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Table of Contents

Agency/Action/Subject Index	iii
Rules Affected Index	iv
Agency Index (Title numbers assigned)	xxvii
Notices of Rulemaking Intent	
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35)	3011, 3012, 3013
Environmental Quality, Department of (Title 252)	3014, 3015, 3016
Emergency Adoptions	
Health, Oklahoma State Department of (Title 310)	3019
Health Care Authority, Oklahoma (Title 317)	3020, 3025, 3028, 3029, 3033, 3035
Human Services, Department of (Title 340)	3036
Permanent Final Adoptions	
Teacher Preparation, Oklahoma Commission for (Title 712)	3047
Treasurer, State (Title 735)	3054
Executive Orders (Title 1)	3055

Agency/Action/Subject Index

**AGRICULTURE, Food, and Forestry, Oklahoma
Department of (Title 35)**

Notices of Rulemaking Intent

Fuel Alcohol (Chapter 13)	3011
Animal Industry (Chapter 15)	3011
Consumer Protection (Chapter 30)	3012
Food Safety (Chapter 37)	3013
Agriculture Pollutant Discharge Elimination System (Chapter 44)	3013

ENVIRONMENTAL Quality, Department of (Title 252)

Notices of Rulemaking Intent

General Water Quality (Chapter 611)	3014
Pretreatment for Central Treatment Trusts (Chapter 623)	3015
Public Water Supply Operation (Chapter 631)	3015
Septage Pumpers and Haulers (Chapter 645)	3016

GOVERNOR

Executive Orders

Ordering flags at half-staff to honor Private First Class Dennis J. Pratt (09-25)	3055
Ordering flags at half-staff to honor former State Representative J. Bruce Harvey (09-28)	3055
Ordering flags at half-staff to honor Lance Corporal Jonathan F. Stroud (09-29)	3055

HEALTH, Oklahoma State Department of (Title 310)

Emergency Adoptions

Advancement in Stem Cell Cures and Therapies Act (Chapter 551)	3019
---	------

HEALTH Care Authority, Oklahoma (Title 317)

Emergency Adoptions

Grievance Procedures and Process (Chapter 2)	3020
Medical Providers-Fee for Service (Chapter 30)	3025, 3028

Medical Assistance for Adults and Children-Eligibility (Chapter 35)	3029
--	------

Developmental Disabilities Services (Chapter 40)	3033
--	------

Insure Oklahoma/Oklahoma Employer and Employee Partnership for Insurance Coverage (Chapter 45)	3035
---	------

HUMAN Services, Department of (Title 340)

Emergency Adoptions

Oklahoma Child Support Services (Chapter 25)	3036
--	------

**TEACHER Preparation, Oklahoma Commission for
(Title 712)**

Permanent Final Adoptions

Teacher Preparation Program Accreditation (Chapter 10)	3047
---	------

TREASURER, State (Title 735)

Permanent Final Adoptions

Unclaimed Property (Chapter 80)	3054
---------------------------------------	------

Rules Affected Index

[(E) = Emergency action]

Rule	Register Page	Rule	Register Page
5:2-1-1. [NEW]	1795	10:15-37-6. [AMENDED]	1379
5:2-1-2. [NEW]	1795	10:15-39-1. [AMENDED]	1380
5:2-1-3. [NEW]	1795	10:15-39-9. [AMENDED]	1380
5:2-1-4. [NEW]	1796	10:15-43-7. [NEW]	1380
5:2-3-1. [NEW]	1796	10:15-43-8. [NEW]	1381
5:2-3-2. [NEW]	1796	25:25-1-1. [NEW]	2416
5:2-3-3. [NEW]	1796	25:25-1-2. [NEW]	2416
5:2-3-4. [NEW]	1796	25:25-1-3. [NEW]	2417
5:2-3-5. [NEW]	1796	25:25-1-4. [NEW]	2417
5:2-3-6. [NEW]	1796	35:2-3-2.2. [AMENDED]	1806
5:2-3-7. [NEW]	1796	35:2-3-2.3. [AMENDED]	1806
5:10-7-1. [NEW] (E)	163	35:2-3-2.4. [AMENDED]	1806
5:10-9-1. [NEW] (E)	164	35:2-3-2.6. [AMENDED]	1807
5:11-1-1. [NEW]	1797	35:10-1-3. [AMENDED]	1808
5:11-3-1. [NEW]	1797	35:10-1-4. [NEW]	1808
5:11-3-2. [NEW]	1797	35:13-1-1. [AMENDED]	1381
5:11-3-3. [NEW]	1798	35:13-1-2. [AMENDED]	1381
5:11-3-4. [NEW]	1798	35:15-1-2. [AMENDED] (E)	607
5:11-3-5. [NEW]	1798	35:15-1-2. [AMENDED]	1809
5:11-3-6. [NEW]	1799	35:15-1-4. [NEW] (E)	2819
5:11-3-7. [NEW]	1799	35:15-5-1. [AMENDED]	1382
5:11-3-8. [NEW]	1799	35:15-13-1. [AMENDED] (E)	608
5:11-3-9. [NEW]	1799	35:15-13-1. [AMENDED]	1810
5:11-5-1. [NEW]	1799	35:15-13-2. [REVOKED] (E)	608
5:11-5-2. [NEW]	1800	35:15-13-2. [REVOKED]	1810
5:11-5-3. [NEW]	1800	35:15-13-3. [AMENDED] (E)	608
5:11-5-4. [NEW]	1800	35:15-13-3. [AMENDED]	1811
5:11-7-1. [NEW]	1800	35:15-13-3. [AMENDED] (E)	609
5:11-9-1. [NEW]	1801	35:15-13-4. [AMENDED]	1811
5:11-11-1. [NEW]	1802	35:15-13-4. [AMENDED] (E)	609
5:21-1-1. [NEW]	1802	35:15-13-5. [AMENDED]	1812
5:21-1-2. [NEW]	1802	35:15-13-6. [AMENDED] (E)	610
5:21-1-3. [NEW]	1803	35:15-13-6. [AMENDED]	1812
5:21-1-4. [NEW]	1803	35:15-13-7. [AMENDED] (E)	610
5:21-1-5. [NEW]	1803	35:15-13-7. [AMENDED]	1812
5:21-3-1. [NEW]	1803	35:15-16-1. [AMENDED]	1383
5:21-3-2. [NEW]	1803	35:15-17-43. [AMENDED]	1813
5:21-5-1. [NEW]	1804	35:15-17-69. [AMENDED] (E)	610
5:21-5-2. [NEW]	1804	35:15-17-69. [REVOKED]	1813
5:21-5-3. [NEW]	1804	35:15-36-1. [AMENDED]	1383
5:21-5-4. [NEW]	1804	35:15-36-2. [AMENDED]	1383
5:21-5-5. [NEW]	1804	35:15-40-1. [AMENDED]	1813
5:21-5-6. [NEW]	1804	35:15-40-38. [AMENDED]	1815
5:21-5-7. [NEW]	1805	35:15-40-40. [AMENDED]	1815
5:21-5-8. [NEW]	1805	35:15-40-41. [AMENDED]	1815
5:21-5-9. [NEW]	1805	35:15-40-43. [AMENDED]	1816
10:15-18-3. [AMENDED]	1374	35:15-40-46. [AMENDED]	1816
10:15-18-4. [AMENDED]	1375	35:15-40-47. [AMENDED]	1816
10:15-18-6. [AMENDED]	1375	35:15-40-49. [AMENDED]	1817
10:15-18-7. [AMENDED]	1375	35:15-40-71. [AMENDED]	1817
10:15-27-3.1. [AMENDED]	1375	35:15-40-72. [AMENDED]	1817
10:15-30-2. [AMENDED]	1376	35:15-40-90. [AMENDED] (E)	165
10:15-30-3. [AMENDED]	1376	35:15-40-90. [AMENDED]	1818
10:15-30-5. [AMENDED]	1376	35:15-40-90.1. [NEW] (E)	165
10:15-30-9. [AMENDED]	2415	35:15-40-90.1. [NEW]	1818
10:15-32-2. [AMENDED]	1377	35:15-40-92. [AMENDED]	1818
10:15-32-5. [AMENDED]	1377	35:15-40-93. [AMENDED]	1819
10:15-33-5. [AMENDED]	1378	35:15-49-1. [NEW]	1384
10:15-33-7. [AMENDED]	1378	35:15-49-2. [NEW]	1384
10:15-35-1. [AMENDED]	1379	35:15-49-3. [NEW]	1384
10:15-37-5. [AMENDED]	1379	35:15-49-4. [NEW]	1384

35:15-49-5.	[NEW]	1384	75:20-1-2.	[AMENDED]	2435
35:30-13-3.	[AMENDED]	1820	75:20-1-3.	[AMENDED]	2435
35:30-17-3.	[AMENDED] (E)	2807	75:20-1-5.	[AMENDED]	2435
35:30-17-3.1.	[AMENDED] (E)	2807	75:20-1-6.	[AMENDED]	2435
35:30-17-3.3.	[REVOKED] (E)	2807	75:20-1-9.	[AMENDED]	2436
35:30-17-10.	[AMENDED]	1821	75:20-1-10.	[AMENDED]	2436
35:30-17-13.	[AMENDED]	1385	75:20-1-13.	[AMENDED]	2436
35:30-17-89.1.	[AMENDED]	1385	75:20-1-14.	[AMENDED]	2436
35:30-17-92.	[AMENDED]	1386	75:20-1-15.	[AMENDED]	2437
35:37-3-1.	[AMENDED]	1387	87:10-1-2.	[AMENDED] (E)	5
35:37-3-3.	[AMENDED]	1387	87:10-1-2.	[AMENDED]	2437
35:37-5-1.	[AMENDED]	1387	87:10-26-1.	[NEW] (E)	7
35:37-5-2.	[AMENDED]	1387	87:10-26-1.	[NEW]	2439
35:40-5-1.	[AMENDED]	1822	87:10-26-2.	[NEW] (E)	7
35:40-5-31.	[AMENDED]	1823	87:10-26-2.	[NEW]	2439
35:40-5-51.	[AMENDED]	1823	87:10-26-3.	[NEW] (E)	7
35:40-5-71.	[AMENDED]	1824	87:10-26-3.	[NEW]	2439
35:40-5-91.	[AMENDED]	1824	87:10-26-4.	[NEW] (E)	7
35:40-5-111.	[AMENDED]	1825	87:10-26-4.	[NEW]	2439
35:40-5-131.	[AMENDED]	1825	87:10-26-5.	[NEW] (E)	7
35:40-5-151.	[AMENDED]	1825	87:10-26-5.	[NEW]	2440
35:40-5-171.	[AMENDED]	1826	87:10-26-6.	[NEW] (E)	7
35:40-5-181.	[AMENDED]	1826	87:10-26-6.	[NEW]	2440
35:40-5-191.	[AMENDED]	1826	87:10-26-7.	[NEW] (E)	7
35:44-3-3.	[AMENDED]	1388	87:10-26-7.	[NEW]	2440
38:1-1-3.	[AMENDED]	2417	87:10-26-8.	[NEW] (E)	7
38:10-3-7.	[NEW]	2418	87:10-26-8.	[NEW]	2440
38:10-7-10.	[NEW]	2419	87:10-26-9.	[NEW] (E)	8
38:10-9-2.	[AMENDED]	2420	87:10-26-9.	[NEW]	2440
38:10-9-4.	[AMENDED]	2420	87:10-26-10.	[NEW] (E)	8
38:10-9-5.	[NEW]	2421	87:10-26-10.	[NEW]	2440
38:10-11-1.	[AMENDED]	2422	87:10-26-11.	[NEW] (E)	8
38:10-11-2.	[AMENDED]	2423	87:10-26-11.	[NEW]	2440
38:10, App. A.	[REVOKED]	2424	120:10-3-1.1.	[NEW] (E)	2820
38:10, App. A.	[NEW]	2424	120:10-3-2.1.	[NEW] (E)	2821
55:10-1-3.	[AMENDED]	771	120:10-3-3.1.	[NEW] (E)	2822
55:10-3-13.	[AMENDED]	773	120:10-3-4.1.	[NEW] (E)	2823
55:10-3-13.	[AMENDED] (E)	993	120:10-3-5.1.	[NEW] (E)	2823
55:10-5-6.	[AMENDED]	773	120:10-3-6.1.	[NEW] (E)	2824
55:10-5-7.	[AMENDED]	774	120:10-3-7.1.	[NEW] (E)	2825
55:10-5-8.	[AMENDED]	774	120:10-3-8.1.	[RESERVED] (E)	2826
55:10-5-10.	[AMENDED]	775	120:10-3-9.1.	[NEW] (E)	2826
55:10-5-11.	[AMENDED]	776	120:10-3-10.1.	[NEW] (E)	2827
55:10-7-1.	[AMENDED]	777	120:10-3-11.1.	[NEW] (E)	2827
55:10-7-3.	[AMENDED]	778	120:10-5-1.2.	[NEW] (E)	2828
55:10-7-6.	[AMENDED]	778	120:10-5-2.1.	[NEW] (E)	2828
55:10-7-7.	[AMENDED]	778	120:10-5-3.1.	[NEW] (E)	2828
55:10-7-9.	[AMENDED]	778	120:10-5-4.1.	[NEW] (E)	2829
55:10-9-11.	[AMENDED]	778	120:10-5-5.1.	[NEW] (E)	2829
55:10-11-7.	[AMENDED]	779	120:10-5-6.1.	[NEW] (E)	2830
55:10-11-9.	[AMENDED]	779	120:10-5-9.1.	[NEW] (E)	2830
55:10-11-10.	[AMENDED]	780	120:10-5-10.1.	[NEW] (E)	2830
55:10-11-12.	[AMENDED]	780	120:10-5-11.1.	[NEW] (E)	2830
55:10-13-2.	[AMENDED]	780	120:10-5-12.1.	[NEW] (E)	2831
55:10-13-5.	[AMENDED]	780	120:10-9-1.1.	[NEW] (E)	2832
55:10-13-20.	[AMENDED]	781	120:10-11-1.1.	[NEW] (E)	2833
55:10-15-2.	[AMENDED]	781	120:10-11-2.1.	[NEW] (E)	2834
55:10-15-10.	[AMENDED]	781	120:10-11-3.1.	[NEW] (E)	2834
75:15-1-2.	[AMENDED]	2426	120:10-11-4.1.	[RESERVED] (E)	2834
75:15-2-1.	[AMENDED]	2429	120:10-11-5.1.	[NEW] (E)	2834
75:15-4-5.	[AMENDED]	2430	120:10-11-6.1.	[NEW] (E)	2835
75:15-4-19.	[AMENDED]	2432	120:10-11-7.1.	[NEW] (E)	2835
75:15-5-3.	[AMENDED]	2432	120:10-11-8.1.	[NEW] (E)	2836
75:15-5-3.1.	[AMENDED]	2433	120:10-11-9.1.	[NEW] (E)	2837
75:15-9-9.	[AMENDED]	2434	120:10-11-10.1.	[NEW] (E)	2837
75:15-13-25.	[AMENDED]	2434	120:10-11-11.1.	[NEW] (E)	2837
75:15-13-26.	[AMENDED]	2434	120:10-13-1.1.	[NEW] (E)	2837

Rules Affected Index – *continued*

120:10-13-2.1.	[NEW] (E)	2838	155:10-1-10.	[AMENDED]	792
120:10-13-3.1.	[NEW] (E)	2838	155:10-1-11.	[AMENDED]	792
120:10-13-4.1.	[NEW] (E)	2838	155:10-1-12.	[AMENDED]	793
120:10-13-5.1.	[NEW] (E)	2838	155:10-1-13.	[REVOKED]	793
120:10-13-6.1.	[NEW] (E)	2839	155:10-1-14.	[REVOKED]	793
120:10-13-7.1.	[NEW] (E)	2839	155:10-1-16.	[REVOKED]	794
120:10-13-8.1.	[NEW] (E)	2839	155:10-1-17.	[REVOKED]	794
120:10-13-9.1.	[NEW] (E)	2839	155:10-1-18.	[REVOKED]	794
120:10-13-10.1.	[NEW] (E)	2840	155:10-1-19.	[AMENDED]	795
120:10-13-11.1.	[NEW] (E)	2840	155:10-1-20.	[AMENDED]	795
120:10-13-12.1.	[NEW] (E)	2840	155:10-1-21.	[AMENDED]	796
120:10, App. F.	[NEW] (E)	2843	155:20-1-3.	[AMENDED]	797
120:10, App. G.	[AMENDED] (E)	2909	155:20-1-4.	[AMENDED]	799
120:10, App. A.1.	[NEW] (E)	2841	155:20-1-5.	[AMENDED]	800
120:10, App. B.1.	[NEW] (E)	2842	155:20-1-6.	[REVOKED]	800
130:1-1-13.	[AMENDED]	2811	155:20-1-7.	[REVOKED]	802
140:3-3-2.	[AMENDED]	2441	155:20-1-8.	[REVOKED]	802
140:10-5-2.	[AMENDED]	2442	155:20-1-9.	[REVOKED]	803
140:10-5-3.	[AMENDED]	2443	155:20-1-10.	[REVOKED]	803
140:10-8-1.	[AMENDED]	2443	155:30-1-1.	[NEW]	1389
140:15-1-2.	[AMENDED]	2444	155:30-1-2.	[NEW]	1389
140:15-5-1.	[AMENDED]	2444	155:30-1-3.	[NEW]	1391
140:15-5-2.	[AMENDED]	2444	155:30-1-4.	[NEW]	1391
140:15-7-5.	[AMENDED]	2445	155:30-3-1.	[NEW]	1391
140:15-8-2.	[AMENDED]	2446	155:30-3-2.	[NEW]	1391
140:15-9-1.	[AMENDED]	2446	155:30-3-3.	[NEW]	1392
140:15-9-2.	[AMENDED]	2446	155:30-3-4.	[NEW]	1392
140:15-9-3.	[AMENDED]	2446	155:30-3-5.	[NEW]	1392
140:15-9-4.	[AMENDED]	2447	155:30-5-1.	[NEW]	1392
140:15-9-5.	[AMENDED]	2447	155:30-5-2.	[NEW]	1392
140:15-9-6.	[AMENDED]	2447	155:30-5-3.	[NEW]	1393
140:15-10-1.	[NEW]	2448	155:30-5-4.	[NEW]	1394
140:15-10-2.	[NEW]	2448	155:30-5-5.	[NEW]	1394
140:15-11-1.	[NEW]	2448	155:30-7-1.	[NEW]	1394
140:15-11-2.	[NEW]	2448	155:30-7-2.	[NEW]	1395
140:15-12-1.	[NEW]	2448	155:30-7-3.	[NEW]	1395
140:15-12-2.	[NEW]	2448	155:30-9-1.	[NEW]	1395
150:65-1-10.	[AMENDED]	1013	155:30-9-2.	[NEW]	1395
150:105-1-2.	[AMENDED] (E)	87	155:30-9-3.	[NEW]	1395
150:105-1-2.	[AMENDED]	1014	155:30-9-4.	[NEW]	1396
150:105-1-3.	[AMENDED] (E)	90	155:30-9-5.	[NEW]	1396
150:105-1-3.	[AMENDED]	1017	155:30-11-1.	[NEW]	1396
150:105-1-4.	[AMENDED] (E)	91	155:30-11-2.	[NEW]	1396
150:105-1-4.	[AMENDED]	1017	155:30-11-3.	[NEW]	1396
155:1-1-1.	[AMENDED]	782	155:30-11-4.	[NEW]	1396
155:1-1-2.	[REVOKED]	782	155:30-11-5.	[NEW]	1396
155:1-1-3.	[AMENDED]	783	155:30-13-1.	[NEW]	1397
155:1-1-4.	[AMENDED]	783	155:30-13-2.	[NEW]	1397
155:1-1-5.	[AMENDED]	783	155:30-13-3.	[NEW]	1397
155:1-1-6.	[REVOKED]	783	155:30-13-4.	[NEW]	1398
155:1-1-7.	[REVOKED]	783	155:30-13-5.	[NEW]	1398
155:1-1-8.	[REVOKED]	783	155:35-1-1.	[NEW]	804
155:1-1-9.	[REVOKED]	784	155:35-1-2.	[NEW]	805
155:1-1-10.	[AMENDED]	785	155:35-1-3.	[NEW]	805
155:1-1-11.	[REVOKED]	785	155:35-1-4.	[NEW]	805
155:1-1-12.	[REVOKED]	785	155:40-1-1.	[NEW]	1018
155:1-1-13.	[REVOKED]	785	155:40-1-2.	[NEW]	1018
155:1-1-14.	[REVOKED]	785	155:40-1-3.	[NEW]	1018
155:10-1-1.	[AMENDED]	786	155:40-1-4.	[NEW]	1019
155:10-1-2.	[REVOKED]	786	155:40-1-5.	[NEW]	1019
155:10-1-3.	[REVOKED]	787	158:1-3-8.	[NEW]	2449
155:10-1-4.	[REVOKED]	787	158:10-3-1.	[AMENDED]	2450
155:10-1-5.	[AMENDED]	787	158:10-3-5.	[NEW] (E)	387
155:10-1-6.	[AMENDED]	791	158:30-1-4.	[AMENDED]	2451
155:10-1-7.	[REVOKED]	791	158:30-9-2.	[AMENDED]	2451
155:10-1-8.	[AMENDED]	791	158:30-9-4.	[AMENDED]	2452
155:10-1-9.	[REVOKED]	792	158:40-5-1.	[AMENDED]	2454

158:40-5-2. [AMENDED]	2455	160:55-3-3. [REVOKED] (E)	2953
158:40-5-3. [AMENDED]	2456	160:55-3-4. [AMENDED] (E)	2953
158:40-9-3. [AMENDED]	2457	160:55-3-8. [AMENDED] (E)	2953
158:50-1-2. [AMENDED] (E)	388	160:55-3-9. [REVOKED] (E)	2954
158:50-1-2. [AMENDED]	2459	160:55-3-9.1. [AMENDED] (E)	2954
158:50-1-4. [AMENDED]	2462	160:55-3-10.1. [REVOKED] (E)	2954
158:50-5-1. [AMENDED] (E)	389	160:55-3-12. [NEW] (E)	2954
158:50-5-1. [AMENDED]	2460	160:55-3-13. [NEW] (E)	2955
158:50-5-2. [AMENDED] (E)	389	160:55-5-1. [REVOKED] (E)	2955
158:50-5-2. [AMENDED]	2460	160:55-5-2. [REVOKED] (E)	2956
158:50-9-2. [AMENDED]	2462	160:55-5-3. [REVOKED] (E)	2956
158:60-5-4. [AMENDED]	2463	160:55-7-1. [AMENDED] (E)	2956
158:70-1-1. [NEW] (E)	391	160:55-9-10. [NEW] (E)	8
158:70-1-1. [NEW]	2464	160:55-9-10. [NEW]	2493
158:70-1-2. [NEW] (E)	391	165:5-1-3. [AMENDED]	2494
158:70-1-2. [NEW]	2464	165:5-3-1. [AMENDED]	2495
158:70-1-3. [NEW] (E)	392	165:5-7-27. [AMENDED]	2497
158:70-1-3. [NEW]	2466	165:5-15-6. [AMENDED]	2498
158:70-3-1. [NEW] (E)	395	165:10-1-6. [AMENDED]	2499
158:70-3-1. [NEW]	2470	165:10-1-7. [AMENDED]	2499
158:70-5-1. [NEW] (E)	395	165:10-1-49. [AMENDED]	2504
158:70-5-1. [NEW]	2470	165:10-3-2. [AMENDED]	2505
158:70-5-2. [NEW] (E)	395	165:10-3-4. [AMENDED]	2505
158:70-5-2. [NEW]	2470	165:10-3-17. [AMENDED]	2508
158:70-9-1. [NEW] (E)	396	165:10-3-29. [AMENDED]	2509
158:70-9-1. [NEW]	2471	165:10-5-2. [AMENDED]	2509
158:70-9-2. [NEW] (E)	396	165:10-5-5. [AMENDED]	2510
158:70-9-2. [NEW]	2471	165:10-5-7. [AMENDED]	2511
158:70-9-3. [NEW] (E)	396	165:10-5-9. [AMENDED]	2512
158:70-9-3. [NEW]	2471	165:10-7-2. [AMENDED]	2513
158:70-9-4. [NEW] (E)	396	165:10-7-4. [AMENDED]	2514
158:70-9-4. [NEW]	2471	165:10-7-26. [AMENDED]	2515
158:70-9-5. [NEW] (E)	396	165:10-11-9. [AMENDED]	2518
158:70-9-5. [NEW]	2472	165:10-13-3. [AMENDED]	2519
158:70-9-6. [NEW] (E)	397	165:10-15-3. [AMENDED]	2519
158:70-9-6. [NEW]	2472	165:10-15-5. [AMENDED]	2519
158:70-9-8. [NEW] (E)	397	165:10-15-6. [AMENDED]	2519
158:70-9-8. [NEW]	2472	165:10-15-13. [AMENDED]	2519
158:70-11-1. [NEW] (E)	397	165:10-17-9. [AMENDED]	2520
158:70-11-1. [NEW]	2472	165:10-21-45. [AMENDED]	2524
158:70-11-2. [NEW] (E)	397	165:20-15-1. [NEW]	1127
158:70-11-2. [NEW]	2473	165:25-1-11. [AMENDED]	1827
158:170-9-7. [NEW] (E)	397	165:25-1-42. [AMENDED]	1828
158:170-9-7. [NEW]	2472	165:25-1-53. [AMENDED]	1828
160:3-1-1.1. [AMENDED] (E)	166	165:25-1-124. [AMENDED]	1828
160:3-1-1.1. [AMENDED]	2474	165:25-2-2. [AMENDED]	1828
160:45-1-1. [AMENDED]	2475	165:25-2-36. [AMENDED]	1830
160:45-1-2. [AMENDED]	2475	165:25-2-40. [AMENDED]	1830
160:45-3-14. [AMENDED]	2477	165:25-2-55.1. [AMENDED]	1831
160:45-5-1. [AMENDED]	2479	165:25-2-75. [AMENDED]	1831
160:45-5-3. [AMENDED]	2480	165:25-3-6.21. [AMENDED]	1831
160:45-5-7. [AMENDED]	2481	165:26-1-2. [AMENDED]	1832
160:45-5-8. [AMENDED]	2483	165:26-1-31. [AMENDED]	1833
160:45-9-2. [AMENDED] (E)	167	165:26-1-42. [AMENDED]	1834
160:45-9-2. [AMENDED]	2485	165:26-1-55. [AMENDED]	1835
160:45-9-4. [AMENDED]	2487	165:26-1-57. [AMENDED]	1835
160:45-9-5. [NEW]	2488	165:26-2-1.3. [AMENDED]	1835
160:45-9-6. [NEW]	2489	165:26-2-32.1. [AMENDED]	1835
160:55-1-2. [AMENDED] (E)	2947	165:26-2-132. [AMENDED]	1835
160:55-3-1.1. [AMENDED] (E)	2948	165:26-3-20.1. [AMENDED]	1835
160:55-3-1.2. [AMENDED] (E)	245	165:26-10-1. [AMENDED]	1836
160:55-3-1.2. [AMENDED]	2491	165:27-1-2. [AMENDED]	1837
160:55-3-1.2. [REVOKED] (E)	2952	165:27-5-1. [AMENDED]	1838
160:55-3-1.3. [REVOKED] (E)	2952	165:27-5-2. [AMENDED]	1838
160:55-3-1.4. [AMENDED] (E)	245	165:27-7-1. [AMENDED]	1838
160:55-3-1.4. [AMENDED]	2491	165:27-7-2. [AMENDED]	1839
160:55-3-1.4. [REVOKED] (E)	2952	165:27-7-6. [AMENDED]	1839

