gubernatorial Approvals

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

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

## **TITLE 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND INTERIOR DESIGNERS OF OKLAHOMA**

### **CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF INTERIOR DESIGNERS**

*[OAR Docket #09-22]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of PERMANENT rules

#### **PROPOSED RULES:**

Subchapter 1. General Provisions

55:10-1-3. [AMENDED]

Subchapter 3. Administrative Operations

55:10-3-13. [AMENDED]

Subchapter 5. Application and Eligibility for Licensing or  
Registration

55:10-5-6. [AMENDED]

55:10-5-7. [AMENDED]

55:10-5-8. [AMENDED]

55:10-5-10. [AMENDED]

55:10-5-11. [AMENDED]

Subchapter 7. Examination

55:10-7-1. [AMENDED]

55:10-7-3. [AMENDED]

55:10-7-6. [AMENDED]

55:10-7-7. [AMENDED]

55:10-7-9. [AMENDED]

Subchapter 9. Licensing and Registration

55:10-9-11. [AMENDED]

Subchapter 11. Rules of Professional Conduct

55:10-11-7. [AMENDED]

55:10-11-9. [AMENDED]

55:10-11-10. [AMENDED]

55:10-11-12. [AMENDED]

Subchapter 13. Organizational Practice

55:10-13-2. [AMENDED]

55:10-13-5. [AMENDED]

55:10-13-20. [AMENDED]

Subchapter 15. Violations

55:10-15-2. [AMENDED]

55:10-15-10. [AMENDED]

Subchapter 17. Continuing Education Requirements

55:10-17-4. [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

January 2, 2009

*[OAR Docket #09-22; filed 1-7-09]*

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

*[OAR Docket #08-1593]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 25. Visible Emissions and Particulates

252:100-25-3. Opacity limit [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

December 15, 2008

*[OAR Docket #08-1593; filed 12-30-08]*

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

*[OAR Docket #08-1594]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Appendix E. Primary Ambient Air Quality Standards  
[REVOKED]

Appendix E. Primary Ambient Air Quality Standards  
[NEW]

Appendix F. Secondary Ambient Air Quality Standards  
[REVOKED]

Appendix F. Secondary Ambient Air Quality Standards  
[NEW]

#### **GUBERNATORIAL APPROVAL:**

December 15, 2008

*[OAR Docket #08-1594; filed 12-30-08]*

# Gubernatorial Approvals

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

[OAR Docket #08-1595]

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Appendix Q. Incorporation by Reference [REVOKED]

Appendix Q. Incorporation by Reference [NEW]

### GUBERNATORIAL APPROVAL:

December 15, 2008

[OAR Docket #08-1595; filed 12-30-08]

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #08-1596]

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 3. Incorporation by Reference

252:205-3-1. [AMENDED]

252:205-3-2. [AMENDED]

### GUBERNATORIAL APPROVAL:

December 15, 2008

[OAR Docket #08-1596; filed 12-30-08]

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

[OAR Docket #08-1597]

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 1. General Provisions

252:410-1-2. Definitions [AMENDED]

252:410-1-4. General regulatory requirements [AMENDED]

252:410-1-7. Incorporation of federal regulations by reference [AMENDED]

Subchapter 10. Radioactive Materials Program

Part 1. General Provisions

252:410-10-1. Radioactive Materials Program [AMENDED]

252:410-10-2. Using provisions incorporated by reference as state rules [AMENDED]

252:410-10-3. Radioactive Materials Program authorizations [AMENDED]

Part 30. Byproduct Material Licensing in General

252:410-10-30. 10 CFR 30 incorporations [AMENDED]

Part 31. Byproduct Material: General Licenses

252:410-10-31. 10 CFR 31 incorporations by reference [AMENDED]

Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items

252:410-10-32. 10 CFR 32 incorporations by reference [AMENDED]

Part 35. Medical Use of Byproduct Material

252:410-10-35. 10 CFR 35 incorporations by reference [AMENDED]

Subchapter 20. Standards for Protection Against Radiation

252:410-20-1. Standards for protection against radiation [AMENDED]

### GUBERNATORIAL APPROVAL:

December 15, 2008

[OAR Docket #08-1597; filed 12-30-08]

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #08-1598]

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 1. General Provisions

252:611-1-3. Adoption and incorporation by reference [AMENDED]

Subchapter 3. Certifications

252:611-3-1. Water quality certifications required [AMENDED]

252:611-3-2. Requirements for certification [AMENDED]

### GUBERNATORIAL APPROVAL:

December 15, 2008

[OAR Docket #08-1598; filed 12-30-08]

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# Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] . . . . [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

*For additional information on the emergency rulemaking process, see 75 O.S., Section 253.*

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS**

*[OAR Docket #08-1599]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Appendix H. Size Charts for On-Site Sewage Treatment Systems [REVOKED]

Appendix H. Size Charts for On-Site Sewage Treatment Systems [NEW]

### **AUTHORITY:**

Environmental Quality Board and Water Quality Management Advisory Council powers and duties, 27A O.S., §§ 2-2-101, 2-2-201 and 2-6-402

### **DATES:**

#### **Adoption:**

November 18, 2008

#### **Approved by Governor:**

December 15, 2008

#### **Effective:**

Immediately upon Governor's approval

#### **Expiration:**

Expires on July 14, 2009, unless superseded by another rule or disapproved by the Legislature

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATION BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

By not immediately adopting this rulemaking, on-site sewage treatment systems, whose minimum size varies based on the Net Evaporation Zone in Delaware County, will be oversized unnecessarily. This could prevent the installation of on-site sewage treatment systems on lots that are large enough for a system sized in Net Evaporation Zone 2 but not in Net Evaporation Zone 1.

### **ANALYSIS:**

Based on feedback from installers in Delaware County, DEQ staff discovered that Delaware County had been mistakenly categorized as being in Net Evaporation Zone 1 instead of 2 in Appendix H, Figure 25. This emergency rulemaking is intended to temporarily correct this mistake, pending promulgation of permanent rulemaking.

### **CONTACT PERSON:**

The contact person is Robert Huber. He can be reached at Robert.Huber@deq.ok.gov (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

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

## Emergency Adoptions

### APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]

### APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

**Figure 1. Individual Conventional Subsurface Absorption Fields Designed Using a Percolation Test**

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	200	270	340	70
16-30 minutes per inch	310	410	510	100
31-45 minutes per inch	420	560	700	140
46-60 minutes per inch	590	790	990	200
61-75 minutes per inch	770	1,030	1,290	260
>75 minutes per inch	Prohibited			

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 2. Individual Conventional Subsurface Absorption Fields Utilizing Chambers When Designed Using a Percolation Test**

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	160	215	270	55
16-30 minutes per inch	250	330	410	80
31-45 minutes per inch	340	450	560	110
46-60 minutes per inch	470	630	790	160
61-75 minutes per inch	620	830	1040	210
>75 minutes per inch	Prohibited			

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 3. Individual Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 4. Small Public Conventional Subsurface Absorption Fields Designed Using a Percolation Test**

Minimum Linear Feet Per Gallon per Day

PERCOLATION RATE FOR DISPERSAL SITE	LINEAR FEET PER GALLON PER DAY
0-15 minutes per inch	1.2
16-30 minutes per inch	1.5
31-45 minutes per inch	2
46-60 minutes per inch	2.5
61-75 minutes per inch	3.85
>75 minutes per inch	Prohibited

## Emergency Adoptions

**Figure 5. Small Public Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	0.8
2a	1.3
3	1.7
3a	2.5
4	3.3
5	Prohibited

**Figure 6. Individual Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	260	340	420	80
2a	400	530	660	130
3	540	720	900	180
3a	800	1,060	1,320	260
4	1,060	1,410	1,760	350
5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 7. Small Public Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	1.3
2a	2.1
3	2.7
3a	4.0
4	5.3
5	Prohibited

**Figure 8. Individual Low Pressure Dosing Fields Designed Using a Soil Profile Description**

Total Linear Trench Length in Feet

SOIL GROUP <sup>††</sup>	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Five
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4, & 5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

<sup>††</sup> Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

**Figure 9. Small Public Low Pressure Dosing Fields Designed Using a Soil Profile Description**

Total Linear Trench Length in Feet

SOIL GROUP <sup>†</sup>	AVERAGE DAILY FLOW IN GALLONS			
	200	275	350	400 <sup>††</sup>
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4 & 5	Prohibited			

<sup>†</sup> Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

<sup>††</sup> Low pressure dosing fields may be allowed for average daily flows over 400 gpd, but they will have to be designed and approved as an alternative on-site sewage treatment system.

**Figure 10. Individual ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only**

Minimum Trench Length in Feet

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,059	2,745	3,432	686
2	1,872	2,496	3,120	624
3	1,647	2,196	2,745	549
4	1,471	1,961	2,451	490
5	1,373	1,830	2,288	457
6	1,144	1,525	1,907	381
7	958	1,277	1,596	319
8	792	1,056	1,320	264
9	675	900	1,125	225
10	580	773	967	193

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 11. Small Public ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only

AVERAGE DAILY FLOW In Gallons	Minimum Trench Length in Feet									
	ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
25	261	238	209	187	174	145	122	100	86	70
50	522	475	418	373	348	290	243	200	171	141
75	783	712	626	560	522	435	364	300	257	212
100	1,044	949	835	746	696	580	485	401	342	282
200	2,088	1,898	1,670	1,491	1,392	1,160	971	803	684	564
300	3,131	2,847	2,505	2,237	2,088	1,740	1,456	1,204	1,027	846
400	4,175	3,796	3,340	2,982	2,784	2,320	1,942	1,606	1,369	1,128
500	5,219	4,745	4,175	3,728	3,479	2,899	2,427	2,007	1,711	1,411
600	6,263	5,694	5,010	4,473	4,175	3,479	2,913	2,409	2,053	1,693
700	7,307	6,642	5,845	5,219	4,871	4,059	3,398	2,810	2,396	1,975
800	8,351	7,591	6,680	5,965	5,567	4,639	3,884	3,112	2,738	2,257
900	9,394	8,540	7,515	6,710	6,263	5,219	4,369	3,613	3,080	2,539
1,000	10,438	9,489	8,351	7,456	6,959	5,799	4,855	4,015	3,422	2,821
1,100	11,482	10,438	9,186	8,201	7,655	6,379	5,340	4,416	3,765	3,105
1,200	12,526	11,387	10,021	8,947	8,351	6,959	5,826	4,818	4,107	3,385
1,300	13,570	12,336	10,856	9,693	9,046	7,539	6,311	5,219	4,449	3,667
1,400	14,613	13,285	11,691	10,438	9,742	8,119	6,797	5,621	4,791	3,950
1,500	15,657	14,234	12,526	11,184	10,438	8,698	7,282	6,022	5,134	4,232
1,600	16,701	15,183	13,361	11,929	11,134	9,278	7,768	6,423	5,476	4,514
1,700	17,745	16,132	14,196	12,675	11,830	9,858	8,253	6,825	5,818	4,796
1,800	18,789	17,081	15,031	13,420	12,526	10,438	8,739	7,226	6,160	5,078
1,900	19,832	18,030	15,866	14,166	13,222	11,018	9,224	7,628	6,502	5,360
2,000	20,876	18,978	16,701	14,912	13,918	11,598	9,710	8,029	6,845	5,642
2,500	26,095	23,718	20,876	18,640	17,397	14,498	12,138	10,037	8,556	7,053
3,000	31,314	28,458	25,052	22,367	20,876	17,397	14,565	12,044	10,267	8,463
3,500	36,533	33,212	29,227	26,096	24,356	20,296	16,993	14,052	11,978	9,874
4,000	41,753	37,957	33,402	29,823	27,835	23,196	19,420	16,059	13,689	11,284
4,500	46,972	42,702	37,578	33,551	31,314	26,096	21,848	18,066	15,401	12,695
5,000	52,191	47,446	41,573	37,279	34,794	28,995	24,275	20,073	17,112	14,106

**Figure 12. Individual Drip Irrigation Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	125	165	205	40
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	1,000	1,330	1,660	330

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 13. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone I [See Figure 25 in this Appendix (relating to net evaporation zones)]**

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	7,282	9,709	12,137	2,427
2	8,010	10,680	13,350	2,670
2a	8,738	11,651	14,564	2,913
3	9,467	12,622	15,777	3,155
3a	10,195	13,593	16,991	3,398
4	10,923	14,564	18,205	3,641
5	14,564	19,418	24,273	4,854

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 14. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 2** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	4,161	5,548	6,935	1,387
2	4,577	6,103	7,629	1,526
2a	4,993	6,658	8,322	1,665
3	5,409	7,212	9,016	1,803
3a	5,825	7,767	9,709	1,942
4	6,242	8,322	10,403	2,080
5	8,322	11,096	13,870	2,774

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 15. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 3** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,913	3,884	4,855	971
2	3,204	4,272	5,340	1,068
2a	3,495	4,660	5,825	1,165
3	3,786	5,049	6,311	1,263
3a	4,078	5,437	6,796	1,359
4	4,369	5,825	7,282	1,456
5	5,825	7,767	9,709	1,942

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

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**Figure 16. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 4** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,330	3,107	3,884	777
2	2,563	3,418	4,272	855
2a	2,796	3,728	4,660	932
3	3,029	4,039	5,049	1,010
3a	3,262	4,350	5,437	1,088
4	3,495	4,661	5,825	1,166
5	4,660	6,214	7,767	1,554

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 17. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 5** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,821	2,428	3,034	607
2	2,003	2,670	3,337	667
2a	2,185	2,913	3,641	728
3	2,367	3,156	3,944	789
3a	2,549	3,399	4,248	850
4	2,731	3,641	4,551	910
5	3,641	4,855	6,068	1,214

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 18. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 6** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,533	2,044	2,555	511
2	1,686	2,248	2,811	562
2a	1,840	2,453	3,066	613
3	1,993	2,657	3,322	664
3a	2,146	2,862	3,577	716
4	2,300	3,066	3,833	766
5	3,066	4,088	5,110	1,022

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 19. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 7** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,324	1,766	2,207	442
2	1,456	1,942	2,427	486
2a	1,589	2,119	2,648	530
3	1,721	2,472	2,868	574
3a	1,854	2,472	3,089	618
4	1,986	2,648	3,310	662
5	2,648	3,531	4,413	883

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

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**Figure 20. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 8** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,165	1,554	1,942	389
2	1,282	1,709	2,136	427
2a	1,398	1,864	2,330	466
3	1,515	2,020	2,525	505
3a	1,631	2,175	2,719	544
4	1,748	2,330	2,913	582
5	2,330	3,107	3,884	777

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 21. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 9** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,041	1,387	1,734	346
2	1,145	1,526	1,907	381
2a	1,249	1,664	2,081	415
3	1,353	1,803	2,254	450
3a	1,457	1,942	2,428	485
4	1,561	2,081	2,601	520
5	2,081	2,774	3,468	693

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 22. Individual Spray Irrigation Fields Designed Using a Soil Profile Description—Net Evaporation Zone 10** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	940	1,253	1,566	313
2	1,033	1,378	1,723	345
2a	1,127	1,504	1,879	377
3	1,221	1,629	2,036	408
3a	1,315	1,754	2,192	439
4	1,409	1,880	2,349	471
5	1,879	2,506	3,132	627

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

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**Figure 23. Individual Lagoons**

Length in Feet of Each Side of the Bottom of a Square Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	40	50	60	65
4	35	45	55	60
5	30	40	50	55
6	25	35	45	50
7	20	30	35	45
8	20	25	30	35
9	15	20	25	30
10	10	15	20	25

Diameter in Feet of the Bottom of a Round Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	50	60	70	80
4	45	55	65	75
5	40	50	60	70
6	35	45	50	60
7	30	40	45	55
8	25	30	40	45
9	20	30	35	40
10	15	25	30	35

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 24. Small Public Lagoons

Length in Feet of Each Side of the Bottom of a Square Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		18	16	14	10	Prohibited			
200			38	35	32	27	22	17	14	11
300			54	49	46	40	34	28	24	20
400			67	61	58	51	44	37	32	27
500			78	72	69	60	52	45	39	34
600			88	82	78	69	60	52	46	40
700			98	91	87	77	68	59	52	46
800			107	99	95	84	74	65	58	51
900			115	107	102	91	81	71	63	56
1,000			123	114	110	97	87	76	68	61
1,100			130	122	116	104	92	81	73	65
1,200			138	128	123	110	98	86	77	69
1,300			144	135	129	115	103	91	82	73
1,400			151	141	135	121	108	95	86	77
1,500			157	147	141	126	113	100	90	81
1,600			163	153	147	131	117	104	94	85
1,700			169	158	152	136	122	108	98	88
1,800			175	164	157	141	126	112	101	92
1,900			181	169	162	146	131	116	105	95
2,000			186	174	167	150	135	120	108	98
2,500	212	198	190	171	154	137	125	114		
3,000	235	220	212	191	172	154	140	127		
3,500	256	240	231	209	188	168	153	140		
4,000	276	259	249	225	203	182	166	151		
4,500	295	276	266	240	218	195	178	163		
5,000	312	293	282	255	231	207	189	173		

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Diameter in Feet of the Bottom of a Round Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE									
	[See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		25	22	20	15	Prohibited			
200			47	43	40	34	29	23	20	16
300			65	59	56	49	42	35	31	26
400			79	73	70	61	53	45	40	35
500			92	85	81	72	63	54	49	43
600			104	96	92	81	72	62	56	50
700			114	106	102	90	80	69	63	56
800			124	116	111	99	88	76	70	62
900			134	125	119	106	95	82	76	68
1,000			143	133	128	114	102	89	81	73
1,100			151	141	135	121	108	94	87	78
1,200			159	149	143	128	114	100	92	83
1,300			167	156	150	134	120	105	97	88
1,400			174	163	156	140	126	110	102	92
1,500			181	170	163	146	131	115	106	96
1,600			188	176	169	152	136	120	111	100
1,700			195	183	175	158	142	125	115	104
1,800			202	189	181	163	147	129	119	108
1,900			208	195	187	168	151	133	124	112
2,000			214	201	193	173	156	138	128	116
2,500	243	228	219	197	178	157	146	133		
3,000	269	252	243	219	198	175	163	149		
3,500	293	275	265	239	216	192	178	163		
4,000	315	296	285	258	233	207	193	176		
4,500	336	316	304	275	249	221	206	189		
5,000	356	335	322	292	264	235	219	201		

**Figure 25. Net Evaporation Zones**

COUNTY	ZONE	COUNTY	ZONE	COUNTY	ZONE
Adair	1	Grant	9	Nowata	5
Alfalfa	9	Greer	9	Okfuskee	7
Atoka	6	Harmon	9	Oklahoma	8
Beaver	10	Harper	9	Okmulgee	6
Beckham	9	Haskell	3	Osage	7
Blaine	9	Hughes	6	Ottawa	2
Bryan	6	Jackson	9	Pawnee	7
Caddo	9	Jefferson	9	Payne	7
Canadian	9	Johnston	7	Pittsburg	5
Carter	7	Kay	8	Pontotoc	7
Cherokee	3	Kingfisher	9	Pottawatomie	7
Choctaw	2	Kiowa	9	Pushmataha	2
Cimarron	10	Latimer	2	Roger Mills	9
Cleveland	8	LeFlore	1	Rogers	5
Coal	6	Lincoln	7	Seminole	7
Comanche	9	Logan	8	Sequoyah	1
Cotton	9	Love	7	Stephens	8
Craig	4	McClain	8	Texas	10
Creek	7	McCurtain	1	Tillman	9
Custer	9	McIntosh	5	Tulsa	6
Delaware	2	Major	9	Wagoner	5
Dewey	9	Marshall	7	Washington	6
Ellis	9	Mayes	5	Washita	9
Garfield	9	Murray	7	Woods	9
Garvin	8	Muskogee	5	Woodward	9
Grady	9	Noble	8		

[OAR Docket #08-1599; filed 12-30-08]

# Emergency Adoptions

## TITLE 265. STATE FIRE MARSHAL COMMISSION CHAPTER 40. FIRE SAFETY STANDARDS FOR CIGARETTES

[OAR Docket #09-05]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

- 265:40-1-1. Scope [NEW]
- 265:40-1-2. Definitions [NEW]
- 265:40-1-3. Test Method [NEW]
- 265:40-1-4. Performance [NEW]
- 265:40-1-5. Test Data [NEW]
- 265:40-1-6. Certification [NEW]
- 265:40-1-7. Notification of Certification [NEW]
- 265:40-1-8. Marking of Cigarette Packing [NEW]
- 265:40-1-9. Penalties [NEW]
- 265:40-1-10. Federal Fire Safety Standards [NEW]
- 265:40-1-11. Notification to the OSFM [NEW]

### AUTHORITY:

74 O.S. Supp. § 326.10; State Fire Marshal Commission

### DATES:

#### Adoption:

December 5, 2008

#### Approved by Governor:

January 2, 2009

#### Effective:

Immediately upon the Governor's approval or January 1, 2009, whichever is later.

#### Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### FINDING OF EMERGENCY:

Effective January 1, 2009, HB 3341 created the Fire Safety Standard and Firefighter Protection Act giving the Agency statutory authority to certify the testing methods and packing of fire safe cigarettes in Oklahoma.

### ANALYSIS:

Pursuant 74 O.S. Supp. § 326.10, the addition of these rules authorizes the Agency to collect testing methods and certification fees to enforce that all cigarettes sold or offered for sale in Oklahoma are fire safe compliant.