Rules Affected Index – *continued*

165:27-7-7.	[AMENDED]	1840	180:1-3-4.	[AMENDED]	1410
165:27-7-10.	[AMENDED]	1840	180:1-3-5.	[AMENDED]	1410
165:29-1-11.	[AMENDED]	1841	180:1-3-6.	[AMENDED]	1411
165:29-1-32.	[AMENDED]	1845	180:1-3-7.	[AMENDED]	1411
165:29-3-2.	[AMENDED]	1846	180:1-3-9.	[AMENDED]	1411
165:29-3-65.	[AMENDED]	1847	180:1-3-10.	[AMENDED]	1411
165:29-3-71.	[AMENDED]	1848	180:1-3-15.	[AMENDED]	1412
165:29-3-81.	[AMENDED]	1848	180:1-3-16.	[NEW]	1412
165:29-3-90.	[AMENDED]	1848	180:1-3-17.	[NEW]	1412
165:30-3-1.	[AMENDED]	1399	180:1-3-18.	[NEW]	1412
165:30-3-11.	[AMENDED]	1400	180:10-1-2.	[AMENDED]	1414
165:30-3-16.	[AMENDED]	1401	180:10-1-3.	[AMENDED]	1416
165:30-3-71.	[AMENDED]	1402	180:10-1-4.	[AMENDED]	1416
165:30-3-76.	[AMENDED]	1402	180:10-1-5.	[AMENDED]	1417
165:30-7-12.	[NEW]	1404	180:10-1-6.	[AMENDED]	1417
165:30-7-13.	[NEW]	1404	180:10-1-7.	[AMENDED]	1417
165:30-19-12.	[AMENDED]	1405	180:10-1-8.	[AMENDED]	1418
165:30-19-17.	[AMENDED]	1405	180:10-1-11.	[AMENDED]	1418
165:30-21-7.	[AMENDED]	1406	180:10-1-12.	[AMENDED]	1421
165:35-1-2.	[AMENDED]	1850	180:10-1-13.	[AMENDED]	1422
165:35-41-1.	[NEW]	1852	180:10-1-14.	[AMENDED]	1422
165:35-41-2.	[NEW]	1852	180:10-1-15.	[AMENDED]	1422
165:35-41-3.	[NEW]	1852	180:10-1-16.	[NEW]	1423
165:35-41-4.	[NEW]	1854	180:10-1-17.	[NEW]	1423
165:35-41-5.	[NEW]	1855	180:10-3-1.	[AMENDED]	1423
165:35-41-6.	[NEW]	1855	180:10-3-3.	[AMENDED]	1423
165:35-41-7.	[NEW]	1856	180:10-3-5.	[AMENDED]	1426
165:45-1-2.	[AMENDED]	1857	180:10-3-6.	[AMENDED]	1427
165:45-23-1.	[NEW]	1859	180:10-3-7.	[AMENDED]	1427
165:45-23-2.	[NEW]	1859	180:10-3-8.	[AMENDED]	1428
165:45-23-3.	[NEW]	1860	180:10-3-9.	[REVOKED]	1428
165:45-23-4.	[NEW]	1861	180:10-5-1.	[AMENDED]	1428
165:45-23-5.	[NEW]	1862	180:10-5-2.	[AMENDED]	1428
165:45-23-6.	[NEW]	1863	180:10-5-3.	[AMENDED]	1429
165:45-23-7.	[NEW]	1863	180:10-5-4.	[AMENDED]	1429
165:55-5-10.	[AMENDED]	1128	180:10-5-5.	[AMENDED]	1429
165:55-5-10.1.	[AMENDED]	1130	180:10-5-6.	[REVOKED]	1429
165:55-5-10.2.	[AMENDED]	1131	180:10-5-8.	[AMENDED]	1429
165:55-5-10.3.	[AMENDED]	1131	180:10-5-9.	[AMENDED]	1429
165:55-5-12.1.	[REVOKED]	1132	210:10-9-1.	[AMENDED] (E)	399
165:55-5-66.	[AMENDED]	1132	210:10-9-1.	[AMENDED]	1430
165:55-5-70.	[AMENDED]	1134	210:10-9-2.	[AMENDED] (E)	399
165:55-5-72.	[AMENDED]	1134	210:10-9-2.	[AMENDED]	1431
165:55-7-1.	[AMENDED]	1134	210:10-13-2.	[AMENDED]	1864
165:55-9-8.	[AMENDED]	1135	210:10-13-4.	[AMENDED] (E)	91
165:55-11-10.	[AMENDED]	1135	210:10-13-4.	[AMENDED]	1434
165:55-11-11.	[AMENDED]	1136	210:10-13-10.	[AMENDED] (E)	94
165:55-11-14.	[NEW]	1136	210:10-13-10.	[AMENDED]	1436
165:55-17-30.	[AMENDED]	1136	210:10-13-11.	[AMENDED] (E)	94
165:56-5-5.	[AMENDED]	1137	210:10-13-11.	[AMENDED]	1437
165:56-5-9.	[AMENDED]	1138	210:10-13-16.	[AMENDED]	1867
165:56-9-4.	[AMENDED]	1139	210:10-13-18.	[AMENDED] (E)	95
165:56-9-4.1.	[NEW]	1139	210:10-13-18.	[AMENDED]	1437
165:56-9-4.2.	[NEW]	1140	210:15-3-41.	[AMENDED]	1869
170:35-1-2.	[AMENDED]	2812	210:15-3-42.	[AMENDED]	1870
170:35-1-3.	[AMENDED]	2812	210:15-3-43.	[AMENDED]	1871
170:35-1-4.	[AMENDED]	2812	210:15-3-44.	[AMENDED]	1873
170:35-1-5.	[AMENDED]	2812	210:15-3-45.	[AMENDED]	1874
170:35-1-6.	[AMENDED]	2812	210:15-3-47.	[AMENDED]	1876
175:10-7-25.	[AMENDED]	1407	210:15-3-48.	[AMENDED]	1877
175:10-7-29.	[NEW]	1407	210:15-3-49.	[AMENDED]	1878
175:10-7-30.	[NEW]	1407	210:15-3-51.	[AMENDED]	1880
180:1-1-2.	[AMENDED]	1408	210:15-3-52.	[AMENDED]	1880
180:1-1-4.	[AMENDED]	1409	210:15-3-53.	[AMENDED]	1881
180:1-3-1.	[AMENDED]	1410	210:15-3-102.	[AMENDED] (E)	651
180:1-3-2.	[AMENDED]	1410	210:15-3-102.	[AMENDED]	1440
180:1-3-3.	[AMENDED]	1410	210:15-3-114.2.	[AMENDED] (E)	35

210:15-3-114.2.	[AMENDED]	1446	230:50-3-31.1.	[NEW]	2539
210:15-3-115.	[AMENDED] (E)	39	230:50-9-9.	[AMENDED]	2540
210:15-3-115.	[AMENDED]	1450	235:1-1-2.	[AMENDED]	1883
210:15-3-116.	[AMENDED] (E)	40	235:10-1-2.	[AMENDED]	1884
210:15-3-116.	[AMENDED]	1451	235:10-3-1.	[AMENDED]	1885
210:15-3-117.	[AMENDED] (E)	41	235:10-3-2.	[AMENDED]	1886
210:15-3-117.	[AMENDED]	1452	235:10-3-5.	[AMENDED]	1889
210:15-3-118.	[AMENDED] (E)	42	235:10-5-1.	[AMENDED]	1890
210:15-3-118.	[AMENDED]	1453	235:10-7-2.	[AMENDED]	1890
210:15-3-119.	[AMENDED] (E)	44	235:10-11-1.	[AMENDED]	1892
210:15-3-119.	[AMENDED]	1455	235:10-13-10.	[AMENDED]	1893
210:15-3-120.	[AMENDED] (E)	46	235:10-14-1.	[NEW]	1894
210:15-3-120.	[AMENDED]	1457	240:10-3-2.	[AMENDED]	1030
210:15-3-121.	[AMENDED] (E)	49	240:10-3-12.	[AMENDED]	1030
210:15-3-121.	[AMENDED]	1460	240:10-5-90.	[AMENDED]	1031
210:15-3-122.	[AMENDED] (E)	51	240:10-11-6.	[AMENDED]	1032
210:15-3-122.	[AMENDED]	1462	240:10-11-26.	[NEW]	1032
210:15-3-196.	[AMENDED] (E)	2957	240:10-13-7.	[AMENDED]	1032
210:15-3-197.	[AMENDED] (E)	2957	240:10-13-8.	[AMENDED]	1032
210:15-8-3.	[NEW]	1020	240:10-13-46.	[NEW]	1032
210:15-31-2.	[AMENDED] (E)	97	240:15-3-2.	[AMENDED]	1033
210:15-31-2.	[AMENDED]	1465	240:15-5-5.	[NEW]	1033
210:15-33-2.	[AMENDED] (E)	54	240:21-9-1.	[AMENDED]	1033
210:15-33-2.	[AMENDED]	1466	245:2-1-10.	[AMENDED]	1034
210:20-9-9.	[AMENDED]	1021	245:2-1-18.	[AMENDED]	1034
210:20-9-10.1.	[AMENDED] (E)	2959	245:15-1-3.	[AMENDED]	1036
210:20-9-99.1.	[AMENDED] (E)	98	245:15-3-4.	[AMENDED]	1037
210:20-9-99.1.	[AMENDED]	1468	245:15-3-6.	[AMENDED]	1037
210:20-9-102.	[AMENDED] (E)	248	245:15-3-7.	[AMENDED]	1037
210:20-9-102.	[AMENDED]	1467	245:15-3-8.	[AMENDED]	1039
210:20-9-172.	[AMENDED] (E)	2960	245:15-3-9.	[AMENDED]	1042
210:20-11-3.	[AMENDED] (E)	2996	245:15-3-10.	[AMENDED]	1042
210:20-23-3.	[AMENDED]	1022	245:15-5-3.	[AMENDED]	1043
210:20-24-1.	[NEW]	1022	245:15-5-4.	[AMENDED]	1043
210:20-24-2.	[NEW]	1022	245:15-5-7.	[AMENDED]	1044
210:20-37-2.	[AMENDED]	1023	245:15-9-3.	[AMENDED]	1044
210:30-5-1.	[AMENDED] (E)	55	245:15-9-4.	[AMENDED]	1044
210:30-5-1.	[AMENDED]	1469	245:15-9-6.	[AMENDED]	1045
210:35-3-201.	[AMENDED] (E)	99	245:15-11-5.	[AMENDED]	1045
210:35-3-201.	[AMENDED]	1473	245:15-11-7.	[AMENDED]	1045
210:35-9-31.	[AMENDED] (E)	10	245:15-11-11.	[AMENDED]	1046
210:35-9-31.	[AMENDED]	1024	245:15-13-2.	[AMENDED]	1046
210:35-17-2.	[AMENDED]	1027	245:15-17-2.	[AMENDED]	1048
210:35-25-3.	[NEW]	1028	245:15-19-2.	[AMENDED]	1050
210:35-25-4.	[NEW]	1029	245:15-19-4.	[AMENDED]	1051
210:40-87-5.	[NEW]	1029	245:15-21-1.	[AMENDED]	1051
230:10-7-66.	[AMENDED]	2525	245:15-21-2.	[AMENDED]	1051
230:15-5-2.	[AMENDED]	2526	245:15-21-3.	[AMENDED]	1051
230:15-5-83.1.	[AMENDED]	2527	245:15-21-4.	[AMENDED]	1052
230:15-5-89.	[AMENDED]	2527	245:15-21-5.	[AMENDED]	1052
230:15-5-123.	[AMENDED]	2528	245:15-21-6.	[AMENDED]	1052
230:15-9-3.1.	[AMENDED]	2528	245:15-23-1.	[AMENDED]	1052
230:15-9-24.	[AMENDED]	2529	252:4-9-32.	[AMENDED]	1895
230:15-9-25.	[AMENDED]	2529	252:100-1-3.	[AMENDED]	1141
230:15-9-35.	[AMENDED]	2530	252:100-1-4.	[AMENDED]	1144
230:20-3-37.	[AMENDED]	2531	252:100-5-1.1.	[AMENDED]	1145
230:20-3-38.	[AMENDED]	2531	252:100-8-2.	[AMENDED]	1147
230:30-11-6.1.	[AMENDED]	2532	252:100-8-4.	[AMENDED]	1150
230:35-3-56.1.	[AMENDED]	2534	252:100-8-30.	[AMENDED]	1152
230:35-3-71.	[AMENDED]	2534	252:100-8-31.	[AMENDED]	1153
230:35-3-78.1.	[NEW]	2535	252:100-8-33.	[AMENDED]	1159
230:35-3-101.	[AMENDED]	2535	252:100-8-37.	[AMENDED]	1160
230:35-3-101.1.	[AMENDED]	2535	252:100-8-38.	[AMENDED]	1161
230:35-3-131.	[AMENDED]	2536	252:100-8-50.	[AMENDED]	1161
230:40-5-46.	[AMENDED]	2537	252:100-8-50.1.	[AMENDED]	1162
230:40-5-77.	[AMENDED]	2537	252:100-8-51.	[AMENDED]	1162
230:45-5-12.	[AMENDED]	2538	252:100-8-51.1.	[AMENDED]	1164

Rules Affected Index – *continued*

252:100-8-52.	[AMENDED]	1164	252:606-8-1.	[NEW]	1905
252:100-8-53.	[AMENDED]	1164	252:606-8-2.	[NEW]	1905
252:100-8-54.1.	[NEW]	1164	252:606-8-3.	[NEW]	1905
252:100-8-55.	[AMENDED]	1164	252:606-8-4.	[NEW]	1906
252:100-8-56.	[AMENDED]	1165	252:606-8-5.	[NEW]	1907
252:100-9-1.	[AMENDED]	1896	252:606-8-6.	[NEW]	1907
252:100-9-1.1.	[NEW]	1896	252:606-9-1.	[REVOKED]	1908
252:100-9-2.	[AMENDED]	1896	252:606-9-2.	[REVOKED]	1908
252:100-9-3.1.	[AMENDED AND RENUMBERED TO 252:100-9-7]	1896	252:606-9-3.	[REVOKED]	1908
252:100-9-3.3.	[AMENDED AND RENUMBERED TO 252:100-9-8]	1897	252:606-9-4.	[REVOKED]	1909
252:100-9-7.	[NEW]	1898	252:606-9-5.	[REVOKED]	1909
252:100-9-8.	[NEW]	1899	252:611-1-3.	[AMENDED]	1207
252:100-17-14.1.	[AMENDED]	1166	252:611-3-1.	[AMENDED]	1207
252:100-17-14.2.	[AMENDED]	1166	252:611-3-2.	[AMENDED]	1207
252:100-17-15.	[AMENDED]	1166	252:616-1-2.	[AMENDED]	1909
252:100-17-16.	[AMENDED]	1167	252:616-3-4.	[AMENDED]	1911
252:100-17-17.	[AMENDED]	1167	252:616-13-1.	[AMENDED]	1911
252:100-17-19.	[AMENDED]	1167	252:616, App. A.	[REVOKED]	1912
252:100-17-20.	[AMENDED]	1167	252:616, App. B.	[REVOKED]	1928
252:100-17-21.	[AMENDED]	1169	252:616, App. C.	[REVOKED]	1938
252:100-17-24.	[AMENDED]	1170	252:616, App. C.	[NEW]	1938
252:100-17-25.	[AMENDED]	1172	252:616, App. D.	[REVOKED]	1939
252:100-17-26.	[AMENDED]	1172	252:616, App. D.	[NEW]	1939
252:100-19-1.1.	[AMENDED]	1172	252:623-1-7.	[AMENDED]	1944
252:100-19-11.	[AMENDED]	1173	252:631-1-3.	[AMENDED]	1945
252:100-25-3.	[AMENDED]	1177	252:641, App. H.	[REVOKED] (E)	506
252:100-33-1.1.	[AMENDED]	1900	252:641, App. H.	[NEW] (E)	506
252:100-33-1.2.	[AMENDED]	1900	252:641, App. H.	[REVOKED]	1946
252:100-33-2.	[AMENDED]	1901	252:641, App. H.	[NEW]	1946
252:100, App. C.	[REVOKED]	1174	252:690-1-1.	[AMENDED]	1963
252:100, App. C.	[NEW]	1174	252:690-1-2.	[AMENDED]	1963
252:100, App. D.	[REVOKED]	1175	252:690-1-4.	[AMENDED]	1965
252:100, App. D.	[NEW]	1175	252:690-3-19.	[AMENDED]	1967
252:100, App. E.	[REVOKED]	1179	252:690-3-27.	[AMENDED]	1967
252:100, App. E.	[NEW]	1179	252:690-3-31.	[AMENDED]	1967
252:100, App. F.	[REVOKED]	1180	252:690-3-34.	[AMENDED]	1968
252:100, App. F.	[NEW]	1180	252:690-3-37.	[AMENDED]	1968
252:100, App. G.	[REVOKED]	1176	252:690-3-39.	[AMENDED]	1968
252:100, App. G.	[NEW]	1176	252:690-3-40.	[AMENDED]	1968
252:100, App. Q.	[REVOKED]	1182	252:690-3-42.	[AMENDED]	1968
252:100, App. Q.	[NEW]	1182	252:690-3-75.	[AMENDED]	1969
252:205-3-1.	[AMENDED]	1192	252:690-3-93.	[NEW]	1969
252:205-3-2.	[AMENDED]	1192	252:690, App. A.	[REVOKED]	1970
252:410-1-2.	[AMENDED]	1194	252:690, App. A.	[NEW]	1970
252:410-1-4.	[AMENDED]	1198	265:40-1-1.	[NEW] (E)	522
252:410-1-7.	[AMENDED]	1199	265:40-1-2.	[NEW] (E)	522
252:410-10-1.	[AMENDED]	1199	265:40-1-3.	[NEW] (E)	523
252:410-10-2.	[AMENDED]	1200	265:40-1-4.	[NEW] (E)	523
252:410-10-3.	[AMENDED]	1200	265:40-1-5.	[NEW] (E)	523
252:410-10-30.	[AMENDED]	1201	265:40-1-6.	[NEW] (E)	524
252:410-10-31.	[AMENDED]	1202	265:40-1-7.	[NEW] (E)	524
252:410-10-32.	[AMENDED]	1202	265:40-1-8.	[NEW] (E)	524
252:410-10-35.	[AMENDED]	1203	265:40-1-9.	[NEW] (E)	524
252:410-20-1.	[AMENDED]	1205	265:40-1-10.	[NEW] (E)	525
252:606-1-2.	[AMENDED]	1902	265:40-1-11.	[NEW] (E)	525
252:606-1-4.	[AMENDED]	1903	304:10-1-3.	[AMENDED]	1473
252:606-7-1.	[REVOKED]	1903	304:10-1-4.	[AMENDED]	1474
252:606-7-2.	[REVOKED]	1903	304:10-1-5.	[AMENDED]	1475
252:606-7-3.	[REVOKED]	1904	304:10-1-9.	[AMENDED]	1475
252:606-7-4.	[REVOKED]	1904	304:10-1-10.	[AMENDED]	1475
252:606-7-5.	[REVOKED]	1904	304:10-1-12.	[AMENDED]	1475
252:606-7-6.	[REVOKED]	1904	310:9-3-1.	[AMENDED]	2000
252:606-7-7.	[REVOKED]	1905	310:9-5-2.1.	[AMENDED]	2001
252:606-7-8.	[REVOKED]	1905	310:9-5-2.1.	[AMENDED]	3001
252:606-7-9.	[REVOKED]	1905	310:205-3-5.	[AMENDED]	2003
			310:250-3-1.	[AMENDED]	1476
			310:250-3-2.	[AMENDED]	1477

310:250-3-3. [AMENDED]	1477	310:405-15-2. [AMENDED]	2032
310:250-3-6. [AMENDED]	1477	310:405-17-2. [AMENDED]	2032
310:257-1-2. [AMENDED]	1478	310:405-17-3. [AMENDED]	2032
310:257-1-4. [AMENDED]	1484	310:405-17-4.1. [AMENDED]	2033
310:257-3-3. [AMENDED]	1485	310:405-21-6. [AMENDED]	2033
310:257-5-10. [AMENDED]	1485	310:405-27-3. [AMENDED]	2033
310:257-5-50. [AMENDED]	1485	310:515-1-1.1. [AMENDED]	2034
310:257-5-59. [AMENDED]	1485	310:515-1-3. [AMENDED]	2034
310:257-5-60. [AMENDED]	1485	310:515-1-4. [AMENDED]	2034
310:257-5-61. [AMENDED]	1486	310:515-1-7. [AMENDED]	2035
310:257-5-69. [AMENDED]	1486	310:515-1-8. [AMENDED]	2035
310:257-5-71. [AMENDED]	1486	310:525-5-1. [NEW]	2036
310:257-7-3. [AMENDED]	1487	310:525-5-2. [NEW]	2036
310:257-7-37. [AMENDED]	1487	310:530-1-4. [AMENDED]	1497
310:257-7-43. [AMENDED]	1487	310:531-1-1. [AMENDED]	2037
310:257-7-53. [AMENDED]	1488	310:531-1-3. [AMENDED]	2037
310:257-7-75. [AMENDED]	1488	310:531-3-1. [AMENDED]	2037
310:257-7-83. [AMENDED]	1488	310:531-5-1. [AMENDED]	2037
310:257-7-92. [AMENDED]	1489	310:531-5-2. [AMENDED]	2037
310:257-9-18. [AMENDED]	1489	310:531-5-3. [AMENDED]	2038
310:257-9-32. [AMENDED]	1490	310:531-5-4. [NEW]	2038
310:257-9-69. [AMENDED]	1490	310:531-7-1. [NEW]	2038
310:257-11-2. [AMENDED]	1490	310:531-7-2. [NEW]	2038
310:257-11-5. [AMENDED]	1490	310:531-7-3. [NEW]	2038
310:257-11-28. [AMENDED]	1490	310:531-7-4. [NEW]	2039
310:257-15-4. [AMENDED]	1490	310:531-7-5. [NEW]	2039
310:257-15-8. [AMENDED]	1490	310:531-7-6. [NEW]	2039
310:257-15-32. [AMENDED]	1490	310:535-3-2. [AMENDED]	2040
310:315-1-2. [AMENDED]	2004	310:546-1-2. [AMENDED]	2040
310:315-3-1. [AMENDED]	2006	310:551-1-1. [NEW]	2041
310:315-7-9. [AMENDED]	2007	310:551-1-2. [NEW]	2041
310:315-7-10. [AMENDED]	2008	310:551-3-1. [NEW]	2041
310:315-7-11. [AMENDED]	2008	310:551-3-2. [NEW] (E)	3019
310:315-7-12. [AMENDED]	2009	310:551-3-3. [NEW] (E)	3019
310:315-7-14. [AMENDED]	2011	310:551-5-1. [NEW] (E)	3019
310:320-1-3. [NEW]	1491	310:551-5-2. [NEW] (E)	3020
310:320-5-5. [AMENDED]	1491	310:551-5-3. [NEW] (E)	3020
310:345-3-1. [AMENDED]	2014	310:551-5-4. [NEW] (E)	3020
310:345-7-2. [AMENDED]	2015	310:641-3-2. [AMENDED]	1499
310:400-1-3. [AMENDED]	2016	310:641-3-31. [AMENDED]	1500
310:400-5-3. [AMENDED]	2016	310:641-3-32. [AMENDED]	1501
310:400-7-2. [AMENDED]	2018	310:641-3-33. [AMENDED]	1502
310:400-7-2.1. [AMENDED]	2018	310:641-3-34. [AMENDED]	1502
310:400-9-4. [AMENDED]	2019	310:641-3-35. [AMENDED]	1503
310:400-9-7. [REVOKED]	2019	310:641-3-36. [AMENDED]	1503
310:400-11-3. [AMENDED]	2020	310:641-3-37. [AMENDED]	1504
310:400-11-4. [AMENDED]	2020	310:641-3-38. [AMENDED]	1505
310:400-11-5. [AMENDED]	2020	310:641-3-39. [AMENDED]	1505
310:400-13-2. [AMENDED]	2021	310:641-3-43. [AMENDED]	1506
310:400-15-3. [AMENDED]	2021	310:641-3-47. [NEW]	1506
310:400-15-4. [AMENDED]	2021	310:641-3-50. [AMENDED]	1506
310:403-1-2. [AMENDED]	2024	310:641-3-91. [AMENDED]	1507
310:403-7-2. [AMENDED]	2024	310:641-5-11. [AMENDED]	1508
310:403-7-3. [AMENDED]	2025	310:641-5-13. [AMENDED]	1509
310:403-15-7. [AMENDED]	2026	310:641-5-14. [AMENDED]	1509
310:403-21-1.1. [NEW]	2026	310:641-5-14.1. [NEW]	1511
310:403-21-3. [AMENDED]	2026	310:641-5-15. [AMENDED]	1513
310:403-25-8. [AMENDED]	2026	310:641-5-17. [AMENDED]	1513
310:403-27-1. [AMENDED]	2027	310:641-5-30. [AMENDED]	1514
310:405-1-2.1. [AMENDED]	2028	310:641-7-10. [AMENDED]	1514
310:405-3-2. [AMENDED]	2028	310:641-7-13. [AMENDED]	1515
310:405-3-3. [AMENDED]	2029	310:641-7-15. [AMENDED]	1515
310:405-3-6. [AMENDED]	2030	310:661-1-2. [AMENDED]	2043
310:405-7-8.1. [NEW]	2030	310:661-2-1. [AMENDED]	2044
310:405-11-2. [AMENDED]	2031	310:661-2-4. [AMENDED]	2045
310:405-11-4. [AMENDED]	2031	310:661-3-2. [AMENDED]	2045
310:405-13-2. [AMENDED]	2031	310:661-3-3.1. [NEW]	2046