### CONTACT PERSON:

Susie Cain (405) 522-5009

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JANUARY 1, 2009, WHICHEVER IS LATER:**

#### **265:40-1-1. Scope**

(a) On and after January 1, 2009, no cigarettes subject to the provisions of the Fire Safety Standard and Firefighter Protection Act or this Chapter shall be sold or offered for sale in this State unless:

- (1) the cigarettes have been tested in accordance with the test method prescribed in OAC 265:40-1-3;
- (2) the cigarettes meet the performance standard specified in OAC 265:40-1-4;

(3) a written certification has been filed by the manufacturer with the Office of the State Fire Marshal, 2401 N.W. 23<sup>rd</sup> Street, Suite 4, Oklahoma City, Oklahoma 73107 in accordance with OAC 265:40-1-6; and

(4) the cigarettes have been marked in accordance with OAC 265:40-1-8.

(b) Nothing in this Chapter shall prohibit:

(1) wholesale dealers or retail dealers from selling their inventory of cigarettes existing on January 1, 2009, provided that the wholesale dealer or retail dealer can establish that Oklahoma State tax stamps were affixed to these cigarettes prior to January 1, 2009, and provided further that the wholesale dealer or retail dealer can establish that the inventory was purchased prior to January 1, 2009 in comparable quantity to the inventory purchased during the same period in the prior year; provided that in no event may a wholesale dealer or retail dealer sell or offer to sale a cigarette in this State that does not comply with the Act or this Chapter after January 1, 2010;

(2) wholesale dealers or retail dealers from selling, until July 1, 2009, cigarettes manufactured in this State as determined by the State Fire Marshal;

(3) any person or entity from manufacturing or selling cigarettes that do not meet the requirements of this Chapter, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States pursuant to 74 O.S. Supp. 2008 § 326.10 and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered to sale to persons located in this State; and

(4) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this Chapter, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

#### **265:40-1-2. Definitions**

For the purposes of this Chapter:

"Act" means the Fire Safety Standard and Firefighter Protection Act.

"Agent" means any person licensed by the Oklahoma Tax Commission to purchase and affix adhesive or meter stamps on packages of cigarettes.

"Cigarette" means any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, if the wrapper or cover is in greater part made of paper or any other substance or material except tobacco.

"Manufacturer" means any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this State, including cigarettes intended to be sold in

the United States through an importer; the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or any entity that becomes a successor of an entity described above.

**"OSFM"** means the Office of the Oklahoma State Fire Marshal.

**"Quality Control and Quality Assurance Program"** means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in Section 40-1-3(e) of this Part for all test trials used to certify cigarettes in accordance with the Act.

**"Repeatability"** means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

**"Retail Dealer"** means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes.

**"Sale"** means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefore. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts and the exchanging of cigarettes for any consideration other than money are considered sales.

**"Sell"** means to sell or to offer or agree to sell.

**"Wholesale Dealer"** means any person who sells cigarettes to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

**265:40-1-3. Test method**

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04 (2004) "Standard Test Method for Measuring the Ignition Strength of Cigarettes". This standard may be obtained from the publisher at ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken PA 19428-2959. This material is available for public inspection and distribution at the Office of the State Fire Marshal, 2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, Oklahoma 73107.

(b) Testing shall be conducted on 10 layers of filter paper.

(c) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required by OAC 265:40-1-4 shall only be applied to a complete test trial.

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO), or other comparable accreditation standard as determined by the State Fire Marshal.

(f) Laboratories conducting testing in accordance with this Chapter shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(g) This Section does not require additional testing, in accordance with this Chapter, if cigarettes are tested consistently with the Act for any other purpose. OSFM may, at its sole discretion, conduct random independent tests of certified brands to verify the accuracy of the information submitted to OSFM by the manufacturer. This testing shall be conducted in accordance with this Section.

**265:40-1-4. Performance standard**

(a) When tested in accordance with OAC 265:40-1-3, no more than 25 percent of the cigarettes tested in a test trial shall exhibit full length burns.

(b) Each cigarette listed in a certification submitted pursuant to OAC 265:40-1-6 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subsection (a) shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column or ten (10) millimeters from the labeled end of the tobacco column for a non-filtered cigarette.

(c) The manufacturer of a cigarette that OSFM determines cannot be tested in accordance with the test method prescribed in OAC 265:40-1-3 shall propose a test method and performance standard for that cigarette to OSFM. Upon approval of the proposed test method and a determination by OSFM that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in OAC 265:40-1-4(a), the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to OAC 265:40-1-6. All other applicable requirements of this Chapter shall apply to the manufacturer.

(d) If OSFM determines that another state, with reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Act, has adopted an alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this Section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State unless the State Fire Marshal demonstrates a reasonable basis for not accepting the alternative test method.

**265:40-1-5. Test data**

In order to ensure compliance with the performance standard specified in OAC 265:40-1-4, data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by the manufacturers for a period of 3 years and shall be sent to OSFM upon its request, and to the Office of the Attorney General upon its request.

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### **265:40-1-6. Certification**

(a) Each manufacturer shall submit a written certification attesting that:

- (1) each cigarette listed in the certification has been tested in accordance with OAC 265:40-1-3; and
- (2) each cigarette listed in the certification meets the performance standard set forth in OAC 265:40-1-4 or meets the performance standard by any other state having equal or stricter performance standards.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) brand (i.e., the trade name on the package);
- (2) style (e.g., light, ultra light);
- (3) length in millimeters;
- (4) circumference in millimeters;
- (5) flavor (e.g., menthol, chocolate), if applicable;
- (6) filter or non-filter;
- (7) package description (e.g., soft pack, box);
- (8) marking approved in accordance with OAC 265:40-1-8;
- (9) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (10) the date the testing occurred.

(c) Each cigarette certified under this Section shall be re-certified every 3 years. Re-certification may be coordinated with re-certification required by other states with the same standard.

(d) At the time it submits a written certification under this Section, a manufacturer shall pay to the OSFM a fee for each brand family listed in the certification as established by the Act. The fee paid shall apply to all cigarettes within the brand family certified, and shall include any new cigarette certified within the brand family during the three-year certification period.

(e) The certifications shall be made available by OSFM to the Attorney General for purposes consistent with this Chapter and the Tax Commission for the purposes of ensuring compliance with this Section.

(f) If a manufacturer has certified a cigarette pursuant to this Section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this Chapter, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in OAC 265:40-1-3 and maintains records of that retesting as required by OAC 265:40-1-5. Any altered cigarette which does not meet the performance standard set forth in OAC 265:40-1-4(a) may not be sold in this State.

### **265:40-1-7. Notification of certification**

(a) After the acceptance of the manufacturer's certification by OSFM, manufacturers certifying cigarettes in accordance with OAC 265:40-1-6 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes.

(b) OSFM and the Office of the Attorney General will cooperate to produce a list of cigarette brands and styles that are legal for sale under any and all of the laws of the State of Oklahoma.

(c) If OSFM intends to remove a brand from the certified list, it will send a notice of intent to remove to the manufacturer.

The notice of intent to remove shall include:

- (1) the factual and legal deficiencies upon which OSFM's intended action rests;
- (2) the actions that the manufacturer must undertake to cure the factual or legal deficiencies upon which the intended action is based; and
- (3) A notification that the manufacturer shall have 30 calendar days to cure deficiencies and submit documentation or other information of its attempt to cure to OSFM. OSFM may extend the time period for a manufacturer to cure its deficiencies.

### **265:40-1-8. Marking of cigarette packaging**

(a) Cigarettes that have been certified by a manufacturer in accordance with OAC 265:40-1-6 shall be marked to indicate compliance with the requirements of this Chapter. Marking shall be in eight (8) point type or larger and consist of:

- (1) the letters "FSC" and be permanently stamped, engraved, embossed or printed on the package at or near the UPC; and
- (2) A manufacturer's marking shall meet all requirements set forth in § 326.5 of the Act.

(b) Wholesale dealers, agents and retail dealers shall permit OSFM, Oklahoma Tax Commission and Office of the Attorney General representatives to inspect cigarette packaging to ensure it is marked in accordance with this Section.

(c) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to OSFM for approval. Upon receipt of the request, OSFM will approve or disapprove the marking offered. Proposed markings shall be deemed approved if OSFM fails to act within ten (10) business days after receiving a request for approval.

(d) No manufacturer shall modify its approved marking unless the modification has been approved by OSFM in accordance with this Section.

### **265:40-1-9. Penalties**

(a) Any manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes other than through retail sale in violation of OAC 265:40-1-1(a)(3) shall be subject to a civil penalty not to exceed \$500.00 for each pack of such cigarettes sold or offered for sale, provided that the penalty against any such person or entity shall not exceed \$100,000.00 for sales or offers to sell in any thirty (30) day period.

(b) Any retail dealer who knowingly sells or offers to sell cigarettes in violation of OAC 265:40-1-1(a)(3) shall be subject to a civil penalty not to exceed \$500.00 for each pack of cigarettes sold or offered for sale, provided that the penalty against any retailer shall not exceed \$25,000.00 for sales or offers to sell during any thirty (30) day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietorship, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section

326.4 of the Act shall be subject to a civil penalty of at least \$75,000.00 and not to exceed \$250,000.00 for each false certification.

(d) Upon discovery by OSFM, the Oklahoma Tax Commission, the Office of the Attorney General, or a law enforcement agency that any person offers, possesses for sale, or has made a sale of cigarettes in violation of Section the Act, OSFM, the Oklahoma Tax Commission, the Office of the Attorney General, or the law enforcement agency may seize those cigarettes possessed in violation of the Act.

(e) To enforce the provisions of the Act, the State Fire Marshal or Attorney General may bring an action on behalf of the people of this State to enjoin acts in violation of the Act and to recover civil penalties authorized under Section 326.6 of the Act and this Chapter.

(f) Civil penalties under this Section shall be assessed by administrative citation issued by the OSFM according to the following provisions:

(1) the civil penalties for OAC 265:40-1-9(a) shall be \$100.00 per pack for the first violation, \$250.00 per pack for the second violation and \$500.00 per pack for each subsequent violation, all subject to the thirty (30) day period maximum per the Act;

(2) the civil penalties for OAC 265:40-1-9(b) shall be \$50.00 per pack for the first violation, \$150.00 per pack for the second violation, \$350.00 per pack for the third offense and \$500.00 per pack for each subsequent violation, all subject to the thirty (30) day period maximum per the Act and;

(3) the civil penalties for OAC 265:40-1-9(c) shall be \$75,000.00 for making a knowingly false certification of any brand style. Any subsequent making of a knowingly false certification of the same brand will be subject to a civil penalty of \$250,000.00.

(g) Administrative citations issued pursuant to this Section shall be scheduled for hearing before the State Fire Marshal within sixty (60) days of issuance pursuant to 75 O.S. § 309. Hearings before the State Fire Marshal under this Section shall comply with OAC Title 265, Chapter 1, Subchapter 5.

**265:40-1-10. Federal fire safety standards**

If federal fire safety standards for cigarettes preempt the Act or this Chapter, the OSFM will repeal this Chapter.

**265:40-1-11. Notification to the OSFM**

All required notices, test results and documents shall be sent to: Office of the State Fire Marshal, 2401 NW 23<sup>rd</sup> Street, Suite 4, Oklahoma City, Oklahoma 73107.

[OAR Docket #09-05; filed 1-6-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY  
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

[OAR Docket #09-68]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
317:2-1-7. [AMENDED]  
(Reference APA WF # 08-40)

**AUTHORITY:**  
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 C.F.R. Section 435.902; 42 C.F.R. Section 435.930

**DATES:**  
**Adoption:**  
December 11, 2008

**Approved by Governor:**  
January 2, 2009

**Effective:**  
Immediately upon Governor's approval.

**Expiration:**  
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**FINDING OF EMERGENCY:**  
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to revise policy which incorrectly states that the provider appeal is forwarded to the SURS unit or Program Integrity Audit/Review unit after it has been docketed. Currently, agency's practices are an appeal is forwarded to the Legal Services Division after it has been docketed. The revision is needed to reflect accurate agency practices and to ensure provider appeals are forwarded to the correct division without unnecessary delays.

**ANALYSIS:**  
Agency rules are revised to ensure policy is consistent with the agency's practices. Currently, agency's practices are an appeal is forwarded to the Legal Services Division after it has been docketed. The revision is needed to reflect accurate agency practices and to ensure provider appeals are forwarded to the correct division without unnecessary delays.

**CONTACT PERSON:**  
Tywanda Cox at (405) 522-7153

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

**317:2-1-7. Surveillance, Utilization and Review System (SURS) and Program Integrity Audits/Reviews appeals**

SURS and Program Integrity Audits/Reviews appeals are made to the State Medicaid Director.

(1) If a provider disagrees with a decision of the ~~Surveillance, Utilization and Review System Unit (SURS)~~ SURS or Program Integrity Audit/Review which has determined that the provider has received an overpayment, the provider may appeal, within 20 days of the date of that decision to the State Medicaid Director.

(2) The appeal from the SURS or Program Integrity Audit/Review decision will be commenced by the receipt of a letter from the appellant provider. The letter must set out with specificity, the overpayment decision to which the provider objects along with the grounds for appeal. The letter should explain in detail, the factual and/or legal basis for disagreement with the allegedly erroneous decision. The letter ~~will~~ should also include all relevant exhibits the provider believes necessary to decide the appeal.

(3) Upon ~~the~~ receipt of the appeal by the docket clerk, the matter will be docketed for the next meeting of the ~~MAC Medical Advisory Committee (MAC)~~. Any appeal received less than four weeks before a scheduled MAC meeting will be set for the following MAC meeting.

(4) The appeal will be forwarded to the ~~SURS unit or Program Integrity Audit/Review unit~~ OHCA Legal Services Division by the docket clerk for distribution to the members of the subcommittee and for preparation of the OHCA's case. A subcommittee of the MAC will be formed and render a recommendation to the State Medicaid Director.

(5) At the discretion of the MAC, witnesses may be called and information may be solicited from any party by letter, telephonic communication, fax, or other means. The subcommittee may request that members of the Authority be present during their consideration of the appeal. Members of the Authority's Legal Division may be asked to answer legal questions regarding the appeal.

(6) The subcommittee will issue a recommendation regarding the appeal, in writing, within 30 days of the hearing. An exception to the 30 day rule will apply in cases where the subcommittee sets the case over until its next scheduled meeting in order to gather additional evidence. The written recommendation will list the members of the subcommittee who participated in the decision. In cases where an appeal must be continued, the subcommittee will issue a letter within 30 days of the initial hearing to inform the appellant of the continuance.

(7) The recommendation, after being formalized, will be sent to the docket clerk for review by the State Medicaid Director. The State Medicaid Director will issue a decision regarding the appeal within 60 days of the docket clerk's receipt of the recommendation from the MAC. The decision will be issued to the appellant or his/her authorized agent.

(8) If the provider is dissatisfied with the Medicaid Director's decision, it may be appealed to the CEO under OAC 317:2-1-13.

*[OAR Docket #09-68; filed 1-9-09]*

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

*[OAR Docket #09-65]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 32. SoonerRide Non-Emergency Transportation  
317:30-5-326. [AMENDED]

**(Reference APA WF #08-49)**

### **AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act and Sections 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.170

### **DATES:**

#### **Adoption:**

December 11, 2008

#### **Approved by Governor:**

January 2, 2009

#### **Effective:**

Immediately upon Governor's approval

#### **Expiration:**

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions which would remove specific reimbursement language from the SoonerRide Non-Emergency Transportation (NET) rules and instead refer only to the reimbursement methodology found in the Oklahoma Title XIX State Plan. Language in the current SoonerRide rule only addresses reimbursement under a capitated methodology and is silent as to reimbursement at a fee for service mileage rate for those members eligible for NET but not included in the NET capitation roster, as outlined in the State Plan. This discrepancy could lead to a potential Payment Error Rate Measurement (PERM) error if OHCA rules are not brought in line with current practices and Oklahoma Title XIX State Plan requirements.

### **ANALYSIS:**

The OHCA is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for NET under the SOonerRide program. Language in the current SoonerRide rule only addresses reimbursement under a capitated methodology and is silent as to reimbursement at a fee for service mileage rate for those members eligible for NET but not included in the NET capitation roster, as is outlined in the State Plan Amendment. This revision will bring OHCA rules in line with current OHCA practices and Oklahoma Title XIX State Plan requirements thereby avoiding a potential PERM error.

### **CONTACT PERSON:**

Tywanda Cox at (405)522-7153

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

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

**PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION**

**317:30-5-326. Provider eligibility**

The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. Payment for covered services to the broker ~~is reimbursed under capitated methodology based on per member per month~~ is made pursuant to the methodology described in the Oklahoma Title XIX State Plan. The agency contracts directly with ambulance and air providers for all other transportation needs for eligible members not approved by SoonerRide.

*[OAR Docket #09-65; filed 1-9-09]*

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

*[OAR Docket #09-72]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**

- Subchapter 5. Individual Providers and Specialties
- Part 3. Hospitals
- 317:30-5-42.14. [AMENDED]
- Part 63. Ambulatory Surgical Centers (ASC)
- 317:30-5-565. through 317:30-5-567. [AMENDED]
- (Reference APA WF # 08-47)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.20

**DATES:**

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December 11, 2008

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January 2, 2009

**Effective:**

Immediately upon Governor's approval

**Expiration:**

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**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to reflect a new payment methodology for outpatient hospitals and free-standing ambulatory surgical centers. This payment methodology will more closely align with Medicare's. Without this change, contracted SoonerCare outpatient surgery providers will continue to suffer an administrative burden in filing claims and necessary provider follow-up. Systems updates will continue to be a manual, labor-intensive process subject

to normal human error. The coordination of benefits between OHCA and other third party payers will continue to be difficult.

**ANALYSIS:**

Agency rules are revised to reflect upcoming changes to the reimbursement methodology for outpatient surgery services. Currently, OHCA does not use the same methodology to process Ambulatory Surgical Center/Ambulatory Payment Classification (ASC/APC) claims as Medicare. OHCA currently pays for outpatient surgery under a "hierarchical" methodology that does not align with any other payer. This current methodology creates an administrative burden for facilities submitting claims and makes it difficult for OHCA to coordinate benefits with other payers. Beginning January 1, 2009, OHCA will no longer process outpatient surgery claims under a "hierarchical" payment methodology. This change in payment methodology will more closely align OHCA's payment methodology with Medicare's, thereby relieving the administrative burden on contracted SoonerCare outpatient surgery providers and facilitating the coordination of benefits between OHCA and other third party payers.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

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

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 3. HOSPITALS**

**317:30-5-42.14. Surgery and diagnostic services**

(a) ~~**Reimbursement.** Reimbursement is made for selected surgeries performed in an outpatient hospital. When an ambulatory surgery is performed in the inpatient hospital setting, the physician must provide exception rationale justifying the need for an inpatient setting to OHCA medical staff for review.~~

(b) ~~**Ambulatory Surgery Center Groups.** The Medicare definition of covered Ambulatory Surgery Center (ASC) facility services includes services furnished on a outpatient basis in connection with a covered surgical procedure. This is a bundled payment that includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use to patients scheduled for surgical procedures. It includes all services and procedures in connection with covered procedures provided by facility personnel and others involved in patient care. These services do not include physician services, or other health services for which payment can be made under other OHCA medical program provisions (e.g., services of an independent laboratory located on the same site as the ASC, prosthetic devices other than intra ocular lenses (IOLs), anesthetist services, DME). (See OAC 317:30-5-565 for items separately billable.)~~

(e) ~~**Ambulatory Patient Classification (APC) Groups.** Certain surgical services filed with revenue code series 36X and 49X and that do not fall within an Ambulatory Patient Classification (ASC) group will pay a SoonerCare rate based on Medicare's APC groups. This is not a bundled rate. Other lines on the claim may pay. All outpatient hospital services paid under the Medicare Outpatient Prospective Payment~~

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System (OPPS) are classified into groups called Ambulatory Payment Classifications or APCs. Group services identified by Health Care Procedure Coding System (HCPCS) codes and descriptors within APC groups are the basis for setting payment rates under OPPS. Services in each APC are similar clinically and in terms of the resources they require. The payment rate calculated for an APC applies to all of the services assigned to the APC. Depending on the services provided, a hospital may receive a number of APC payments for the services furnished to a member on a single day.

(b) **Reimbursement.** Reimbursement is made for selected services performed in an outpatient hospital. Hospital outpatient services are paid on a rate-per-service basis that varies according to the Ambulatory Payment Classification (APC) group to which the services are assigned.

(d) **Multiple Surgeries.** Multiple surgeries refers to more than one surgical procedure done on the same person on the same day. The multiple surgery rule provides that under certain circumstances the second and subsequent surgeries may be discounted. Multiple procedures furnished during the same visit are discounted. The full amount is paid for the procedure with the highest payment group. Fifty percent is paid for any other surgical procedure(s) performed at the same time if the procedure is subject to discounting based on the status indicator established by Medicare.

(d) **Status indicators.** Status indicators identify whether the service described by a HCPCS code is paid under the OPPS and if so, whether payment is made separately or packaged and if payment is subject to discounting. SoonerCare follows Medicare's guidelines for packaged/bundled service costs.

(e) **Minor procedures.** Minor procedures that are normally performed in a physician's office are not covered in the outpatient hospital unless medically necessary.