Rules Affected Index – *continued*

310:661-5-1.1. [NEW]	2047	317:25-7-5. [AMENDED] (E)	403
310:661-5-1.2. [NEW]	2047	317:25-7-5. [AMENDED]	2076
310:661-5-1.3. [NEW]	2047	317:25-7-6. [AMENDED] (E)	404
310:661-5-2. [AMENDED]	2048	317:25-7-6. [AMENDED]	2077
310:661-5-2.1. [NEW]	2048	317:25-7-10. [AMENDED] (E)	404
310:661-5-2.2. [NEW]	2049	317:25-7-10. [AMENDED]	2077
310:661-5-2.3. [NEW]	2050	317:25-7-12. [AMENDED] (E)	405
310:661-5-2.4. [NEW]	2050	317:25-7-12. [AMENDED]	2078
310:661-5-3.1. [NEW]	2050	317:25-7-13. [AMENDED] (E)	405
310:661-5-4.1. [NEW]	2051	317:25-7-13. [AMENDED]	2078
310:661-5-6. [NEW]	2051	317:25-7-25. [AMENDED] (E)	405
310:661-5-7. [NEW]	2052	317:25-7-25. [AMENDED]	2078
310:661-5-8. [NEW]	2052	317:25-7-26. [AMENDED] (E)	405
310:661-5-9. [NEW]	2053	317:25-7-26. [AMENDED]	2078
310:661-6-7. [AMENDED]	2053	317:25-7-27. [AMENDED] (E)	405
310:664-3-3. [AMENDED]	1517	317:25-7-27. [AMENDED]	2078
310:664-3-5. [AMENDED]	1517	317:25-7-28. [AMENDED] (E)	406
310:664-3-6. [AMENDED]	1517	317:25-7-28. [AMENDED]	2079
310:664-5-2. [AMENDED]	1517	317:25-7-29. [AMENDED] (E)	406
310:664-11-1. [AMENDED]	1517	317:25-7-29. [AMENDED]	2079
310:664-11-3. [NEW]	1518	317:25-7-30. [AMENDED] (E)	407
310:667-5-4. [AMENDED]	2054	317:25-7-30. [AMENDED]	2080
310:667-59-1. [AMENDED]	2056	317:25-7-40. [NEW] (E)	407
310:667-59-3. [AMENDED]	2056	317:25-7-40. [NEW]	2080
310:667-59-5. [AMENDED]	2056	317:30-3-5.1. [AMENDED] (E)	100
310:667-59-20. [NEW]	2057	317:30-3-5.1. [AMENDED]	1059
310:669-1-3. [AMENDED] (E)	1759	317:30-3-25. [AMENDED] (E)	249
310:675-3-1.1. [AMENDED]	2060	317:30-3-25. [AMENDED]	1053
310:675-3-5. [AMENDED]	2060	317:30-3-27. [NEW] (E)	250
310:675-3-5.1. [AMENDED]	2060	317:30-3-27. [NEW]	1054
310:675-3-8. [AMENDED]	2061	317:30-3-27. [AMENDED] (E)	3026
310:675-7-4. [AMENDED]	2062	317:30-3-65.4. [AMENDED]	2081
310:675-7-12.1. [AMENDED]	2063	317:30-3-80. [REVOKED] (E)	3029
310:675-7-20. [AMENDED]	2063	317:30-5-1. [AMENDED] (E)	1760
310:675-11-1. [AMENDED]	2064	317:30-5-2. [AMENDED] (E)	1760
310:675-11-5. [AMENDED]	2064	317:30-5-2. [AMENDED]	2083
310:675-11-8. [AMENDED]	2065	317:30-5-9. [AMENDED]	2088
310:675-11-9. [AMENDED]	2065	317:30-5-11. [AMENDED] (E)	252
310:675-13-8. [AMENDED]	2065	317:30-5-11. [AMENDED]	1056
310:675-13-9. [AMENDED]	2066	317:30-5-22. [AMENDED] (E)	101
310:675-19-6. [AMENDED]	2067	317:30-5-22. [AMENDED] (E)	255
310:677-1-3. [AMENDED]	2068	317:30-5-22. [AMENDED]	1060
310:677-1-6. [AMENDED]	2070	317:30-5-22. [AMENDED] (E)	1767
310:677-3-2. [AMENDED]	2071	317:30-5-22.1. [AMENDED] (E)	102
310:677-5-2. [AMENDED]	2071	317:30-5-22.1. [AMENDED]	1063
310:677-7-5. [NEW]	2071	317:30-5-42.14. [AMENDED] (E)	527
310:677-11-4. [AMENDED]	2072	317:30-5-42.14. [AMENDED]	2118
310:677-13-8. [AMENDED]	2072	317:30-5-47. [AMENDED] (E)	252
310:677-13-12. [AMENDED]	2073	317:30-5-47. [AMENDED]	1057
317:2-1-1. [AMENDED] (E)	3020	317:30-5-49. [AMENDED]	2087
317:2-1-2. [AMENDED] (E)	3020	317:30-5-95.33. [AMENDED] (E)	263
317:2-1-6. [AMENDED] (E)	3022	317:30-5-95.33. [AMENDED]	1073
317:2-1-7. [AMENDED] (E)	525	317:30-5-97. [AMENDED]	2087
317:2-1-7. [AMENDED]	2074	317:30-5-122. [AMENDED] (E)	249
317:2-1-7. [AMENDED] (E)	3022	317:30-5-122. [AMENDED]	1053
317:2-1-8. [AMENDED] (E)	3022	317:30-5-211.17. [NEW] (E)	733
317:2-1-9. [AMENDED] (E)	3023	317:30-5-216. [AMENDED] (E)	257
317:2-1-10. [AMENDED] (E)	3023	317:30-5-216. [AMENDED]	1062
317:2-1-11. [AMENDED] (E)	3023	317:30-5-240. [AMENDED] (E)	735
317:2-1-12. [AMENDED] (E)	3024	317:30-5-240. [AMENDED]	2090
317:2-1-13. [AMENDED] (E)	3025	317:30-5-240.1. [NEW] (E)	738
317:25-7-1. [AMENDED] (E)	402	317:30-5-240.1. [NEW]	2093
317:25-7-1. [AMENDED]	2075	317:30-5-240.2. [NEW] (E)	739
317:25-7-2. [AMENDED] (E)	402	317:30-5-240.2. [NEW]	2094
317:25-7-2. [AMENDED]	2075	317:30-5-240.3. [NEW] (E)	740
317:25-7-3. [AMENDED] (E)	403	317:30-5-240.3. [NEW]	2095
317:25-7-3. [AMENDED]	2076	317:30-5-241. [AMENDED] (E)	103

317:30-5-241. [AMENDED] (E)	741	317:30-5-764. [AMENDED] (E)	544
317:30-5-241. [AMENDED]	2096	317:30-5-764. [AMENDED] (E)	1007
317:30-5-241.1. [NEW] (E)	751	317:30-5-950. [AMENDED] (E)	758
317:30-5-241.1. [NEW]	2107	317:30-5-952. [AMENDED] (E)	758
317:30-5-241.2. [NEW] (E)	752	317:30-5-953. [AMENDED] (E)	545
317:30-5-241.2. [NEW]	2107	317:30-5-953. [AMENDED]	2128
317:30-5-241.3. [NEW] (E)	753	317:30-5-1010. [AMENDED]	2115
317:30-5-241.3. [NEW]	2108	317:30-5-1010.1. [AMENDED]	2116
317:30-5-241.4. [NEW] (E)	754	317:30-5-1026. [AMENDED]	2088
317:30-5-241.4. [NEW]	2109	317:30-5-1076. [AMENDED] (E)	256
317:30-5-241.5. [NEW] (E)	754	317:30-5-1076. [AMENDED]	1061
317:30-5-241.5. [NEW]	2109	317:30-5-1090. [AMENDED] (E)	254
317:30-5-244. [AMENDED] (E)	755	317:30-5-1090. [AMENDED]	1058
317:30-5-244. [AMENDED]	2110	317:30-5-1091. [AMENDED] (E)	3028
317:30-5-248. [AMENDED] (E)	755	317:30-5-1200. [NEW] (E)	259
317:30-5-248. [AMENDED]	2110	317:30-5-1200. [NEW]	1070
317:30-5-249. [NEW] (E)	756	317:30-5-1201. [NEW] (E)	259
317:30-5-249. [NEW]	2111	317:30-5-1201. [NEW]	1070
317:30-5-275. [AMENDED] (E)	258	317:30-5-1202. [NEW] (E)	260
317:30-5-275. [AMENDED]	1065	317:30-5-1202. [NEW]	1071
317:30-5-276. [AMENDED]	2112	317:30-5-1203. [NEW] (E)	260
317:30-5-278.1. [AMENDED]	2113	317:30-5-1203. [NEW]	1071
317:30-5-326. [AMENDED] (E)	527	317:30-5-1204. [NEW] (E)	260
317:30-5-326. [AMENDED]	2113	317:30-5-1204. [NEW]	1072
317:30-5-336. [AMENDED]	1066	317:30-5-1205. [NEW] (E)	261
317:30-5-336.5. [AMENDED] (E)	262	317:30-5-1205. [NEW]	1072
317:30-5-356. [AMENDED] (E)	114	317:30-5-1206. [NEW] (E)	261
317:30-5-356. [AMENDED]	1066	317:30-5-1206. [NEW]	1072
317:30-5-361. [AMENDED] (E)	253	317:35-1-2. [AMENDED] (E)	759
317:30-5-361. [AMENDED]	1057	317:35-5-25. [AMENDED] (E)	115
317:30-5-410. [AMENDED]	2114	317:35-5-25. [AMENDED] (E)	545
317:30-5-422. [AMENDED]	2115	317:35-5-25. [AMENDED]	2129
317:30-5-515. [AMENDED]	1068	317:35-5-25. [AMENDED] (E)	3029
317:30-5-516. [AMENDED]	1068	317:35-5-41.8. [AMENDED]	2133
317:30-5-517. [AMENDED]	1068	317:35-5-41.9. [AMENDED] (E)	1768
317:30-5-518. [AMENDED]	1069	317:35-5-41.9. [AMENDED]	2135
317:30-5-519. [AMENDED]	1069	317:35-5-41.10. [AMENDED]	2136
317:30-5-565. [AMENDED] (E)	528	317:35-5-42. [AMENDED] (E)	1770
317:30-5-565. [AMENDED]	2119	317:35-5-43. [AMENDED]	2137
317:30-5-566. [AMENDED] (E)	529	317:35-5-45. [AMENDED] (E)	119
317:30-5-566. [AMENDED]	2119	317:35-5-45. [AMENDED]	1074
317:30-5-567. [AMENDED] (E)	530	317:35-5-46. [AMENDED] (E)	119
317:30-5-567. [AMENDED]	2120	317:35-5-46. [AMENDED]	1075
317:30-5-605. [AMENDED] (E)	1764	317:35-9-5. [AMENDED]	2139
317:30-5-607. [AMENDED] (E)	1765	317:35-9-26. [AMENDED] (E)	408
317:30-5-608. [REVOKED] (E)	1765	317:35-9-26. [AMENDED]	2140
317:30-5-609. [REVOKED] (E)	1765	317:35-9-65. [AMENDED]	2136
317:30-5-610. [REVOKED] (E)	1765	317:35-10-26. [AMENDED] (E)	1775
317:30-5-611. [AMENDED] (E)	1766	317:35-15-1. [AMENDED] (E)	550
317:30-5-612. [NEW] (E)	1766	317:35-15-1. [AMENDED]	2141
317:30-5-613. [NEW] (E)	1766	317:35-15-2. [AMENDED] (E)	550
317:30-5-614. [NEW] (E)	1766	317:35-15-2. [AMENDED]	2141
317:30-5-615. [NEW] (E)	1766	317:35-15-3. [AMENDED] (E)	550
317:30-5-664.10. [AMENDED] (E)	253	317:35-15-3. [AMENDED]	2142
317:30-5-664.10. [AMENDED]	1058	317:35-15-4. [AMENDED] (E)	551
317:30-5-695. [AMENDED]	2121	317:35-15-4. [AMENDED]	2142
317:30-5-696. [AMENDED] (E)	531	317:35-15-5. [AMENDED] (E)	554
317:30-5-696. [AMENDED]	2122	317:35-15-5. [AMENDED]	2145
317:30-5-698. [AMENDED] (E)	534	317:35-15-6. [AMENDED] (E)	554
317:30-5-698. [AMENDED]	2125	317:35-15-6. [AMENDED]	2145
317:30-5-699. [AMENDED] (E)	535	317:35-15-7. [AMENDED] (E)	554
317:30-5-699. [AMENDED]	2127	317:35-15-7. [AMENDED]	2146
317:30-5-761. [AMENDED] (E)	756	317:35-15-8. [AMENDED] (E)	554
317:30-5-761. [AMENDED] (E)	995	317:35-15-8. [AMENDED]	2146
317:30-5-763. [AMENDED] (E)	537	317:35-15-8.1. [AMENDED] (E)	556
317:30-5-763. [AMENDED] (E)	996	317:35-15-8.1. [AMENDED] (E)	761
317:30-5-763.1. [AMENDED] (E)	758	317:35-15-8.1. [AMENDED]	2147

Rules Affected Index – *continued*

317:35-15-9. [AMENDED] (E)	556	317:45-9-4. [AMENDED]	2171
317:35-15-9. [AMENDED]	2148	317:45-9-6. [AMENDED]	2171
317:35-15-10. [AMENDED] (E)	556	317:45-9-7. [AMENDED]	2171
317:35-15-10. [AMENDED]	2148	317:45-11-1. [AMENDED]	2172
317:35-15-11. [REVOKED] (E)	557	317:45-11-2. [AMENDED]	2172
317:35-15-11. [REVOKED]	2149	317:45-11-10. [AMENDED] (E)	409
317:35-15-14. [AMENDED] (E)	558	317:45-11-10. [AMENDED]	2175
317:35-15-14. [AMENDED]	2150	317:45-11-11. [AMENDED] (E)	411
317:35-15-15. [AMENDED] (E)	557	317:45-11-11. [AMENDED]	2177
317:35-15-15. [AMENDED]	2149	317:45-11-11. [AMENDED] (E)	3035
317:35-17-1. [AMENDED] (E)	1009	317:45-11-20. [AMENDED] (E)	1784
317:35-17-3. [AMENDED] (E)	264	317:45-11-20. [AMENDED]	2172
317:35-17-11. [AMENDED] (E)	1009	317:45-11-21. [AMENDED]	2173
317:35-17-12. [AMENDED] (E)	762	317:45-11-21.1. [AMENDED]	2173
317:35-17-14. [AMENDED] (E)	762	317:45-11-22. [AMENDED]	2173
317:35-17-17. [AMENDED] (E)	765	317:45-11-23. [AMENDED]	2173
317:35-17-18. [AMENDED] (E)	766	317:45-11-24. [AMENDED]	2174
317:35-17-20. [AMENDED] (E)	766	317:45-11-25. [AMENDED] (E)	624
317:35-17-21.1. [AMENDED] (E)	766	317:45-11-25. [AMENDED]	2168
317:35-17-22. [AMENDED] (E)	559	317:45-11-26. [AMENDED]	2174
317:35-17-22. [AMENDED]	2150	317:45-11-27. [AMENDED]	2174
317:35-18-10. [AMENDED]	1076	325:10-1-6. [AMENDED]	806
317:35-19-6. [AMENDED] (E)	408	325:20-1-2. [AMENDED]	806
317:35-19-6. [AMENDED]	2140	325:20-1-15. [AMENDED]	807
317:35-22-9. [AMENDED]	2151	325:20-1-24. [AMENDED]	807
317:35-22-10. [AMENDED]	2151	325:45-1-6. [AMENDED]	808
317:35-22-11. [AMENDED]	2151	325:75-1-2. [AMENDED]	2178
317:35-23-1. [NEW] (E)	266	325:75-1-3. [AMENDED]	2180
317:35-23-1. [NEW]	1077	325:75-1-3.1. [NEW]	2184
317:35-23-2. [NEW] (E)	266	325:75-1-4. [AMENDED]	2188
317:35-23-2. [NEW]	1077	325:75-1-4.1. [NEW]	2188
317:35-23-3. [NEW] (E)	267	325:75-1-5. [AMENDED]	2189
317:35-23-3. [NEW]	1077	325:75-1-7. [AMENDED]	2189
317:35-23-4. [NEW] (E)	267	325:75-1-8. [AMENDED]	2189
317:35-23-4. [NEW]	1077	325:75-1-9. [AMENDED]	2189
317:40-1-1. [AMENDED]	2152	325:75-1-10. [AMENDED]	2189
317:40-5-1. [REVOKED]	2155	325:75-1-12. [AMENDED]	2190
317:40-5-3. [AMENDED]	2156	325:75-1-12.1. [NEW]	2190
317:40-5-5. [AMENDED]	2157	325:75-1-13.1. [NEW]	2191
317:40-5-5. [AMENDED] (E)	3034	325:75-1-14. [AMENDED]	2191
317:40-5-8. [AMENDED]	1078	325:75-1-15. [AMENDED]	809
317:40-5-100. [AMENDED]	2159	325:75-1-16. [AMENDED]	2191
317:40-5-101. [AMENDED] (E)	1781	325:75-1-19. [AMENDED]	2192
317:40-7-6. [AMENDED]	2163	325:80-5-5. [AMENDED]	810
317:40-7-8. [AMENDED]	2163	325:80-9-1. [AMENDED]	2192
317:40-7-11. [AMENDED]	2164	325:80-9-2. [AMENDED]	2193
317:40-7-13. [AMENDED]	2165	325:80-11-2. [AMENDED]	2193
317:45-1-1. [AMENDED] (E)	621	325:80-11-3. [AMENDED]	2193
317:45-1-1. [AMENDED]	2166	325:80-15-1. [AMENDED]	2193
317:45-1-2. [AMENDED] (E)	621	325:90-5-1. [AMENDED]	811
317:45-1-2. [AMENDED]	2166	330:36-1-4. [AMENDED] (E)	304
317:45-1-3. [AMENDED] (E)	622	330:36-1-4. [AMENDED]	1208
317:45-1-3. [AMENDED]	2167	330:36-1-4. [AMENDED]	2541
317:45-1-4. [AMENDED]	2169	330:36-2-1. [AMENDED] (E)	309
317:45-3-1. [AMENDED]	2169	330:36-2-1. [AMENDED]	1214
317:45-3-2. [AMENDED]	2170	330:36-2-1. [AMENDED]	2546
317:45-5-1. [AMENDED]	2170	330:36-2-2. [AMENDED] (E)	309
317:45-5-2. [AMENDED]	2170	330:36-2-2. [AMENDED]	1214
317:45-7-1. [AMENDED] (E)	623	330:36-2-7. [AMENDED] (E)	310
317:45-7-1. [AMENDED]	2168	330:36-2-7. [AMENDED]	1214
317:45-7-2. [AMENDED]	2170	330:36-2-9. [AMENDED] (E)	310
317:45-7-3. [AMENDED]	2170	330:36-2-9. [AMENDED]	1215
317:45-7-5. [AMENDED]	2170	330:36-2-9. [AMENDED]	2546
317:45-7-8. [AMENDED]	2170	330:36-2-11. [AMENDED] (E)	310
317:45-9-1. [AMENDED]	2171	330:36-2-11. [AMENDED]	1215
317:45-9-2. [AMENDED]	2171	330:36-2-12. [AMENDED]	2547
317:45-9-3. [AMENDED]	2171	330:36-2-16. [AMENDED] (E)	310

330:36-2-16. [AMENDED]	1215	340:10-3-75. [AMENDED]	1240
330:36-2-17. [AMENDED] (E)	311	340:10-3-81. [AMENDED]	1242
330:36-2-17. [AMENDED]	1216	340:10-7-1. [AMENDED]	1242
330:36-2-17. [AMENDED]	2547	340:10-15-1. [AMENDED] (E)	177
330:36-4-2. [AMENDED] (E)	311	340:10-15-1. [AMENDED]	1243
330:36-4-2. [AMENDED]	1216	340:10-19-2. [AMENDED]	1244
330:36-4-2. [AMENDED]	2548	340:10-22-1. [AMENDED]	1244
330:36-4-2.1. [AMENDED] (E)	314	340:10-22-1. [AMENDED] (E)	2808
330:36-4-2.1. [AMENDED]	1219	340:15-1-4. [AMENDED]	815
330:36-4-2.1. [AMENDED]	2551	340:15-1-6. [AMENDED]	816
330:36-4-3. [AMENDED]	2552	340:20-1-5. [AMENDED]	817
330:36-6-3. [AMENDED] (E)	316	340:20-1-10. [AMENDED]	817
330:36-6-3. [AMENDED]	1220	340:20-1-11. [AMENDED]	818
330:36-6-7. [AMENDED] (E)	316	340:20-1-14. [AMENDED]	819
330:36-6-7. [AMENDED]	1221	340:25-1-1. [AMENDED]	1246
330:36-6-7. [AMENDED]	2554	340:25-1-1.1. [AMENDED]	1246
330:36-10-1. [NEW] (E)	1370	340:25-1-1.1. [AMENDED] (E)	3036
330:36-10-2. [RESERVED] (E)	1370	340:25-1-1.2. [AMENDED]	1248
330:36-10-3. [NEW] (E)	1370	340:25-1-2.1. [AMENDED]	1249
330:36-10-4. [RESERVED] (E)	1370	340:25-1-5.1. [AMENDED]	1249
330:36-10-5. [NEW] (E)	1370	340:25-3-1. [AMENDED]	1250
330:36-10-6. [RESERVED] (E)	1370	340:25-3-1.1. [AMENDED]	1251
330:36-10-7. [NEW] (E)	1370	340:25-3-3. [AMENDED]	1251
330:36-10-8. [RESERVED] (E)	1370	340:25-3-5. [AMENDED]	1251
330:36-10-9. [NEW] (E)	1370	340:25-5-66. [AMENDED]	1252
330:36-10-10. [RESERVED] (E)	1370	340:25-5-67. [AMENDED] (E)	3039
330:36-10-11. [NEW] (E)	1371	340:25-5-75. [AMENDED]	1252
330:36-10-12. [RESERVED] (E)	1371	340:25-5-95. [AMENDED]	1252
330:36-10-13. [NEW] (E)	1371	340:25-5-117. [AMENDED]	1252
330:36-10-14. [RESERVED] (E)	1371	340:25-5-123. [AMENDED] (E)	412
330:36-10-15. [NEW] (E)	1371	340:25-5-123. [AMENDED]	1253
340:1-1-18. [AMENDED]	812	340:25-5-124. [AMENDED]	1253
340:2-1-83. [AMENDED]	2195	340:25-5-124.2. [AMENDED]	1254
340:2-3-1. [AMENDED]	2196	340:25-5-124.3. [AMENDED]	1255
340:2-3-2. [AMENDED]	2196	340:25-5-140. [AMENDED]	1255
340:2-3-45. [AMENDED]	2200	340:25-5-168. [AMENDED]	1256
340:2-3-46. [AMENDED]	2207	340:25-5-168. [AMENDED] (E)	3040
340:2-3-47. [AMENDED]	2208	340:25-5-169. [AMENDED] (E)	3042
340:2-3-48. [AMENDED]	2209	340:25-5-170. [AMENDED] (E)	3042
340:2-3-50. [AMENDED]	2209	340:25-5-171. [AMENDED] (E)	413
340:2-3-51. [AMENDED]	2210	340:25-5-171. [AMENDED]	1257
340:2-3-54. [AMENDED]	2211	340:25-5-171. [AMENDED] (E)	3042
340:2-3-64. [AMENDED]	2211	340:25-5-176. [AMENDED]	1258
340:2-3-71. [AMENDED]	2212	340:25-5-176.1. [AMENDED]	1259
340:2-3-72. [AMENDED]	2215	340:25-5-178. [AMENDED]	1259
340:2-3-73. [AMENDED]	2216	340:25-5-198.1. [AMENDED] (E)	3043
340:2-3-74. [AMENDED]	2217	340:25-5-201.1. [AMENDED]	1260
340:2-3-75. [AMENDED]	2219	340:25-5-203.2. [NEW]	1260
340:2-39-1. [AMENDED]	814	340:25-5-212. [AMENDED]	1261
340:10-2-1. [AMENDED] (E)	169	340:25-5-214. [AMENDED]	1262
340:10-2-1. [AMENDED]	1224	340:25-5-265.1. [AMENDED]	1262
340:10-2-4. [AMENDED]	1225	340:25-5-345.2. [NEW]	1262
340:10-2-5. [AMENDED] (E)	170	340:25-5-350.3. [AMENDED]	1263
340:10-2-5. [AMENDED]	1228	340:25-5-350.4. [NEW]	1265
340:10-2-6. [AMENDED] (E)	171	340:25-5-351. [AMENDED] (E)	3044
340:10-2-6. [AMENDED]	1228	340:25-5-352. [NEW]	1266
340:10-2-6.1. [AMENDED] (E)	171	340:40-3-1. [AMENDED]	821
340:10-2-6.1. [AMENDED]	1228	340:40-5-1. [AMENDED]	822
340:10-2-7. [AMENDED] (E)	171	340:40-7-1. [AMENDED]	824
340:10-2-7. [AMENDED]	1229	340:40-7-3. [AMENDED]	825
340:10-2-8. [AMENDED] (E)	767	340:40-7-3.1. [AMENDED]	825
340:10-2-8. [AMENDED]	2220	340:40-7-5. [AMENDED] (E)	178
340:10-3-5. [AMENDED] (E)	174	340:40-7-5. [AMENDED]	826
340:10-3-5. [AMENDED]	1231	340:40-7-6. [AMENDED]	826
340:10-3-40. [AMENDED]	1234	340:40-7-8. [AMENDED]	827
340:10-3-56. [AMENDED]	1235	340:40-7-9. [AMENDED]	830
340:10-3-57. [AMENDED]	1238	340:40-7-10. [AMENDED]	833