(f) **Ambulatory Surgery.** When an ambulatory surgery is performed in the inpatient hospital setting, the physician must provide exception rationale justifying the need for an inpatient setting to OHCA medical staff for review.

(g) **Dental Procedures.** Dental services are routinely rendered in the dental office, unless the situation requires that the dental service be performed in the outpatient hospital setting. However, services are not covered in the outpatient hospital setting for the convenience of the dentist or member. Dental procedures are not covered as Medicare ASC procedures. Routine dental procedures that are normally performed in a dentist's office are not covered in an outpatient hospital setting unless medically necessary as determined by OHCA. For OHCA payment purposes, the ASC-APC list has been expanded to cover these dental services for adults in an ICF/MR and all children.

(1) Non-emergency routine dental that is provided in an outpatient hospital setting is covered under the following circumstances:

(A) The child has a medical history of uncontrolled bleeding or other medical condition which renders in-office treatment impossible.

(B) The child has uncontrollable behavior in the dental office even with premedication.

(C) The child needs extensive dental procedures or oral surgery procedures.

(2) Non-emergency routine dental that is provided in an outpatient hospital setting is covered for children and/or adults who are residents in ICFs/MR only under the following circumstances for children or adults who are residents in ICFs/MR:

(1) A concurrent hazardous medical condition exists;

(2) The nature of the procedure requires hospitalization or;

(3) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

(g) **Special Procedures.** Certain procedures rendered in a designated area of a licensed hospital dedicated to specific procedures (i.e., Cardiac Catheterization Lab, etc.) are covered and are not paid at a bundled rate. When multiple APC procedures are performed in the same visit, payment will be the rate of the procedure in the highest payment group.

## PART 63. AMBULATORY SURGICAL CENTERS (ASC)

### 317:30-5-565. Eligible providers

All eligible ambulatory surgical center providers must be certified by Medicare and have a current contract with the Oklahoma Health Care Authority.

(1) **Definition of ambulatory surgical center.** An ambulatory surgical center (ASC) is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients, and which enters into an agreement with HCFA to do so. All eligible ambulatory surgical center providers must be certified by Medicare and have a current contract with the Oklahoma Health Care Authority. An ASC may be either independent (i.e., not part of a provider of services or any other facility); or may be operated by a hospital (i.e., under the common ownership, licensure or control of a hospital). If an ASC is the latter type it has the option of being covered and certified under Medicare as an ASC, or of being covered as an outpatient hospital facility. In order to be covered as an ASC operated by a hospital, a facility must:

(A) elect to do so, and continue to be so covered unless HCFA determines there is good cause to do otherwise;

(B) be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations of the hospital; and

(C) meet all the requirements with regard to health and safety, and agree to the assignment, coverage and reimbursement rules applied to independent ASC's.

(2) **Federal requirements.** In order to be eligible to enter into an agreement with HCFA to be covered as an ASC, a facility must be surveyed and certified as complying with the conditions for coverage for ASC's in 42 CFR 416.39-49.

**317:30-5-566. Outpatient surgery Ambulatory Surgery Center services**

(a) Reimbursement. The covered facility services are defined as those services furnished by an Ambulatory Surgical Center (ASC) or Outpatient Hospital Facility (OHF) in connection with a covered surgical procedure. Reimbursement is made for selected services based on the Medicare approved list of covered services that can be performed at an ASC. Ambulatory surgery center services are paid on a rate-per-service basis that varies according to the Health Care Procedure Coding System (HCPCS) codes. Separate payments may be made to the ASC for covered ancillary services. To be considered a covered ancillary service for which separate payment is made, the items and services must be provided integral to covered surgical procedures, that is, immediately before, during, or immediately after the covered surgical procedure.

**(1) Services included in the facility reimbursement rates are:**

- (A) Nursing, technicians, and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.
- (B) Use by the member of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.
- (C) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures including any drugs and biologicals administered while the member is in the facility. Surgical dressings, other supplies, splints, and casts include only those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the member and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.
- (D) Diagnostic or therapeutic items and services directly related to the surgical procedures. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.
- (E) Administrative, recordkeeping and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.
- (F) Blood, blood plasma, platelets, etc.—Under normal circumstances, blood and blood fractions furnished during the course of the procedure will be

included in the payment for the facility charge. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.

(G) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

**(2) Services not included in facility reimbursement rates are:**

(A) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set global fee for a given surgical procedure.

(B) The sale, lease or rental of durable medical equipment (DME) to members for use in their homes. If the facility furnishes items of DME to members it should be treated as a DME supplier and this requires a separate contract and separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(C) Prosthetic devices. Non implantable Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prostheses is intra ocular lenses (IOL's). These should be billed as a separate line item.

(D) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs. This requires a separate contract and a separate claim form.

(E) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(F) Artificial legs, arms and eyes. This equipment is not considered part of a facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(G) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(H) Reimbursement—facility services. The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, the second and subsequent surgeries may be discounted. Reimbursement will be made at a state wide payment rate based on Medicare's established groups as adapted for SoonerCare.

(b) Multiple surgeries. Multiple procedures furnished during the same visit are discounted. The full amount is paid for the procedure with the highest payment rate. Fifty percent is

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paid for any other procedure(s) performed at the same time if the procedure is subject to discounting based on the discount indicator established by Medicare.

(c) **Payment indicators.** Payment indicators identify whether the service described by a HCPCS code is paid under the ASC methodology and if so, whether payment is made separately or packaged. SoonerCare follows Medicare's guidelines for packaged/bundled service costs.

(d) **Minor procedures.** Minor procedures that are normally performed in a physician's office are not covered in an ambulatory surgery center unless medically necessary and they are on the Medicare list for procedures approved to be performed in an ASC.

(e) **Dental Procedures.** For OHCA payment purposes, the ASC list has been expanded to cover dental services for adults in an ICF/MR and all children.

(1) Non-emergency routine dental that is provided in an ambulatory surgery center is covered for children under the following circumstances:

(A) The child has a medical history of uncontrolled bleeding or other medical condition renders in-office treatment impossible.

(B) The child has uncontrollable behavior in the dental office even with premedication.

(C) The child needs extensive dental procedures or oral surgery procedures.

(2) Non-emergency routine dental that is provided in an ambulatory surgical center is covered for children and/or adults who are residents in ICFs/MR only under the following circumstances:

(A) A concurrent hazardous medical condition exists;

(B) The nature of the procedure requires hospitalization or;

(C) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

### 317:30-5-567. Coverage by category

Payment is made for ambulatory surgical center services as set forth in this Section.

(1) **Children.** Payment is made for children for medically necessary surgical procedures which are included on the Medicare's List of Covered Surgical Procedures list of covered ASC surgical procedures and dental procedures in certain circumstances.

(A) Services, deemed medically necessary and allowable under federal regulations, may be covered by the EPSDT/OHCA Child Health program even though those services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(B) Federal regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

(2) **Adults.** Payment is made for adults for medically necessary surgical procedures which are included on Medicare's the List of Covered Surgical Procedures list of covered ASC surgical procedures.

(3) **Individuals eligible For Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services.

[OAR Docket #09-72; filed 1-9-09]

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

[OAR Docket #09-64]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696. [AMENDED]

317:30-5-698. through 317:30-5-699. [AMENDED]

(Reference APA WF# 08-41)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.100

### DATES:

#### Adoption:

December 11, 2008

#### Approved by Governor:

January 2, 2009

#### Effective:

February 1, 2009

#### Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696. [AMENDED]

317:30-5-698. [AMENDED]

(Reference APA WF # 08-04)

#### Gubernatorial approval:

April 28, 2008

#### Register publication:

25 Ok Reg 2759

#### Docket number:

08-1205

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to allow a second set of panoramic x-rays within 36 months of the first set for detection and treatment of oral disease. Additionally, the rule is revised to allow for corrective treatment of restorative services by a different dental provider than the original provider of poorly rendered services. SoonerCare members are at risk for increased health complications without proper diagnosis and treatment of oral disease.

### ANALYSIS:

Dental rules are revised to allow, with prior authorization, panoramic x-rays more than once every 36 months, for the detection and treatment of oral disease. The request for authorization must be submitted with a detailed medical need narrative and will not be prior authorized without sufficient justification. A second set of panoramic x-rays allow providers, discovering

preliminary evidence of oral disease to treat and eliminate the pathology. Rules are also revised to allow the OHCA Dental Director to prior authorize the correction of poorly rendered or insufficient treatment of restorative procedures by a different provider than the original provider of sub-standard treatment. Lastly, rules are revised to restrict the application of ceramic based and cast metal based crowns to natural teeth only.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 79. DENTISTS**

**317:30-5-696. Coverage by category**

Payment is made for dental services as set forth in this Section.

(1) **Adults.**

(A) Dental coverage for adults is limited to:

- (i) emergency extractions;
- (ii) Smoking and Tobacco Use Cessation Counseling; and
- (iii) medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4) of this Section).

(2) **Home and community based waiver services (HCBWS) for the mentally retarded (HCBWS).**

All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

(A) **Comprehensive oral evaluation.** ~~Comprehensive oral evaluation~~ Evaluation must be performed and recorded for each new patient, or established

patient not seen for more than 18 months. This procedure is allowed once each 18 month period.

(B) **Periodic oral evaluation.** This procedure may be provided for a client member of record if she or he has not been seen for more than six months.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint.

~~(D) **Emergency extractions.** This procedure is only for the relief of pain or treatment of acute infection.~~

~~(E) **Oral hygiene instructions.** This service is limited to once every 12 months. The dentist or designated qualified dental staff shall instruct in-structs the member or the responsible adult, (if the child is under five years of age); in proper tooth brushing and flossing by actual demonstration. Verbal and provides proper verbal and/or written proper diet information should be discussed. This service also includes dispensing a new tooth brush, and may include disclosing tablets if available, and a small container of six or more yards of dental floss dispensed to the patient when appropriate. This service is limited to once per 12 months.~~

~~(F) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be determined as of diagnostic quality and medically necessary by the dentist, of diagnostic quality and taken within the allowable limits of the program. A clinical examination must precede any radiographs, and chart documentation must include patient history, prior radiographs, caries risk assessment and both dental and general health needs of the patient. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Panoramic films are allowable once in a three year period and must be of diagnostic quality. Panoramic films are only compensable when chart documentation clearly indicates the test is being performed to rule out or evaluate non-caries related pathology. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.~~

~~(G) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on all surfaces to be eligible for this service. This service is available through ~~18~~ 18.0 years of age and is compensable only once per lifetime. Replacement of ~~lost~~ sealants will be at no cost to the OHCA is not a covered service under the SoonerCare program.~~

~~(H) **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.~~

~~(I) **Composite restorations.**~~

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- (i) This procedure is compensable for primary incisors as follows:
  - (I) tooth numbers O and P to age 4.0 years;
  - (II) tooth numbers E and F to age 6.0 years;
  - (III) tooth numbers N and Q to 5.0 years; and
  - (IV) tooth numbers D and G to 6.0 years.
- (ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.
- (iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

~~(J)~~ **Amalgam.** Amalgam restorations are allowed in:

- (i) posterior primary teeth when:
  - (I) 50 percent or more root structure is remaining;
  - (II) the teeth have no mobility; or
  - (III) the procedure is provided more than 12 months prior to normal exfoliation.
- (ii) any permanent tooth, determined as medically necessary by the treating dentist.

~~(J)~~ **Stainless steel crowns.** The use of stainless steel crowns is allowed as follows:

- (i) Stainless steel crowns are allowed if:
  - (I) the child is five years of age or under;
  - (II) 70 percent or more of the root structure remains; or
  - (III) the procedure is provided more than 12 months prior to normal exfoliation.
- (ii) Stainless steel crowns are treatment of choice for:
  - (I) primary teeth with pulpotomies or pulpectomies, if the above conditions exist; and for
  - (II) primary teeth where three surfaces of extensive decay exist; or
  - (III) primary teeth where cuspal occlusion is lost due to decay or accident.
- (iii) Stainless steel crowns are the treatment of choice on posterior permanent teeth that have completed endodontic therapy, if more than three surfaces of extensive decay exist or where cuspal occlusion are lost due to decay prior to age 16.0 years.
- (iv) Preoperative periapical x-rays must be available for review, if requested.
- (v) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other prosthetic procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

~~(K)~~ **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre and post operative periapical x-rays must be available for review, if requested.

- (I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;
- (II) Tooth numbers O and P before age 5.0 years;
- (III) Tooth numbers E and F before 6.0 years;
- (IV) Tooth numbers N and Q before 5.0 years; and
- (V) Tooth numbers D and G before 6.0 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

~~(M)~~ **Anterior root canals.** Payment is made for the services provided in accordance with the following:

- (i) This procedure is done for permanent teeth when there are ~~not~~ no other missing anterior teeth in the same arch requiring replacement.
- (ii) Acceptable ADA filling materials must be used.
- (iii) Preauthorization is required if the member's treatment plan involves more than four anterior root canals.
- (iv) Teeth with less than 50 percent of clinical crown should not be treatment-planned for root canal therapy.
- (v) Pre and post operative periapical x-rays must be available for review.
- (vi) Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA.
- (vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.
- (viii) Endodontic treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.
- (ix) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

~~(M)~~ **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

- (I) ~~Procedure.~~ This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.
- (II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.
- (III) If there are missing teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.
- (IV) The teeth numbers shown on the claim should be those of the missing teeth.
- (V) Post operative bitewing x-rays must be available for review.
- (ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:
  - (I) Lingual arch bar is used where multiple missing teeth exist in the same arch.
  - (II) The requirements are the same as for band and loop space maintainer.
  - (III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age 6.0 years to prevent abnormal swallowing habits.
  - (IV) Pre and post operative x-rays must be available.
- (iii) **Interim partial dentures.** ~~These dentures are used~~ This service is for an anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16.0 years of age.
- (⊖N) **Analgesia.** Use of nitrous oxide is compensable for four occurrences per year.
- (ⓅO) **Pulp caps (direct).** ADA accepted CAO containing material must be used.
- (ⓆP) **Sedative treatment.** ADA acceptable materials must be used for temporary restoration. This restoration is used for very deep cavities to allow the tooth an adequate chance to heal itself or an attempt to prevent the need for root canal therapy. This restoration, when properly used, is intended to relieve pain and may include a direct or indirect pulp cap. The combination of a pulp cap and sedative fill is the only restorative procedure allowed per tooth per day. Subsequent restoration of the tooth is allowed after a minimum of 30 days.
- (ⓇQ) **History and physical.** Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.
- (ⓈR) **Local anesthesia.** This procedure is included in the fee for all services.

(ⓉS) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the patient to describe his/her smoking, advising the patient to quit, assessing the willingness of the patient to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the patient specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

- (4) **Pregnant Women.** Dental coverage for this special population is provided regardless of age.
  - (A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).
  - (B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.
  - (C) In addition to dental services for adults, other services available include:
    - (i) Comprehensive oral evaluation must be performed and recorded for each new client, or established client not seen for more than 24 months;
    - (ii) Periodic oral evaluation as defined in OAC 317:30-5-696(a)(3)(B);
    - (iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same patient, or if the patient is under active treatment;
    - (iv) Oral hygiene instructions as defined in OAC 317:30-5-696(a)(3)(E);
    - (v) Radiographs as defined in OAC 317:30-5-696(a)(3)(F);
    - (vi) Dental prophylaxis as defined in OAC 317:30-5-696(a)(3)(H);
    - (vii) Composite restorations:
      - (I) Any permanent tooth that has an opened lesion that is a food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.
      - (II) Class I posterior composite resin restorations are allowed in posterior teeth that qualify;
    - (viii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and
    - (ix) Analgesia. Use of nitrous oxide is compensable for four occurrences.

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(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).

(E) Periodontal scaling and root planing. Required that 50% or more of six point measurements be 4 millimeters or greater. This procedure is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism and requires anesthesia and some soft tissue removal.

(5) **Individuals eligible for Part B of Medicare.**

(A) Payment is made ~~utilizing the Medicaid allowable for comparable services. This is an all inclusive payment on assigned claims based on the member's coinsurance and deductibles.~~

(B) Services which have been denied by Medicare as noncompensable should be filed directly with ~~this Authority~~ the OHCA with a copy of the Medicare EOB ~~attached~~ indicating the reason for denial.

### 317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis. Emergency dental care is immediate service that must be provided to relieve the ~~recipient member~~ from pain due to an acute infection, swelling, trismus or trauma. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. Study models (where indicated), x-rays, six point periodontal charting, comprehensive treatment plan and narrative may be requested. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under 21 and eligible ICF/MR residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be mounted so that they are viewed from the front of the member. If required x-rays sent are copies, each film or print must be of good, readable quality and identified as to left and right sides. The film must clearly show the requested service area of interest. X-rays must be identified with member name, date, ~~recipient member~~ ID number, provider name, and provider number. X-rays must be placed together in an envelope and stapled to the submission form. If radiographs are not taken, provider

must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) Endodontics. Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics. A permanent restoration is not billable to the OHCA when performing pulpotomy or pulpal debridement on a permanent tooth.

(A) Anterior root canals. This procedure is for members whom, by the provider's documentation, have a treatment plan requiring more than four anterior root canals and/or posterior endodontics. Payment is made for services provided in accordance with the following:

(i) Permanent teeth numbered 6, 7, 8, 9, 10, 11, 22, 23, 24, 25, 26 and 27 are eligible for therapy if there are ~~not~~ no other missing teeth in the same arch requiring replacement, unless numbers 6- 11- 22, or 27 are abutments for prosthesis.

(ii) Accepted ADA filling must be used.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(vii) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

(B) Posterior endodontics. The guidelines for this procedure are as follows:

(i) The provider ~~should document~~ documents that the ~~client~~ member has improved oral hygiene and flossing ability in this member's records.

(ii) Teeth that would require pre-fabricated post and cores to minimally retain a crown due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area.

(vi) Only ADA accepted filling materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure is limited to a maximum of five teeth. A request may not be

approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

- (viii) Endodontics will not be considered if:
  - (I) there are missing teeth in the same arch requiring replacement;
  - (II) an opposing tooth has super erupted;
  - (III) loss of tooth space is one third or greater;
  - (IV) opposing second molars are involved; or
  - (V) the member has multiple teeth failing due to previous inadequate root canal therapy.
- (ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.
- (x) a single failing root canal is determined not medically necessary for re-treatment.

(2) Cast metal crowns or ceramic-based crowns. ~~This procedure is~~ These procedures are compensable for restoration of natural teeth for members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for the Mentally Retarded ~~(IF/MR)~~ (ICF/MR) and who have been approved for ~~IF/MR~~ (ICF/MR) level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

- (i) The tooth must be fractured or decayed to such an extent to prevent proper cuspal or ~~incisal~~ incisal function.
- (ii) The clinical crown is destroyed by the above elements by one-half or more.
- (iii) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered.

(B) The conditions listed in ~~(A)(i)~~ (A)(i) through (A)(iii) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown.

(D) A crown will not be approved if adequate tooth structure does not remain to establish ~~cleansable~~ cleansable margins, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Ceramic-metal based crowns will be considered only for tooth numbers 4 through 13 and 21 through 28.

(G) Full cast metal crowns are treatment of choice for all posterior teeth.

(H) Provider is responsible for replacement or repair of cast crowns for 48 months post insertion.

(3) Cast frame partial dentures. This appliance is the treatment of choice for replacement of three or more missing permanent teeth in the same arch for members 16 through 20 years of age. Provider must indicate tooth number to be replaced and teeth to be clasped.

(4) Acrylic partial. This appliance is the treatment of choice for replacement of missing anterior permanent teeth or three or more missing teeth in the same arch for members 12 through 16 years of age and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care. Provider must indicate tooth numbers to be replaced and teeth to be clasped. This appliance includes all necessary clasps and rests.

(5) Occlusal guard. Narrative of clinical findings must be sent with prior authorization request.

~~(5.6)~~ Fixed cast non-precious metal or porcelain/metal bridges. Only members 17 through 20 years of age where the bite relationship precludes the use of an acrylic or cast frame partial denture are considered. Study models with narrative are required to substantiate need for fixed bridge(s). Members must have excellent oral hygiene documented in the requesting provider's records.

~~(6.7)~~ Periodontal scaling and root planing. This procedure requires that 50% or more of the six point measurements be four millimeters or greater and must involve two or more teeth per quadrant for consideration. This procedure is allowed on members 12 to 20 years of age and requires anesthesia and some soft tissue removal ~~occurs. Tooth planing is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism.~~ The procedure is not allowed in conjunction with any other periodontal surgery. Allowance may be made for submission of required authorization data post treatment if the member has a medical or emotional problem that requires sedation.

~~(7.8)~~ Additional prophylaxis. The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a member for one additional prophylaxis per year:

- (A) dilantin hyperplasia;
- (B) cerebral palsy;
- (C) mental retardation;
- (D) juvenile periodontitis.

**317:30-5-699. Restorations**

(a) **Use of posterior composite resins.** Payment is not made for certain restorative services when posterior composite resins are used in restorations involving:

- (1) replacement of any occlusal cusp;
- (2) sub-gingival margins; and
- (3) a restoration replacing more than 50 percent of the dentin.

(b) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 12 months. Providers must document use of rubber dam isolation in daily

## Emergency Adoptions

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treatment progress notes. The provider is responsible for follow-up or any required replacement of a failed restoration. Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.