Rules Affected Index – *continued*

340:40-7-12. [AMENDED]	833	340:65-1-3. [AMENDED]	1274
340:40-7-13. [AMENDED]	835	340:65-3-1. [AMENDED]	1274
340:40-9-2. [AMENDED]	835	340:65-3-2. [AMENDED]	1276
340:40-10-4. [AMENDED]	836	340:65-3-4. [AMENDED]	1277
340:40-13-1. [AMENDED]	1266	340:65-3-5. [AMENDED]	1278
340:40-13-2. [AMENDED]	1267	340:65-3-6. [AMENDED]	1280
340:40-13-3. [AMENDED]	837	340:65-3-8. [AMENDED]	1281
340:40-13-5. [AMENDED]	837	340:65-5-2. [AMENDED]	1282
340:50-1-1. [AMENDED]	841	340:65-5-3. [AMENDED]	1282
340:50-1-2. [AMENDED]	841	340:70-8-1. [AMENDED]	882
340:50-1-3. [AMENDED]	842	340:75-1-12.2. [AMENDED] (E)	1786
340:50-1-5. [AMENDED]	842	340:75-1-18. [AMENDED]	885
340:50-1-6. [AMENDED]	843	340:75-1-18.1. [AMENDED]	886
340:50-1-9. [AMENDED]	843	340:75-1-18.4. [AMENDED]	887
340:50-3-1. [AMENDED]	844	340:75-1-26.2. [NEW]	1283
340:50-5-1. [AMENDED]	846	340:75-1-44. [AMENDED]	888
340:50-5-3. [AMENDED]	846	340:75-1-152.5. [AMENDED]	891
340:50-5-5. [AMENDED]	847	340:75-6-4. [AMENDED]	891
340:50-5-7. [AMENDED]	847	340:75-6-31. [AMENDED]	892
340:50-5-8.1. [AMENDED]	848	340:75-6-48. [AMENDED]	894
340:50-5-25. [AMENDED]	848	340:75-6-48. [AMENDED] (E)	1787
340:50-5-26. [AMENDED]	848	340:75-6-50. [AMENDED]	897
340:50-5-29. [AMENDED]	849	340:75-6-85. [AMENDED]	898
340:50-5-46. [AMENDED]	849	340:75-6-85.1. [AMENDED]	899
340:50-5-49. [AMENDED]	850	340:75-6-85.6. [AMENDED]	900
340:50-5-64. [AMENDED]	851	340:75-6-88. [AMENDED]	900
340:50-5-68. [AMENDED]	852	340:75-7-2. [AMENDED]	1283
340:50-5-86. [AMENDED]	852	340:75-7-10. [AMENDED]	1284
340:50-5-88. [AMENDED]	853	340:75-7-12. [AMENDED]	1284
340:50-5-90. [AMENDED]	856	340:75-7-14. [AMENDED]	1286
340:50-5-97. [AMENDED]	856	340:75-7-15. [AMENDED]	1286
340:50-7-1. [AMENDED]	856	340:75-7-18. [AMENDED]	1288
340:50-7-2. [AMENDED] (E)	12	340:75-7-24. [AMENDED] (E)	414
340:50-7-2. [AMENDED]	857	340:75-7-24. [AMENDED]	901
340:50-7-3. [AMENDED] (E)	15	340:75-7-37. [AMENDED]	1291
340:50-7-3. [AMENDED]	860	340:75-7-37.1. [AMENDED]	1292
340:50-7-5. [AMENDED]	860	340:75-7-41. [AMENDED]	1293
340:50-7-22. [AMENDED]	861	340:75-7-51. [AMENDED]	1294
340:50-7-29. [AMENDED]	863	340:75-7-52. [AMENDED]	1295
340:50-7-30. [AMENDED]	865	340:75-7-52.1. [AMENDED]	1296
340:50-7-31. [AMENDED]	866	340:75-7-65. [AMENDED]	1296
340:50-9-1. [AMENDED]	869	340:75-7-280. [NEW]	1298
340:50-9-5. [AMENDED]	1270	340:75-8-6. [AMENDED]	902
340:50-11-3. [AMENDED]	872	340:75-8-7. [AMENDED]	904
340:50-11-4. [AMENDED]	873	340:75-8-8. [AMENDED]	905
340:50-11-23. [AMENDED]	873	340:75-8-9. [AMENDED]	905
340:50-11-24. [AMENDED]	874	340:75-11-233.1. [AMENDED]	906
340:50-11-27. [AMENDED]	874	340:75-11-250. [AMENDED]	907
340:50-11-111. [AMENDED]	874	340:75-11-275. [NEW]	908
340:50-11-112. [AMENDED]	874	340:75-11-286. [AMENDED]	1299
340:50-11-113. [AMENDED]	875	340:75-11-289. [AMENDED]	908
340:50-11-114. [AMENDED]	875	340:75-11-300. [AMENDED]	909
340:50-11-115. [AMENDED]	875	340:75-11-320. [AMENDED]	909
340:50-13-3. [AMENDED]	875	340:75-11-321. [AMENDED]	910
340:50-13-4. [AMENDED]	876	340:75-11-330. [AMENDED]	911
340:50-15-1. [AMENDED]	876	340:75-11-350. [AMENDED]	912
340:50-15-2. [AMENDED]	877	340:75-11-360. [AMENDED]	913
340:50-15-3. [AMENDED]	877	340:75-13-10. [AMENDED]	914
340:50-15-4. [AMENDED]	877	340:75-15-5. [AMENDED]	914
340:50-15-5. [AMENDED]	878	340:75-15-7. [AMENDED]	915
340:50-15-6. [AMENDED]	878	340:75-15-41. [AMENDED]	917
340:50-15-25. [AMENDED]	879	340:75-15-43. [AMENDED]	918
340:50-15-26. [AMENDED]	880	340:75-15-82. [AMENDED]	918
340:50-15-27. [AMENDED]	881	340:75-15-83. [AMENDED]	919
340:60-1-3. [AMENDED] (E)	179	340:75-15-84. [AMENDED]	919
340:60-1-3. [AMENDED]	881	340:75-15-87. [AMENDED]	920
340:65-1-2. [AMENDED]	1272	340:75-15-88. [AMENDED]	921

340:75-15-89. [AMENDED]	922	340:110-1-45. [AMENDED] (E)	415
340:75-15-91. [AMENDED]	922	340:110-1-45. [AMENDED]	2239
340:75-15-128.2. [AMENDED] (E)	1790	340:110-1-46. [AMENDED] (E)	415
340:75-15-128.5. [AMENDED] (E)	1791	340:110-1-46. [AMENDED]	2239
340:100-3-4. [AMENDED]	923	340:110-1-47. [AMENDED] (E)	415
340:100-3-5. [AMENDED]	925	340:110-1-47. [AMENDED]	2239
340:100-3-5.1. [AMENDED]	927	340:110-1-47.1. [AMENDED] (E)	415
340:100-3-5.2. [AMENDED]	929	340:110-1-47.1. [AMENDED]	2239
340:100-3-33. [AMENDED]	930	340:110-1-47.2. [AMENDED] (E)	415
340:100-3-35. [AMENDED]	931	340:110-1-47.2. [AMENDED]	2239
340:100-3-38.5. [AMENDED]	932	340:110-1-51. [AMENDED] (E)	415
340:100-3-38.12. [AMENDED]	933	340:110-1-51. [AMENDED]	2239
340:100-3-39. [AMENDED]	934	340:110-1-52. [AMENDED] (E)	415
340:100-5-17. [REVOKED]	940	340:110-1-52. [AMENDED]	2239
340:100-5-21. [REVOKED]	940	340:110-1-54.1. [NEW] (E)	415
340:100-5-22.1. [AMENDED]	940	340:110-1-54.1. [NEW]	2239
340:100-5-26. [AMENDED]	944	340:110-3-3. [AMENDED] (E)	415
340:100-5-53. [AMENDED]	948	340:110-3-3. [AMENDED]	2239
340:100-6-45. [AMENDED]	948	340:110-3-5. [AMENDED] (E)	415
340:100-6-55. [AMENDED]	949	340:110-3-5. [AMENDED]	2239
340:100-17-30. [AMENDED]	950	340:110-3-5.1. [AMENDED] (E)	415
340:105-10-3. [AMENDED]	2222	340:110-3-5.1. [AMENDED]	2239
340:105-10-12. [AMENDED]	2227	340:110-3-6. [AMENDED] (E)	415
340:105-10-13. [AMENDED]	2228	340:110-3-6. [AMENDED]	2239
340:105-10-32. [AMENDED]	2228	340:110-3-7.1. [AMENDED] (E)	415
340:105-10-36. [AMENDED]	2229	340:110-3-7.1. [AMENDED]	2239
340:105-10-37. [AMENDED]	2229	340:110-3-7.1. [AMENDED] (E)	415
340:105-10-38. [AMENDED]	2230	340:110-3-37. [AMENDED]	2239
340:105-10-40. [AMENDED]	2231	340:110-3-39. [AMENDED] (E)	415
340:105-10-50.1. [AMENDED]	2231	340:110-3-39. [AMENDED]	2239
340:105-10-54. [AMENDED]	2233	340:110-3-40. [AMENDED] (E)	415
340:105-10-71. [AMENDED]	2235	340:110-3-40. [AMENDED]	2239
340:105-10-75. [AMENDED]	2235	340:110-3-41. [AMENDED] (E)	415
340:105-10-90.1. [AMENDED]	2236	340:110-3-41. [AMENDED]	2239
340:105-10-96. [AMENDED]	2237	340:110-3-42. [AMENDED] (E)	415
340:105-10-101. [AMENDED]	2238	340:110-3-42. [AMENDED]	2239
340:110-1-4.1. [AMENDED] (E)	415	340:110-3-82. [AMENDED] (E)	415
340:110-1-4.1. [AMENDED]	2239	340:110-3-82. [AMENDED]	2239
340:110-1-5. [AMENDED] (E)	415	340:110-3-85. [AMENDED] (E)	415
340:110-1-5. [AMENDED]	2239	340:110-3-85. [AMENDED]	2239
340:110-1-6. [AMENDED] (E)	415	340:110-3-88. [AMENDED] (E)	415
340:110-1-6. [AMENDED]	2239	340:110-3-88. [AMENDED]	2239
340:110-1-8. [AMENDED] (E)	415	340:110-3-89.1. [AMENDED] (E)	415
340:110-1-8. [AMENDED]	2239	340:110-3-89.1. [AMENDED]	2239
340:110-1-8.1. [AMENDED] (E)	415	340:110-3-146. [AMENDED]	2239
340:110-1-8.1. [AMENDED]	2239	340:110-3-147. [AMENDED]	2239
340:110-1-8.3. [AMENDED] (E)	415	340:110-3-150. [AMENDED]	2239
340:110-1-8.3. [AMENDED]	2239	340:110-3-151. [AMENDED]	2239
340:110-1-9. [AMENDED] (E)	415	340:110-3-152. [AMENDED]	2239
340:110-1-9. [AMENDED]	2239	340:110-3-153. [AMENDED]	2239
340:110-1-9.2. [AMENDED] (E)	415	340:110-3-153.1. [AMENDED]	2239
340:110-1-9.2. [AMENDED]	2239	340:110-3-153.2. [AMENDED]	2239
340:110-1-9.3. [AMENDED] (E)	415	340:110-3-154. [AMENDED]	2239
340:110-1-9.3. [AMENDED]	2239	340:110-3-154.1. [AMENDED]	2239
340:110-1-9.4. [AMENDED] (E)	415	340:110-3-154.2. [AMENDED]	2239
340:110-1-9.4. [AMENDED]	2239	340:110-3-154.3. [AMENDED]	2239
340:110-1-10. [AMENDED] (E)	415	340:110-3-154.5. [AMENDED]	2239
340:110-1-10. [AMENDED]	2239	340:110-3-157. [AMENDED]	2239
340:110-1-11. [AMENDED]	2239	340:110-3-163. [AMENDED]	2239
340:110-1-13. [AMENDED] (E)	415	340:110-3-164. [AMENDED]	2239
340:110-1-13. [AMENDED]	2239	340:110-3-165. [AMENDED]	2239
340:110-1-17. [AMENDED] (E)	415	340:110-3-165.1. [NEW]	2239
340:110-1-17. [AMENDED]	2239	340:110-3-166. [AMENDED]	2239
340:110-1-43.1. [AMENDED] (E)	415	340:110-3-167. [AMENDED]	2239
340:110-1-43.1. [AMENDED]	2239	340:110-3-168. [AMENDED]	2239
340:110-1-44. [AMENDED] (E)	415	340:110-3-169. [AMENDED]	2239
340:110-1-44. [AMENDED]	2239	340:110-3-222. [AMENDED] (E)	415

Rules Affected Index – *continued*

340:110-3-222.	[AMENDED]	2239	365:10-5-129.	[AMENDED]	1566
340:110-3-223.	[AMENDED] (E)	415	365:10-5-129.1.	[AMENDED]	1566
340:110-3-223.	[AMENDED]	2239	365:10-5-134.	[AMENDED]	1569
340:110-3-224.	[AMENDED] (E)	415	365:10-5-143.	[NEW]	1570
340:110-3-224.	[AMENDED]	2239	365:10-5-190.	[REVOKED]	1543
340:110-3-225.	[AMENDED] (E)	415	365:10-5-191.	[REVOKED]	1543
340:110-3-225.	[AMENDED]	2239	365:10-5-192.	[REVOKED]	1543
340:110-3-226.	[AMENDED] (E)	415	365:10-5-193.	[REVOKED]	1543
340:110-3-226.	[AMENDED]	2239	365:10-5-194.	[REVOKED]	1544
340:110-5-4.	[AMENDED] (E)	415	365:10-5-195.	[REVOKED]	1544
340:110-5-4.	[AMENDED]	2239	365:10-27-1.	[NEW]	1544
340:110-5-6.	[AMENDED] (E)	415	365:10-27-2.	[NEW]	1544
340:110-5-6.	[AMENDED]	2239	365:10-27-3.	[NEW]	1544
340:110-5-7.	[AMENDED] (E)	415	365:10-27-4.	[NEW]	1545
340:110-5-7.	[AMENDED]	2239	365:10-27-5.	[NEW]	1545
340:110-5-8.	[AMENDED] (E)	415	365:10-27-6.	[NEW]	1545
340:110-5-8.	[AMENDED]	2239	365:10, App. S.	[REVOKED]	1572
340:110-5-12.	[AMENDED] (E)	415	365:10, App. S.	[NEW]	1572
340:110-5-12.	[AMENDED]	2239	365:10, App. EE.	[REVOKED]	1546
340:110-5-30.	[AMENDED] (E)	415	365:10, App. EE.	[NEW]	1546
340:110-5-30.	[AMENDED]	2239	365:10, App. LL.	[NEW]	1548
340:110-5-57.	[AMENDED] (E)	415	365:10, App. MM.	[NEW]	1550
340:110-5-57.	[AMENDED]	2239	365:15-7-32.	[NEW]	1643
340:110-5-61.1.	[AMENDED] (E)	415	365:15, App. D.	[REVOKED]	1644
340:110-5-61.1.	[AMENDED]	2239	365:15, App. D.	[NEW]	1644
360:1-1-2.	[AMENDED]	1518	365:25-3-1.	[AMENDED]	1645
360:1-1-3.	[AMENDED]	1518	365:25-3-14.	[AMENDED]	1649
360:1-3-8.	[AMENDED]	1519	365:25-3-18.	[AMENDED]	1652
360:1-3-13.	[NEW]	1519	365:25-3-19.	[NEW] (E)	16
360:1-5-1.	[AMENDED]	2669	365:25-3-19.	[NEW]	1653
360:1-5-2.	[AMENDED]	1519	365:25-3-20.	[NEW]	1653
360:1-5-2.	[AMENDED]	2670	365:25-7-40.	[AMENDED]	1655
360:1-5-3.	[AMENDED]	2670	365:25-7-41.	[AMENDED]	1655
360:10-1-2.	[AMENDED]	1520	365:25-7-42.	[AMENDED]	1655
360:10-3-3.5.	[AMENDED]	1522	365:25-7-43.	[AMENDED]	1656
360:10-3-24.1.	[NEW]	1523	365:25-9-3.	[AMENDED]	1657
360:10-3-25.	[AMENDED]	1523	365:25-9-8.	[AMENDED]	1657
360:10-5-16.	[AMENDED]	1523	365:25-11-1.	[AMENDED] (E)	180
360:10-5-20.	[AMENDED]	1524	365:25-11-1.	[AMENDED]	1660
360:10-5-34.	[AMENDED]	1525	365:25-11-2.	[REVOKED] (E)	181
360:10-5-100.	[AMENDED]	1525	365:25-11-2.	[REVOKED]	1660
360:10-9-1.	[AMENDED]	1525	365:25-11-2.1.	[NEW] (E)	181
360:10-9-2.	[AMENDED]	1526	365:25-11-2.1.	[NEW]	1660
360:15-1-14.1.	[AMENDED]	1526	365:25-11-3.	[AMENDED] (E)	181
365:1-1-2.	[AMENDED]	1527	365:25-11-3.	[AMENDED]	1660
365:1-13-1.	[AMENDED]	1529	365:25-11-4.	[REVOKED] (E)	182
365:10-1-13.	[AMENDED]	1530	365:25-11-4.	[REVOKED]	1661
365:10-5-42.	[AMENDED]	1530	365:25-11-4.1.	[NEW] (E)	182
365:10-5-43.	[AMENDED]	1531	365:25-11-4.1.	[NEW]	1661
365:10-5-43.1.	[AMENDED]	1534	365:25-11-5.	[AMENDED] (E)	182
365:10-5-44.	[AMENDED]	1534	365:25-11-5.	[AMENDED]	1662
365:10-5-45.	[AMENDED]	1535	365:25-11-6.	[AMENDED] (E)	183
365:10-5-45.1.	[AMENDED]	1537	365:25-11-6.	[AMENDED]	1662
365:10-5-45.2.	[AMENDED]	1538	365:25-11-7.	[NEW] (E)	184
365:10-5-48.6.	[AMENDED]	1538	365:25-11-7.	[NEW]	1663
365:10-5-53.	[AMENDED]	1540	365:25-11-8.	[NEW] (E)	184
365:10-5-54.	[AMENDED]	1540	365:25-11-8.	[NEW]	1663
365:10-5-55.	[NEW]	1542	365:25-11-9.	[NEW] (E)	184
365:10-5-56.	[NEW]	1543	365:25-11-9.	[NEW]	1663
365:10-5-123.	[AMENDED]	1551	365:25-11-10.	[NEW] (E)	184
365:10-5-127.	[AMENDED]	1553	365:25-11-10.	[NEW]	1663
365:10-5-127.1.	[NEW]	1556	365:25-11-11.	[NEW] (E)	184
365:10-5-128.	[AMENDED]	1558	365:25-13-1.	[REVOKED] (E)	184
365:10-5-128.1.	[AMENDED AND RENUMBERED TO 365:10-5-128.3]	1560	365:25-13-1.	[REVOKED]	1664
365:10-5-128.2.	[NEW]	1562	365:25-13-2.	[REVOKED] (E)	185
365:10-5-128.3.	[NEW]	1564	365:25-13-2.	[REVOKED]	1664
			365:25-13-3.	[REVOKED] (E)	185

365:25-13-3.	[REVOKED]	1664	380:70-3-4.	[AMENDED]	2264
365:25-13-4.	[REVOKED] (E)	185	380:70-5-1.	[AMENDED]	2264
365:25-13-4.	[REVOKED]	1664	380:70-5-3.	[AMENDED]	2265
365:25-13-5.	[REVOKED] (E)	185	390:1-1-4.	[AMENDED]	2556
365:25-13-5.	[REVOKED]	1664	390:1-1-12.	[NEW]	2557
365:25-13-6.	[REVOKED] (E)	185	390:10-1-6.	[AMENDED]	2558
365:25-13-6.	[REVOKED]	1665	390:15-1-19.	[AMENDED]	2559
365:25-13-7.	[REVOKED] (E)	186	390:25-1-8.	[AMENDED]	2560
365:25-13-7.	[REVOKED]	1665	390:25-1-11.	[AMENDED]	2561
365:25-21-1.	[NEW]	1667	390:25-1-13.	[AMENDED]	2561
365:25-21-2.	[NEW]	1667	390:30-1-5.	[AMENDED]	2562
365:25-21-3.	[NEW]	1667	390:30-1-6.	[AMENDED]	2562
365:25-21-4.	[NEW]	1667	390:35-5-1.	[AMENDED]	2563
365:25-21-5.	[NEW]	1667	390:35-5-2.	[AMENDED]	2564
365:25-21-6.	[NEW]	1668	390:35-5-13.	[AMENDED]	2565
365:25, App. U.	[NEW] (E)	189	390:50-1-3.	[AMENDED]	2566
365:25, App. U.	[NEW]	1669	390:55-1-15.	[AMENDED]	2566
365:25, App. V.	[NEW] (E)	193	395:1-1-3.	[AMENDED]	1685
365:25, App. V.	[NEW]	1671	395:10-1-4.	[AMENDED]	1686
365:25, App. W.	[NEW] (E)	197	395:10-1-4.3.	[NEW]	1686
365:25, App. W.	[NEW]	1675	395:10-1-10.	[AMENDED]	1686
375:8-3-34.	[AMENDED]	1676	395:10-1-11.1.	[AMENDED]	1686
375:8-3-35.	[AMENDED]	1676	395:10-1-11.3.	[NEW]	1687
375:8-3-36.	[AMENDED]	1676	395:10-1-16.	[NEW]	1688
375:8-5-5.	[AMENDED]	1676	420:10-1-5.	[AMENDED]	2567
375:8-5-6.	[AMENDED]	1678	420:10-1-14.	[AMENDED]	2569
375:8-7-25.	[AMENDED]	1678	435:1-1-7.	[AMENDED]	2574
375:8-9-1.	[AMENDED]	1678	435:15-11-1.	[AMENDED]	1079
375:9-1-2.	[AMENDED]	1679	435:20-1-1.1.	[AMENDED]	1080
375:9-1-3.	[AMENDED]	1680	435:20-7-1.	[AMENDED]	1081
375:25-1-3.	[AMENDED]	1681	435:50-1-4.	[AMENDED]	1084
375:25-1-5.	[AMENDED]	1681	435:50-3-4.	[AMENDED]	1085
375:25-1-7.	[AMENDED]	1681	435:50-3-5.	[AMENDED]	1085
377:3-1-28.	[AMENDED]	2242	435:50-3-8.	[AMENDED]	1086
377:3-13-43.	[AMENDED]	2244	435:50-3-9.	[AMENDED]	1086
377:5-3-1.	[AMENDED]	2247	435:50-5-1.	[AMENDED]	1086
377:5-3-2.	[AMENDED]	2247	435:50-5-4.	[AMENDED]	1086
377:5-3-4.	[AMENDED]	2247	435:50-7-2.	[AMENDED]	1087
377:5-5-1.	[AMENDED]	2248	435:55-5-3.	[AMENDED]	2577
377:5-5-2.	[AMENDED]	2248	435:60-1-1.	[NEW] (E)	681
377:5-5-3.	[AMENDED]	2249	435:60-1-1.	[NEW]	2578
377:5-5-4.	[AMENDED]	2250	435:60-1-2.	[NEW] (E)	681
377:5-5-5.	[AMENDED]	2250	435:60-1-2.	[NEW]	2578
377:35-1-2.	[AMENDED]	2252	435:60-1-3.	[NEW] (E)	681
377:35-3-7.	[AMENDED]	2252	435:60-1-3.	[NEW]	2579
377:35-3-8.	[AMENDED]	2253	435:60-1-4.	[NEW] (E)	682
377:35-3-10.	[AMENDED]	2254	435:60-1-4.	[NEW]	2579
380:20-1-3.	[AMENDED] (E)	198	435:60-1-5.	[NEW] (E)	682
380:20-1-3.	[AMENDED]	2255	435:60-1-5.	[NEW]	2580
380:20-1-14.	[AMENDED] (E)	199	435:60-3-1.	[NEW] (E)	683
380:20-1-14.	[AMENDED]	2256	435:60-3-1.	[NEW]	2580
380:20-1-15.	[NEW] (E)	200	435:60-3-2.	[NEW] (E)	683
380:20-1-15.	[NEW]	2256	435:60-3-2.	[NEW]	2580
380:25-3-7.	[AMENDED]	2257	435:60-3-3.	[NEW] (E)	683
380:30-1-7.	[AMENDED]	2258	435:60-3-3.	[NEW]	2580
380:30-3-4.	[AMENDED]	2258	435:60-3-4.	[NEW] (E)	683
380:30-3-5.	[AMENDED]	2259	435:60-3-4.	[NEW]	2580
380:40-1-2.	[AMENDED]	2259	435:60-3-5.	[NEW] (E)	683
380:40-1-7.	[AMENDED]	2260	435:60-3-5.	[NEW]	2580
380:40-1-20.	[AMENDED]	2260	435:60-3-6.	[NEW] (E)	683
380:40-1-21.	[AMENDED]	2260	435:60-3-6.	[NEW]	2581
380:40-1-23.	[AMENDED]	2261	435:60-5-1.	[NEW] (E)	683
380:55-1-2.	[AMENDED]	1682	435:60-5-1.	[NEW]	2581
380:55-5-5.	[AMENDED]	1683	435:60-5-2.	[NEW] (E)	684
380:55-13-1.	[AMENDED]	1683	435:60-5-2.	[NEW]	2581
380:55-13-2.	[AMENDED]	1685	435:60-5-3.	[NEW] (E)	684
380:70-1-2.	[AMENDED]	2262	435:60-5-3.	[NEW]	2581

Rules Affected Index – *continued*

435:60-5-4.	[NEW] (E)	684	450:70-6-8.	[AMENDED]	1313
435:60-5-4.	[NEW]	2581	450:70-6-17.	[AMENDED]	1313
435:60-7-1.	[NEW] (E)	684	455:10-1-2.	[AMENDED] (E)	560
435:60-7-1.	[NEW]	2581	455:10-1-2.	[AMENDED]	2691
435:60-7-2.	[NEW] (E)	684	455:10-1-5.	[AMENDED] (E)	561
435:60-7-2.	[NEW]	2581	455:10-1-5.	[AMENDED]	2692
435:60-7-3.	[NEW] (E)	684	455:10-1-7.	[AMENDED] (E)	562
435:60-7-3.	[NEW]	2582	455:10-1-7.	[AMENDED]	2693
435:65-1-1.	[NEW] (E)	200	455:10-1-10.	[AMENDED] (E)	562
435:65-1-1.	[NEW]	2583	455:10-1-10.	[AMENDED]	2693
435:65-1-2.	[NEW] (E)	200	455:10-3-1.1.	[AMENDED] (E)	562
435:65-1-2.	[NEW]	2583	455:10-3-1.1.	[AMENDED]	2693
435:65-1-3.	[NEW] (E)	200	455:10-3-2.	[AMENDED] (E)	562
435:65-1-3.	[NEW]	2583	455:10-3-2.	[AMENDED]	2694
435:65-1-4.	[NEW] (E)	200	455:10-3-3.3.	[NEW] (E)	562
435:65-1-4.	[NEW]	2583	455:10-3-3.3.	[NEW]	2694
435:65-1-5.	[NEW] (E)	201	455:10-3-4.1.	[AMENDED] (E)	563
435:65-1-5.	[NEW]	2584	455:10-3-4.1.	[AMENDED]	2694
435:65-1-6.	[NEW] (E)	201	455:10-3-6.	[AMENDED] (E)	563
435:65-1-6.	[NEW]	2584	455:10-3-6.	[AMENDED]	2694
435:65-1-7.	[NEW] (E)	201	455:10-3-15.	[AMENDED] (E)	563
435:65-1-7.	[NEW]	2584	455:10-3-15.	[AMENDED]	2695
435:65-1-8.	[NEW] (E)	201	455:10-3-17.	[AMENDED] (E)	563
435:65-1-8.	[NEW]	2584	455:10-3-17.	[AMENDED]	2695
450:1-9-1.	[AMENDED]	2670	455:10-7-2.	[AMENDED] (E)	564
450:1-9-5.	[AMENDED]	2670	455:10-7-2.	[AMENDED]	2695
450:15-1-2.	[AMENDED]	2671	455:10-7-4.	[AMENDED] (E)	564
450:15-7-6.	[AMENDED]	2674	455:10-7-4.	[AMENDED]	2695
450:15-7-9.	[AMENDED]	2674	455:10-7-6.	[AMENDED] (E)	564
450:15-7-15.	[AMENDED]	2674	455:10-7-6.	[AMENDED]	2696
450:17-1-2.	[AMENDED]	2676	455:10-9-1.	[AMENDED] (E)	564
450:17-1-6.	[AMENDED]	2680	455:10-9-1.	[AMENDED]	2696
450:17-3-2.	[AMENDED]	2681	455:10-9-2.	[AMENDED] (E)	565
450:17-3-3.	[AMENDED]	2681	455:10-9-2.	[AMENDED]	2696
450:17-3-21.	[AMENDED]	2681	455:10-11-1.	[AMENDED] (E)	566
450:17-3-41.	[AMENDED]	2681	455:10-11-1.	[AMENDED]	2697
450:17-3-61.	[AMENDED]	2682	455:10-11-4.	[AMENDED] (E)	566
450:17-3-62.	[AMENDED]	2682	455:10-11-4.	[AMENDED]	2698
450:17-3-82.	[AMENDED]	2682	455:10-11-14.	[AMENDED] (E)	566
450:17-3-84.	[AMENDED]	2682	455:10-11-14.	[AMENDED]	2698
450:17-3-101.	[AMENDED]	2683	455:10-11-17.	[AMENDED] (E)	567
450:17-3-101.1.	[REVOKED]	2683	455:10-11-17.	[AMENDED]	2698
450:17-3-103.	[AMENDED]	2684	455:10-15-4.	[AMENDED] (E)	567
450:17-3-141.	[AMENDED]	2684	455:10-15-4.	[AMENDED]	2699
450:17-3-191.	[NEW]	2685	455:10-19-1.	[AMENDED] (E)	568
450:17-3-192.	[NEW]	2685	455:10-19-1.	[AMENDED]	2699
450:17-3-193.	[NEW]	2685	455:10-19-35.	[AMENDED] (E)	568
450:17-3-201.	[NEW]	2685	455:10-19-35.	[AMENDED]	2699
450:17-5-95.	[AMENDED]	2686	460:1-28-1.	[NEW]	3007
450:17-5-96.	[REVOKED]	2686	460:10-1-5.	[AMENDED]	3003
450:17-5-97.	[REVOKED]	2686	460:10-10-1.	[NEW]	3004
450:17-5-98.	[REVOKED]	2686	460:10-10-2.	[NEW]	3004
450:17-5-99.	[REVOKED]	2686	460:10-10-3.	[NEW]	3004
450:17-5-100.	[REVOKED]	2687	460:10-10-4.	[NEW]	3004
450:17-7-8.	[AMENDED]	2687	460:10-10-5.	[NEW]	3004
450:17-7-9.	[AMENDED]	2688	460:10-10-6.	[NEW]	3004
450:21-5-2.	[AMENDED]	1301	460:10-10-7.	[NEW]	3005
450:22-1-15.	[AMENDED]	1302	460:10-10-8.	[NEW]	3005
450:30-15-1.	[REVOKED]	2688	460:10-11-1.	[AMENDED]	3005
450:30-15-2.	[REVOKED]	2689	460:10-11-4.	[AMENDED]	3005
450:30-15-3.	[REVOKED]	2689	460:10-17-1.	[AMENDED]	3005
450:70-1-2.	[AMENDED]	1304	460:10-21-2.	[AMENDED]	3005
450:70-3-5.	[AMENDED]	1307	460:10-21-4.	[AMENDED]	3005
450:70-3-8.	[AMENDED]	1310	460:10-25-1.	[AMENDED]	3006
450:70-4-5.	[AMENDED]	1310	460:10-25-3.	[AMENDED]	3006
450:70-4-7.	[AMENDED]	1311	460:10-27-1.	[AMENDED]	3007
450:70-6-7.	[AMENDED]	1312	460:10-28-2.	[NEW]	3007

460:10-28-3.	[NEW]	3007	490:10-13-1.	[AMENDED]	2719
460:10-37-2.	[AMENDED]	3007	490:10-13-2.	[AMENDED]	2720
460:10-37-6.	[AMENDED]	3008	490:10-13-3.	[AMENDED]	2721
465:10-1-7.	[AMENDED]	1316	490:15-1-1.	[AMENDED]	2722
465:10-3-3.	[AMENDED]	1316	490:15-1-3.	[AMENDED]	2722
465:10-7-2.	[AMENDED]	1316	490:15-1-3.1.	[NEW]	2722
465:10-7-3.	[AMENDED]	1316	490:15-1-4.	[AMENDED]	2722
465:15-5-1.	[RENUMBERED]	1317	490:15-3-1.	[AMENDED]	2723
465:15-5-1.1.	[NEW]	1317	490:15-3-2.	[AMENDED]	2723
465:15-5-1.2.	[NEW]	1317	530:10-3-26.	[AMENDED]	2266
465:15-7-1.	[REVOKED]	1317	530:10-3-33.3.	[AMENDED]	2266
465:15-7-2.	[REVOKED]	1317	530:10-3-33.6.	[AMENDED]	2267
485:10-1-2.	[AMENDED]	1089	530:10-7-12.	[AMENDED]	1091
485:10-16-1.	[AMENDED]	1090	530:10-7-24.	[AMENDED]	1092
490:1-1-1.	[AMENDED]	2701	530:10-7-26.	[AMENDED]	1093
490:1-1-2.	[AMENDED]	2701	530:10-9-9.	[AMENDED]	1093
490:1-3-1.	[AMENDED]	2703	530:10-15-40.	[AMENDED]	1094
490:1-3-2.	[AMENDED]	2703	530:10-15-43.	[AMENDED]	1094
490:1-3-3.	[AMENDED]	2703	530:10-17-150.	[REVOKED]	1094
490:1-3-8.	[AMENDED]	2703	530:10-17-151.	[RESERVED]	1094
490:1-5-2.	[AMENDED]	2703	530:10-17-152.	[REVOKED]	1094
490:1-5-2.1.	[AMENDED]	2704	530:10-17-153.	[REVOKED]	1095
490:1-5-3.	[AMENDED]	2704	530:10-17-154.	[RESERVED]	1095
490:1-5-4.	[REVOKED]	2704	530:10-17-155.	[REVOKED]	1095
490:1-5-5.	[REVOKED]	2704	530:10-17-156.	[REVOKED]	1095
490:1-5-6.	[REVOKED]	2704	530:10, App. A.	[REVOKED]	2269
490:1-5-7.	[AMENDED]	2704	530:10, App. A.	[NEW]	2269
490:1-5-7.1.	[AMENDED]	2705	530:15-1-1.	[AMENDED]	1096
490:1-5-8.	[AMENDED]	2705	530:15-1-2.	[AMENDED]	1096
490:1-6-1.	[AMENDED]	2705	530:15-1-7.	[AMENDED]	1097
490:1-7-1.	[AMENDED]	2705	530:15-1-9.	[AMENDED]	1098
490:1-7-2.	[AMENDED]	2706	530:15-3-7.	[AMENDED]	1098
490:1-9-1.	[AMENDED]	2706	530:15-3-9.	[AMENDED]	1098
490:1-9-3.	[AMENDED]	2707	530:15-3-14.	[AMENDED]	1099
490:1-9-4.	[AMENDED]	2707	535:1-5-5.1.	[AMENDED]	2270
490:1-9-5.	[AMENDED]	2707	535:1-7-2.	[AMENDED]	2270
490:10-1-2.1.	[AMENDED]	2708	535:1-7-4.	[AMENDED]	2270
490:10-1-3.	[AMENDED]	2709	535:1-7-5.	[AMENDED]	2271
490:10-1-4.	[AMENDED]	2709	535:1-7-7.	[AMENDED]	2271
490:10-1-5.	[AMENDED]	2710	535:10-3-4.	[AMENDED]	2272
490:10-1-9.	[AMENDED]	2710	535:10-5-1.1.	[AMENDED]	2272
490:10-1-10.	[AMENDED]	2711	535:10-5-1.2.	[AMENDED]	2272
490:10-3-1.	[AMENDED]	2711	535:10-5-3.	[AMENDED]	2273
490:10-3-1.1.	[AMENDED]	2712	535:10-5-4.	[AMENDED]	2273
490:10-3-2.	[AMENDED]	2712	535:10-5-5.	[AMENDED]	2273
490:10-3-3.	[AMENDED]	2712	535:10-5-9.	[AMENDED]	2273
490:10-3-4.	[AMENDED]	2713	535:10-5-13.	[AMENDED]	2274
490:10-3-5.	[AMENDED]	2713	535:10-7-8.	[AMENDED] (E)	417
490:10-5-3.	[AMENDED]	2715	535:10-7-8.	[AMENDED]	2274
490:10-5-5.	[AMENDED]	2716	535:10-11-3.	[AMENDED]	2274
490:10-7-3.	[AMENDED]	2716	535:10-11-5.	[AMENDED]	2274
490:10-8-2.	[AMENDED]	2716	535:15-3-4.1.	[AMENDED]	2275
490:10-8-3.	[AMENDED]	2716	535:15-3-9.	[AMENDED]	2275
490:10-8-4.	[AMENDED]	2717	535:15-3-10.	[AMENDED]	2276
490:10-8-5.	[AMENDED]	2717	535:15-3-13.	[AMENDED]	2276
490:10-8-5.1.	[NEW]	2717	535:15-6-4.	[AMENDED]	2276
490:10-8-6.	[AMENDED]	2717	535:15-6-11.	[AMENDED]	2276
490:10-8-7.	[AMENDED]	2718	535:15-10-2.	[AMENDED]	2277
490:10-8-8.	[AMENDED]	2718	535:15-10-3.	[AMENDED]	2278
490:10-8-9.	[AMENDED]	2718	535:15-10-4.	[AMENDED]	2279
490:10-8-10.	[AMENDED]	2718	535:15-10-5.	[AMENDED]	2280
490:10-8-11.	[AMENDED]	2718	535:15-10-6.	[AMENDED]	2280
490:10-8-12.	[AMENDED]	2718	535:15-10-7.	[AMENDED]	2280
490:10-8-13.	[AMENDED]	2718	535:15-10-8.	[AMENDED]	2280
490:10-8-14.	[AMENDED]	2719	535:15-10-8.1.	[NEW]	2281
490:10-8-16.	[AMENDED]	2719	535:15-10-8.2.	[NEW]	2281
490:10-8-17.	[AMENDED]	2719	535:15-10-9.	[AMENDED]	2281

Rules Affected Index – *continued*

535:15-10-10.	[AMENDED]	2282	535:20-9-4.	[AMENDED]	2307
535:15-10-11.	[AMENDED]	2282	535:20-9-6.	[NEW]	2310
535:15-10-12.	[AMENDED]	2282	535:25-3-4.	[AMENDED]	2310
535:15-10-13.	[AMENDED]	2282	535:25-9-8.	[AMENDED]	2311
535:15-10-14.	[NEW]	2282	550:1-7-2.	[AMENDED]	1318
535:15-10-15.	[NEW]	2283	550:1-7-4.	[AMENDED]	1319
535:15-10-50.	[NEW]	2283	550:10-1-5.	[AMENDED]	1320
535:15-10-51.	[NEW]	2284	550:15-1-2.	[AMENDED]	1321
535:15-10-52.	[NEW]	2286	550:20-1-2.	[AMENDED]	1322
535:15-10-53.	[NEW]	2287	580:10-2-2.	[AMENDED]	2585
535:15-10-54.	[NEW]	2287	580:10-2-4.	[AMENDED]	2585
535:15-10-55.	[NEW]	2290	580:10-5-2.	[AMENDED]	2585
535:15-10-56.	[NEW]	2291	580:10-5-3.	[AMENDED]	2586
535:15-10-57.	[NEW]	2291	580:10-5-6.	[AMENDED]	2586
535:15-10-58.	[NEW]	2291	580:10-5-10.	[NEW]	2587
535:15-10-59.	[NEW]	2291	580:10-7-3.	[AMENDED]	2587
535:15-10-60.	[NEW]	2292	580:10-7-5.	[NEW]	2588
535:15-10-61.	[AMENDED]	2292	580:15-2-2.	[AMENDED] (E)	419
535:15-10-62.	[NEW]	2292	580:15-2-2.	[AMENDED]	2588
535:15-10-63.	[NEW]	2293	580:15-4-2.	[AMENDED]	2591
535:15-10-64.	[NEW]	2293	580:15-4-5.	[AMENDED] (E)	421
535:15-10-65.	[NEW]	2293	580:15-4-5.	[AMENDED]	2591
535:15-10-66.	[NEW]	2294	580:15-4-6.	[AMENDED] (E)	422
535:15-10-67.	[NEW]	2295	580:15-4-6.	[AMENDED]	2592
535:15, App. A.	[NEW]	2296	580:15-4-7.	[AMENDED] (E)	424
535:20-3-1.	[REVOKED]	2297	580:15-4-7.	[AMENDED]	2593
535:20-3-1.1.	[NEW]	2297	580:15-4-11.	[AMENDED] (E)	424
535:20-3-1.2.	[RESERVED]	2297	580:15-4-11.	[AMENDED]	2594
535:20-3-2.	[AMENDED]	2297	580:15-4-14.	[AMENDED]	2595
535:20-3-3.	[AMENDED]	2298	580:15-6-6.	[AMENDED] (E)	425
535:20-3-4.	[AMENDED]	2298	580:15-6-6.	[AMENDED]	2595
535:20-3-5.	[AMENDED]	2298	580:25-3-2.	[AMENDED]	2599
535:20-3-6.	[AMENDED]	2298	580:25-5-1.	[AMENDED]	2601
535:20-3-6.1.	[NEW]	2298	580:25-9-1.	[AMENDED]	2603
535:20-3-6.2.	[NEW]	2299	580:25-11-2.	[AMENDED]	2605
535:20-3-6.3.	[NEW]	2299	580:65-7-5.	[AMENDED]	2606
535:20-3-6.4.	[NEW]	2299	580:65-7-6.	[AMENDED]	2606
535:20-3-6.5.	[NEW]	2299	590:1-1-7.	[REVOKED] (E)	120
535:20-3-6.6.	[NEW]	2299	590:1-1-7.	[REVOKED]	951
535:20-3-6.7.	[NEW]	2299	590:1-3-1.	[AMENDED]	951
535:20-3-6.8.	[NEW]	2300	590:1-3-2.	[AMENDED]	952
535:20-3-6.9.	[NEW]	2300	590:10-2-1.	[NEW] (E)	769
535:20-3-6.10.	[NEW]	2300	590:10-3-9.	[AMENDED]	953
535:20-3-6.11.	[NEW]	2300	590:10-3-14.	[NEW] (E)	121
535:20-3-9.	[NEW]	2300	590:10-3-14.	[NEW]	954
535:20-5-1.	[AMENDED]	2300	590:10-7-13.	[AMENDED]	954
535:20-5-1.1.	[NEW]	2300	590:10-7-18.	[AMENDED] (E)	121
535:20-5-2.	[AMENDED]	2301	590:10-7-18.	[AMENDED]	955
535:20-5-3.	[AMENDED]	2301	590:10-19-3.	[AMENDED]	955
535:20-5-4.	[AMENDED]	2301	590:15-1-10.	[AMENDED]	956
535:20-5-5.	[AMENDED]	2301	595:10-1-1.	[AMENDED]	2724
535:20-5-6.	[AMENDED]	2301	595:10-1-2.	[AMENDED]	2724
535:20-5-6.1.	[NEW]	2302	595:10-1-3.	[AMENDED]	2724
535:20-5-6.2.	[NEW]	2302	595:10-1-5.	[AMENDED]	2727
535:20-5-6.3.	[NEW]	2302	595:10-1-7.	[REVOKED]	2729
535:20-5-6.4.	[NEW]	2302	595:10-1-10.	[AMENDED]	2729
535:20-5-6.5.	[NEW]	2302	595:10-1-12.	[AMENDED]	2730
535:20-5-6.6.	[NEW]	2302	595:10-1-18.	[AMENDED]	2730
535:20-5-6.7.	[NEW]	2302	595:10-1-19.	[AMENDED]	2731
535:20-5-6.8.	[NEW]	2303	595:10-1-51.	[AMENDED]	2731
535:20-5-6.9.	[NEW]	2303	595:10-1-52.	[AMENDED]	2733
535:20-5-6.10.	[NEW]	2303	595:10-1-56.	[AMENDED]	2734
535:20-5-6.11.	[NEW]	2303	595:10-1-58.	[AMENDED]	2734
535:20-5-9.	[NEW]	2303	595:10-3-3.	[AMENDED]	2734
535:20-7-7.7.	[AMENDED] (E)	418	595:10-3-4.	[AMENDED]	2735
535:20-7-7.7.	[AMENDED]	2303	595:10-3-5.	[AMENDED]	2735
535:20-9-3.	[AMENDED]	2304	595:10-3-6.	[AMENDED]	2735

595:10-3-7. [AMENDED]	2737	595:11-5-16. [NEW]	2767
595:10-3-8. [REVOKED]	2738	595:11-5-17. [NEW]	2767
595:10-3-9. [AMENDED]	2738	595:11-5-18. [NEW]	2767
595:10-5-1. [AMENDED]	2742	595:11-7-1. [NEW]	2767
595:10-5-31. [NEW]	2742	595:11-7-2. [NEW]	2767
595:10-5-32. [NEW]	2742	595:11-7-3. [NEW]	2768
595:10-5-33. [NEW]	2742	595:11-7-4. [NEW]	2769
595:10-5-34. [NEW]	2742	595:11-7-5. [NEW]	2769
595:10-5-35. [NEW]	2742	595:11-7-6. [NEW]	2769
595:10-5-36. [NEW]	2742	595:11-7-7. [NEW]	2769
595:10-5-37. [NEW]	2742	595:11-7-8. [NEW]	2769
595:10-5-38. [NEW]	2742	595:11-7-9. [NEW]	2770
595:10-9-1. [REVOKED]	2742	595:11-7-10. [NEW]	2770
595:10-9-2. [REVOKED]	2742	595:11-7-11. [NEW]	2771
595:10-9-3. [REVOKED]	2743	595:11-7-12. [NEW]	2771
595:10-9-4. [REVOKED]	2743	595:11-7-13. [NEW]	2771
595:10-9-5. [REVOKED]	2744	595:11-7-14. [NEW]	2772
595:10-9-6. [REVOKED]	2745	595:11-7-15. [NEW]	2772
595:10-9-7. [REVOKED]	2746	595:11-7-16. [NEW]	2772
595:10-9-8. [REVOKED]	2746	595:11-9-1. [NEW]	2773
595:10-9-9. [REVOKED]	2746	595:11-9-2. [NEW]	2773
595:10-9-10. [REVOKED]	2746	595:11-9-3. [NEW]	2773
595:10-9-11. [REVOKED]	2746	595:11-9-4. [NEW]	2773
595:10-9-12. [REVOKED]	2747	595:11-9-5. [NEW]	2774
595:10-9-13. [REVOKED]	2747	595:11-9-6. [NEW]	2774
595:10-9-14. [REVOKED]	2748	595:11-9-7. [NEW]	2774
595:10-9-15. [REVOKED]	2748	595:11-9-8. [NEW]	2774
595:10-9-16. [REVOKED]	2749	595:11-9-9. [NEW]	2774
595:10-9-17. [REVOKED]	2749	595:11-9-10. [NEW]	2774
595:10-9-18. [REVOKED]	2749	595:11-9-11. [NEW]	2775
595:11-1-1. [NEW]	2750	595:25-1-2. [AMENDED]	2775
595:11-1-11. [NEW]	2750	595:25-3-4. [AMENDED]	2777
595:11-1-12. [NEW]	2750	595:25-5-3. [AMENDED]	2777
595:11-1-13. [NEW]	2751	595:25-5-4. [AMENDED]	2778
595:11-1-14. [NEW]	2751	595:25-9-1. [AMENDED]	2779
595:11-1-15. [NEW]	2751	595:25-11-2. [AMENDED]	2780
595:11-1-16. [NEW]	2752	595:30-3-3. [AMENDED]	2781
595:11-1-21. [NEW]	2752	595:30-3-4. [AMENDED]	2781
595:11-1-31. [NEW]	2753	595:30-3-5. [AMENDED]	2782
595:11-1-41. [NEW]	2753	595:30-3-7. [AMENDED]	2782
595:11-1-51. [NEW]	2754	595:30-3-8. [AMENDED]	2782
595:11-1-61. [NEW]	2755	595:30-3-13. [AMENDED]	2783
595:11-1-62. [NEW]	2755	595:30-3-16. [AMENDED]	2784
595:11-3-1. [NEW]	2755	595:30-3-17. [AMENDED]	2784
595:11-3-2. [NEW]	2755	595:30-3-17.1. [AMENDED]	2786
595:11-3-3. [NEW]	2755	595:30-3-19. [AMENDED]	2787
595:11-3-4. [NEW]	2756	595:30-3-21. [AMENDED]	2788
595:11-3-5. [NEW]	2756	595:30-3-22. [AMENDED]	2788
595:11-3-6. [NEW]	2757	595:30-5-2. [AMENDED]	2789
595:11-3-7. [NEW]	2758	595:30-9-1. [AMENDED]	2789
595:11-3-8. [NEW]	2758	595:30, App. A. [REVOKED]	2790
595:11-3-9. [NEW]	2760	595:30, App. B. [REVOKED]	2791
595:11-5-1. [NEW]	2760	595:40-1-1. [AMENDED]	2792
595:11-5-2. [NEW]	2760	595:40-1-2. [AMENDED]	2792
595:11-5-3. [NEW]	2760	595:40-1-3. [AMENDED]	2792
595:11-5-4. [NEW]	2761	595:40-1-4. [AMENDED]	2793
595:11-5-5. [NEW]	2762	595:40-1-9. [AMENDED]	2794
595:11-5-6. [NEW]	2763	595:40-1-11. [AMENDED]	2796
595:11-5-7. [NEW]	2763	595:40-1-13. [AMENDED]	2797
595:11-5-8. [NEW]	2764	595:40-1-15. [AMENDED]	2797
595:11-5-9. [NEW]	2764	600:10-1-4. [AMENDED]	2311
595:11-5-10. [NEW]	2764	600:10-1-6. [AMENDED]	2311
595:11-5-11. [NEW]	2764	600:10-1-16. [AMENDED]	2312
595:11-5-12. [NEW]	2765	605:10-3-1. [AMENDED]	2608
595:11-5-13. [NEW]	2765	605:10-3-5. [AMENDED] (E)	428
595:11-5-14. [NEW]	2766	605:10-3-5. [AMENDED]	2609
595:11-5-15. [NEW]	2766	605:10-3-6. [AMENDED]	2610