(c) **Coverage for dental restorations.** Services for dental restorations are covered as follows:

- (1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one surface restoration.
- (2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.
- (3) If any three separate surfaces on a posterior tooth are restored at the same appointment, it is a three surface restoration.
- (4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four surface restoration.
- (5) If any two separate surfaces on an anterior tooth are restored at the same appointment, it is a two surface restoration.
- (6) If any three separate surfaces on an anterior tooth are restored at the same appointment, it is a three surface restoration.
- (7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.
- (8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.
- (9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well as either the buccal groove pit or buccal surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

(d) **Sedative restorations.** Sedative restorations include removal of decay, if present, and direct or indirect pulp cap, if needed. These two codes are the only codes that may be used for the same tooth on the same date of service. Permanent restoration of the tooth is allowed after 30 days unless the tooth becomes symptomatic and requires pain relieving treatment.

(e) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted materials, not a cavity liner. Utilization of these codes are verified on a post payment review.

*[OAR Docket #09-64; filed 1-9-09]*

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

*[OAR Docket #09-66]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 85. ADvantage Program Waiver Services  
317:30-5-763. [AMENDED]  
(Reference APA WF # 08-45)

### **AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.80

### **DATES:**

#### **Adoption:**

December 11, 2008

#### **Approved by Governor:**

January 2, 2009

#### **Effective:**

February 1, 2009

#### **Expiration:**

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to add private duty nursing as a compensable service under the ADvantage waiver program. Without this addition, some ADvantage members will not be able to have their needs met in their homes and will require unnecessary and more costly nursing facility placement.

### **ANALYSIS:**

ADvantage Waiver Services rules are revised to add private duty nursing as a compensable service in order to better meet ADvantage members' needs in the home. The ADvantage Waiver program offers an array of home and community-based services to eligible members as an alternative to nursing facility care. Services available to the member through ADvantage are intended to meet the need for care and assistance. Currently, the ADvantage program only offers skilled nursing services. Some members, however, require private duty nursing services to supplement family provided services. The provision of private duty nursing services will work to prevent or postpone the nursing facility placement of the member.

### **CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING EMERGENCY RULES ARE  
CONSIDERED PROMULGATED UPON APPROVAL BY  
THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION  
253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

## **SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

## **PART 85. ADVANTAGE PROGRAM WAIVER SERVICES**

### 317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

#### (1) Case Management.

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet ADvantage Program minimum requirements for qualification and training prior to providing services to ADvantage members. Prior to providing services to members receiving Consumer-Directed Personal Assistance Services and Supports (CD-PASS), Case Managers are required to receive training and demonstrate knowledge regarding CD-PASS service delivery model, "Independent Living Philosophy" and demonstrate competency in Person-centered planning.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in AA Oklahoma Department of Human Services/Aging Services Division (OKDHS/ASD) identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States ~~2000~~ Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

#### (2) Respite.

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

#### (3) Adult Day Health Care.

(A) Adult Day Health Care is furnished on a regularly scheduled basis for one or more days per week in an outpatient setting. It provides both health and social services which are necessary to ensure the optimal functioning of the member. Physical, occupational, respiratory and/or speech therapies may only be provided as an enhancement to the basic Adult Day Health Care service when authorized by

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the plan of care and billed as a separate procedure. Meals provided as part of this service ~~shall do~~ not constitute a full nutritional regimen. Transportation between the member's residence and the service setting is provided as a part of Adult Day Health Care. Personal Care service enhancement in Adult Day Health Care is assistance in bathing and/or hair washing authorized by the plan of care and billed as a separate procedure. Most assistance with activities of daily living, such as eating, mobility, toileting and nail care, are services that are integral to the Adult Day Health Care service and are covered by the Adult Day Health Care basic reimbursement rate. Assistance with bathing and/or hair care is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing and/or hair washing will be authorized when an ADvantage waiver member who uses adult day health care requires assistance with bathing and/or hair washing to maintain health and safety.

(B) Adult Day Health Care is a 15-minute unit. No more than 6 hours are authorized per day. The number of units of service a member may receive is limited to the number of units approved on the member's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a maximum one session per day unit of service.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing and/or hair washing service.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service ~~shall exclude~~ excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure

code. Reoccurring ~~services~~ supplies which are shipped to the member are compensable only when the member remains eligible for waiver services, continues to reside in the home and is not institutionalized in a hospital, skilled nursing facility or nursing home. It is the provider's responsibility to ~~check on~~ verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the ~~Medicaid~~ SoonerCare rate, or actual acquisition cost plus 30 percent. All services must be prior authorized.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. ~~The service assists~~ These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Skilled Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services includes skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

~~(A,B) Skilled~~ Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to be treatment for treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide, ~~assessment of~~ and assesses the member's health and ~~assessment of~~ prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the ADvantage Program case manager in accordance with review schedule

determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The ADvantage Program case manager may recommend authorization of Skilled Nursing services ~~for participation in as part of the interdisciplinary team planning of for the member's service plan and/or assessment/evaluation of:~~

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of Skilled Nursing services for the following:

(I) ~~filling preparing~~ a one-week supply of insulin syringes for a blind diabetic who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) ~~setting up preparing~~ oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level ~~of~~ of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk ~~of~~ for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological ~~deficiency compromise;~~

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures ~~to the member, family and/or other informal caregivers as specified in the service plan.~~

~~(B C)~~ Skilled Nursing service is can be billed for service plan development and/or assessment/evaluation services or, for ~~non-assessment~~ other services

within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Skilled-Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure ~~code is~~ codes are used to bill for all other authorized skilled nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to ~~produce~~ perform a nurse evaluation is also an agreement, ~~as well,~~ to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation ~~shall be~~ is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational

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therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy Services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes

paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed ~~speech/language~~ Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(12) **Respiratory Therapy Services.**

(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the member. Treatment involved use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders Hospice Care. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the

terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. ADvantage Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for ADvantage Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five days during any 30 day period. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services.

(B) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the Hospice provider is responsible for providing Hospice services as needed by the member or member's family.

**(14) ADvantage Personal Care.**

(A) ADvantage Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) ADvantage Home Care Agency Skilled Nursing staff working in coordination with an ADvantage Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) ADvantage Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the ADvantage approved plan of care.

**(15) Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member

preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an ADvantage Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

- (i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;
- (ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;
- (iii) demonstrates capability to comprehend the purpose of and activate the PERS;
- (iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;
- (v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,
- (vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the ADvantage approved plan of care.

**(16) Consumer-Directed Personal Assistance Services and Support (CD-PASS).**

(A) Consumer-Directed Personal Assistance Services and Supports are Personal Services Assistance and Advanced Personal Services Assistance that enable an individual in need of assistance to reside in their home and in the community of their choosing rather than in an institution and to carry out functions of daily living, self care, and mobility. CD-PASS services are delivered as authorized on the service plan. The member employs the Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from ADvantage Program Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member may designate an adult family member or friend, an individual who is not a PSA or APSA to the member, as an "authorized representative" to assist in executing these employer functions. The member:

- (i) recruits, hires and, as necessary, discharges the PSA or APSA;
- (ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Consumer Directed Agent/Case Manager to obtain ADvantage skilled nursing services assistance with training when necessary.

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Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the ASPA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(B) The service Personal Services Assistance may include:

(i) assistance with mobility and with transfer in and out of bed, wheelchair or motor vehicle, or both;

(ii) assistance with routine bodily functions that may include:

(I) bathing and personal hygiene;

(II) dressing and grooming;

(III) eating including meal preparation and cleanup;

(iii) assistance with homemaker type services that may include shopping, laundry, cleaning and seasonal chores;

(iv) companion type assistance that may include letter writing, reading mail and providing escort or transportation to participate in approved activities or events. "Approved activities or events" means community civic participation guaranteed to all citizens including but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the member that may include shopping for food, clothing or other necessities, or for participation in other activities or events that are specifically approved on the service plan.

(C) Advanced Personal Services Assistance are maintenance services provided to assist a member with a stable, chronic condition with activities of daily living when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the individual were physically capable, and the procedure may be safely performed in the home. Advanced Personal Services Assistance is a maintenance service and should never be used as a therapeutic treatment. Members who develop medical complications requiring skilled nursing services while receiving Advanced Personal Services Assistance should be referred to their attending physician who may, if appropriate, order home health services. The service of Advanced

Personal Services Assistance includes assistance with health maintenance activities that may include:

(i) routine personal care for persons with ostomies (including tracheotomies, gastrostomies and colostomies with well-healed stoma) and external, ~~in-dwelling~~ indwelling, and suprapubic catheters which includes changing bags and soap and water hygiene around ostomy or catheter site;

(ii) remove external catheters, inspect skin and reapplication of same;

(iii) administer prescribed bowel program including use of suppositories and sphincter stimulation, and enemas (Pre-packaged only) with members without contraindicating rectal or intestinal conditions;

(iv) apply medicated (prescription) lotions or ointments, and dry, non-sterile dressings to unbroken skin;

(v) use lift for transfers;

(vi) manually assist with oral medications;

(vii) provide passive range of motion (non-resistive flexion of joint) delivered in accordance with the plan of care, unless contraindicated by underlying joint pathology;

(viii) apply non-sterile dressings to superficial skin breaks or abrasions; and

(ix) use Universal precautions as defined by the Center for Disease Control.

(D) The service Financial Management Services are program administrative services provided to participating CD-PASS employer/members by the ~~ADvantage Program Administrative Agent~~ OKDHS/ASD. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Personal Services Assistant or Advanced Personal Services Assistant; and

- (v) for making available Hepatitis B vaccine and vaccination series to PSA and APSA employees in compliance with OSHA standards.
- (E) The service of Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.
- (F) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

**(17) Institution Transition Services.**

(A) Institution Transition Services are those services that are necessary to enable an individual to leave the institution and receive necessary support through ADvantage waiver services in their home and/or in the community.

(B) Institution Transition Case Management Services are services as described in OAC 317:30-5-763(1) required by the individual's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or to enable the individual to function with greater independence in the home, and without which, the individual would continue to require institutionalization. ADvantage Transition Case Management Services assist institutionalized individuals that are eligible to receive ADvantage services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist in the transition, regardless of the funding source for the services to which access is gained. Transition Case Management Services may be authorized for periodic monitoring of an ADvantage member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the service plan, including necessary Institution Transition Services to prepare services and supports to be in place or to start on the date the member is discharged from the institution. Transition Case Management Services may be authorized to assist individuals that have not previously received ~~Advantage~~ ADvantage services but have been referred by the ~~AA~~ or OKDHS/ASD to the Case Management Provider for assistance in transitioning from the institution to the community with ~~Advantage~~ ADvantage services support.

- (i) Institution Transition Case Management services are prior authorized and billed per 15-minute unit of service using the appropriate HCPC and modifier associated with the location of residence of the member served as described in OAC 317:30-5-763(1)(C).
- (ii) A unique modifier code is used to distinguish Institution Transition Case Management services from regular Case Management services.

(C) Institutional Transition Services may be authorized and reimbursed under the following conditions:

- (i) The service is necessary to enable the individual to move from the institution to their home;
- (ii) The individual is eligible to receive ADvantage services outside the institutional setting;
- (iii) Institutional Transition Services are provided to the individual within 180 days of discharge from the institution;
- (iv) Transition Services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(D) If the member has received Institution Transition Services but fails to enter the waiver, any Institution Transition Services authorized and provided are reimbursed as "Medicaid administrative" costs and providers follow special procedures specified by the ~~AA~~ OKDHS/ASD to bill for services provided.

*[OAR Docket #09-66; filed 1-9-09]*

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

*[OAR Docket #09-70]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 85. ADvantage Program Waiver Services  
317:30-5-764. [AMENDED]  
Part 95. Agency Personal Care Services  
317:30-5-953. [AMENDED]  
**(Reference APA WF # 08-29A)**

**AUTHORITY:**  
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

**DATES:**  
**Adoption:**  
December 11, 2008

**Approved by Governor:**  
January 2, 2009

**Effective:**  
February 1, 2009

**Expiration:**  
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**FINDING OF EMERGENCY:**  
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to require that the provision of Personal Care and certain other in-home ADvantage services to SoonerCare members be documented using the Interactive Voice Response Authentication (IVRA) time and attendance system. The new electronic IVRA system will replace the current system of manual time documentation and therefore increase the efficiency of processing claims while reducing the error rate caused by

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duplication of records, resulting in a substantial savings of SoonerCare dollars over time.

## ANALYSIS:

Rules are revised to require the use of the new Interactive Voice Response Authentication (IVRA) system to document time and attendance for all Personal Care and certain in-home ADvantage services provided to SoonerCare members. Currently, claims for Personal Care and associated in-home ADvantage services represent the highest volume of claim records processed through the Medicaid Management Information System. In-home services are necessarily provided in the individual homes of persons with physical and cognitive disabilities. The verification of service delivery is typically a paper time sheet signed by the member receiving services with a high potential for errors. Additionally, a paper based time and attendance system which requires transcription of time units from paper to computer is both inefficient and affords many opportunities for inadvertent errors.

## CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

#### 317:30-5-764. Reimbursement

(a) Rates for waiver services are set in accordance with the rate setting process by the ~~Committee for Rates and Standards~~ State Plan Amendment Rate Committee (SPARC) and approved by the Oklahoma Health Care Authority Board.

(1) The rate for NF Respite is set equivalent to the rate for routine level of care nursing facility services that require providers having equivalent qualifications;

(2) The rate for daily units for Adult Day Health Care are set equivalent to the rate established by the Oklahoma Department of Human Services for the equivalent services provided for the OKDHS Adult Day Service Program that require providers having equivalent qualifications;

(3) The rate for units of Home-Delivered Meals are set equivalent to the rate established by the Oklahoma Department of Human Services for the equivalent services provided for the OKDHS Home-Delivered Meals Program that require providers having equivalent qualifications;

(4) The rates for units of ADvantage Personal Care and In-Home Respite are set equivalent to State Plan Agency Personal Care unit rate which require providers having equivalent qualifications;

(5) The rates for Advanced Supportive/Restorative Assistance is set equivalent to 1.077 of the State Plan Agency Personal Care unit rate;

(6) CD-PASS rates are determined using the Individual Budget Allocation (IBA) Expenditure Accounts Determination process for each member. The IBA Expenditure

Accounts Determination process includes consideration and decisions about the following:

(A) The individual Budget Allocation (IBA) expenditure Accounts Determination constrains total Medicaid reimbursement for CD-PASS services to be less than expenditures for equivalent services using agency providers.

(B) The PSA and APSA service unit rates are calculated by the ~~AA OKDHS/ASD~~ during the CD-PASS service eligibility determination process. The ~~AA—OKDHS/ASD~~ sets the PSA and APSA unit rates at a level that is not less than 80 percent and not more than 95 percent of the comparable Agency Personal Care (for PSA) or Advanced Supportive/Restorative (for APSA) service rate. The allocation of portions of the PSA and/or APSA rate to cover salary, mandatory taxes, and optional benefits (including Worker's Compensation insurance, if available) is determined individually for each member using the CD-PASS Individualized Budget Allocation Expenditure Accounts Determination Process.

(C) The IBA Expenditure Accounts Determination process defines the level of program financial resources required to meet the member's need for CD-PASS services. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources to meet needs, the Case Manager, based upon an updated assessment, amends the service plan to increase CD-PASS service units appropriate to meet additional member need. The ~~AA OKDHS/ASD~~, upon favorable review, authorizes the amended plan and updates the member's IBA. Service amendments based on changes in member need for services do not change an existing PSA or APSA rate. The member, with assistance from the FMS, reviews and revises the IBA Expenditure Accounts calculation annually or more often to the extent appropriate and necessary.

(b) The ~~AA OKDHS/ASD~~ approved ADvantage service plan is the basis for the MMIS service prior authorization, specifying:

- (1) service;
- (2) service provider;
- (3) units authorized; and
- (4) begin and end dates of service authorization.

(c) ~~As part of ADvantage quality assurance, provider audits evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provisions will be turned over to SURS for follow up investigation. Service time for Personal Care, Nursing, Advanced Supportive/Restorative Assistance, In-Home Respite, CD-PASS Personal Services Assistance, and Advanced Personal Services Assistance is documented solely through the use of the Interactive Voice Response Authentication (IVRA) system. Providers are required to use the IVRA system after access to the system is made~~

available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

(d) As part of ADvantage quality assurance, provider audits evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provisions will be turned over to SURS for follow-up investigation.

**PART 95. AGENCY PERSONAL CARE SERVICES**

**317:30-5-953. Billing**

A billing unit of service for ~~personal care~~ Personal Care skilled nursing service equals a visit. A billing unit of service for ~~personal care~~ Personal Care services provided by a PC service agency is 15 minutes of PC services delivery. Billing procedures for Personal Care services are contained in the OKMMIS Billing and Procedure Manual. Service time for Personal Care and Nursing is documented solely through the Interactive Voice Response Authentication (IVRA) system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

[OAR Docket #09-70; filed 1-9-09]

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

[OAR Docket #09-67]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 3. Non-Medical Eligibility Requirements  
317:35-5-25. [AMENDED]  
(Reference APA WF # 08-44)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 109-163; Public Law 110-181; Public Law 110-161

**DATES:**

**Adoption:**

December 11, 2008

**Approved by Governor:**

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**Effective:**

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**Gubernatorial approval:**

September 23, 2008

**Register publication:**

26 Ok Reg 115

**Docket number:**

08-1279

(Reference APA WF # 08-20)

**SUPERSEDED EMERGENCY ACTIONS:**

Superseded rules:

Subchapter 5. Eligibility and Countable Income

Part 3. Non-Medical Eligibility Requirements

317:35-5-25. [AMENDED]

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to comply with Public Laws 110-181 and 110-161 regarding SoonerCare eligibility treatment of Iraqis and Afghans with special immigrant status. These individuals with Special Immigrant status are Iraqis or Afghans who were employed by the U.S. military as translators or provided faithful and valuable service for or on behalf of the U.S. government for at least one year and have experienced or are likely to experience a serious threat as a consequence of that employment. Rule revisions are needed to assure that eligible individuals receive the SoonerCare benefits they are entitled to receive.

**ANALYSIS:**

SoonerCare rules regarding citizenship are revised to include Iraqis and Afghans with special immigrant status as qualified aliens. Iraqi and Afghan Special Immigrants are a relatively new category of special immigrants, created by Public Law 109-163. Each Federal fiscal year, a certain number of Iraqis and Afghans and their families who were employed by the U.S. military as translators and meet other requirements, may be granted Iraqi or Afghan Special Immigrant Status under section 101(a)(27) of the Immigration and Nationality Act (INA). Public Law 110-161 allows six months of eligibility for Afghan special immigrants and Public Law 110-181 allows eight months of eligibility for Iraqi special immigrants. All other eligibility requirements must be met in order to qualify for SoonerCare services during this time-limited period. After this time-limited period of eligibility, Iraqi and Afghan special immigrants will lose eligibility for SoonerCare services until they meet the 5-year bar or otherwise meet the citizenship or alien eligibility criteria.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS**

**317:35-5-25. Citizenship/alien status and identity verification requirements**

(a) **Citizenship/alien status and identity verification requirements.** Verification of citizenship/alien status and identity are required for all adults and children approved for Medicaid.

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(1) The types of acceptable evidence that verify identity and citizenship include:

- (A) United States (U.S.) Passport;
- (B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS) (Form N-550 or N-570);
- (C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561); ~~or~~
- (D) Copy of the Medicare card or printout of a BENDEX or SDX screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration; or
- (E) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, with a photograph of the individual.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

- (i) A U.S. public Birth Certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986;
- (ii) A Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of birth issued by the State Department (Form FS-240, FS-545 or DS-1350);
- (iii) A U.S. Citizen ID Card (Form I-179 or I-197);
- (iv) A Northern Mariana Identification Card (Form I-873) (Issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);
- (v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);
- (vi) A Final Adoption Decree showing the child's name and U.S. place of birth;
- (vii) Evidence of U.S. Civil Service employment before 6/1/1976; ~~or~~
- (viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214);
- (ix) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, without a photograph of the individual, for Native Americans;
- (x) Oklahoma Voter Registration Card; or

(xi) Other acceptable documentation as approved by OHCA.

(B) Other less reliable forms of citizenship verification are:

- (i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and that indicates a U.S. place of birth. For children under 16 the evidence must have been created near the time of birth or five years before the date of application;
- (ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date and that indicates a U.S. place of birth;
- (iii) Federal or State census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The census record must also show the applicant's/member's age; or
- (iv) One of the following items that show a U.S. place of birth and was created at least five years before the application for Medicaid. This evidence must be one of the following and show a U.S. place of birth:
  - (I) Seneca Indian tribal census record;
  - (II) Bureau of Indian Affairs tribal census records of the Navajo Indians;
  - (III) U.S. State Vital Statistics official notification of birth registration;
  - (IV) An amended U.S. public birth record that is amended more than five years after the person's birth; or
  - (V) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:

- (A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;
- (B) A school identification card with a photograph of the individual;
- (C) An identification card issued by Federal, state, or local government with the same information included on driver's licenses;
- (D) A U.S. military card or draft record;
- (E) A U.S. military dependent's identification card;
- (F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;
- (G) A U.S. Coast Guard Merchant Mariner card;
- (H) A state court order placing a child in custody as reported by the OKDHS;

(I) For children under 16, school records may include nursery or daycare records;

(J) If none of the verification items on the list are available, an affidavit may be used for children under 16. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and **cannot be used if an affidavit for citizenship was provided.**

**(b) Centralized Verification Unit.**

(1) When the applicant/member is unable to obtain citizenship verification, a reasonable opportunity is afforded the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded the applicant/member before taking action affecting the individual's eligibility for Medicaid. The reasonable opportunity time frame usually consists of 60 days. In rare instances, the CVU may extend the time frame to a period not to exceed an additional 60 days.

(2) Additional methods of verification are available to the CVU. These methods are the least reliable forms of verification and should only be used as a last resort:

(A) Institutional admission papers from a nursing facility, skilled care facility or other institution. Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth;

(B) Medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates a U.S. place of birth. For children under 16, the document must have been created near the time of birth. Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;

(C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;

(ii) At least one of the individuals making the affidavit cannot be related to the applicant/member;

(iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity;

(iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim or citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;

(v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and

(vi) The affidavits must be signed under penalty of perjury.

**(c) Alienage verification requirements.** Medicaid services are provided as listed to the defined groups as indicated in this subsection if they meet all other factors of eligibility.

(1) **Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services. A qualified alien is:

(A) an alien who was admitted to the United States and has resided in the United States for a period greater than five years from the date of entry and who was:

(i) lawfully admitted for permanent residence under the Immigration and Nationality Act;

(ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;

(iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or

(iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

(B) an alien who was admitted to the United States and who was:

(i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;

(ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;

(iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;

(iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;

(v) an alien who is a veteran as defined in 38 U.S.C. ' 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;

(vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(vii) the spouse or unmarried dependent child of an individual described in (C) of this paragraph.

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

(C) permanent residents who first entered the country under (B) of this paragraph and who later converted to lawful permanent residence status.

## Emergency Adoptions

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(2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) of this subsection. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(3) **Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are exempt from the five year period of ineligibility for SoonerCare services for a time-limited period. The time-limited exemption period for Afghan special immigrants is six months from the date of entry into the United States as a special immigrant or the date of conversion to special immigrant status. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Once the six month exemption period ends, Afghan special immigrants are no longer exempt from the five year bar for SoonerCare services and are only eligible for services described in (2) of this subsection until the five year period ends. Afghan special immigrants are considered lawful permanent residents.

(4) **Iraqi Special Immigrants.** Iraqi special immigrants, as defined in Public Law 110-181, who have special immigration status after January 28, 2008, are exempt from the five year period of ineligibility for SoonerCare services for a time-limited period. The time-limited exemption period for Iraqi special immigrants is eight months from the date of entry into the United States as a special immigrant or the date of conversion to special immigrant status. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Once the eight month exemption period ends, Iraqi special immigrants are no longer exempt from the five year bar for SoonerCare services and are only eligible for services described in (2) of this subsection until the five year period ends. Iraqi special immigrants are considered lawful permanent residents.

(5) **Undocumented aliens.** Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when

the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(6) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for Medicaid, including emergency services, because of the temporary nature of their admission status. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(B) These individuals are generally issued Form I-94, Arrival Departure Record, on which an expiration date is entered. This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition". Two other forms that do not give the individual "Immigrant" status are Form I-186, Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.

(7) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to non-qualified and undocumented aliens. Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE).

(d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the BCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be

lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for Medicaid if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in *Silva vs. Levi*, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

(4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the ineligible alien status described in (c)(4)(b) of this Section.

(5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Marshall Islanders Permanent non-immigrants.** Marshall Islanders and individuals from the Republic of Palau and the Federated States of Micronesia are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

[OAR Docket #09-67; filed 1-9-09]

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

[OAR Docket #09-71]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 15. Personal Care Services

317:35-15-1. through 317:35-15-10. [AMENDED]

317:35-15-11. [AMENDED]

317:35-15-15. [AMENDED]

(Reference APA WF # 08-22)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

**DATES:**

**Adoption:**

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Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to transfer responsibilities for the authorization of service units and monitoring of service provisions from the Oklahoma Department of Human Services (OKDHS) nurses to agency provider nurses. The Aging Division of OKDHS requested these revisions in order to eliminate a duplication of responsibilities by the OKDHS nurses and nurses employed by the agencies who provide Personal Care services to eligible SoonerCare members. Furthermore, the OKDHS nurses will have additional time available to complete their other work activities.

**ANALYSIS:**

Personal Care rules are revised to transfer the responsibilities for the authorization of service units and monitoring of service provisions from the OKDHS nurses to Personal Care agency nurses. Personal Care services are provided to SoonerCare members to help them carry out activities of daily living, such as bathing, grooming, meal preparation, and laundry. Medical need for Personal Care services is determined by the OKDHS nurse using the Uniform Comprehensive Assessment Tool (UCAT) criteria and professional judgment. Due in part to the current nurse shortage, the OKDHS Aging Division has requested these revisions to remove the current duplication of responsibilities by their nurses and Personal Care agency nurses. The OKDHS nurses will still determine the level of care and maintain oversight of the units of Personal Care services authorized for all SoonerCare members. Also, they will have more time to attend to their other responsibilities including mandatory visits to nursing facilities in order to determine medical need for long term care for SoonerCare applicants. Other revisions update terminology, forms, and procedures.

# Emergency Adoptions

## CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

## SUBCHAPTER 15. PERSONAL CARE SERVICES

### **317:35-15-1. Overview of long-term medical care services; relationship to QMB QMBP, SLMB and other Medicaid service SoonerCare services and eligibility and spenddown calculation**

Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for the mentally retarded (refer to OAC 317:35-9), persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9), Home and Community Based Waiver Services for the Mentally Retarded (refer to OAC 317:35-9), Home and Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17), and Personal Care services (refer to this subchapter). Personal Care provides services in the member's own home. Any time an individual is certified as eligible for Medicaid SoonerCare coverage of long-term care, the individual is also eligible for other Medicaid SoonerCare services. Another application or spenddown computation is not required. Spenddown is applied to the first long-term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required. Any spenddown computed for long-term care is not applicable to QMB coverage.

### **317:35-15-2. Personal Care services**

(a) Personal Care is assistance to an individual in carrying out activities of daily living, such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry or errands directly related to the member's personal care needs, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. The Personal Care service requires a skilled nursing assessment of need, development of a care plan to meet identified personal care needs, care plan oversight and periodic re-assessment and updating, if necessary, of the care plan. Personal Care services do not include technical services such as, tracheal suctioning, bladder catheterization, colostomy irrigation, and operation of equipment of a technical nature.

(b) Personal Care services support informal care being provided in the member's home. A rented apartment, room or

shelter shared with others is considered "the member's home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-899.1 et seq., and Section 1-1902 et seq., and/or in any other typed of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not considered the "the member's home" for delivery of SoonerCare Personal Care Program services.

(c) Personal Care services may be provided by an individual employed by the member referred to as a Personal Care Assistant (PCA) or by a qualified employee of a home care agency that is certified to provide PC Personal Care services and contracted with the OHCA to provide PC Personal Care services. OKDHS must determine a PCA to be qualified to provide PC Personal Care services before they can provide services.

### **317:35-15-3. Application for Personal Care; forms**

(a) **Requests for Personal Care.** A request for Personal Care is made to the local ~~DHS~~ OKDHS office. A written financial application is not required for an individual who has an active ~~Medicaid~~ SoonerCare case. A financial application for Personal Care consists of the Medical Assistance Application form. The form is signed by the ~~client~~ applicant, parent, spouse, guardian or someone else acting on the ~~client's~~ applicant's behalf. All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes eligibility, the information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

#### **(b) Date of application.**

(1) The date of application is:

(A) the date the applicant or someone acting on his/her behalf signs the application in the county office;

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or,

(C) the date when the request for ~~Medicaid~~ SoonerCare is made orally and the financial application form is signed later.

(2) An exception to paragraph (1) of this subsection would occur when ~~DHS~~ OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contract provider forwards the application and documentation to the ~~DHS~~ OKDHS county office of the ~~client's~~ applicant's county of residence for ~~Medicaid~~ SoonerCare eligibility determination. The application date is the date the ~~client~~ applicant signed the application form for the provider.

(c) **Eligibility status.** Financial and medical eligibility must be established before services can be initiated.

**317:35-15-4. Determination of medical eligibility for Personal Care**

(a) **Eligibility.** The OKDHS area nurse, or designee, utilizes the UCAT criteria and professional judgment in determining medical eligibility and level of care. To be eligible for Personal Care services, the individual must:

- (1) have adequate informal supports that contribute to care, or decision making ability as documented on the UCAT, to remain in his/her home without risk to his/her health, safety, and well-being:
  - (A) the individual must have the decision making ability to respond appropriately to situations that jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or
  - (B) the individual who has his/her decision making ability, but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the ~~LTC~~ OKDHS nurse of potential risks and consequences may be eligible;
- (2) require a ~~care~~ plan of care involving the planning and administration of services delivered under the supervision of professional personnel;
- (3) have a physical impairment or combination of physical and mental impairments. An individual who poses a threat to self or others as supported by professional documentation may not be approved for Personal Care services;
- (4) not have members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the ~~client individual~~ or other household visitors;
- (5) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and
- (6) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

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

- (1) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the ~~client's~~ member's ability to perform self-care tasks essential for sustaining health and safety such as:
  - (A) bathing,
  - (B) eating,
  - (C) dressing,
  - (D) grooming,
  - (E) transferring (includes getting in and out of a tub, bed to chair, etc.),
  - (F) mobility,
  - (G) toileting, and
  - (H) bowel/bladder control.
- (2) **"ADLs score of three or greater"** means the ~~client~~ member cannot do one ADL at all or needs some help with two ADLs.

(3) **"ADLs score is two"** means the ~~client~~ member needs some help with one ADL.

(4) **"Client support very low need"** means the ~~client's~~ member's UCAT Client Support score is zero which indicates in the UCAT assessor's clinical judgment, formal and informal sources are sufficient for present level of ~~client~~ member need in most functional areas.

(5) **"Client support low need"** means the member's UCAT Client Support score is 5 which indicates in the UCAT assessor's clinical judgment, support from formal and informal sources are nearly sufficient for present level of ~~client~~ member need in most functional areas.

(6) **"Client support moderate need"** means the UCAT Client Support score is 15, which indicates in the UCAT assessor's clinical judgment formal and informal support is available, but overall, it is inadequate, changing, fragile or otherwise problematic.

(7) **"Client support high need"** means the ~~client's~~ member's UCAT Client Support score is 25 ~~and which indicates in the UCAT assessor's clinical judgment,~~ formal and informal supports are not sufficient as there is very little or no support available to meet a high degree of ~~client~~ member need.

(8) **"Community Services Worker"** means any person employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to frail elderly, disabled person(s), or person(s) with developmental disabilities, and who is not a licensed health professional.

(9) **"Community Services Worker Registry"** means a registry established by the Oklahoma Department of Human Services, as required by Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes, to list community services workers against whom a final investigative finding of abuse, neglect, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, involving a frail elderly, disabled person(s) or person(s) with developmental disabilities has been made by ~~DHS~~ OKDHS or an administrative law judge, amended in 2002 to include the listing of ~~Medicaid~~ SoonerCare personal care assistants providing personal care services.

(10) **"Instrumental activities of daily living"** means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (A) shopping,
- (B) cooking,
- (C) cleaning,
- (D) managing money,
- (E) using a telephone,
- (F) doing laundry,
- (G) taking medication, and
- (H) accessing transportation.

~~(11)~~ **"IADL"** means the instrumental activities of daily living.

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- (12) "IADLs score is at least six" means the client member needs some help with at least three IADLs or cannot do two IADLs at all.
- (13) "IADLs score of eight or greater" means the client member needs some help with four IADLs or the client member cannot do two IADLs at all and needs some help with one other IADLs.
- (13) "~~Instrumental activities of daily living~~" means ~~those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:~~
- (A) ~~shopping,~~
  - (B) ~~cooking,~~
  - (C) ~~cleaning,~~
  - (D) ~~managing money,~~
  - (E) ~~using a telephone,~~
  - (F) ~~doing laundry,~~
  - (G) ~~taking medication, and~~
  - (H) ~~accessing transportation.~~
- (14) "Medicaid SoonerCare personal care services provider" means a program, corporation, or individual who provides services under the state's Medicaid SoonerCare personal care program or ADvantage Waiver to individuals who are elderly or who have a physical disability.
- (15) "MSQ" means the mental status questionnaire.
- (16) "MSQ moderate risk range" means a total weighted score of seven or more which indicates an orientation-memory-concentration impairment or a memory impairment.
- (17) "Nutrition moderate risk" means the total weighted UCAT Nutrition score is 8 or more which indicates poor appetite or weight loss combined with special diet requirements, medications or difficulties in eating.
- (18) "Social resources score is eight or more" means the client member lives alone or has no informal support when sick or needs assistance, or has little or no contact with others.
- (c) **Medical eligibility minimum criteria for Personal Care.** The medical eligibility minimum criteria for Personal Care is the minimum UCAT score criteria which a client member must meet for medical eligibility for personal care and are:
- (1) functional ADLs score is a five or greater; or IADLs score of eight or greater; or Nutrition score is eight or greater; or the MSQ score is seven or greater; or the ADLs score is three and IADLs score is at least six, and
  - (2) Client Support is moderate risk; or Client Support score is five ~~or more~~ and the Social Resources score is eight or more.
- (d) **Medical eligibility determination.** Medical eligibility for Personal Care is determined by the Oklahoma Department of Human Services. The medical decision for Personal Care, ~~the care plan and service plan approval for Personal Care~~ is made by the DHS OKDHS area nurse, or designee, utilizing the Uniform Comprehensive Assessment Tool (UCAT).
- (1) When Personal Care services are requested, the local office is responsible for completing the UCAT, Part III.

- (2) Categorical relationship must be established for determination of eligibility for Personal Care. If categorical relationship to Aid to the Disabled has not already been established but there is an extremely emergent need for Personal Care and current medical information is not available, the local office authorizes a medical examination. When authorization is necessary, the county director issues the Authorization for Examination, DHS OKDHS form ABCDM-16 08MA016E, and the Report of Physician's Examination, DHS OKDHS form ABCDM-80 08MA02E, to a licensed medical or osteopathic physician (refer to OAC 317:30-5-1). The physician cannot be in a medical facility intern, residency, or fellowship program or in the full time employment of the Veterans Administration, Public Health Service or other agency. The OKDHS county ~~social~~ worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship using the same definition used by SSA. A follow-up is required by the ~~DHS social~~ OKDHS county worker with the Social Security Administration (SSA) to be sure that SSA's disability decision agrees with the decision of LOCEU.
- (3) Approved contract agencies may complete the UCAT Part I for intake and screening and forward the form to the county office.
- (4) When ~~DHS~~ the OKDHS county office does not receive a UCAT from the AA, a UCAT I is initiated by the DHS county staff upon receipt of the referral.
- (5) The ~~DHS Long Term Care (LTC)~~ OKDHS nurse completes the UCAT III assessment visit within 10 working days of receipt of the referral for Personal Care from the ~~social~~ OKDHS county worker or receipt of the UCAT I ~~and II~~ (Intake and Screening) request for Personal Care for the client member who is Medicaid SoonerCare eligible at the time of the request. The ~~LTC~~ OKDHS nurse completes the assessment visit within 20 working days of the Medicaid SoonerCare application for the client applicant who has not been determined financially Medicaid SoonerCare eligible at the time of the request. The ~~DHS social~~ OKDHS county worker is responsible for contacting the individual applicant within three working days from the date of the receipt of the request for services to initiate the financial eligibility process. If the UCAT Part I ~~or II~~ indicates the request is from an individual who resides at home and an immediate response is required to ensure the health and safety of the client person (emergency situation) or to avoid institutional placement, the UCAT Part III assessment visit has top priority for scheduling.
- (6) During the assessment visit, the ~~LTC~~ OKDHS nurse completes the UCAT III and reviews with the member rights to privacy, fair hearing and provider choice. The OKDHS nurse informs the client member of medical eligibility criteria and provides information about the different DHS OKDHS long-term care service options. The OKDHS nurse documents on the UCAT III whether the client member wants to be considered for nursing facility level of care services or if the client member is

applying for a specific service program. If based upon the information obtained during the assessment, the OKDHS nurse determines that the client member may be at risk for health and safety, an immediate referral is made to Adult Protective Services (APS) staff are notified immediately. The referral is documented on the UCAT.

~~(A) The LTC nurse uses the Personal Care service plan form to develop an individual plan of care. The plan of care and service plan, including the amount and frequency of DHS Personal Care services, is based on the client's needs as determined by the UCAT III assessment.~~

~~(B A) If the client's member's needs cannot be met by DHS Personal Care and Home Health services alone, the LTC OKDHS nurse informs the client member of the other DHS Long Term Care (LTC) community long term care service options. The LTC OKDHS nurse assists the client member in accessing service options selected by the client member in addition to, or in place of, Personal Care services.~~

~~(C B) If multiple household members are applying for DHS SoonerCare Personal Care services, the UCAT assessment is done for all the client household members at the same time. Individual care plans and service plans are discussed and developed with the group of clients who appear eligible so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of service allocated to each individual is distributed between family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.~~

~~(D) If the length of time from the date the initial assessment information was obtained to the date the assessment is submitted to the area nurse, or designee, exceeds 60 days, the assessment must be updated as necessary including a new signature and date. A new UCAT and assessment visit is required if the length of time exceeds 90 days.~~

~~(C) The OKDHS nurse informs the member of the qualified agencies in their local area available to provide services and obtains the member's primary and secondary choice of agencies. If the member or family declines to choose a primary personal care service agency, the OKDHS nurse selects an agency from a list of all available agencies, using a round-robin system. The OKDHS nurse documents the name of the selected personal care service agency.~~

(7) The LTC OKDHS nurse scores completes the UCAT III. Within five within three working days of the assessment visit, the nurse forwards the UCAT and the completed Personal Care plan and service plan forms and sends it to the OKDHS area nurse, or designee, for medical eligibility determination. Personal care service eligibility is established as of the date that both medical eligibility is approved and financial eligibility is established. The client's Personal Care service plan and care plan include:

(A) goals and tasks; If the length of time from the date the initial assessment to the date of service eligibility determination exceeds 60 days, the assessment must be updated as necessary including a new signature and date. A new UCAT and assessment visit is required if the length of time exceeds 90 days.

(B) the number of authorized Personal Care units (hours) per month; Upon establishment of Personal Care service eligibility, the OKDHS nurse contacts the member's preferred personal care service agency, or if necessary, the secondary agency or the agency selected by the rotation system.

(C) frequency of service visits; Within one working day of agency acceptance, the OKDHS nurse forwards the referral to the personal care service agency for Service Authorization Model (SAM) packet development. [Refer to OAC 317:35-15-8(a)]. The date the referral is forwarded is the certification effective date.

(D) the effective date for services; and

(E) the certification period for the care plan and service plan.

(8) Following the development of the Service Authorization Model (SAM) packet by the personal care service agency, and within three working days of receipt of the packet from the agency, the OKDHS nurse reviews the packet to ensure agreement with the plan. Once agreement is established, the packet is forwarded to the OKDHS area nurse or designees for review.

(9) Within 10 working days of receiving the UCAT, care plan, and service plan Service Authorization Model (SAM) packet from the LTC OKDHS nurse, the OKDHS area nurse, or designee, determines medical eligibility for Personal Care services, certifies or denies the care plan and service plan Service Authorization Model (SAM) packet and enters the medical decision on MEDATS. If there is certification, the OKDHS area nurse enters into the system the units authorized. Denied service and care plans Service Authorization Model (SAM) packets that fail to meet authorization are returned to the LTC OKDHS nurse for revision or further justification by the personal care service agency. The LTC nurse revises and re-submits the denied service and care plans to the area nurse, or designee, within five working days of receipt of the returned documents.

(9 10) The OKDHS area nurse, or designee, determines the medical certification period for the plan of care and service plan which is the same as the certification period for the medical eligibility decision [see OAC 317:35-15-7(b)] assigns a medical certification period of not more than 36 months. The service plan certification period under the Service Authorization Model (SAM) is for a period of 12 month.

(11) Once the OKDHS nurse is notified of the service plan authorization, and within one working day, forwards copies of the certified Personal Care Service Plan [OKDHS form 02AG031E (AG-6)] to the agency.

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(12) The OKDHS nurse notifies the OKDHS county worker in writing of the service and the number of authorized personal care service units including the start and end dates. The OKDHS county worker opens the service authorization. These steps are automated via ELDERS. Once the authorization is opened, five Service Authorization Model (SAM) visits by a skilled nurse are automatically authorized.

### 317:35-15-5. General financial eligibility requirements for Personal Care

Financial eligibility for Personal Care is determined using the rules on income and resources according to the category to which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36 for those categorically related to ABD.)

(1) ~~Income, and resources and expenses are evaluated on a monthly basis for all individuals requesting payment for Personal Care who are categorically related to ABD; maximum countable monthly income and resource standards for individuals related to ABD are found on OKDHS form 08AX001E (Appendix C-1), Schedule VI (QMBP program standards).~~

(2) ~~The maintenance standards on the DHS Appendix C-1, Schedule II, A, are used to evaluate income and resources when an individual requests Personal Care with income and resources that exceed the categorically needy standards. Any vendor copayment for Personal Care is deducted from the claim prior to payment.~~

### 317:35-15-6. Determining financial eligibility of categorically needy individuals

Financial eligibility for Personal Care for categorically needy individuals is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.** In determining income for the individual related to AFDC, all family income is considered. (See OAC 317:35-5-45 for Exceptions to AFDC rules.) The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the ~~DHS OKDHS form 08AX001E (Appendix C-1), Schedule X.~~

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the ~~DHS OKDHS form 08AX001E (Appendix C-1), Schedule I, A.~~

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the countable income must be less than the categorically needy

standard as shown on the ~~DHS OKDHS form 08AX001E (Appendix C-1), Schedule VIII, A VI (QMBP standard).~~ If an individual and spouse cease to live together for reasons other than institutionalization or receipt of the ADvantage waiver or HCBW/MR services, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered.