Rules Affected Index – *continued*

605:10-5-1. [AMENDED] (E)	429	630:10-1-4. [REVOKED]	2317
605:10-5-1. [AMENDED]	2611	630:10-1-5. [AMENDED]	2317
605:10-5-2. [AMENDED]	2613	630:10-1-7. [AMENDED]	2318
605:10-5-3. [AMENDED]	2615	630:10-2-2. [AMENDED]	2318
605:10-7-2. [AMENDED]	2615	630:10-2-4. [AMENDED]	2319
605:10-7-9. [AMENDED]	2618	630:15-1-14. [AMENDED]	2320
605:10-7-10. [AMENDED]	2619	650:18-1-1. [NEW] (E)	122
605:10-13-1. [AMENDED]	2620	650:18-1-1. [NEW]	2799
605:10-15-4. [AMENDED]	2622	650:18-1-2. [NEW] (E)	123
610:1-3-1. [AMENDED]	1323	650:18-1-2. [NEW]	2799
610:1-3-2. [AMENDED]	1323	650:18-1-3. [NEW] (E)	123
610:1-3-3. [AMENDED]	1324	650:18-1-3. [NEW]	2799
610:1-3-6. [AMENDED]	1325	650:18-1-4. [NEW] (E)	123
610:25-23-2. [AMENDED]	1325	650:18-1-4. [NEW]	2800
610:25-23-5. [AMENDED] (E)	202	650:18-1-5. [NEW] (E)	123
610:25-23-5. [AMENDED]	1326	650:18-1-5. [NEW]	2800
610:25-23-6. [AMENDED] (E)	202	650:18-1-6. [NEW] (E)	123
610:25-23-6. [AMENDED]	1327	650:18-1-6. [NEW]	2800
610:25-27-3. [AMENDED]	1328	650:18-1-7. [NEW] (E)	123
610:25-27-5. [AMENDED]	1328	650:18-1-7. [NEW]	2800
610:25-27-6. [AMENDED]	1328	650:18-1-8. [NEW] (E)	123
610:25-27-7. [AMENDED]	1329	650:18-1-8. [NEW]	2800
610:25-27-9. [AMENDED]	1329	650:18-1-9. [NEW] (E)	123
610:25-31-2. [AMENDED]	1330	650:18-1-9. [NEW]	2800
610:25-31-4. [AMENDED]	1330	650:18-1-10. [NEW] (E)	124
610:25-31-5. [NEW]	1330	650:18-1-10. [NEW]	2801
610:25-35-1. [REVOKED]	1331	650:18-1-11. [NEW] (E)	124
610:25-35-2. [REVOKED]	1331	650:18-1-11. [NEW]	2801
610:25-35-3. [REVOKED]	1332	650:18-1-12. [NEW] (E)	124
610:25-35-4. [REVOKED]	1332	650:18-1-12. [NEW]	2801
610:25-35-5. [REVOKED]	1332	650:18-1-13. [NEW] (E)	124
610:25-35-6. [REVOKED]	1332	650:18-1-13. [NEW]	2801
610:25-35-7. [REVOKED]	1333	650:18-1-14. [NEW] (E)	125
612:3-5-1. [AMENDED]	1689	650:18-1-14. [NEW]	2801
612:3-5-12. [AMENDED]	1689	650:18-1-15. [NEW] (E)	125
612:3-5-13. [AMENDED]	1689	650:18-1-15. [NEW]	2801
612:10-1-2. [AMENDED]	1691	695:10-1-5. [AMENDED]	1334
612:10-7-4. [AMENDED]	1695	695:10-3-33. [AMENDED]	1334
612:10-7-50. [AMENDED]	1697	695:10-5-4. [AMENDED]	1334
612:10-7-62. [AMENDED]	1699	710:1-3-6. [AMENDED]	2320
612:10-7-88. [AMENDED]	1700	710:1-3-73. [AMENDED]	2321
612:10-7-131. [AMENDED]	1700	710:1-5-10. [AMENDED]	2321
612:10-7-152. [AMENDED]	1701	710:1-5-27. [AMENDED]	2322
612:10-7-219. [AMENDED]	1701	710:1-5-37. [AMENDED]	2322
612:10-7-220. [AMENDED]	1701	710:1-5-38. [AMENDED]	2322
612:10-7-233. [AMENDED]	1703	710:1-9-1. [NEW] (E)	17
630:3-1-1. [AMENDED]	2313	710:1-9-2. [NEW] (E)	17
630:3-1-2. [AMENDED]	2314	710:1-9-3. [NEW] (E)	17
630:3-1-3. [AMENDED]	2314	710:1-9-4. [NEW] (E)	18
630:3-1-4. [AMENDED]	2314	710:1-9-5. [NEW] (E)	18
630:3-1-5. [AMENDED]	2314	710:1-9-6. [NEW] (E)	18
630:3-1-6. [REVOKED]	2314	710:1-9-7. [NEW] (E)	18
630:3-1-7. [AMENDED]	2314	710:1-9-8. [NEW] (E)	18
630:3-1-8. [REVOKED]	2314	710:1-9-9. [NEW] (E)	18
630:3-1-9. [AMENDED]	2314	710:1-9-10. [NEW] (E)	19
630:3-1-10. [AMENDED]	2314	710:10-4-8. [AMENDED]	2324
630:3-1-11. [REVOKED]	2315	710:10-4-9. [AMENDED]	2325
630:3-1-12. [REVOKED]	2315	710:10-7-6. [AMENDED]	2325
630:3-1-13. [AMENDED]	2315	710:10-9-22. [AMENDED]	2325
630:3-1-14. [REVOKED]	2315	710:10-14-1. [AMENDED]	2326
630:3-1-15. [REVOKED]	2315	710:10-15-2. [AMENDED]	2327
630:3-1-16. [AMENDED]	2315	710:20-2-20. [AMENDED]	2327
630:3-1-17. [AMENDED]	2315	710:22-5-10. [NEW] (E)	267
630:3-1-18. [AMENDED]	2316	710:22-5-10. [NEW]	2328
630:3-1-19. [REVOKED]	2316	710:22-7-14. [NEW]	2329
630:3-1-20. [REVOKED]	2316	710:45-9-60. [AMENDED]	2330
630:3-1-21. [AMENDED]	2316	710:50-9-8. [AMENDED]	2331

710:50-15-34. [NEW]	2331	710:95-5-9. [AMENDED]	2378
710:50-15-81. [AMENDED]	2331	712:10-5-1. [AMENDED]	1335
710:50-15-86. [AMENDED]	2332	712:10-5-2. [AMENDED]	1342
710:50-15-86.1. [AMENDED]	2333	712:10-5-3. [AMENDED]	1343
710:50-15-87. [AMENDED]	2334	712:10-5-4. [AMENDED]	1346
710:50-15-87.1. [AMENDED]	2335	712:10-7-1. [AMENDED]	1348
710:50-15-95. [AMENDED]	2336	712:10, App. A. [REVOKED]	3048
710:50-15-98. [AMENDED]	2336	712:10, App. A. [NEW]	3048
710:50-15-100. [AMENDED]	2337	715:10-11-7. [AMENDED] (E)	319
710:50-15-103. [AMENDED]	2338	715:10-11-7. [AMENDED]	2379
710:50-15-108. [AMENDED]	2338	715:10-15-26. [AMENDED] (E)	320
710:50-15-109. [NEW]	2339	715:10-15-26. [AMENDED]	2380
710:50-17-51. [AMENDED]	2341	730:30-5-1. [AMENDED] (E)	19
710:50-17-52. [NEW]	2343	730:30-5-1. [AMENDED]	1099
710:60-3-14. [AMENDED]	2345	730:35-5-3. [AMENDED]	1704
710:60-3-24. [AMENDED]	2345	730:35-5-4. [AMENDED]	1706
710:60-3-25. [NEW]	2345	730:35-5-6. [AMENDED]	1707
710:60-3-54. [AMENDED]	2346	730:35-5-8. [AMENDED]	1708
710:60-3-56. [AMENDED]	2346	730:35-5-12. [AMENDED]	1708
710:60-3-70. [AMENDED]	2347	730:35-5-13. [AMENDED]	1711
710:60-3-99. [AMENDED]	2347	730:35-5-16. [AMENDED]	1711
710:60-3-111. [AMENDED]	2348	730:35-5-17. [NEW]	1711
710:60-3-115. [AMENDED]	2349	735:10-1-7. [AMENDED]	1349
710:60-3-140. [AMENDED]	2349	735:80-7-8. [AMENDED]	3054
710:60-3-141. [AMENDED]	2349	775:10-3-10.1. [NEW]	958
710:60-3-142. [AMENDED]	2350	775:10-3-12. [AMENDED]	958
710:60-5-2. [AMENDED]	2350	775:10-7-9.1. [AMENDED]	958
710:60-5-6. [AMENDED]	2351	775:15-1-2. [AMENDED]	959
710:60-5-53. [AMENDED]	2351	775:25-1-4. [AMENDED]	960
710:60-5-61. [NEW]	2352	775:26-1-1. [AMENDED]	961
710:60-5-73. [AMENDED]	2352	780:10-3-2. [AMENDED]	2385
710:60-7-4. [AMENDED]	2352	780:10-3-3. [AMENDED]	2385
710:60-9-2. [AMENDED]	2352	780:10-3-4. [AMENDED]	2386
710:60-9-52. [AMENDED]	2353	780:10-3-8. [AMENDED]	2387
710:60-9-72. [AMENDED]	2353	780:10-5-4. [AMENDED]	2387
710:60-9-134. [AMENDED]	2353	780:10-7-1. [AMENDED]	2388
710:65-1-7. [AMENDED]	2355	780:10-7-3. [AMENDED]	2389
710:65-3-4. [AMENDED]	2356	780:15-3-2. [AMENDED]	2391
710:65-7-13. [AMENDED]	2357	780:15-3-3. [AMENDED]	2396
710:65-7-15. [AMENDED]	2358	780:15-3-7. [AMENDED]	2396
710:65-7-20. [NEW]	2359	780:20-3-2. [AMENDED]	2399
710:65-9-1. [AMENDED]	2359	780:20-3-5. [AMENDED]	2405
710:65-13-51. [AMENDED]	2360	785:5-1-6. [AMENDED]	1712
710:65-13-158. [NEW]	2362	785:5-1-10. [AMENDED]	1713
710:65-13-170. [AMENDED]	2362	785:5-1-11. [AMENDED]	1713
710:65-13-173. [AMENDED]	2363	785:35-1-4. [AMENDED]	1714
710:65-13-177. [NEW]	2366	785:35-1-5. [AMENDED]	1715
710:65-13-210. [AMENDED]	2367	785:50-7-5. [AMENDED]	1716
710:65-13-343. [AMENDED]	2368	785:50-7-7. [AMENDED]	1722
710:65-13-345. [AMENDED]	2368	785:50-9-9. [AMENDED]	1723
710:65-13-357. [NEW]	2369	785:50-9-38. [AMENDED]	1725
710:65-13-358. [NEW]	2369	785:50-9-60. [AMENDED]	1726
710:65-13-359. [NEW]	2369	785:50-9-61. [AMENDED]	1729
710:65-13-360. [NEW]	2369	785:50-13-1. [NEW] (E)	1371
710:65-13-650. [AMENDED]	2370	785:50-13-1. [NEW]	1732
710:65-18-3. [AMENDED]	2370	785:50-13-2. [NEW] (E)	1371
710:65-19-11. [AMENDED]	2371	785:50-13-2. [NEW]	1732
710:65-19-44. [AMENDED]	2371	785:50-13-3. [NEW] (E)	1372
710:65-19-56. [AMENDED]	2372	785:50-13-3. [NEW]	1732
710:65-19-114. [AMENDED]	2373	785:50-13-4. [NEW] (E)	1372
710:70-2-11. [AMENDED]	2374	785:50-13-4. [NEW]	1732
710:70-2-12. [REVOKED]	2374	785:50-13-5. [NEW] (E)	1372
710:70-2-13. [REVOKED]	2375	785:50-13-5. [NEW]	1732
710:70-5-12. [AMENDED]	2376	785:50-13-6. [NEW] (E)	1372
710:70-5-13. [AMENDED]	2376	785:50-13-6. [NEW]	1732
710:90-1-6. [AMENDED]	2377	785:50-13-7. [NEW]	1732
710:90-3-10. [AMENDED]	2377	785:50-13-8. [NEW]	1733

Rules Affected Index – *continued*

785:50-13-9. [NEW]	1733	800:25-7-48. [NEW]	2644
785:50-13-10. [NEW]	1733	800:25-7-51. [AMENDED]	2644
800:1-15-1. [AMENDED]	2623	800:25-7-54. [AMENDED]	2644
800:1-15-2. [AMENDED]	2623	800:25-7-56. [AMENDED]	2645
800:1-15-3. [AMENDED]	2624	800:25-7-57. [AMENDED]	2645
800:1-19-1. [NEW]	2625	800:25-7-62. [AMENDED]	2645
800:1-19-2. [NEW]	2625	800:25-7-64. [AMENDED]	2645
800:10-1-4. [AMENDED]	2626	800:25-7-66. [NEW]	2646
800:10-1-5. [AMENDED]	2627	800:25-7-67. [NEW]	2646
800:10-3-5. [AMENDED] (E)	203	800:25-7-75. [AMENDED]	2646
800:10-3-5. [AMENDED]	2628	800:25-7-83. [AMENDED]	2647
800:10-5-1.1. [NEW]	2632	800:25-7-88. [AMENDED]	2647
800:10-5-2. [AMENDED]	2632	800:25-7-92.1. [NEW]	2647
800:10-5-3. [AMENDED]	2634	800:25-7-92.2. [NEW] (E)	431
800:15-7-4. [AMENDED]	2635	800:25-7-92.2. [NEW]	2648
800:15-9-3. [AMENDED]	2635	800:25-7-94. [AMENDED]	2648
800:15-13-1. [NEW] (E)	2999	800:25-7-94.1. [AMENDED]	2649
800:15-13-2. [NEW] (E)	2999	800:25-7-100. [AMENDED]	2649
800:20-1-2. [AMENDED]	2637	800:25-7-101. [AMENDED]	2649
800:20-4-1. [NEW]	2638	800:25-7-111. [AMENDED]	2650
800:20-4-2. [NEW]	2638	800:25-7-112. [REVOKED]	2650
800:20-4-3. [NEW]	2638	800:25-7-119. [REVOKED]	2651
800:20-4-4. [NEW]	2638	800:25-7-131.1. [AMENDED]	2651
800:25-1-3. [AMENDED]	2639	800:25-7-132.1. [NEW] (E)	207
800:25-1-4. [AMENDED]	2640	800:25-7-132.1. [NEW]	2651
800:25-1-5. [AMENDED]	2640	800:25-7-134. [AMENDED]	2652
800:25-5-49. [AMENDED]	2640	800:25-7-137. [AMENDED]	2652
800:25-5-106. [AMENDED]	2640	800:25-7-151. [AMENDED]	2652
800:25-7-3. [AMENDED]	2640	800:25-9-2. [AMENDED]	2653
800:25-7-12. [AMENDED]	2641	800:25-9-3. [AMENDED]	2653
800:25-7-16. [AMENDED]	2641	800:25-9-4. [AMENDED]	2653
800:25-7-18. [AMENDED]	2641	800:25-9-5. [AMENDED]	2653
800:25-7-27. [AMENDED]	2642	800:25-9-11. [AMENDED]	2654
800:25-7-28. [AMENDED]	2642	800:25-9-12. [AMENDED]	2654
800:25-7-29. [AMENDED]	2642	800:25-25-3. [AMENDED]	2655
800:25-7-30. [AMENDED]	2642	800:30-1-4. [AMENDED]	2656
800:25-7-31. [AMENDED]	2642	800:30-1-5. [AMENDED]	2658
800:25-7-32. [AMENDED]	2643	800:30-1-7. [AMENDED]	2658
800:25-7-33. [AMENDED]	2643	800:30-3-2. [AMENDED]	2659
800:25-7-47. [NEW]	2644	800:30-3-3. [AMENDED]	2660

Agency/Title Index

[Assigned as of 9-1-09]

Agency	Title	Agency	Title
Oklahoma ABSTRACTORS Board	5	Oklahoma FUNERAL Board (<i>Formerly</i> : Oklahoma State Board of	
Oklahoma ACCOUNTANCY Board	10	EMBALMERS and Funeral Directors)	235
State ACCREDITING Agency	15	Oklahoma Department of EMERGENCY Management	
AD Valorem Task Force (<i>abolished 7-1-93</i>)	20	(<i>Formerly</i> : Department of CIVIL Emergency Management) -	
Oklahoma AERONAUTICS Commission	25	<i>See</i> Title 145	
Board of Regents for the Oklahoma AGRICULTURAL and Mechanical		Oklahoma EMPLOYMENT Security Commission	240
Colleges	30	Oklahoma ENERGY Resources Board	243
Oklahoma Department of AGRICULTURE , Food, and Forestry	35	State Board of Licensure for Professional ENGINEERS and Land	
Oklahoma Board of Licensed ALCOHOL and Drug Counselors	38	Surveyors (<i>Formerly</i> : State Board of Registration for Professional	
Board of Tests for ALCOHOL and Drug Influence	40	ENGINEERS and Land Surveyors)	245
ALCOHOLIC Beverage Laws Enforcement Commission	45	Board of Trustees for the ENID Higher	
ANATOMICAL Board of the State of Oklahoma	50	Education Program	250
Board of Governors of the Licensed ARCHITECTS , Landscape		Department of ENVIRONMENTAL Quality	252
Architects and Interior Designers of Oklahoma	55	State Board of EQUALIZATION	255
ARCHIVES and Records Commission	60	ETHICS Commission (<i>Title revoked</i>)	257
Board of Trustees for the ARDMORE Higher		ETHICS Commission	258
Education Program	65	Office of State FINANCE	260
Oklahoma ARTS Council	70	State FIRE Marshal Commission	265
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma		Oklahoma Council on FIREFIGHTER Training	268
Professional BOXING Commission) - <i>See</i> Title 92		Oklahoma FIREFIGHTERS Pension and Retirement System	270
ATTORNEY General	75	[RESERVED]	275
State AUDITOR and Inspector	80	State Board of Registration for FORESTERS	280
State BANKING Department	85	FOSTER Care Review Advisory Board	285
Oklahoma State Employees BENEFITS Council	87	Oklahoma FUNERAL Board (<i>Formerly</i> : Oklahoma State Board of	
Council of BOND Oversight	90	Embalmers and Funeral Directors) - <i>See</i> Title 235	
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma		Oklahoma FUTURES	290
Professional BOXING Commission)	92	GOVERNOR	295
State BURIAL Board (<i>abolished 7-1-92</i>)	95	GRAND River Dam Authority	300
[RESERVED]	100	Group Self-Insurance Association GUARANTY Fund Board	302
Oklahoma CAPITAL Investment Board	105	Individual Self-Insured GUARANTY Fund Board	303
Oklahoma CAPITOL Improvement Authority	110	STATE Use Committee (<i>Formerly</i> : Committee on Purchases of Products	
State CAPITOL Preservation Commission	115	and Services of the Severely HANDICAPPED)	304
CAPITOL-MEDICAL Center Improvement and Zoning		Office of DISABILITY Concerns (<i>Formerly</i> : Office of	
Commission	120	HANDICAPPED Concerns)	305
Oklahoma Department of CAREER and Technology Education		Oklahoma State Department of HEALTH	310
(<i>Formerly</i> : Oklahoma Department of VOCATIONAL and		Oklahoma Basic HEALTH Benefits Board (<i>abolished 11-1-97</i>)	315
Technical Education) - <i>See</i> Title 780		Oklahoma HEALTH Care Authority	317
Board of Regents of CARL Albert State College	125	HIGHWAY Construction Materials Technician Certification	
Department of CENTRAL Services (<i>Formerly</i> : Office of PUBLIC		Board	318
Affairs) - <i>See</i> Title 580		Oklahoma HISTORICAL Society	320
CEREBRAL Palsy Commission	130	Oklahoma HORSE Racing Commission	325
Commission on CHILDREN and Youth	135	Oklahoma HOUSING Finance Agency	330
Board of CHIROPRACTIC Examiners	140	Oklahoma HUMAN Rights Commission	335
Oklahoma Department of EMERGENCY Management		Department of HUMAN Services	340
(<i>Formerly</i> : Department of CIVIL Emergency Management)	145	Committee for INCENTIVE Awards for State Employees	345
Oklahoma Department of COMMERCE	150	Oklahoma INDIAN Affairs Commission	350
COMMUNITY Hospitals Authority	152	Oklahoma INDIGENT Defense System	352
COMPSOURCE Oklahoma (<i>Formerly</i> : State INSURANCE		Oklahoma INDUSTRIAL Finance Authority	355
Fund) - <i>See</i> Title 370		INJURY Review Board	357
Oklahoma CONSERVATION Commission	155	Oklahoma State and Education Employees Group INSURANCE	
CONSTRUCTION Industries Board	158	Board	360
Department of CONSUMER Credit	160	INSURANCE Department	365
CORPORATION Commission	165	COMPSOURCE Oklahoma	
Department of CORRECTIONS	170	(<i>Formerly</i> : State INSURANCE Fund)	370
State Board of COSMETOLOGY	175	Oklahoma State Bureau of INVESTIGATION	375
Oklahoma State CREDIT Union Board	180	Council on JUDICIAL Complaints	376
CRIME Victims Compensation Board	185	Office of JUVENILE Affairs	377
Joint CRIMINAL Justice System Task Force Committee	190	Department of LABOR	380
Board of DENTISTRY	195	Department of the Commissioners of the LAND Office	385
Oklahoma DEVELOPMENT Finance Authority	200	Council on LAW Enforcement Education and Training	390
Office of DISABILITY Concerns (<i>Formerly</i> : Office of		Oklahoma LAW Enforcement Retirement System	395
HANDICAPPED Concerns) - <i>See</i> Title 305		Board on LEGISLATIVE Compensation	400
Board of Regents of EASTERN Oklahoma State College	205	Oklahoma Department of LIBRARIES	405
EDGE Fund Policy Board	208	LIEUTENANT Governor	410
State Department of EDUCATION	210	Oklahoma LINKED Deposit Review Board	415
EDUCATION Oversight Board	215	Oklahoma LIQUEFIED Petroleum Gas Board	420
Oklahoma EDUCATIONAL Television Authority	220	Oklahoma LIQUEFIED Petroleum Gas Research, Marketing and Safety	
[RESERVED]	225	Commission	422
State ELECTION Board	230	LITERACY Initiatives Commission	425

Agency/Title Index – *continued*

Agency	Title	Agency	Title
LONG-RANGE Capital Planning Commission	428	Oklahoma Commission on SCHOOL and County Funds Management	635
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (<i>Formerly:</i> Oklahoma State Board of Examiners for NURSING Home Administrators) - <i>See</i> Title 490		Advisory Task Force on the Sale of SCHOOL Lands (<i>functions concluded 2-92</i>)	640
LOTTERY Commission, Oklahoma	429	The Oklahoma School of SCIENCE and Mathematics	645
Board of Trustees for the MCCURTAIN County Higher Education Program	430	Oklahoma Center for the Advancement of SCIENCE and Technology	650
Commission on MARGINALLY Producing Oil and Gas Wells	432	SECRETARY of State	655
State Board of MEDICAL Licensure and Supervision	435	Department of SECURITIES	660
MEDICAL Technology and Research Authority of Oklahoma	440	Board of Regents of SEMINOLE State College	665
Board of MEDICOLEGAL Investigations	445	SHEEP and Wool Commission	670
Department of MENTAL Health and Substance Abuse Services	450	State Board of Licensed SOCIAL Workers	675
MERIT Protection Commission	455	SOUTHERN Growth Policies Board	680
MILITARY Planning Commission, Oklahoma Strategic	457	Oklahoma SOYBEAN Commission (<i>abolished 7-1-97</i>)	685
Department of MINES	460	Board of Examiners for SPEECH-LANGUAGE Pathology and Audiology	690
Oklahoma MOTOR Vehicle Commission	465	STATE Employee Charitable Contributions, Oversight Committee for (<i>Formerly:</i> STATE Agency Review Committee)	695
Board of Regents of MURRAY State College	470	STATE Use Committee (<i>Formerly:</i> Committee on Purchases of Products and Services of the Severely HANDICAPPED) – <i>See</i> Title 304	
Oklahoma State Bureau of NARCOTICS and Dangerous Drugs Control	475	Oklahoma STUDENT Loan Authority	700
Board of Regents of NORTHERN Oklahoma College	480	TASK Force 2000	705
Oklahoma Board of NURSING	485	Oklahoma TAX Commission	710
Oklahoma State Board of Examiners for LONG-TERM Care Administrators (<i>Formerly:</i> Oklahoma State Board of Examiners for NURSING Home Administrators)	490	Oklahoma Commission for TEACHER Preparation	712
Board of Regents of OKLAHOMA City Community College	495	TEACHERS' Retirement System	715
Board of Regents of OKLAHOMA Colleges	500	State TEXTBOOK Committee	720
Board of Examiners in OPTOMETRY	505	TOBACCO Settlement Endowment Trust Fund	723
State Board of OSTEOPATHIC Examiners	510	Oklahoma TOURISM and Recreation Department	725
PARDON and Parole Board	515	Department of TRANSPORTATION	730
Oklahoma PEANUT Commission	520	Oklahoma TRANSPORTATION Authority (<i>Name changed to</i> Oklahoma TURNPIKE Authority <i>11-1-05</i>) - <i>See</i> Title 731	
Oklahoma State PENSION Commission	525	Oklahoma TURNPIKE Authority (<i>Formerly:</i> Oklahoma TRANSPORTATION Authority AND Oklahoma TURNPIKE Authority) - <i>See</i> also Title 745	731
State Board of Examiners of PERFUSIONISTS	527	State TREASURER	735
Office of PERSONNEL Management	530	Board of Regents of TULSA Community College	740
Oklahoma State Board of PHARMACY	535	Oklahoma TURNPIKE Authority (<i>Name changed to</i> Oklahoma TRANSPORATION Authority <i>11-1-99</i> - <i>no rules enacted in this Title</i> - <i>See</i> Title 731)	745
PHYSICIAN Manpower Training Commission	540	Board of Trustees for the UNIVERSITY Center at Tulsa	750
Board of PODIATRIC Medical Examiners	545	UNIVERSITY Hospitals Authority	752
Oklahoma POLICE Pension and Retirement System	550	UNIVERSITY Hospitals Trust	753
State Department of POLLUTION Control (<i>abolished 1-1-93</i>)	555	Board of Regents of the UNIVERSITY of Oklahoma	755
POLYGRAPH Examiners Board	560	Board of Regents of the UNIVERSITY of Science and Arts of Oklahoma	760
Oklahoma Board of PRIVATE Vocational Schools	565	Oklahoma USED Motor Vehicle and Parts Commission	765
State Board for PROPERTY and Casualty Rates (<i>abolished 7-1-06; see also Title 365</i>)	570	Oklahoma Department of VETERANS Affairs	770
State Board of Examiners of PSYCHOLOGISTS	575	Board of VETERINARY Medical Examiners	775
Department of CENTRAL Services (<i>Formerly:</i> Office of PUBLIC Affairs)	580	Oklahoma Department of CAREER and Technology Education (<i>Formerly:</i> Oklahoma Department of VOCATIONAL and Technical Education)	780
PUBLIC Employees Relations Board	585	Oklahoma WATER Resources Board	785
Oklahoma PUBLIC Employees Retirement System	590	Board of Regents of WESTERN Oklahoma State College	790
Department of PUBLIC Safety	595	Oklahoma WHEAT Commission	795
REAL Estate Appraiser Board	600	Department of WILDLIFE Conservation	800
Oklahoma REAL Estate Commission	605	WILL Rogers and J.M. Davis Memorials Commission	805
Board of Regents of REDLANDS Community College	607		
State REGENTS for Higher Education	610		
State Department of REHABILITATION Services	612		
Board of Regents of ROGERS State College	615		
Board of Regents of ROSE State College	620		
Oklahoma SAVINGS and Loan Board (<i>abolished 7-1-93</i>)	625		
SCENIC 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 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #09-1224]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

35:13-1-1. [AMENDED]

35:13-1-2. [AMENDED]

SUMMARY:

The proposed rules incorporate the date for the most recent version of the Code of Federal Regulations.