(3) **Determining financial eligibility for Personal Care.** For individuals determined categorically needy for Personal Care, ~~excess income is not applied to the member will not pay a vendor payment for Personal Care services.~~

### 317:35-15-7. Certification for Personal Care

(a) ~~Application date.~~ The first month of the Personal Care certification period must be the first month the ~~client member~~ was determined eligible for Personal Care, both financially and medically.

(1) As soon as eligibility or ineligibility for Personal Care is established, the local office updates the computer form and the appropriate notice is computer generated. Notice information is retained on the notice file for county use.

(2) An applicant approved for Personal Care under Medicaid SoonerCare as categorically needy is mailed a Medical Identification Card.

(b) ~~Certification period for Personal Care.~~ A medical certification period of not more than 36 months is assigned for an individual categorically related to ABD who is approved for Personal Care. The certification period for Personal Care is based on the UCAT evaluation and clinical ~~judgement~~ judgment of the OKDHS area nurse or designee. When the individual determined eligible for Personal Care is categorically related to AFDC, a medical certification period of not more than 36 months is assigned.

### 317:35-15-8. Agency Personal Care service management Service Authorization and Monitoring

(a) ~~At the time of assessment, the OKDHS nurse informs the member of the qualified agencies in their local area available to provide services and obtains the member's primary and secondary choice of agencies. If the member or family declines to choose a primary PC service agency, the OKDHS nurse selects an agency from a list of all local available agencies, using a round robin system. The OKDHS nurse documents the name of the selected PC service agency.~~

(b) After medical and financial eligibility are established, OKDHS contacts the member's preferred PC service agency or, if necessary, the secondary agency or the agency selected by the rotation system. The OKDHS nurse forwards the referral to the PC services agency and establishes an initial PC ~~skilled nursing service authorization for assessment and care~~

plan development. Within one working day, OKDHS notifies the PC service agency and member of eligibility approval and also the authorization for PC skilled nursing for assessment and care plan development. The agency, prior to placing a PCA in the member's home, initiates an OSBI background check, checks the OKDHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and, as appropriate, checks the Certified Nurse Aid Registry.

(e a) Within ten working days of receipt of the member's PC eligibility approval, referral for Personal Care services, the PC services agency skilled nurse Personal Care Assessment/Service Planning Nurse completes an in-home assessment of a Service Authorization Model (SAM) visit in the home to assess the member's PC Personal Care service needs, develops a care plan completes a Service Authorization Model (SAM) packet based on the member's needs and submits the plan packet to the OKDHS nurse. The member's PC services care plan includes PC services goals and tasks, the number of authorized PC service units per month, frequency of PC service visits, the begin date for PC services, and the care plan end date which is no more than one year from the plan begin date. If more than one person in the household has been authorized to receive PC services, all household members' care plans are discussed and developed with the eligible members so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of PC service authorized for each individual is distributed between all eligible family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home. Service Authorization Model (SAM) packet includes:

- (1) State Plan Personal Care Progress Notes (OKDHS form 02AG044E);
- (2) Personal Care Planning Schedule [OKDHS form 02AG030E (AG-5)];
- (3) Personal Care Plan [OKDHS form 02AG029E (AG-4)]; and
- (4) Personal Care Service Plan [02AG031E (AG-6)].

(b) If more than one person in the household has been referred to receive Personal Care services, all household members' Service Authorization Model (SAM) packets are discussed and developed with the eligible members so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of Personal Care service authorized for each individual is distributed between all eligible family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.

(d) Within three working days of receipt of the care plan from the PC services agency, the OKDHS nurse reviews and approves or denies the care plan and notifies the agency. The OKDHS nurse may also reduce the number of units requested by the PC services agency and then approve the care plan. When the OKDHS nurse denies a plan or approves a plan with fewer authorized units than the submitted plan, OKDHS consults with the PC services agency prior to denying the care plan or approving the care plan with reduced units.

(c) The Personal Care service agency receives a certified Service Plan [OKDHS form 02AG031E (AG-6)] from OKDHS as authorization to begin services. The agency delivers a copy of the care plan and service plan to the member upon initiating services.

(e d) Prior to placing a PC Personal Care attendant in the member's home or other service-delivery setting, an OSBI background check, OKDHS Community Service Worker Registry check in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and as appropriate, the Certified Nurse Aide Registry Check must be completed.

(f e) The PC service skilled nurse Personal Care Assessment/Service Planning Nurse monitors their member's care plan of care.

(1) The PC Personal Care service provider agency contacts the member within 5 five calendar days of receipt of the approved care plan Service Plan [OKDHS form 02AG031E (AG-6)] in order to make sure that services have been implemented and the needs of the member are being met.

(2) The PC services agency nurse Personal Care Assessment/Service Planning Nurse makes a Service Authorization Model (SAM) home visit at least every 180 days to assess the member's satisfaction with their care and to evaluate the care plan Service Authorization Model (SAM) packet for adequacy of goals and units authorized. Whenever a home visit is made, the PC services agency nurse Personal Care Assessment/Service Planning Nurse documents their findings in the personal care services progress notes State Plan Personal Care Progress Notes (OKDHS form 02AG044E). The personal care agency forwards a copy of the Progress Notes to the OKDHS nurse for review. The monitoring visit may be conducted by an LPN. If an LPN or social worker conducts the monitoring visit, an RN must co-sign the progress notes.

(3) Requests by the PC Personal Care service agency to change the number of units authorized in the care plan Service Authorization Model (SAM) packet are submitted to OKDHS and are approved or denied by the OKDHS area nurse, or designee prior to implementation of the changed number of units.

(4) Annually, or more frequently if the member's needs change, the PC services agency nurse Personal Care Assessment/Service Planning Nurse re-assesses member's need and develops a new care plan Service Authorization Model (SAM) eligibility packet to meet personal care needs. If the member's need does not change, the agency nurse may re-authorize the member's existing plan.

(g) When the PC services agency returns the member's care plan containing a service start date to OKDHS, the OKDHS nurse notifies the OKDHS county social worker in writing of the service and number of authorized PC service units and the start and end date of PC service authorization.

(5) If the member is unstaffed, the Personal Care service agency communicates with the member and makes efforts to restaff. If the member is unstaffed for 30 calendar days, the agency notifies the OKDHS nurse on an

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OKDHS form 02AG032E (AG-7), Provider Communication Form. The OKDHS nurse contacts the member and if the member chooses, initiates a transfer of the member to another Personal Care service agency that can provide staff.

### 317:35-15-8.1. Agency Personal Care services; billing, and issue problem resolution

The ~~Administrative Agent~~ ADvantage Administration (AA) certifies qualified PC Personal Care service agencies and facilitates the execution of the agencies' SoonerCare contracts on behalf of OHCA. OHCA will check the list of providers that have been barred from ~~Medicare/Medicaid~~ Medicare/Sooner-Care participation to ensure that the PC Personal Care services agency is not listed.

(1) **Payment for Personal Care.** Payment for PC Personal Care services is generally made for care in the member's "own home". In addition to an owned or rented home, a rented apartment, room or shelter shared with others is considered to be the member's "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., and/or in any other type of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not a setting that qualifies as the member's "own home" for delivery of PC Personal Care services through Sooner-Care. With prior approval of the OKDHS area nurse, PC Personal Care services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the care plan.

(A) **Use of Personal Care service agency.** To provide PC Personal Care services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by OKDHS ~~or the AA~~, and possess a current SoonerCare contract.

(B) **Reimbursement.** Personal Care services payment on behalf of a member is made according to the type of service and number of units of PC Personal Care services authorized in the ~~care plan~~ Service Authorization Model (SAM) packet.

(i) The amount paid to PC Personal Care services providers for each unit of service is according to the established SoonerCare rates for the PC Personal Care services. Only authorized units contained ~~on~~ in each eligible member's individual ~~care plan~~ Service Authorization Model (SAM) packet are eligible for reimbursement. Providers serving more than one PC Personal Care service member residing in the same residence will assure that the members' ~~care plans~~ Service Authorization Model (SAM) packets combine units in the most efficient manner possible to meet the needs of all eligible persons in the residence.

(ii) Payment for PC Personal Care services is for tasks performed in accordance with OAC 317:30-5-951 only when listed on an authorized ~~care plan of care~~. Payment for PC Personal Care skilled nursing service is made on behalf of the member for assessment/evaluation and associated service planning per assessment/service planning visit by the ~~provider agency personal care skilled nurse~~ Personal Care Assessment/Service Planning Nurse.

### (2) Issue resolution.

(A) If the member is dissatisfied with the PC Personal Care services provider agency or the assigned PCA, and has exhausted attempts to work with the PC Personal Care services agency's grievance process without resolution, the member may contact the OKDHS nurse to attempt to resolve the issues. The member has the right to appeal to the OHCA in accordance with OAC 317:2-1-2. For members receiving ADvantage services, the member or family should contact their case manager for the problem resolution. If the problem remains unresolved, the member or family should contact the Consumer Inquiry System (CIS). Providers are required to provide the CIS contact number to every member. The ADvantage Program member also has the right to appeal to the OHCA in accordance with OAC 317:2.

(B) When a problem with performance of the Personal Care attendant is identified, agency staff will conduct a counseling conference with the member and/or the attendant as appropriate. Agency staff will counsel the attendant regarding problems with his/her performance.

### 317:35-15-9. Redetermination of financial eligibility for Personal Care

~~(a)~~ The ~~social~~ OKDHS county worker must complete a redetermination of financial eligibility before the end of the certification period. A notice is generated only if there is a change which affects the client's financial ~~responsibility~~ eligibility.

~~(b)~~ The area nurse, or designee, must complete a redetermination of medical eligibility before the end of the long-term ~~care~~ medical certification period.

### 317:35-15-10. Redetermination of medical eligibility for Personal Care services

(a) **Medical eligibility redetermination.** The OKDHS area nurse, or designee, must complete a redetermination of medical eligibility before the end of the long-term care medical certification period.

~~(a)~~ **Recertification.** The OKDHS nurse re-assesses the PC Personal Care services member for medical re-certification based on the member's needs and level ~~of~~ caregiver support required, using the UCAT at least every 36 months. During this re-certification assessment, the OKDHS nurse informs the member of the state's other SoonerCare long-term care options.

The OKDHS nurse submits the re-assessment, to the OKDHS area nurse, or designee, for re-certification. ~~Recertification documents are~~ Documentation is sent to the OKDHS area nurse, or designee, no later than the tenth day of the month in which the certification expires. When the OKDHS area nurse, or designee determines medical eligibility for ~~PC~~ Personal Care services, a re-certification review date is entered on the system.

~~(b c) Change in service plan and care plan amount of units or tasks within Personal Care service for State Plan PC Personal Care service members.~~ Upon notification by the PC service agency of the member's need for a change in the amount of PC service required, the OKDHS nurse initiates the process to increase or decrease the approved units of service on the member's care plan. Based on the documentation provided by the PC service agency to OKDHS, the area nurse or designee approves or denies the care plan changes within three working days of receipt of the request. A copy of the signed care plan is included in the case record. The social worker updates the service authorization system after they are notified of the increase or decrease. When the Personal Care services agency determines a need for a change in the amount of units or tasks within the Personal Care service, a new Personal Care Service Authorization Model (SAM) packet is completed and submitted to OKDHS. The change is approved or denied by the OKDHS area nurse, or designee prior to implementation.

~~(e d) Voluntary closure of State Plan PC Personal Care services.~~ If a member decides Personal Care services are no longer needed to meet his/her needs, a medical decision is not needed. The member and the OKDHS nurse or social OKDHS county worker completes and signs OKDHS form 02AG038E, AG-17, Voluntary Action of Personal Care Case Closure form.

~~(e e) Resuming State Plan PC Personal Care services.~~ If a member approved for Personal Care services has been without ~~PC~~ Personal Care services for less than 90 days but still has a current ~~PC~~ Personal Care services medical and SoonerCare financial eligibility approval, ~~PC~~ Personal Care services may be resumed using the member's previously approved care plan Service Authorization Model (SAM) packet. The ~~PC~~ Personal Care service agency submits a ~~PC~~ Personal Care services skilled nursing re-assessment of need within ten working days of the resumed plan start date using the State Plan Personal Care Progress Notes, OKDHS form 02AG044E. If the member's needs dictate, the ~~PC~~ Personal Care services agency may submit a request for a change in authorized ~~PC~~ Personal Care services units with the re-assessment for authorization review by a Service Authorization Model (SAM) packet to OKDHS.

~~(e f) Financial ineligibility.~~ Anytime OKDHS determines a ~~PC~~ Personal Care services member does not meet the SoonerCare financial eligibility criteria, the local OKDHS office notifies the member, ~~PC~~ Personal Care service provider, and the OKDHS nurse of financial ineligibility.

~~(f g) Closure due to medical ineligibility.~~ If the local OKDHS office is notified through the system that a member is no longer medically eligible for Personal Care, the social OKDHS county worker notifies the member of the decision. The OKDHS nurse notifies the ~~PC~~ Personal Care service agency.

~~(g h) Termination of State Plan Personal Care Services.~~

- (1) Personal Care services may be discontinued if:
  - (A) the member poses a threat to self or others as supported by professional documentation; or
  - (B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the member or other household visitors; or
  - (C) the member or family member fails to cooperate with Personal Care service delivery or to comply with OHCA or OKDHS rules as supported by professional documentation; or
  - (D) the member's health or safety is at risk as ~~documented on the UCAF~~ supported by professional documentation; or
  - (E) additional services, either "formal" (i.e., paid by Medicaid SoonerCare or some other funding source) or "informal" (i.e., unpaid) are provided in the home eliminating the need for SoonerCare Personal Care services.
- (2) The member refuses to select and/or accept the services of a ~~PC~~ Personal Care service agency or PCA for 90 consecutive days as supported by professional documentation.
- (3) For persons receiving ~~State Plan PC~~ Personal Care services, the ~~PC~~ Personal Care services agency submits documentation with the recommendation to discontinue services to OKDHS. The OKDHS nurse reviews the documentation and submits it to the OKDHS Area Nurse for determination. The OKDHS nurse notifies the member and the Personal Care service agency or PCA, and the local OKDHS county social worker of the decision to terminate services. ~~The social worker closes the authorization on the OKDHS system which sends~~ The member is sent an official closure notice to the member informing them of their appropriate member rights to appeal the decision to discontinue services.

**317:35-15-11. Case transfer between categories [REVOKED]**

~~If it becomes necessary to transfer a Medicaid Personal Care case from one category to another because of change of age, income, or marital status, a new application is not required. If someone other than the client or guardian signed the original application form and the transfer is to a money payment case, an application with the member's signature is required. The new case is certified retaining the original certification date and redetermination date, using the appropriate code for transfer from the old category and the appropriate effective date which coincides with the closure of the previous case category. Members and appropriate medical contractors are notified of the new case number and category by computer generated notice.~~

**317:35-15-15. Referral for social services**

In many situations, adults who are receiving medical services through Medicaid SoonerCare need social services.

# Emergency Adoptions

The ~~LTC~~ OKDHS nurse may make referrals for social services to the OKDHS worker in the local office. In addition to these referrals, a request for social services may be initiated by a client member or by another individual acting upon behalf of a client member.

(1) The OKDHS county worker is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.

(2) Among the services provided by the OKDHS worker are:

(A) Services that will enable individuals to attain and/or maintain as good physical and mental health as possible;

(B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) Services to encourage the development and maintenance of family and community interest and ties;

(D) Services to promote maximum independence in the management of their own affairs;

(E) Protective services, including evaluation of need for and arranging for guardianship; and

(F) Appropriate family planning services, which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

[OAR Docket #09-71; filed 1-9-09]

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

[OAR Docket #09-69]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 15. Personal Care Services

317:35-15-14.[AMENDED]

Subchapter 17. ADvantage Waiver Services

317:35-17-22.[AMENDED]

(Reference APA WF #08-29B)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

### DATES:

#### Adoption:

December 11, 2008

#### Approved by Governor:

January 2, 2009

#### Effective:

February 1, 2009

#### Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to require that the provision of Personal Care and certain other in-home ADvantage services to SoonerCare members be documented using the Interactive Voice Response Authentication (IVRA) time and attendance system. The new electronic IVRA system will replace the current system of manual time documentation and therefore increase the efficiency of processing claims while reducing the error rate caused by duplication of records, resulting in a substantial savings of SoonerCare dollars over time.

### ANALYSIS:

Rules are revised to require the use of the new Interactive Voice Response Authentication (IVRA) system to document time and attendance for all Personal Care and certain in-home ADvantage services provided to SoonerCare members. Currently, claims for Personal Care and associated in-home ADvantage services represent the highest volume of claim records processed through the Medicaid Management Information System. In-home services are necessarily provided in the individual homes of persons with physical and cognitive disabilities. The verification of service delivery is typically a paper time sheet signed by the member receiving services with a high potential for errors. Additionally, a paper based time and attendance system which requires transcription of time units from paper to computer is both inefficient and affords many opportunities for inadvertent errors.

### CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE FEBRUARY 1, 2009:**

## SUBCHAPTER 15. PERSONAL CARE SERVICES

### 317:35-15-14. Billing procedures for Personal Care

Billing procedures for Personal Care Services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures that cannot be resolved through a study of the manual are referred to the OHCA. Contractors for Personal Care bill on ~~HCFR-1500~~ CMS-1500. The OKDHS county office ~~provide~~ provides instructions to an individual PCA for completion of the claim at the time of the contractor orientation. Each Personal Care contractor submits a claim for each client member. The contractor prepares claims for services provided and submits the claims to the fiscal agent who is responsible for assuring that the claims have been properly completed. All Personal Care contractors must have a unique provider number. New contractors will be mailed the provider number after they have been placed on the claims processing contractor's provider file. Service time of Personal Care and Nursing is documented solely through the Interactive Voice Response Authentication (IVRA) system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

**SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

**317:35-17-22. Billing procedures for ADvantage services**

(a) Billing procedures for long-term care medical services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures which cannot be resolved through a study of the manual should be referred to the OHCA.

(b) The ~~AA~~ OKDHS/ASD approved ADvantage service plan is the basis for the MMIS service prior authorization, specifying:

- (1) service;
- (2) service provider;
- (3) units authorized; and
- (4) begin and end dates of service authorization.

(c) As part of ADvantage quality assurance, provider audits are used to evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision will be turned over to SURS for follow-up investigation.

(d) Service time of Personal Care, Nursing, Advanced Supportive/ Restorative Assistance, In-Home Respite, CD-PASS Personal Services Assistance and Advanced Personal Services Assistance is reimbursed solely through the Interactive Voice Response Authentication (IVRA) system. Providers are required to use the IVRA system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

*[OAR Docket #09-69; filed 1-9-09]*

**TITLE 455. MERIT PROTECTION COMMISSION  
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION**

*[OAR Docket #09-95]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**

- Subchapter 1. General Provisions
  - 455:10-1-2. Definitions [AMENDED]
  - 455:10-1-5. Review of Commission records [AMENDED]
  - 455:10-1-7. Organization [AMENDED]
  - 455:10-1-10. Forms and instructions [AMENDED]
- Subchapter 3. Jurisdiction, Rights and Processes
  - 455:10-3-1.1. Time [AMENDED]
  - 455:10-3-2. Determining jurisdiction; "file" defined [AMENDED]
  - 455:10-3-3.3. No jurisdiction over designation of worksite [NEW]
  - 455:10-3-4.1. Notice of appeal [AMENDED]

- 455:10-3-6. Alleged violations of employee's freedom of expression [AMENDED]
- 455:10-3-15. Transcripts [AMENDED]
- 455:10-3-17. Continuances [AMENDED]
- Subchapter 7. Investigations
  - 455:10-7-2. Directed investigation [AMENDED]
  - 455:10-7-4. Investigative report [AMENDED]
  - 455:10-7-6. Investigative file [AMENDED]
- Subchapter 9. Hearing Process
  - 455:10-9-1. Prehearing conference [AMENDED]
  - 455:10-9-2. Hearing [AMENDED]
- Subchapter 11. Discipline
  - 455:10-11-1. General [AMENDED]
  - 455:10-11-4. Progressive discipline [AMENDED]
  - 455:10-11-14. Causes for discharge, suspension without pay or involuntary demotion [AMENDED]
  - 455:10-11-17. Discharge [AMENDED]
- Subchapter 15. Attorney Fees and Costs
  - 455:10-15-4. Request [AMENDED]
- Subchapter 19. Internal Agency Grievance Resolution Procedures
  - Part 1. General Provisions
    - 455:10-19-1. General [AMENDED]
  - Part 5. Grievance Provisions
    - 455:10-19-35. Grievance [AMENDED]

**AUTHORITY:**

Merit Protection Commission; 74 O.S., 840-1-9

**DATES:**

**Comment Period:**

November 15, 2007, through November 28, 2007

**Public Hearing:**

November 29, 2007

**Adoption:**

January 24, 2008

**Approved by Governor:**

March 1, 2008

**Effective:**

Immediately upon Governor's approval

**Expiration:**

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

In accordance with 75 O.S., 253(A), the Merit Protection Commission proposes there is a compelling public interest to ensure procedural clarity and stability in its adjudication processes while implementing electronic filing - whereas conflicting rules and procedures might exacerbate jurisdictional and legal disputes at the expense of state resources.