AUTHORITY:

State Board of Agriculture; 2 O.S. §§ 2-4, 2-18, 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, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 1:00 p.m., October 1, 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 September 1, 2009 through October 1, 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 address.

CONTACT PERSON:

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

[OAR Docket #09-1224; filed 8-7-09]

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

[OAR Docket #09-1227]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Subchapter 16. Contagious Equine Metritis

35:15-16-1 [AMENDED]

Subchapter 36. Scrapie

35:15-36-1 [AMENDED]

35:15-36-2 [AMENDED]

SUMMARY:

The proposed rules update the incorporation by reference of the Code of Federal Regulations for Contagious Equine Metritis and Scrapie.

AUTHORITY:

Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. §§ 2-4, 6-2, 6-131, 6-124, and 6-152; 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, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 2:30 p.m., October 1, 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

to Teena Gunter at the above address during the period from September 1, 2009 through October 1, 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 #09-1227; filed 8-7-09]

rules. Business entities may submit this information in writing to Teena Gunter at the above address during the period from September 1, 2009 through October 1, 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 #09-1225; filed 8-7-09]

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

[OAR Docket #09-1225]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Subchapter 17. Combined Pesticide

Part 6. Pesticidal Product Producing Establishments

35:30-17-13 [AMENDED]

Part 21. Standards for disposal of pesticide and pesticide containers

35:30-17-89.1 [AMENDED]

SUMMARY:

The proposed rules incorporate the date for the most recent version of the Code of Federal Regulations.

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, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 2:00 p.m., October 1, 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

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

[OAR Docket #09-1228]

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Subchapter 17. Combined Pesticide

Part 1. Commercial and Non-Commercial Categories of Pesticide Application

35:30-17-3. Categories of pesticide dealer permits [AMENDED]

35:30-17-3.1. ~~Pesticide Restricted use pesticide dealer permit~~ required [AMENDED]

35:30-17-3.3. Non-restricted use pesticide dealer permit [REVOKED]

SUMMARY:

The proposed rules revoke the requirements for permitting of dealers who sell non restricted use pesticides. The permitting program began in 2007, however, during the launching of the program, the Department determined that several significant concerns had arisen among the public. A second rulemaking in 2008 attempted to correct the problems, however, the Department determined that the concerns could only be adequately addressed by revoking the non restricted use pesticide dealers permitting program. The Department previously revoked these rules through an emergency rulemaking.

AUTHORITY:

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, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 1:30 p.m., October 1, 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 September 1, 2009 through October 1, 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 #09-1228; filed 8-7-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 37. FOOD SAFETY**

[OAR Docket #09-1226]

RULEMAKING ACTION:

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

- Subchapter 3. Meat Inspection
- 35:37-3-1 [AMENDED]
- 35:37-3-3 [AMENDED]
- Subchapter 5. Poultry Products Inspection
- 35:37-5-1 [AMENDED]
- 35:37-5-2 [AMENDED]

SUMMARY:

The proposed rule changes update the incorporation by reference of Code of Federal Regulations citations.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 6-181 et seq., 6-251 et seq., 6-280.1 et seq., and 6-290.1 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, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804

during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 3:30 p.m., October 1, 2009 in the Board Room, located at 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 September 1, 2009 through October 1, 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 address.

CONTACT PERSON:

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

[OAR Docket #09-1226; filed 8-7-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM**

[OAR Docket #09-1223]

RULEMAKING ACTION:

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

- Subchapter 3. Concentrated Animal Feeding Operations
- 35:44-3-3 [AMENDED]

SUMMARY:

This rule updates the Code of Federal Regulations date for the incorporation by reference of the permitting requirements for concentrated animal feeding operations.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 2-18.2, 2A-1 et seq., and 2A-21 et seq.; 27A O.S. § 1-3-101(D); and Article 6, Section 31, Constitution of the State of Oklahoma.

COMMENT PERIOD:

Persons may submit written and oral comments to Teena Gunter at teena.gunter@oda.state.ok.us, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma

Notices of Rulemaking Intent

73152-8804 during the period from September 1, 2009 through October 1, 2009.

PUBLIC HEARING:

A public hearing will be held at 3:00 p.m., October 1, 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 September, 2009 through October 1, 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 #09-1223; filed 8-7-09]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #09-1230]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:611-1-3. Adoption and incorporation by reference
[AMENDED]

SUMMARY:

The Department proposes to update its rules to modify the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Water Quality Management Advisory Council

powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 1, 2009, through October 5, 2009. Oral comments may be made at the Water Quality Management Advisory Council meeting on October 13, 2009, and at the Environmental Quality Board meeting on November 19, 2009.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 13, 2009, at 1:00 p.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 19, 2009, at 9:30 a.m. at East Central University, Regents Room, 1100 E. 14th Street, Ada, Oklahoma 74820.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/wqdnew/index.htm>.

CONTACT PERSON:

The contact person is Donald D. Maisch. Mr. Maisch can be reached at don.maisch@deq.ok.gov (e-mail), (405) 702-7189 (phone) or (405) 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

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

[OAR Docket #09-1230; filed 8-7-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS**

[OAR Docket #09-1231]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:623-1-7 [AMENDED]

SUMMARY:

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 1, 2009, through October 5, 2009. Oral comments may be made at the Water Quality Management Advisory Council meeting on October 13, 2009, and at the Environmental Quality Board meeting on November 19, 2009.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 13, 2009, at 1:00 p.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 19, 2009, at 9:30 a.m. at East Central University, Regents Room, 1100 E. 14th Street, Ada, Oklahoma 74820.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/wqdnew/index.htm>.

CONTACT PERSON:

The contact person is Donald D. Maisch. Mr. Maisch can be reached at don.maisch@deq.ok.gov (e-mail), (405) 702-7189 (phone) or (405) 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

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

[OAR Docket #09-1231; filed 8-7-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

[OAR Docket #09-1232]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:631-1-3. Adoption of U.S. EPA regulations by reference [AMENDED]

SUMMARY:

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations, except for the federal rules previously exempted. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009.

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 1, 2009, through October 5, 2009. Oral comments may be made at the Water Quality Management Advisory Council meeting on October 13, 2009, and at the Environmental Quality Board meeting on November 19, 2009.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 13, 2009, at 1:00 p.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 19, 2009, at 9:30 a.m. at East Central University, Regents Room, 1100 E. 14th Street, Ada, Oklahoma 74820.

Notices of Rulemaking Intent

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

The contact person is Donald D. Maisch. Mr. Maisch can be reached at don.maisch@deq.ok.gov (e-mail), (405) 702-7189 (phone) or (405) 702-7199 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

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

[OAR Docket #09-1232; filed 8-7-09]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 645. SEPTAGE PUMPERS AND HAULERS

[OAR Docket #09-1229]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 645. Septage Pumpers and Haulers [AMENDED]

SUMMARY:

There are four (4) primary reasons for the proposed rulemaking. The first is to require training for individuals who are licensed to pump, haul, and store septage, operate a septage land application site, or treat septage as a means of final disposal. Requiring training will ensure that the licensed individuals have actual knowledge of the regulations. Facilities already permitted by DEQ's Water Quality Division to accept septage would be exempt from having to obtain another license under this regulation.

The second reason for the proposed rulemaking is to allow the temporary storage of septage when the preferred disposal method is unavailable (e.g., land application site too wet, municipal wastewater treatment plant closed, etc.).

The third reason for the proposed rulemaking is to allow individuals to operate a treatment facility that specifically treats septage, which will provide another disposal option for septage pumpers and haulers.

The fourth reason for the proposed rulemaking is to establish a fee schedule that will help cover some of the costs of operating the program, which has historically been entirely supported by appropriation funds.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§2-1-101, 2-2-201, 2-3-402 and 2-6-801.

COMMENT PERIOD:

Written comments may be submitted to the contact person from September 1, 2009, through October 1, 2009. Oral comments may be made at the Water Quality Management Advisory Council meeting on October 13, 2009, and at the Environmental Quality Board meeting on February 26, 2010.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 13, 2009, at 1:00 p.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on February 26, 2010 at 9:30 a.m. at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/eclsnew/index.htm>.

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.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) working days in advance of the hearing. For hearing impaired, the TDD relay number

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

[OAR Docket #09-1229; filed 8-7-09]

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

[OAR Docket #09-1210]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Required Information for Reporting

310:551-3-2. [NEW]

310:551-3-3. [NEW]

Subchapter 5. Confidentiality of Information and Responsibilities of
Information Providers [NEW]

310:551-5-1. [NEW]

310:551-5-2. [NEW]

310:551-5-3. [NEW]

310:551-5-4. [NEW]

AUTHORITY:

Oklahoma State Board of Health; 63 O.S. 2001, § 1-104 and 63 O.S. Supp
2008, § 1-270.2.

DATES:

Public Hearing:
June 11, 2009

Adoption:

June 11, 2009

Approved by Governor:

July 21, 2009

Effective:

Immediately upon the Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or
disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

"n/a"

INCORPORATION BY REFERENCE:

"n/a"

FINDING OF EMERGENCY:

There was a discrepancy in the notice that was published regarding the
permanent rulemaking that prevented the ability to finally promulgate these
rules.

ANALYSIS:

This proposal establishes a stem cell research reporting system to the
Oklahoma State Department of Health as defined by house bill 3126 The
Advancement in Stem Cell Cures and Therapies Act.

CONTACT PERSON:

John Corpolongo, MS, Chief, Screening, Special Services, and
SoonerStart, Oklahoma State Department of Health, 1000 Northeast 10th
Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6617; email:
John@health.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 3. REQUIRED INFORMATION FOR REPORTING

310:551-3-2. Data files

(a) When a data file is received from an information
provider, the Department will notify the information provider
acknowledging receipt of the data.

(b) Every data file received by the Department will be pro-
cessed and checked for errors. This process will include error
checking for out of range, or invalid data elements as specified
in Section 310:551-3-1. Upon processing the submitted data
file, the Department will send the information provider:

(1) An acknowledgement that the report appears to be
without any apparent error, or,

(2) A list of errors in that information provider's data
file along with a request to correct the listed errors within
30 days of receipt of the notice.

310:551-3-3. Periodic schedule for submission of information

(a) Information providers must submit their data files to the
Department within thirty (30) days of beginning the research,
thirty (30) days of completion of the research, or by October
1, whichever is soonest.

(b) The Department may grant an extension of the reporting
deadline upon written request from the information provider
made at least ten (10) days prior to the deadline and supported
by substantial cause.

SUBCHAPTER 5. CONFIDENTIALITY OF INFORMATION AND RESPONSIBILITIES OF INFORMATION PROVIDERS

310:551-5-1. Confidentiality

(a) All information collected from any source will remain
confidential in accordance with 51 O.S. § 24A.19, and will not
be deemed or treated as a public record as otherwise defined

Emergency Adoptions

in the Open Records Act. Under no circumstances shall information submitted to the Department pursuant to this Chapter be used for any purpose other than the compilation of data to be transmitted to the Governor, Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate. The information collected pursuant to this Chapter may not be released voluntarily or in response to any legal process unless the Department is directed to release it by a court of competent jurisdiction, granted after application showing good cause.

(b) The Department will develop internal procedures to ensure that the collection, maintenance and dissemination of the information collected is in compliance with all provisions of state and federal laws and regulations, including this Chapter.

310:551-5-2. Release and dissemination of information upon request

After approval by the Department, aggregate compilations prepared for release or dissemination from the data collected shall be public record. However, reports prepared at the request of an individual information provider containing information concerning only its transactions, shall not be public record.

310:551-5-3. Responsibilities of information providers

Information providers shall be responsible to insure that the information required by this Chapter to be reported to the Department is timely collected and reported to the Department and that the data reported is accurate and complete. The obligation to report may be satisfied by the IRB or Stem Cell Research Oversight Committee of the person or entity conducting stem cell research.

310:551-5-4. Reporting safety and ethical violations

It shall be the obligation of the IRB or Stem Cell Research Oversight Committee to report any violation of a safety or ethical standard that has not been corrected upon notice within thirty (30) days. The report of an uncorrected violation of a safety or ethical standard must be made to the Department within (30) days of occurrence or by October 1, whichever is sooner.

[OAR Docket #09-1210; filed 7-27-09]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #09-1214]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

317:2-1-1. through 317:2-1-2. [AMENDED]

317:2-1-6. through 317:2-1-13. [AMENDED]

(Reference APA WF # 09-24)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

Adoption:

June 25, 2009

Approved by Governor:

July 21, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to include language regarding member and provider appeals processes, specifically concerning the time frames allowed for responses to appeals from the Oklahoma Health Care Authority and the Administrative Law Judge. Additionally, the rule revision clarifies the process for administrative sanction appeals and the process for provider suspension or termination. Clarification of the rules process is needed to ensure unnecessary legal action by SoonerCare members or providers due to misinterpretation of the rules.

ANALYSIS:

Agency rules are revised to include language regarding member and provider appeals processes, specifically concerning time frames allowed for responses to appeals from the Oklahoma Health Care Authority and the Administrative Law Judge. Additionally, the rule revision clarifies the process for administrative sanction appeals and the process for provider suspension or termination.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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

317:2-1-1. Purpose

The purpose of this Chapter is to describe the different types of grievances addressed by the Oklahoma Health Care Authority (OHCA). The rules explain the step by step processes that must be followed by a party seeking redress from the OHCA. All hearings on eligibility issues for ~~recipients~~ members are conducted by the Oklahoma Department of Human Services, and are not contained in this Chapter. Hearings will not be granted when the sole issue to be determined is a Federal or State law requiring an automatic change adversely affecting some or all ~~recipients~~ members.

317:2-1-2. Appeals

(a) Member Process Overview.

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal).

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. The member must appear at this hearing and it is conducted according to ~~Section~~ OAC 317:2-1-5. The ALJ's decision may be appealed to the ~~CEO Chief Executive Officer of the OHCA~~, which is a record review at which the parties do not appear (Section OAC 317:2-1-13).

(7) Member appeals are ~~to be~~ ordinarily decided within 90 days from the date OHCA receives the member's timely request for a fair hearing unless the member waives this requirement. [Title 42 ~~U.S.C. C.F.R.~~ Section 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision ~~will be~~ is normally rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) **Provider Process Overview.**

(1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files a grievance) files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.)

(B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(D) A decision will be rendered by the ALJ ordinarily within 45 days of the close of all evidence in the case.

(E) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-13.

(c) **ALJ jurisdiction.** The administrative law judge has jurisdiction of the following matters:

(1) Member Appeals:

(A) Discrimination complaints regarding the ~~Medicaid~~ SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

(E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); ~~and~~

(F) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions; and

(2) Provider Appeals:

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

(D) Petitions for Rulemaking;

(E) Appeals of insureds participating in Insure Oklahoma/ O-EPIC which are authorized by OAC 317:45-9-8(a);

(F) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5 and other appeal rights granted by contract;

(G) Drug rebate appeals;

(H) Nursing home contracts which are terminated, denied, or non-renewed; and

(I) Proposed administrative sanction appeals pursuant to OAC ~~317:35-13-7~~ 317:30-3-19. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will normally be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.

Emergency Adoptions

317:2-1-6. Other grievance procedures and processes

Other grievance procedures and processes include those set out in OAC 317:2-1-7 [~~Surveillance, Utilization and Review System (SURS) and (Program Integrity Audits/Reviews Appeals)~~]; OAC 317:2-1-8 (Nursing Home Provider Contract Appeals); OAC 317:2-1-9 [~~OHCA's Designated Agent's Appeal Process for Behavioral Health QIO Services~~]; OAC 317:2-1-10 (Drug Rebate Appeal Process); OAC 317:2-1-11 [Medicaid Drug Utilization Review Board (DUR) Appeal Process]; and OAC 317:2-1-12 (For Cause Provider Contract Suspension/Termination Appeals Process).

317:2-1-7. ~~Surveillance, Utilization and Review System (SURS) and Program Integrity Audits/Reviews appeals~~

~~All SURS and Program Integrity Audits/Reviews appeals are made to the State Medicaid Director.~~

(1) ~~If a provider disagrees with a decision of the SURS or Program Integrity Audit/Review including statewide surveillance and utilization control program appeals, 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 should also include all relevant exhibits the provider believes necessary to decide the appeal.~~

(3) ~~Upon receipt of the appeal by the docket clerk, the matter will be docketed for the next meeting of the 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 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 OHCA be present during their consideration of the appeal. Members of the Authority's OHCA'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 ordinarily 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.~~

317:2-1-8. Nursing home provider contract appeals

This Section explains the appeal process to be accorded all nursing home providers whose contracts are terminated, denied or non-renewed. No procedure is afforded a nursing facility whose contract is limited in any other fashion.

(1) ~~If a nursing home provider's contract is terminated, non-renewed or denied prior to the action's effective date, the provider will be afforded an informal reconsideration in accordance with 42 C.F.R. 431.154 42 C.F.R. 421.153.~~

(2) ~~The notice of termination, non-renewal or, denial of contract will include the findings it was based upon. The letter will be sent by certified mail to the provider.~~

(3) ~~The provider will have 20 60 days to respond to the notice unless there is a finding of immediate jeopardy or a determination that the facility's SoonerCare certification has been cancelled prior to 60 days. The response should outline the reasons why the Authority's OHCA's decision to terminate, non-renew, or deny the contract is wrong. The response by the provider must include a detailed position addressing the findings set out in the Authority's OHCA's letter. The provider may request an extension of the 20 day limit if "good cause" exists that prevents the provider from refuting the findings in 20 days. A finding of "good cause" is in OHCA's discretion. In the event that less than a 60 day notice is provided for either reason stated above, the provider will be afforded a notice in as much time before decertification as possible.~~

(4) ~~Based upon the provider's response, the Authority OHCA will affirm or deny the notice of non-renewal, termination or denial.~~

(5) ~~If the Oklahoma Health Care Authority affirms the notice of termination, non-renewal, or denial or the provider files no timely response, the effective date will pass and upon affirmation of the notice, the process described in OAC 317:2-1-2(b), and 317:2-1-2(e)(2) and 317:2-1-5(b) will apply.~~

(6) ~~The hearing afforded the provider after the effective date will satisfy the requirements of 42 C.F.R. 431.153.~~

(7) ~~If the facility is a skilled nursing facility, the facility will receive a notice as required by 42 C.F.R. 431.153(d)(1) and (2).~~

317:2-1-9. OHCA's Designated Agent's appeal process for Behavioral Health services QIO Decisions

~~This Section explains the administrative processes available to providers who have reviews completed by OHCA's Quality Improvement Organization (QIO). The OHCA's Quality Improvement Organization (QIO) The QIO conducts an administrative process for those providers it reviews. The process afforded providers by QIO is the only administrative remedy available to providers. The decision issued by the QIO is considered by the OHCA to be a final administrative determination. The final QIO determination is not appealable to the OHCA for any further administrative hearings. After the QIO'S decision, OHCA will recoup the monies paid the provider related to the review.~~

317:2-1-10. Drug Rebate appeal process

The purpose of this Section is to afford a process to both the manufacturer and the state to administratively resolve drug rebate discrepancies. These rules anticipate discrepancies between the manufacturer and OHCA which would require the manufacturer to pay a higher rebate or a lower rebate. These regulations provide a mechanism for both informal dispute resolution of drug rebate discrepancies between the manufacturer and OHCA and a mechanism for appeals of drug rebate discrepancies between the manufacturer and OHCA.

- (1) ~~The process begins at the end of each calendar quarter when the Authority will mail~~ OHCA mails a copy of the State's past quarter's utilization data to the manufacturer. Utilization data and a billing for rebates will be mailed to the manufacturer within 60 days after the end of each quarter. It is this data which dictates the application of the federal drug rebate formula.
- (2) Within 30 days from the date utilization data is sent to the manufacturer, the manufacturer may edit state data and resolve data inconsistencies with the state. The manufacturer may utilize telephone conferences, letters and any other mechanism to resolve data inconsistencies in mutual agreement with the state.
- (3) Within 30 days after the utilization data is mailed to the manufacturer, the manufacturer may:
 - (A) pay the same amount as billed by the state with the quarterly utilization date;
 - (B) pay an amount which differs from the amount billed by the state with the utilization data and send disputed data information;
 - (C) pay nothing and send no disputed data information;
 - (D) pay nothing and send disputed data information.
- (4) In the event the state receives the rebate amount billed by the 30th day, the dispute ends.
- (5) If after 30 days one of the following events occurs, the state will acknowledge the receipt of the correspondence and review the disputed data:
 - (A) the receipt of an amount lower than that billed to the manufacturer;
 - (B) the receipt of disputed data.

- (6) In the event no disputed data is received and no payment is received, interest will be computed in accordance with the provisions of federal law found at 42 U.S.C. Section 1396b(d)(5) and will be compounded upon the amount billed from 38 days after the date utilization data is sent.
- (7) In the event a lower amount than billed is paid or in the event disputed data is sent, and no money is received, interest will be computed in accordance with 42 U.S.C. Section 1396b(d)(5) and will be computed from 38 days from the date utilization data is sent to the manufacturer.
- (8) Within 70 days from the date utilization data is sent to the manufacturer, the state will make its final informal review of the disputed data. OHCA will mail a second notice to the manufacturer which will include:
 - (A) receipt of the rebate, if any;
 - (B) receipt of the dispute;
 - (C) a statement regarding the interest amount; and
 - (D) a statement regarding the appeal rights of the manufacturer with a copy of the appeal form.
- (9) Within 90 days of the date utilization data is sent to the manufacturer or within 20 days of the date a second notice is mailed to the manufacturer, whichever is sooner, the state or the manufacturer may request a hearing to administratively resolve the matter.
- (10) The administrative appeal of drug rebate discrepancies includes:
 - (A) The appeal process will begin by the filing of a form LD-2 by the manufacturer or OHCA.
 - (B) The process afforded the parties will be the process found at ~~OAC 317:2-1-5(b)~~. ~~The process provided by OAC 317:2-1-2(b) and (c) will also apply to these hearings.~~
 - (C) With respect to the computation of interest, interest will continue to be computed from the 38 day based upon the policy contained in the informal dispute resolution rules above.
 - (D) The ALJ's decision will constitute the final administrative decision of the OHCA.
 - (E) If the decision of the ALJ affirms the decision of OHCA in whole or in part, ~~payment~~ payment from the manufacturer must be made within 30 days of the decision. If the decision of the ALJ reverses the decision of the OHCA, the OHCA will make such credit or action within 30 days of the decision of the ALJ.
 - (F) The nonpayment of the rebate by the manufacturer within 30 days after the ALJ's decision will be reported to the Centers for Medicare and Medicaid Services and may be the basis of an exclusion action by the OHCA.

317:2-1-11. Medicaid Drug Utilization Review Board (DUR) appeal process

This Section explains the appeal process, pursuant to 36 O.S. §5030.3(8)(B)(Supp. 1999), accorded any ~~part~~ party aggrieved by a decision of the OHCA Board or Administrator

Emergency Adoptions

(CEO) concerning a proposed recommendation of the Medicaid Drug Utilization Review Board (DUR).

(1) The aggrieved party may appeal pursuant to OAC 317:2-1-2 et seq. (OHCA Appeals).

(2) The Board finds that the prescription of Title 63 O.S. § 5030.3(B) is somewhat contradictory with the functions of the DUR Board. More specifically, in most instances, the DUR Board suggests policies that must be rule made. Rules promulgated by the OHCA Board do not lend to an "individual proceeding notice" as contemplated by Article II of the Oklahoma Administrative Procedures Act, specifically, Title 75 O.S. §309. Thus, in instances where the OHCA Board promulgates rules as a result of policy recommendations by the DUR Board, this Board will consider a party aggrieved by these rules to have filed a Petition for Rulemaking under 75 O.S. §305. In making this interpretation of 63 O.S. §5030.1, the Board will not enforce the last sentence of ~~74~~ 75 O.S. §305. In making this interpretation, the Board finds that it is taking two somewhat conflicting provisions, and combining them to effectuate the intent of the legislature - to provide a hearing to those aggrieved by recommendations by the DUR Board and accepted by the OHCA Board.

(3) In instances where the DUR Board makes a recommendation accepted by the Board against an individual provider [for example, a recommendation under ~~42 U.S.C. §1396a8(g)(3)(c)(iii)(IV)~~ 42 U.S.C. 1396r-8(g)(3)(C)(iii)(IV)], OHCA will provide an individual proceeding under the Oklahoma Administrative Procedures Act.

(4) In any appeal under (1) and (2) of this subsection, the OHCA Board delegates the OHCA ALJ to preside over the above hearing and present the Board with proposed findings of fact and conclusions of law in accordance with Article II of the Administrative Procedures Act. The OHCA Board may accept the ALJ's written decision, reject it, or amend the recommendations.

(5) Appeals filed pursuant to (1) and (2) of this subsection, will be made within 20 days of the OHCA Board's acceptance of the recommendation by the DUR Board.

(6) After Proposed Findings of Fact and Conclusions of Law are presented to the OHCA Board, the Board will have a period of 120 days to issue a final administrative order.

(7) The Agency's Legal Services Division will construct a form called the LD-3, which will be used for parties to file an action under (1) and (2) of this subsection.

317:2-1-12. For Cause provider contract suspension/termination appeals process

This Section explains the appeals process for providers whose Medicaid SoonerCare contracts have been suspended/terminated by the OHCA for cause. Those providers whose contracts have been affected by other OHCA actions cannot request an appeal of those measures. Contracts terminated or suspended for cause are either timed terminations (30, 60, or 90 day) or immediate terminations/suspensions.

Paragraphs (1) and (2) apply to timed terminations/suspensions and paragraph (3) applies to immediate terminations.

(1) Procedure for suspending/terminating provider's contract.

(A) **Notice of proposed suspension or termination.** The OHCA will provide notice to the medical services provider of the proposed suspension or termination of provider contract. The written notice of suspension/termination will state:

- (i) the reasons for the proposed suspension/termination;
- (ii) the date upon which the suspension/termination will be effective; and
- (iii) a statement that the medical services provider has a right to review prior to the suspension/termination of the provider's contract (refer to subparagraph (B) of this paragraph).