**ANALYSIS:**

The emergency rules serve to update the Merit Protection Commission's processes to reflect advances in technology and processes such as digital recording, email notification, and electronic filing. The emergency rules also update statutory citations and requirements that need to be addressed to reflect current framework and guidelines for the Merit Protection Commission's administrative processes.

**CONTACT PERSON:**

Susan Bussey, Executive Director, Oklahoma Merit Protection Commission, (405) 525-9144, sbussey@mpc.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(D):**

**SUBCHAPTER 1. GENERAL PROVISIONS**

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### 455:10-1-2. Definitions

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

**"Addendum decision"** or **"Addendum order"** means a decision or order to add to a previously issued decision or order.

**"Administrative Law Judge"** means a person appointed by the Executive Director and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final and addendum decisions.

**"Adverse action appeal"** means an appeal by a permanent classified employee appealing a discharge, suspension without pay or involuntary demotion.

**"Affidavit"** means a sworn statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

**"Affidavit of service"** means a written statement certifying that a motion, request or other document has been provided to other persons.

**"Allegation"** means the claims of a party.

**"Allege"** means to state, assert or charge; to make an allegation.

**"Alleged violation appeal"** means an appeal in which an allegation is made that a violation of law or rules over which the Commission has jurisdiction has occurred.

**"Appeal"** means, as a verb, the filing of a petition for appeal, or as a noun, the procedure that takes place after a petition for appeal is filed.

**"Appellant"** means a party who files a petition for appeal.

**"Appellee"** means a party against whom an appeal is filed or who is otherwise named or joined as a party.

**"Burden of proof"** means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

**"Caucus"** means a private meeting between an Alternative Dispute Resolution Program facilitator and a party for the purpose of assisting in the resolution of a dispute.

**"Commission"** means the Oklahoma Merit Protection Commission.

**"Commissioners"** means the members appointed to the Oklahoma Merit Protection Commission.

**"Consolidation"** means the combining of appeals containing the same or similar issues but filed by 2 or more appellants into a single appeal.

**"Continuance"** means a postponement of a matter scheduled by the Commission to a date certain.

**"Cross-examination"** means the questioning of a witness by a party other than the party calling the witness.

**"Deny"** means to refuse to grant or accept.

**"Deposition"** means a method where the sworn testimony of a person is taken. The person who answers the questions is said to be deposed.

**"Determination of the Executive Director"** means a document which states the issues, findings of fact, conclusions of law and disposition of an appeal.

**"Direct-examination"** means the questioning of a witness by the party calling the witness.

**"Discovery"** means to obtain relevant facts and information about the appeal from another party or person.

**"Dismiss"** means to close without further consideration.

**"Employee"** or **"State employee"** means *an elected or appointed officer or employee of an agency unless otherwise indicated* [74:840-1.3(2)].

**"Evidence"** means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

**"Ex-parte communication"** means communications by anyone with a presiding official on the merits of an appeal which could affect its outcome.

**"Executive Director"** means the appointing authority of the Oklahoma Merit Protection Commission [Section 840-1.3 of Title 74 of the Oklahoma Statutes].

**"Exhibit"** means items offered as evidence.

**"Expert"** means a person knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience.

**"Filing"** means the receipt of documents by the Commission.

**"Final decision"** means a determination made by a presiding official after considering the merits, testimony and evidence of an appeal. Final decision also refers to a determination made by the Executive Director to dismiss an appeal.

**"Grant"** means to give or permit.

**"Hearing"** means an open, formal proceeding conducted by an Administrative Law Judge, Executive Director or Commissioners to decide an appeal. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

**"Interrogatories"** means written questions given to a party or witness. The answers are made in writing under oath.

**"Intervenor"** means a person or agency permitted to voluntarily enter an appeal as a party.

**"Investigative report"** means a written account of an investigation to assist the Executive Director in determining whether or not a violation within the Commission's jurisdiction may have occurred.

**"Issue"** means a disputed point or question on which the parties to an appeal seek a resolution.

**"Joinder"** means the combining of 2 or more appeals of one appellant.

**"Jurisdiction"** means the authority of the Commission to complete its duties and responsibilities.

**"Jurisdictional limitations"** means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Commission.

**"Merit Rules"** or **"Merit Rules for Employment"** means the merit system of personnel administration rules. The merit rules include both the rules in this chapter as adopted by the Merit Protection Commission and the rules in OAC 530 as adopted by the Administrator of the Office of Personnel Management.

**"Moot"** means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

**"Motion"** means a request for a ruling to be made by a presiding official or the Commissioners.

**"Not sustain"** means to deny a request; to deny an appeal.

**"Order"** means a command or directive given by a presiding official, Executive Director or Commissioners.

**"Party"** means an Appellant, Appellee or Intervenor.

**"Payroll claim protest"** means a protest in which an employee challenges the decision that an overpayment or underpayment of salary has been made or a protest of the amount of the alleged overpayment or underpayment.

**"Petition for Appeal"** means the form adopted by the Commission for the filing of an appeal.

**"Petition for Reconsideration, Rehearing or Reopening"** means a document filed after the final decision on an appeal has been made requesting that the Commissioners rehear, reopen or reconsider the case based on specific grounds as outlined in Section 317 of Title 75 of the Oklahoma Statutes.

**"Prehearing conference"** means a proceeding conducted by an Administrative Law Judge or Executive Director with the parties to identify the issues, documents, witnesses and motions which will guide the Administrative Law Judge or Executive Director in the conduct of the hearing.

**"Preponderance of evidence"** means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

**"Presiding official"** means the Executive Director or a person appointed by the Executive Director to serve the Commission in the capacity of Administrative Law Judge, mediator or other Alternative Dispute Resolution Program arbitrator or facilitator.

**"Prima facie case"** means a case which on its face is presumed to be true and will prevail until contradicted and overcome by other evidence.

**"Protective order"** means a directive issued to protect a party or witness from annoyance, embarrassment, oppression or undue burden or expense.

**"Quash"** means to annul or make void.

**"Relevant"** means directly related to the issue or issues being examined.

**"Remedy"** means corrective action sought by or afforded to a party.

**"Representative"** means the designated agent of record, identified in the petition for appeal or through an entry of appearance or other written means, acting on behalf of a party.

**"Stipulation"** means a voluntary admission of fact.

**"Subpoena"** means an order to appear at a certain time and place to give testimony.

**"Subpoena Duces Tecum"** means an order requiring the production of books, papers and other documents.

**"Summary judgment"** means a request or decision on issues where there is no dispute of material fact.

**"Sustain"** means to grant a request; to grant an appeal.

**"Testimony"** means statements given by a witness under oath or affirmation.

**"Violation"** means a breach of any law or rule over which the Commission has jurisdiction.

## 455:10-1-5. Review of Commission records

(a) **Generally.** The Commission supports the public's right to know and be informed about their government. This right must be balanced with the rights of individuals to have adequate protection from clearly unwarranted invasions of personal privacy and assaults on their integrity. Records maintained by the Commission may be inspected and copied during normal business hours in accordance with state and federal laws and the rules in this chapter. Any person wishing to inspect, copy or reproduce records under the control of the Commission shall complete the Commission's Request for Access to Records form. Sufficient advanced notice shall be given so the essential functions of the Commission shall not be severely disrupted. Appointments are preferred.

(b) **Confidential records.** Access to confidential records shall be limited to officers and employees of state or federal government acting in their official capacities. The extent of access may be limited as determined to be appropriate by the Executive Director.

(1) The following Commission records shall be confidential:

(A) records which relate to internal personnel investigations, including examination and selection for employment, hiring, appointment, promotion, demotion, discipline or resignation. [51:24A.7(A)(1)].

(B) records received from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by law.

(C) records specifically required by law to be kept confidential, including records not discoverable under state law, such as material prepared in anticipation of ~~law-suit~~ lawsuit or trial, records protected by a state evidentiary privilege, [51:24A.5(1)(a)], records of what happened during executive session. [51:24A.5(1)(b)].

(D) other records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, such as employee evaluations, payroll deductions or employment applications of persons not hired. [51:24A.7(A)(2)].

(E) state employee home addresses, home telephone numbers and social security numbers shall not be open to public inspection or disclosure [74:840-2.11].

(F) see OAC 455:10-7-6 for access to Commission investigative files.

(2) The Executive Director may keep records confidential that are specifically permitted by law to be kept confidential.

(c) **Public records.** All personnel records that are not confidential shall be available for public inspection and copying. Any employee of the state of Oklahoma shall have a right of access to his or her own records on file with the Commission

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unless a law prohibits it. Public records include, but are not limited to, records of:

- (1) employment application of a person who becomes a state official or employee; [51:24A.7(B)(1)]
  - (2) gross receipts of public funds; [51:24A.7(B)(2)]
  - (3) dates of employment, title or position; [51:24A.7(B)(3)]
  - (4) final disciplinary action resulting in loss of pay, suspension, demotion or discharge. [51:24A.7(B)(4)].
- (d) **Appeal records.** The records of an active appeal shall be open to inspection only by a party to the appeal or the party's designated representative. The records of an inactive appeal shall be open to inspection in accordance with the Oklahoma Open Records Act and these rules.
- (e) **Fees.** ~~Access to The Commission shall charge a reasonable fee for copies of Commission records shall be subject to the Commission's fee schedule.~~ including A a reasonable search fee may be charged to recover the direct costs of document searches if the request is solely for commercial purposes [51:24A.5(3)(a)] or clearly would cause excessive disruption of the Commission's essential functions. [51:24A.5(3)(b)].
- (1) ~~Fee for paper photocopies—\$0.25 per copy.~~
  - (2) ~~Fee for cassette tapes—\$1.00 per tape, plus cassette tape.~~
  - (3) ~~Search fee shall be determined by multiplying the hours of the search by the Commission employee's hourly rate of pay.~~

### 455:10-1-7. Organization

- (a) The Oklahoma Merit Protection Commission consists of nine members (Commissioners): two members appointed by the President Pro Tempore of the Senate; two members appointed by the Speaker of the House of Representatives; and five members appointed by the Governor. The appointing authority of the Commission is the Executive Director.
- (b) The Commissioners and the Executive Director may take action to carry out the duties of the Commission and to accomplish the objectives of any program or activity within the Commission's jurisdiction and authority.
- (c) ~~The address and telephone number for making Requests requests, submissions and other communications to the Commission is: Oklahoma Merit Protection Commission, 201 NE 38th Terrace, Suite 5 3545 N.W. 58th Street, Suite 360, Oklahoma City, Oklahoma 73105 73112, (405) 525-9144. The Commission's fax number is (405) 528-6245 can be accomplished by mail, email, fax, telephone, or personal visit, except where specified in rule or policy pertaining to the Commission's programs and processes.~~
- (d) The normal business hours of the Commission are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

### 455:10-1-10. Forms and instructions

Other chapters in this Title contain references to ~~forms and filing~~ instructions that the Commission uses and requires. Persons may contact the Commission to request ~~blank~~ forms and general information about completing and submitting them.

## SUBCHAPTER 3. JURISDICTION, RIGHTS AND PROCESSES

### 455:10-3-1.1. Time

Time is jurisdictional.

(1) **Alleged violation appeal.** Unless otherwise provided for by statute or the rules in this chapter, an alleged violation appeal shall be filed within 20 calendar days after the alleged violation occurs. The Executive Director may extend this time limit if the appellant demonstrates that he or she filed within 20 calendar days after becoming aware of, or with due diligence, should have become aware of the alleged violation, or for other good cause shown. For information on filing an appeal after a formal grievance see OAC 455:10-19-46.

(2) **Adverse action appeal.** An appeal of a permanent classified employee appealing a discharge, suspension without pay or involuntary demotion shall be filed within 20 calendar days after receipt of the written notice of the action imposed, by certified mail or personal service. This is a statutory time limit and may not be extended. [74:840-6.5(C)].

### 455:10-3-2. Determining jurisdiction; "file" defined

- (a) It is solely the authority of the Commissioners and Executive Director to determine whether or not matters being appealed are subject to the jurisdiction of the Commission. No request for appeal shall be accepted more than 12 months after the event causing the appeal, unless otherwise provided for by any statute. Unless otherwise defined in the rules in this chapter, "file" means receipt by the Commission.
- (b) The file date of a document is the earliest date the Commission receives the document or the date it is postmarked, ~~not the date it is faxed, or mailed or postmarked~~. If the last day for filing is a Saturday, Sunday or legal holiday as proclaimed by the Governor, the file date shall be extended to the end of the next business day.
- (c) The Executive Director is authorized to establish guidelines for the electronic filing of documents.

### 455:10-3-3.3. No jurisdiction over designation of worksite

*A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have the jurisdiction to accept an appeal of an employee resulting from the employing agency transfer of an employee from one county or locality to another, changing the assigned duties of an employee, or relieving the employee from the performance of duty at a particular place and reassigning to an employee duties to be performed at another place, unless an employee asserts that:*

- (1) The action resulted in a change in job classification or reduction of the base salary of the employee;
- (2) A violation of the provisions of Section 840-2.5 or 840-2.9 of [Title 74] may have occurred; or

(3) The action was taken clearly for disciplinary reasons and to deny the employee the right of appeal [74:840-4.19].

**455:10-3-4.1. Notice of appeal**

Upon receipt of a petition for appeal, ~~it is the Commission's policy to shall~~ send a notice of appeal, ~~with attachments, to the appointing authority or designated representative—and any other persons alleged to have violated a law or rule over which the Commission has jurisdiction.~~ The Executive Director may order a person or agency added as a party of record and that person or agency shall be sent a notice of appeal, ~~by certified mail or personal service, with attachments.~~

**455:10-3-6. Alleged violations of employee's freedom of expression**

(a) **General.** For purposes of this section agency means any office, department, commission or institution of the state government [74:840-2.5(A) (B)]. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

- (1) Disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;
- (2) Reporting any a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;
- (3) Reporting such information without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command;
- ~~(4)~~ Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, or others the print or electronic media, or other persons in a position to investigate or initiate corrective action; [74:840-2.5(A)]. For purposes of this section only, "others" means persons with authority to take corrective action on the issues discussed.
- (4) Taking any of the above actions without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command. [74:840-2.5(B)].

(b) **Appeal rights.**

- (1) Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Commission within 60 calendar days of the alleged disciplinary action [74:840-2.5~~(E)~~ (F)]. This is a statutory time limit and may not be extended.
- (2) The appeal shall contain, as a minimum,:
  - (A) the name of the person(s) alleged to have violated this section;
  - (B) the disciplinary action taken and when such disciplinary action was taken;
  - (C) the public information disclosed, to whom it was disclosed, and when it was disclosed; or,

(D) the violation of the Oklahoma Constitution, state or federal law, rule or policy, mismanagement, gross waste of public funds, abuse of authority, or substantial and specific danger to public health or safety reported, to whom it was reported, and when it was reported, or;

(E) the operations and functions of the agency discussed, with whom such discussions were made, and when such discussions took place.

(3) Sufficient evidence or information shall be provided which causes the Executive Director to believe there is a causal connection between the alleged protected activity and the disciplinary action. For purposes of this section, causal connection means such evidence or information which shows that the disciplinary action was taken in relationship to the alleged protected activity.

(c) **Sanctions.** Section 840-2.5~~(F)~~(G) of Title 74 of the Oklahoma Statutes sets out corrective actions and sanctions which may be taken for violation of this section.

(d) **Freedom of expression posting.** Each state agency, department, institution, board and commission in all branches of state government shall prominently post or publish a copy of Section 840-2.5 of Title 74 of the Oklahoma Statutes in locations where it can reasonably be expected to come to the attention of all employees [74:840-2.5~~(C)~~(D)].

**455:10-3-15. Transcripts**

(a) ~~Hearings and designated Alternative Dispute Resolution Program procedures shall be recorded by audio tape digital recordings which shall constitute the official transcript. The Commission's recording will serve as the official recording for purposes of creating an official written transcript.~~ The Commission shall prepare a written transcript of the ~~audio tape~~ recording only upon written request and receipt of a deposit of cash or cashier's check in an amount determined to be appropriate to cover the costs associated with the transcription, except as prohibited by statute.

(b) Upon application, the Commission shall pay transcription costs on behalf of an indigent respondent, if the respondent establishes indigent condition through execution of an *in forma pauperis* affidavit upon a form approved by the Commission. Should the indigent respondent receive a financial recovery, the respondent shall reimburse the Commission from those proceeds. [74:840-1.21].

~~(c)~~ Any party desiring to have a hearing or Alternative Dispute Resolution Program procedure recorded by a court reporter shall request approval of the presiding official before initiating such action. The party making the request shall bear the associated expenses and costs and shall provide a copy of the written transcript to the Commission at no cost.

**455:10-3-17. Continuances**

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference, hearing or Alternative Dispute Resolution Program procedure may be continued or adjourned by the

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Executive Director or the presiding official for just cause at any time. A continuance shall be granted only in those instances where extraordinary circumstances exist and good cause has been shown. If granted, a continuance shall be made to a date certain.

(1) If granted on behalf of the Commission or an appellee, and the appellant is subsequently sustained in the appeal, back pay and other benefits shall be awarded for the entire ~~judgement~~ judgment as determined appropriate by the presiding official.

(2) If granted on behalf of the appellant and he or she is subsequently sustained in the appeal, back pay and other benefits shall be awarded only for the period of time that the appellant did not delay the appeal as determined appropriate by the presiding official.

### SUBCHAPTER 7. INVESTIGATIONS

#### 455:10-7-2. Directed investigation

(a) **General.** Upon receipt of a petition for appeal or on its own initiative, the Commissioners or Executive Director may direct that an investigation of any agency's employment practices be conducted. The directed investigation is a method to assist in determining whether or not a violation within the Commission's jurisdiction may have occurred. In conducting investigations, the Commission may exercise any statutory authority and may use all powers not otherwise prohibited.

(b) **Extent.** The investigation shall be conducted to the extent necessary to determine whether or not there are reasonable grounds and evidence to believe whether or not the alleged violation(s) may have occurred.

(c) **Requests for information.** The Commission may request responses or information from any agency or person. Written responses and information may be required and may be obtained through written questions, interviews or any other methods determined appropriate. The time limit for submission of responses and information may be extended for good cause.

(1) Failure of an appointing authority, agency representative, or named person to appear, respond or provide requested information may be grounds to believe the alleged violation(s) may have occurred without further review.

(2) Failure of an appellant, or his or her designated representative, to appear, respond or provide requested information shall be grounds to dismiss the appeal without further review.

(d) **Interviews.** Parties and witnesses may be interviewed face-to-face or by telephone to obtain relevant facts and knowledge concerning the issues in dispute. Interviews may be conducted at the Commission office or any other location determined appropriate. A party or witness may have his or her representative in attendance at the interview to act in an advisory role only. The representative shall not have or take an active role in the investigation or interview process.

(1) The Commission may make a record of the interview session by ~~audio-tape~~ digital recording. The person

being interviewed may also tape record his or her interview session.

(2) Commission interview tape recordings ~~shall be maintained in the investigative file and~~ shall be confidential pursuant to Section 24A.7(A)(1) of Title 51 of the Oklahoma Statutes. The person interviewed may request a copy of the ~~audio-tape~~ recording of his or her interview in accordance with OAC 455:10-1-5.

#### 455:10-7-4. Investigative report

An investigative report of the preliminary investigation, directed investigation or fact finding conference shall be issued and include a summary of the appeal, issues of the appeal, findings of fact and a recommendation for the disposition of the appeal. The report shall also include a reference to persons interviewed and documents used in making the findings of fact. The purpose of the report shall be to assist the Executive Director in determining whether or not a violation within the Commission's jurisdiction may have occurred. ~~An investigative report shall not be a part of the appeal record.~~

(1) A copy of the investigative report shall be issued to each party and within 10 calendar days after the issue date of the report, any party may file a response and include any additional relevant information to be considered. The time limit for response may be extended for good cause.

(2) Any party filing a response or providing additional information should provide a copy to all other parties.

#### 455:10-7-6. Investigative file

Documents obtained during the course of a directed investigation or fact finding conference shall be maintained in an investigative file. The investigative file shall be confidential pursuant to Section 24A.7(A)(1) of Title 51 of the Oklahoma Statutes and the rules in this chapter. A party to the appeal or his or her designated representative may review the documents in the investigative file and listen to ~~audio-tape a~~ a recording of his or her interview. This review shall be limited to the time between the issue date of the investigative report up to 10 calendar days after the issue date of the Determination of the Executive Director. ~~Thereafter, the investigative file shall be destroyed.~~ See OAC 455:10-1-5 for information on access to Commission records.

### SUBCHAPTER 9. HEARING PROCESS

#### 455:10-9-1. Prehearing conference

(a) **Purpose.** The Executive Director may schedule a prehearing conference on any appeal set for hearing. The conference provides an opportunity for the parties to clarify, isolate and dispose of procedural matters prior to the hearing.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. Prior to the prehearing conference each party shall file with the Commission and provide to each other party and the Administrative Law Judge a copy of:

- (1) a brief statement of his or her respective case, to include a list of stipulations and requested remedy;
  - (2) a list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer. The list may be amended, with the approval of the Administrative Law Judge, before the hearing date;
  - (3) a list of any documents and exhibits and the original or a copy of each document or exhibit to be offered into evidence at the hearing. The list may be amended, with the approval of the Administrative Law Judge, before the hearing date;
  - (4) a list of any witnesses for whom a subpoena is required. The list shall include each witness's name, address and a brief statement of the testimony to be offered by each witness. Subpoenas shall not be issued by the Commission without this information. The list may be amended, with the approval of the Administrative Law Judge, up to 10 calendar days before the hearing date; and
  - (5) any requirements or requests for discovery. Discovery shall be requested and completed in accordance with OAC 455:10-13-1.
- (c) **Representation.** Each party to the appeal may have a representative to speak and act on his or her behalf.
- (d) **Administrative Law Judge responsibility.** The Administrative Law Judge shall:
- (1) consider, facilitate and rule on settlement;
  - (2) consider any matters which will aid in the fair and prompt resolution and disposition of the appeal;
  - (3) hear and rule on pending requests or motions;
  - (4) rule on whether or not witnesses have knowledge of the facts at issue;
  - (5) rule on whether or not documents and exhibits are relevant;
  - (6) rule on whether or not discovery requests and other motions and requests are relevant;
  - (7) strike or deny witnesses, documents, exhibits, discovery requests and other requests or motions which are cumulative, not relevant or not material; used as a means of harassment; unduly burdensome or not timely filed.
- (e) **Conference.** The conference shall be informal, structured by the Administrative Law Judge and not open to the public. The Administrative Law Judge shall record the conference by ~~audio-tape~~ digital recording.
- (1) **Notice.** Each party shall be notified of the date, time and location at least 7 calendar days prior to the scheduled conference.
  - (2) **Location.** The conference shall be conducted at the Commission offices or any other location determined appropriate.
  - (3) **Witnesses.** Witnesses shall not appear or present evidence at the conference.
  - (4) **Continuance.** A request for continuance shall be filed in accordance with OAC 455:10-3-7 normally no less than 3 calendar days prior to the scheduled conference. A lesser period of time may be permitted for good cause shown. The Administrative Law Judge, or in his or her

absence, the Executive Director, shall rule on the request and in no case shall a combination of continuances of the prehearing conference exceed a total of 30 calendar days except for good cause shown.

- (f) **Conclusion.** The Administrative Law Judge shall end the conference when preparation for the hearing is complete, unless sooner terminated as a result of settlement or for other just cause.

**455:10-9-2. Hearing**

(a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case for decision by an Administrative Law Judge. Hearings shall be conducted in accordance with the Oklahoma Personnel Act, the Administrative Procedures Act and the rules in this chapter.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(c) **Representation.** Each party to the appeal may have a representative to speak and act on his or her behalf.

(d) **Administrative Law Judge responsibility.** The Administrative Law Judge shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.

(e) **Process.** The hearing shall be formal, structured by the Administrative Law Judge and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The Administrative Law Judge shall record the hearing by ~~audio-tape~~ digital recording and such recording shall constitute the ~~transcript~~ official recording of the hearing.

(1) **Notice.** Each party shall be notified of the date, time and location at least 7 calendar days prior to the scheduled hearing.

(2) **Location.** The hearing shall be held at the Commission offices or any other location determined appropriate. At the prehearing conference any party may request the hearing be changed to a more convenient location. The Administrative Law Judge shall rule on the request and may change the location when to do so is in the best interests of the Commission and parties. The Administrative Law Judge shall be compensated for travel, per diem and other associated costs by the appointing authority if the location is changed at his or her request.

(3) **Witnesses.** Each party may call witnesses who have been approved by the Administrative Law Judge to offer testimony and evidence. The Administrative Law Judge shall administer an oath or affirmation to the witness and may question the witness at any stage of the hearing.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 455:10-3-7 normally no less than 3 calendar days prior to the scheduled hearing. A lesser period of time may be permitted for good cause shown. The Administrative Law Judge shall rule on the request and in no case shall a combination of continuances

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of the hearing exceed a total of 30 calendar days except for good cause shown.

(f) **Burden of proof.** The following burdens of proof shall also apply to appeals heard through the Alternative Dispute Resolution Program as well as the hearing process.

(1) **Adverse action appeal.** The burden of proof shall be upon the appointing authority who must prove his or her case by a preponderance of the evidence.

(A) Upon a finding that just cause existed for the adverse action and the discipline imposed was just, a presiding official shall affirm the decision of the appointing authority.

(B) Upon a finding that just cause did not exist for the adverse action, a presiding official may order the reinstatement of the employee, with or without back pay and other benefits. A presiding official may also order that documentation of the adverse action be expunged from any and all of the employee's personnel records.

(C) Upon a finding that just cause existed for the adverse action, but did not justify the severity of the discipline imposed, a presiding official may order reduction of the discipline or other corrective action. A presiding official shall, as a minimum, consider the following circumstances in ordering the reduction of discipline: the seriousness of the conduct as it relates to the employee's duties and responsibilities; the consistency of action taken with respect to similar conduct by other employees of the agency; the previous employment and disciplinary records of the employee; and mitigating circumstances.

(D) A presiding official who orders reinstatement with back pay and other benefits under (B) or (c) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.

(2) **Alleged violation appeal.** The burden of proof shall be upon the appellant who must prove his or her case by a preponderance of the evidence. Upon a finding that a violation within the Commission's jurisdiction did occur, a presiding official may order the appointing authority to take the necessary corrective action or report the findings to any other appropriate authorities for further action. Corrective action shall be limited to issues submitted for decision, shall be consistent with applicable statutes and rules and shall be limited to action which makes the person harmed by the violation whole as if the violation had not occurred.

(3) **Payroll claim protest.** In payroll claim protests of overpayment, the burden of proof shall be upon the appointing authority who must prove his or her case by a preponderance of the evidence. In payroll claim protests of underpayment, the burden of proof shall be upon the appellant who must prove his or her case by a preponderance of the evidence. The presiding official may determine the amounts paid or not paid in error; determine dates of overpayments or underpayments; determine options available for repayment; affirm the protest of the appellant;

affirm the decision of the appointing authority and order corrective action.

(g) **Order of procedure.** The party with the burden of proof shall present his or her case first and the opposing party may respond. A presiding official shall have the authority to alter the order of procedure. This order of procedure also applies to appeals heard through the Alternative Dispute Resolution Program.

(h) **Summary judgement judgment.** The Administrative Law Judge may decide appeals based on summary ~~judgement~~ judgment when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved.

### SUBCHAPTER 11. DISCIPLINE

#### 455:10-11-1. General

*Each appointing authority shall establish written policies and procedures for progressive discipline of employees according to the rules established by the Oklahoma Merit Protection Commission [74:840-6.3(A)]. Each appointing authority is responsible for developing and maintaining a safe and productive work environment. Each appointing authority and each supervisor is responsible for promptly applying discipline when necessary that is equitable and suitable for the offense considering the circumstances.*

#### 455:10-11-4. Progressive discipline

(a) *Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Typically, penalties range from verbal warning to discharge, with intermediate levels of a written warning, suspension or demotion. Absent mitigating circumstances, repetition of an offense is accompanied by a generally automatic progression to the next higher level of discipline [74:840-6.3(B)].*

(b) Based on relevant circumstances, a single incident may justify a higher step of discipline without proceeding through lower steps of discipline.

#### 455:10-11-14. Causes for discharge, suspension without pay or involuntary demotion

*Any employee in the classified service may be discharged, suspended without pay for not to exceed sixty (60) calendar days, or demoted by the agency, department, institution, or officer by whom employed, for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, or any other just cause [74:840-6.5(C)].*

**455:10-11-17. Discharge**

(a) **General.** A permanent classified employee may be discharged for any of the reasons set forth in OAC 455:10-11-14.

(b) **Pretermination hearing.** Before any permanent classified employee may be terminated, the employee shall be afforded a pretermination hearing to be held before the appointing authority or his or her designee. A pretermination hearing shall not be required if the employee is being terminated as part of a reduction-in-force as provided for in Title 74 O.S., Section 840-2.27C.

(1) **Purpose.** The purpose of a pretermination hearing is to provide the appointing authority or his or her designee with information from which a determination may be made as to whether or not reasonable grounds exist to believe that the charges against the employee are true and whether or not the grounds support the proposed termination.

(2) **Notice.** Notice of the pretermination hearing shall be provided to the employee by personal service or certified or registered mail at least seven calendar days before the scheduled pretermination hearing. Pending completion of this notice and the pre-termination hearing, an employee may be suspended with pay in accordance with rules adopted by the Administrator of the Office of Personnel Management. The notice shall include, as a minimum:

- (A) the statute, rule, policy, practice or procedure of work performance or behavior which was violated and cause for the proposed action;
- (B) all grounds for the proposed action;
- (C) a summary of evidence or physical evidence to support each of the stated grounds for the proposed action;
- (D) a statement of the employee's right to be represented, by an attorney or other person of his or her choice, at the pre-termination hearing; and
- (E) date, time and location of the pre-termination hearing.

(3) **Disciplinary certificate.** *The appointing authority shall file in the employee's official personnel file at least seventy-two (72) hours before each pretermination hearing, a certificate to be included in the record stating what disciplinary actions have been taken to comply with progressive discipline prior to the pretermination hearing and proposed termination and further certifying that all mandatory progressive discipline actions as required by statute or rule have been taken before pretermination hearing; provided, said certificate shall not be required where grounds for proposed termination are for commission of a criminal offense and/or acts involving moral turpitude [74:840-6.4(B)(3)].*

(4) **Hearing.** The pretermination hearing need not be a full evidentiary hearing and formal rules of evidence shall not apply. The pretermination hearing shall be recorded by audio tape in its entirety. The employee shall be provided a copy of the tape recording, at no cost, if the employee appeals to the Commission and requests a copy.

A copy of the tape shall be provided as soon as possible but no later than 14 calendar days after the request is made.

(5) **Legal review.** *Following the pretermination hearing, if recommendation for termination is made, recordings of the pretermination hearing and all evidence in support thereof, shall be reviewed for legal sufficiency by the appointing agency director or his or her designee before termination is final [74:840-6.4(B)(7)].*

(c) **Final action.** Within ten working days after the pretermination hearing the employee shall be provided written notice of the final action, by personal service or certified or registered mail. If the decision is made to proceed with the termination, the notice shall include, as a minimum:

- (1) the statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the termination;
- (2) all grounds for the termination;
- (3) a citation of the law or rule under which the termination is being taken;
- (4) effective date of the termination;
- (5) a citation of any other informal or formal discipline which was used in the decision to administer the termination; and
- (6) a statement of the employee's right to file an appeal with the Commission, the 20 calendar day time limit for the Commission's receipt of the appeal and the address of the Commission; and
- (7) a copy of the Commission's petition for appeal form.

**SUBCHAPTER 15. ATTORNEY FEES AND COSTS**

**455:10-15-4. Request**

A request for the award of attorney fees or costs shall be filed with the Commission within 10 calendar days after the issue date of the final decision and shall include an affidavit of service to all other parties. This time limit is statutory and may not be extended [74:840-6.8(B)].

(1) **Grounds.** The request shall specifically state why an award of attorney fees or costs should be made and shall be supported by evidence to substantiate the request and evidence to determine whether or not the amount claimed is reasonable.

(2) **Evidence.** Evidence submitted with the request shall include, as a minimum:

- (A) adequate time records so the reasonableness of the claimed fee can be ascertained;
- (B) a copy of any fee agreement between the attorney and the client or any fee agreement between the attorney and any organization, union or association representing the client;
- (C) the attorney's customary billing rate for similar work, provided the attorney has a billing practice to report;

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(D) evidence of the prevailing community rate sufficient to establish a market value for the services rendered;

(E) specific evidence of the prevailing rate for similar work of attorneys of comparable experience and reputation; and

(F) specific detailed documentation identifying the actual costs associated with the request.

(3) **Response.** Any party may file a response in opposition to the request within 10 calendar days after the date the request is filed with the Commission. The response shall include an affidavit of service to all other parties. This time limit is statutory and may not be extended [74:840-6.8(B)].

(4) **Rejection.** Requests and responses which are not timely filed or do not meet the requirements of this section shall be rejected by the Commission.

### SUBCHAPTER 19. INTERNAL AGENCY GRIEVANCE RESOLUTION PROCEDURE

#### PART 1. GENERAL PROVISIONS

##### 455:10-19-1. General

*The Oklahoma Merit Protection Commission shall establish standard internal agency grievance resolution procedures for classified state employees [74:840-6.2(A)].* It is the Commission's policy to seek resolution of disputes at the lowest level possible. The Commission will not normally intervene when the issues in dispute are being addressed through the internal agency grievance resolution procedure.

#### PART 5. GRIEVANCE PROVISIONS

##### 455:10-19-35. Grievance

(a) **General.** The resolution of disputes is advocated within the agency before appeals are filed with the Commission.

(b) **Promotion.** Any employee who feels that he or she has not been treated fairly with regard to a promotional action has the right to file a formal grievance. The Commission will accept an appeal regarding a promotional issue only after such complaint has been reviewed in the formal grievance procedure [74:840-4.15(C)].

(c) **Classification.** *An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the class specification [74:840-4.3(B)].*

(1) *Employees shall be classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal work assignment and class specification [74:840-4.3(B)].* Any employee who believes he or she is not classified in accordance with the work assigned on a regular and consistent basis as an integral part of his or her work assignment and job family descriptor, has the right to file a formal grievance.

(2) *An employee is entitled to the compensation assigned to the job family descriptor for which duties were performed on a regular and consistent basis as determined by the Office of Personnel Management [74:840-4.3(B)].*

Any employee who believes he or she is entitled to compensation for having performed duties on a regular and consistent basis which do not conform to the job family descriptor for the position he or she occupies or occupied, has the right to file a formal grievance.

(3) The appointing authority and employee shall attempt to resolve these disputes through the formal grievance procedure.

(4) If the dispute can not be resolved, the resolution decision by the appointing authority shall be to advise the employee to complete an Office of Personnel Management (OPM) Classification or Allocation Dispute Review Request form (OPM-70) pursuant to rules adopted by the Administrator of the Office of Personnel Management.

(5) *Agency classification and reclassification decisions shall not be subject to appeal to the Oklahoma Merit Protection Commission. However, the involuntary removal of a permanent employee in permanent status in a job family level to a lower level in the same job family or to another job family level assigned a lower pay band shall be considered a demotion. Such action may be appealed by the employee to the Oklahoma Merit Protection Commission*

[74:840-4.3(B)]. An employee may allege a violation of law or rule over which the Commission has jurisdiction in the classification and reclassification process pursuant to OAC 455:10-3-3.

(d) **Discipline.** Any employee who has reason to believe that discipline imposed was not uniform, appropriate or in compliance with the agency progressive discipline policy, has the right to file a formal grievance. The Commission will accept an appeal regarding a discipline issue (except suspension without pay, involuntary demotion or discharge) only after such complaint has been reviewed in the formal grievance procedure.

(e) **Leave.** Any employee who feels that he or she has not been treated fairly with regard to annual, sick or any other leave accrual, accumulation, use or eligibility (including leave without pay and leave sharing), has the right to file a formal grievance. The Commission will accept an appeal regarding leave issues only after such complaint has been reviewed in the formal grievance procedure.

(f) **Employee service rating system.** Any employee who disagrees with his or her individual service rating has the right to file a formal grievance.

(1) The Commission will accept, for alternative dispute resolution only, a complaint involving disagreement with the individual service rating only after such complaint has been reviewed in the formal grievance procedure.

(2) The Commission will accept an appeal of alleged violation of the Oklahoma Personnel Act or Merit Rules in regard to the employee service rating system only after such complaint has been reviewed in the formal grievance procedure.

(3) Alleged violations of Title 74 O.S., Section 840-2.5 and Section 840-2.9 in regard to the employee service rating system may be appealed directly to the Commission.

(g) **Discrimination.** Complaints of illegal discrimination, including sexual harassment, are subject to the internal agency grievance resolution procedure. The appointing authority may adopt special procedures for addressing and resolving discrimination complaints. Any such procedures shall comply with federal laws and rules, the Oklahoma Personnel Act and the rules in this subchapter.

(h) **Pay movement mechanisms and other compensation issues.** Any employee who feels that a violation of law, rule,

policy or practice has occurred with regard to pay movement mechanisms or other compensation issues, has the right to file a formal grievance. The Commission will accept an appeal regarding pay movement mechanisms and other compensation issues only after such complaint has been reviewed in the formal grievance procedure.

*[OAR Docket #09-95; filed 1-9-09]*

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# 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."

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## TITLE 1. EXECUTIVE ORDERS

### 1:2009-1.

#### EXECUTIVE ORDER 2009-1

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by law, so that the status quo shall be maintained, and pursuant to the provisions of Subsection D of Section 840-2.14 of Title 74 of the Oklahoma Statutes, hereby order a state agency hiring freeze.

For purposes of this hiring freeze, each statewide elected official shall perform the duties of a Cabinet Secretary in approving or disapproving exemptions to this hiring freeze. These duties shall be accomplished in the same manner as other official actions by the elected officials.

Subject to written approval by the Governor, the Secretary of Human Resources and Administration may delegate specific agencies to a Deputy Secretary for purposes of complying with this Order.

This hiring freeze shall be implemented by all agencies in accordance with the following guidelines:

1. It is my direction that no audits of classified positions or reallocation of unclassified positions shall be initiated or conducted at the request of any agency unless specifically approved by the appropriate Cabinet Secretary.
2. All audits resulting from a classification grievance shall be exempt from the provisions of this Executive Order.
3. Except as specifically provided and authorized by this order, all affected state agencies are prohibited from hiring, reinstating, or promoting employees and from accepting a transferred employee from another agency.
4. Exceptions to this hiring freeze may be granted pursuant to special conditions as declared by the Chief Administrative Officer of any agency and approved by the appropriate Cabinet Secretary for that agency.
  - a. A Chief Administrative Officer shall submit a written request to the appropriate Cabinet Secretary stating the special conditions requiring the submission of the request.

b. Such requests may be on forms provided by the Office of Personnel Management. If an agency has an internal form regularly used by that agency which provides all the necessary information, that form may be used in lieu of the Office of Personnel Management forms if approved by the Administrator of the Office of Personnel Management.

c. The Cabinet Secretary shall indicate approval in writing of the submitted request for the granting of an exception to this hiring freeze.

d. All approved requests and approved Cabinet Secretary findings shall be maintained as an official record by the Office of Personnel Management in accordance with Records Management Act. Any agency which does not submit personnel action requests for approval to the Office of Personnel Management shall be responsible for maintaining this documentation.

e. In the event of a vacancy in a Cabinet Secretary position, the Secretary of State shall act as the approving authority for the hiring freeze exception requests.

5. The Administrator of the Office of Personnel Management and the Director of the Office of State Finance are hereby directed to develop and implement procedures necessary to carry out the provisions of this Executive Order.

6. The Director of the Office of State Finance is authorized to require Cabinet Secretaries to provide him with periodic accountings of their approvals and disapprovals of written requests for exemptions to this hiring freeze. These reports shall be provided to the Governor.

7. The Oklahoma Military Department shall not be required to comply with this order for hiring personnel and contracts for which the department receives total federal government reimbursement.

Copies of this Executive Order shall be distributed to the Secretary for Human Resources and Administration for immediate implementation.

The provisions of this Executive Order shall be effective from January 1, 2009, and shall terminate December 31, 2009.

## Executive Orders

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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 2nd day of January, 2009.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
Kathy Jekel  
Acting Assistant Secretary of State

*[OAR Docket #09-19; filed 1-6-09]*

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**1:2009-2.**

### EXECUTIVE ORDER 2009-2

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Tuesday, January 6, 2009, to honor Specialist Stephen G. Zapasnik, an Oklahoma resident, who died

on Wednesday, December 24, 2008, at age 19 while serving in Iraq.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 5th day of January, 2009.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
Kathy Jekel  
Acting Assistant Secretary of State

*[OAR Docket #09-20; filed 1-6-09]*

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**STATE BOND ADVISOR'S OFFICE  
NOTICE OF STATE CEILING AMOUNT FOR  
THE CALENDAR YEAR 2009**

In accordance with §695.25, Title 62 O.S., the maximum total volume (also referred to as "Volume Cap" or "State Ceiling Amount") of Private Activity Bonds that may be issued pursuant to federal law by the State of Oklahoma during calendar year 2009 is \$327,812,490. From the first business day of 2009 through September 1, 2009, the Volume Cap is subdivided into the following categories ("Pools") and amounts: (1) Qualified Small Issue Pool, \$39,337,499; (2) Exempt Facility Pool, \$8,195,312; (3) Beginning Agricultural Producer

Pool, \$3,278,125; (4) Student Loan Pool, \$50,810,936; (5) Economic Development Pool, \$39,337,499; (6) Oklahoma Housing Finance Agency Pool, \$49,171,874; (7) State Issuer Pool, \$13,112,500; (8) Metropolitan Area Housing Pool, \$40,976,560; (9) Rural Area Housing Pool, \$26,224,999; and (10) Local Issuer Single Family Pool, \$57,367,186. From September 2, 2009, through December 17, 2009, any amount remaining to be allocated from these pools is combined and managed from the Consolidated Pool. On or after 9:00 a.m. on December 18, 2009, certain Private Activity Bond issuing authorities may apply to the State Bond Advisor to carry forward a portion of any remaining State Ceiling Amount.

*[OAR Docket #08-1588; filed 12-29-08]*