(B) **Right to review prior to suspension/termination of provider contract.** Before the medical services provider's contract is suspended or terminated, the OHCA will give the medical services provider the opportunity to submit documents and written arguments against the suspension/termination of the provider's contract.

(C) Notice of suspension or termination.

(i) After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-suspension or termination hearing.

(ii) After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-sanction hearing. Should the OHCA decide not to suspend or terminate the provider's contract, the medical services provider will be notified of the reasons for the decision.

(iii) Should the OHCA make a decision to suspend or terminate the medical services provider's contract, the OHCA will send a notice stating:

- (I) the reasons for the decision;
- (II) the effective date of the suspension or termination of the contract;
- (III) the medical services provider's right to request a post-suspension or termination hearing; and
- ~~(IV) the earliest date in which the agency will accept a request for reinstatement; and~~
- ~~(V) the requirements and procedures for reinstatement.~~

(2) **Post-suspension/termination hearing.** After the effective date of the suspension or termination of the provider's contract, the medical services provider is entitled to receive a post-suspension or termination hearing. The hearing committee for the OHCA will be comprised of three members of the OHCA and two other members as appointed. The representative who investigated the case will not be a representative if an investigation was initiated or completed.

(A) After the provider's request for the post-suspension/termination hearing is made, a hearing date will be established. A certified letter will be sent to the provider giving notification of the hearing date and naming the contact person. The contact person will answer procedural questions about the hearing.

(B) Ten days prior to the hearing, the medical services provider will submit a brief written statement detailing the evidence which will be presented by the provider at the hearing. Such statement must detail the facts which will be refuted by the provider. The purpose of the hearing will be limited to issues raised in the letter of suspension or termination as the cause of suspending or terminating the provider contract.

(C) The provider may be represented by an authorized representative, with documentation to that effect, at the informal hearing and/or the provider may present testimony himself or herself and have witnesses present.

(D) At the conclusion of the hearing, a decision will be made by the Hearing Committee. The provider will be notified in writing of the decision within 20 days of the final day of the hearing. The decision letter will constitute the agency's final decision regarding the matter.

(3) Notice of immediate suspension or termination.
The process below will be followed in the event of an immediate suspension or termination:

(A) A notice described in paragraph (1)(A) will be sent to the provider, except there is no right to review prior to an immediate termination or suspension.

(B) A post suspension termination review will be conducted in accordance with paragraph (2) above.

317:2-1-13. Appeal to the Chief Executive Officer

An appeal to the Chief Executive Officer (CEO) of the Oklahoma Health Care Authority includes:

(1) Within 20 days of decisions made pursuant to provider or ~~SURS~~/Program Integrity Audits/Reviews appeals found at this Chapter, either party may appeal a decision to the CEO of the Authority ~~OHCA~~. Such appeal will be commenced by a letter or fax received by the CEO within 20 days of the receipt of the prior decision made by the ALJ or Medicaid Director. The appeal will concisely and fully explain the reasons for the request. No new evidence may be presented to the CEO. Evidence presented must be confined to the records below.

(2) Appeals to the CEO under ~~recipient member~~ proceedings will be commenced by a letter received no later than 10 days of the receipt of the decision by the ALJ. Should the appellant request a transcription to prosecute its appeal to the CEO, the appellant will be required to execute a waiver relieving the OHCA from completing its fair process hearing within 90 days.

(3) For provider and ~~SURS~~/Program Integrity Audits/Reviews proceedings, the CEO will ordinarily have 90 days from receipt of the appeal to render a written decision.

(4) For ~~recipient member~~ proceedings, the CEO will ordinarily have 30 days from receipt of the appeal to render a written decision.

(5) The only appeal for proposed provider or member administrative sanctions is before the ALJ and the ALJ decision is not appealable to the CEO.

[OAR Docket #09-1214; filed 7-28-09]

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

[OAR Docket #09-1212]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-27. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)
317:30-5-1091. [AMENDED]
(Reference APA WF # 09-16)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:
Adoption:
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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 to add Indian Health Service Facilities, Tribally Operated Facilities and Urban Indian Clinics as distant site providers under the telemedicine delivery system, allowing segments of the Native American population in rural areas access to specialty healthcare services. Additionally this rule includes public health nursing as an allowable service available to qualifying individuals in the Native American population on a statewide basis. Without this rule revision, Native American SoonerCare members are denied access to critical nursing and specialty care services.

ANALYSIS:
Agency rules are revised to add Indian Health Service Facilities, Tribally Operated Facilities and Urban Indian Clinics as distant site providers under the telemedicine delivery system, allowing segments of the Native American population in rural areas access to specialty healthcare services. Additionally this rule includes public health nursing as an allowable service available to qualifying individuals in the Native American population. Lower income Native Americans will benefit from this rule change as a result of improved access to specialty care services and public health nursing service.

CONTACT PERSON:
Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE**

Emergency Adoptions

CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-27. Telemedicine

(a) **Applicability and scope.** The purpose of this Section is to implement telemedicine policy that improves access to health care services by enabling the provision of medical specialty care in rural or underserved areas to meet the needs of members and providers alike, while complying with all applicable federal and state statutes and regulations. Telemedicine services are not an expansion of SoonerCare covered services but an option for the delivery of certain covered services. SoonerCare views telemedicine no differently than an office visit or outpatient consultation. However, if there are technological difficulties in performing an objective through medical assessment or problems in member's understanding of telemedicine, hands-on-assessment and/or care must be provided for the member. Quality of health care must be maintained regardless of the mode of delivery.

(b) **Definitions.** The following words and terms, when used in this Section, have the following meaning, unless the context clearly indicates otherwise.

(1) **"Certified or licensed health care professional"** means an individual who has successfully completed a prescribed program of study in any variety of health fields and who has obtained an Oklahoma state license or certificate indicating his or her competence to practice in that field.

(2) **"Distant site"** means the site where the specialty physician/practitioner providing the professional service is located at the time the service is provided via audio/video telecommunications.

(3) **"Interactive telecommunications"** means multimedia communications equipment that includes, at a minimum, audio/video equipment permitting two-way, real-time or near real-time service or consultation between the member and the practitioner.

(4) **"Originating site"** means the location of the SoonerCare member at the time the service is being performed by a contracted provider via audio/video telecommunications.

(5) **"Rural area"** means a county with a population of less than 50,000 people.

(6) **"Store and forward"** means the asynchronous transmission of medical information to be reviewed at a later time. A camera or similar device records (stores) an image(s) that is then sent (forwarded) via telecommunications media to another location for later viewing. The

sending of x-rays, computed tomography scans, or magnetic resonance images are common store and forward applications. The original image may be recorded and/or forwarded in digital or analog format and may include video "clips" such as ultrasound examinations, where the series of images that are sent may show full motion when reviewed at the receiving location.

(7) **"Telehealth"** means the use of telecommunication technologies for clinical care (telemedicine), patient teaching and home health, health professional education (distance learning), administrative and program planning, and other diverse aspects of a health care delivery system.

(8) **"Telemedicine"** means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the real-time or near real-time and in the physical presence of the member.

(9) **"Telemedicine network"** means a network infrastructure, consisting of computer systems, software and communications equipment to support telemedicine services.

(10) **"Underserved area"** means an area that meets the definition of a medically underserved area (MUA) or medically underserved population (MUP) by the U.S. Department of Health and Human Services (HHS).

(c) **Coverage.** SoonerCare coverage for telemedicine technology is limited to consultations, office visits, individual psychotherapy, psychiatric diagnostic interview examinations and testing, mental health assessments and pharmacologic management.

(1) An interactive telecommunications system is required as a condition of coverage.

(2) Coverage for telemedicine services is limited to members in rural areas, underserved areas, or geographic areas where there is a lack of medical/psychiatric/mental health expertise locally.

(3) Office and outpatient visits that are conducted via telemedicine are counted toward the applicable benefit limits for these services.

(4) Authorized originating sites are:

(A) The office of a physician or practitioner;

(B) A hospital;

(C) A school;

(D) An outpatient behavioral health clinic;

(E) A critical access hospital;

(F) A rural health clinic (RHC);

(G) A federally qualified health center (FQHC); or

(H) An Indian Health Service facility, a Tribal health facility or an Urban Indian clinic (I/T/U).

(5) Authorized distant site specialty ~~physicians and practitioners~~ providers are contracted:

(A) Physicians;

(B) Advanced Registered Nurse Practitioners;

(C) Physicians Assistants;

(D) Genetic Counselors;

(E) Licensed Behavioral Health Professionals; ~~and~~

(F) Dieticians; and

(G) I/T/U's with specialty service providers as listed in (A) through (F) above.

- (d) **Non-covered services.** Non-covered services include:
- (1) Telephone conversation;
 - (2) Electronic mail message; and
 - (3) Facsimile.
- (e) **Store and forward technology.** SoonerCare covers store and forward technology for applications in which, under conventional health care delivery, the medical service does not require face-to-face contact between the member and the provider. Examples include teleradiology, telepathology, fetal monitor strips, as well as physician interpretation of electrocardiogram and electroencephalogram readings that are transmitted electronically. SoonerCare does not consider these services telemedicine as defined by OHCA and will not reimburse an originating site fee for these services.
- (f) **Conditions.** The following conditions apply to all services rendered via telemedicine.
- (1) Interactive audio and video telecommunications must be used, permitting real-time communication between the distant site physician or practitioner and the SoonerCare member. As a condition of payment the member must be present and participating in the telemedicine visit.
 - (2) Only telemedicine services provided utilizing an OHCA approved network are eligible for reimbursement.
 - (3) For SoonerCare reimbursement, telemedicine connections to rural areas must be located within Oklahoma and the health providers must be licensed in Oklahoma or practice at an I/T/U.
 - (4) The telemedicine equipment and transmission speed must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telemedicine visit need to be trained in the use of the telemedicine equipment and competent in its operation.
 - (5) An appropriate certified or licensed health care professional at the originating site is required to present the member to the physician or practitioner at the distant site and remain available as clinically appropriate.
 - (6) The health care practitioner must obtain written consent from the SoonerCare member that states they agree to participate in the telemedicine-based office visit. The consent form must include a description of the risks, benefits and consequences of telemedicine and be included in the member's medical record.
 - (7) If the member is a minor child, a parent/guardian must present the minor child for telemedicine services unless otherwise exempted by State or Federal law. The parent/guardian need not attend the telemedicine session unless attendance is therapeutically appropriate.
 - (8) The member retains the right to withdraw at any time.
 - (9) All existing confidentiality protections apply.
 - (10) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(11) There will be no dissemination of any member images or information to other entities without written consent from the member.

(g) **Reimbursement.**

(1) A facility fee will be paid to the originating site when the appropriate telemedicine facility fee code is used.

(A) Hospital outpatient: When the originating site is a hospital outpatient department, payment for the originating site facility fee will be paid according to the SoonerCare fee schedule.

(B) Hospital inpatient: For hospital inpatients, payment for the originating site facility fee will be paid outside the Diagnostic Related Group (DRG) payment.

(C) FQHCs and RHCs: The originating site facility fee for telemedicine services is not an FQHC or RHC service. When an FQHC or RHC serves as the originating site, the originating site facility fee is paid separately from the center or clinic all-inclusive rate.

(D) Facilities of the Indian Health Service, tribal facilities or Urban Indian Clinics: When an I/T/U serves as the originating site, the originating site facility fee is reimbursed outside the OMB rate.

(E) Physicians'/practitioners' offices: When the originating site is a physician's office, the originating site facility fee will be paid according to the SoonerCare fee schedule. If a provider from the originating site performs a separately identifiable service for the member on the same day as telemedicine, documentation for both services must be clearly and separately identified in the member's medical record.

(2) Services provided by telemedicine must be billed with the appropriate modifier. Only the portion of the telemedicine service rendered from the distant site is billed with the modifier.

(3) If the technical component of an X-ray, ultrasound or electrocardiogram is performed at the originating site during a telemedicine transmission, the technical component and a telemedicine facility fee are billed by the originating site. The professional component of the procedure and the appropriate visit code are billed by the distant site.

(4) Post payment review may result in adjustments to payment when a telemedicine modifier is billed inappropriately or not billed when appropriate.

(5) The cost of telemedicine equipment and transmission is not reimbursable by SoonerCare.

(h) **Documentation.**

(1) Documentation must be maintained at the originating and the distant locations to substantiate the services provided.

(2) Documentation must indicate the services were rendered via telemedicine, the location of the originating and distant sites, and which OHCA approved network was used.

Emergency Adoptions

(3) All other SoonerCare documentation guidelines apply to the services rendered via telemedicine. Examples include but are not limited to:

- (A) Chart notes;
- (B) Start and stop times;
- (C) Service provider's credentials; and
- (D) Provider's signature.

(i) **Telemedicine network standards.** In order to be an approved telemedicine network, an applicant must be contracted with the OHCA and meet certain technical and privacy standards stated within the contract in order to ensure the highest quality of care.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND URBAN INDIAN CLINICS (I/T/US)

317:30-5-1091. Definition of I/T/U services

(a) As described in Title 42 of the Code of Federal Regulations (CFR) 136.11(a), the I/T/U services may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) Further, Title 42 CFR 136.11(c) allows that the scope and availability of I/T/U services will depend upon the resources of the facility.

(c) I/T/U services may be covered when furnished to a patient at the clinic or other location, including a mobile clinic, or the patient's place of residence.

(d) I/T/U outpatient encounters include but are not limited to:

- (1) Physicians' services and supplies incidental to a physician's services;
- (2) Within limitations as to the specific services furnished, a doctor of dentistry or oral surgery, a doctor of optometry, or a doctor of podiatry [Refer to Section 1861(r) of the Act for specific limitations];
- (3) The services of a resident as defined in OAC 317:25-7-5(4) who meets the requirements for payment under SoonerCare and the supplies incidental to a resident's services;
- (4) Services of advanced practice nurses (APNs), physician assistants (PAs), certified nurse midwives (CNMs), or specialized advanced practice nurse practitioners;
- (5) Services and supplies incidental to the services of APNs and PAs (including services furnished by certified nurse midwives);
- (6) Public health nursing services include but are not limited to services in the following areas:

- (A) Phlebotomy;
- (B) Wound care;
- (C) Public health education;

(D) Administration of immunizations;

(E) Administration of medication;

(F) Child health screenings meeting EPSDT criteria;

(G) Prenatal, newborn and postpartum assessments, including case management services for first time mothers; and

(H) General health assessments and management of conditions such as tuberculosis, diabetes and hypertension.

(6Z) Visiting nurse services to the homebound;

(7Z) Behavioral health professional services and services and supplies incidental to the services of LBHPs; and

(8Z) Dental services.

[OAR Docket #09-1212; filed 7-28-09]

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

[OAR Docket #09-1215]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies

Part 5. Eligibility

317:30-3-80. [REVOKED]

(Reference APA WF # 09-26)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

Adoption:

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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 durable medical equipment (DME) policy. Rules are revised to alleviate confusion and make rules consistent concerning prior authorization for oxygen and oxygen equipment. Specific DME policy already addresses that prior authorization is not required as long as providers maintain a fully completed certificate of medical necessity. This emergency rule revision will provide more consistent access to healthcare for Oklahomans, thereby reducing the amount of uncompensated administrative activities by healthcare providers.

ANALYSIS:

DME rules are revised to revoke an outdated DME policy related to oxygen and oxygen equipment and the requirements for prior authorization. Current DME rules already clarify that no prior authorization is required for oxygen and oxygen equipment. Revoking this rule will alleviate confusion and make rules consistent.

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 SEPTEMBER 1, 2009:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 5. ELIGIBILITY

317:30-3-80. Physician's prescription for appliances, prostheses, and/or medical equipment and medical suppliers request for prior authorization [REVOKED]

~~Request prior authorization for oxygen concentrators, appliances, prostheses, medical equipment and medical supplies via CC 17, Physicians Prescription and Authorization, in triplicate. Section I is completed by the physician, who forwards the original and one copy of the form to the medical supplier. The medical supplier completes Section II and forwards the original to OHCA, Special Health Care Needs Unit. No item will be authorized unless prescribed by the physician. Some items also require a Certificate of Medical necessity.~~

[OAR Docket #09-1215; filed 7-28-09]

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

[OAR Docket #09-1211]

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 # 09-13)

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 111-08

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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 comply with federal regulations regarding SoonerCare eligibility for Afghans with special immigrant status. Public Law 110-161 allowed six months of Medicaid eligibility for Afghan special immigrants who were employed by the United States military as translators or provided faithful and valuable service for or on behalf of the United States government for at least one year. These individuals have experienced or are likely to experience a serious threat as a consequence of that employment. On March 10, 2009, Public Law 111-08 was enacted to lengthen the period of Medicaid eligibility from six months to eight months. Emergency rules are needed in order to comply with Public Law 111-08 which increased the period of Medicaid eligibility for Afghan special immigrants.

ANALYSIS:

SoonerCare citizenship rules are revised to extend the time limited benefit period for Afghans with special immigrant status from six to eight months. Congress enacted Public Law 111-08 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2009) on March 10, 2009, which lengthened the six month period of Medicaid for Afghan special immigrants to eight months. Rules are amended to assure that eligible Afghan individuals receive SoonerCare benefits for the correct period of time under federal regulation.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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

SUBCHAPTER 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-SoonerCare.~~

(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);
- (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

Emergency Adoptions

(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;

(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~~ SoonerCare. 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~~ **Reasonable opportunity to obtain citizenship verification.**

(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 SoonerCare. The reasonable opportunity time frame usually consists of 60 days. In rare instances, the CVU ~~may extend the~~ time frame may be extended to a period not to exceed an additional 60 days.

(2) ~~Additional~~ The following 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 SoonerCare 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 SoonerCare 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.

(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 SoonerCare for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a

Emergency Adoptions

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~~ 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 ~~six-eight~~ 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-SoonerCare~~, 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-SoonerCare~~ 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) **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 #09-1211; filed 7-28-09]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES**

[OAR Docket #09-1213]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-5. [AMENDED]
(Reference APA WF # 09-21)

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 441.300

DATES:
Adoption:
June 25, 2009

Approved by Governor:
July 21, 2009

Effective:
Immediately upon Governor's approval

Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to correct policy references regarding responsibilities of Agency Companion Services provided to the developmentally disabled. Without the rule change reference corrections, the potential for oversight of incident reporting and quality assurance is increased, resulting in a lower over-all quality of care for the developmentally disabled through Agency Companion Services.

ANALYSIS:
Agency rules are revised for the Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) waivers to change incorrect references in policy regarding incident reporting and quality assurance for Agency Companion Services. The current references direct the reader to sections that do not exist. The correct reference is necessary to provide accurate information relating to incident reporting and quality assurance for Agency Companion Services.

CONTACT PERSON:
Tywanda Cox at (405)522-7153

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

SUBCHAPTER 5. MEMBER SERVICES

PART 1. AGENCY COMPANION SERVICES

Emergency Adoptions

317:40-5-5. Agency Companion Services provider responsibilities

(a) Providers of Agency Companion Services (ACS) are required to meet all applicable standards outlined in this subchapter and competency-based training described in OAC 340:100-3-38. The provider agency ensures that all companions meet the criteria in this Section.

(b) Failure to follow any rules or standards, failure to promote the independence of the member, or failure to follow recommendation(s) of the personal support team (Team) results in problem resolution, as described in subsection (b) of OAC 340:100-3-27, for the companion, and if warranted, revocation of approval of the companion.

(c) In addition to the criteria given in OAC 317:40-5-4, the companion:

(1) ensures no other adult or child is cared for in the home on a regular or part-time basis including other Oklahoma Department of Human Services (OKDHS) placements, family members, and friends without prior written authorization from the OKDHS Developmental Disabilities Services Division (DDSD) area manager or designee;

(2) meets the requirements of OAC 317:40-5-103, Transportation. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

(3) transports or arranges transportation for the member to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;

(4) delivers services in a manner that contributes to the member's enhanced independence, self sufficiency, community inclusion, and well-being;

(5) participates as a member of the member's Team and assists in the development of the member's Individual Plan for service provision;

(6) with assistance from the DDSD case manager and the provider agency program coordination staff, develops, implements, evaluates, and revises the training strategies corresponding to the relevant outcomes for which the companion is responsible, as identified in the Individual Plan;

(A) The companion documents and provides monthly data and health care summaries to the provider agency program coordination staff.

(B) The agency staff provides monthly reports to the DDSD case manager or nurse.

(7) delivers services at appropriate times as directed in the Individual Plan;

(8) does not deliver services that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA);

(9) is sensitive to and assists the member in participating in the member's chosen religious faith. No member is expected to attend any religious service against his or her wishes;

(10) participates in and supports visitation and contact with the member's natural family, guardian, and friends, provided this visitation is desired by the member;

(11) obtains permission from the member's legal guardian, if a guardian is assigned, and notifies the family, the provider agency program coordination staff, and the case manager prior to:

(A) traveling out of state;

(B) overnight visits; or

(C) involvement of the member in any publicity;

(12) serves as the member's health care coordinator in accordance with OAC 340:100-5-26;

(13) ensures the monthly room and board contribution received from the member as reflected on OKDHS Form 06AC074E, Service Authorization Budget (SAB), is used toward the cost of operating the household;

(14) assists the member in accessing entitlement programs for which the member may be eligible and maintains records required for the member's ongoing eligibility;

(15) works closely with the provider agency program coordination staff and the DDSD case manager to ensure all aspects of the member's program are implemented to the satisfaction of the member, the member's family or legal guardian, when appropriate, and the member's Team;

(16) assists the member in achieving the member's maximum level of independence;

(17) submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the member;

(18) ensures that the member's confidentiality is maintained in accordance with OAC 340:100-3-2;

(19) supports the member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;

(20) implements training and provides supports that enable the member to actively join in community life;

(21) does not serve as representative payee for the member without a written exception approval from the DDSD area manager or designee;

(A) The written approval is retained in the member's home record.

(B) When serving as payee, the companion complies with the requirements of OAC 340:100-3-4.

(22) ensures the member's funds are properly safeguarded.

(23) must obtain prior approval from the provider agency when making a purchase of over \$50.00 with the member's funds;

(24) allows the provider agency staff and DDSD staff to make announced and unannounced visits to the home;

(25) develops an Evacuation Plan, OKDHS Form 06AC020E, for the home and conducts training with the member;

(26) conducts fire and weather drills at least quarterly and maintains the Fire and Weather Drill Record, OKDHS Form 06AC021E, available for review;

- (27) develops and maintains a Personal Possession Inventory, OKDHS Form 06AC022E, documenting the member's possessions and adaptive equipment;
- (28) supports the member's employment program by:
 - (A) assisting the member to wear appropriate work attire; and
 - (B) contacting the member's employer only as outlined by the Team and in the Individual Plan; and
- (29) follows all applicable rules promulgated by the Oklahoma Health Care Authority or DDS, including:
 - (A) OAC 340:100-3-40;
 - (B) OAC 340:100-5-50 through 100-5-58;
 - (C) OAC 340:100-5-26;
 - (D) OAC 340:~~100-5-34~~ 100-3-34;
 - (E) OAC 340:100-5-32;
 - (F) OAC 340:100-5-22.1;
 - (G) OAC 340:~~100-3-24~~ 100-3-27; and
 - (H) OAC 340:100-3-38.

[OAR Docket #09-1213; filed 7-28-09]

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

[OAR Docket #09-1216]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 11. Insure Oklahoma/O-EPIC IP
Part 3. Insure Oklahoma/O-EPIC IP Member Health Care Benefits
317:45-11-11. [AMENDED]
(Reference APA WF # 09-27)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:
Adoption:
June 25, 2009

Approved by Governor:
July 21, 2009

Effective:
September 1, 2009

Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Insure Oklahoma/O-EPIC IP program. Rules are revised to clarify the intent of non-covered benefits related to weight loss treatment and intervention including bariatric surgical procedures. This emergency rule revision will make rules consistent with reimbursement practices and clarify coverage and access to healthcare for Oklahomans, thereby reducing confusion among individuals enrolled in the IP program about covered benefits and ultimately reducing the amount of uncompensated care provided by healthcare providers.

ANALYSIS:
Insure Oklahoma/O-EPIC rules are revised to clarify the intent of non-covered benefits related to weight loss intervention and treatment including bariatric surgical procedures, other weight loss surgeries and procedures, drugs primarily used for weight loss, and nutrition services prescribed only for the intent of weight loss under the Individual Plan (IP) program. These benefits have never been covered under the IP program; this simply provides the clarification.

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 SEPTEMBER 1, 2009:

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

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

**317:45-11-11. INSURE OKLAHOMA/O-EPIC IP
non-covered services**

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

- (1) services that the member's PCP or Insure Oklahoma/O-EPIC does not consider medically necessary;
- (2) any medical service when the member refuses to authorize release of information needed to make a medical decision;
- (3) organ and tissue transplant services;
- (4) treatment of obesity weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;
- (5) procedures, services and supplies related to sex transformation;
- (6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;
- (7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);
- (8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;
- (9) experimental procedures, drugs or treatments;
- (10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in OAC 317:30-5-696;
- (11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

Emergency Adoptions

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

[OAR Docket #09-1216; filed 7-28-09]

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

[OAR Docket #09-1234]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Scope and Applicability

340:25-1-1.1 [AMENDED]

Subchapter 5. Operational Policies

Part 9. Disclosure of Information

340:5-25-67 [AMENDED]

Part 20. Medical Support

340:25-5-168 [AMENDED]

340:25-5-169 [AMENDED]

340:25-5-170 [AMENDED]

340:25-5-171 [AMENDED]

Part 22. Review and Modification

340:25-5-198.1 [Amended]

Part 39. Accounting and Distribution

340:25-5-351 [AMENDED]

(Reference APA WF 09-09)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 453, 454, 454A, and 454B of the Social Security Act, codified in Sections 653, 654, 654a and 654b of Title 42 of the United States Code (U.S.C.); Section 237 of Title 56 of the Oklahoma Statutes;

Sections 652 and 666 of Title 42 of the U.S.C. (federal Deficit Reduction Act of 2005); Sections 302.56, 303.31, 303.32 (National Medical Support Notice Parts A and B), and 303.7 of Title 45 of the Code of Federal Regulations; and Sections 118, 118A, 118B, 118C, 118D, 118E, 118F, 118G, 118H, and 118I of Title 43 of the Oklahoma Statutes (Oklahoma State Senate Bill 2194).

DATES:

Adoption:

June 16, 2009

Approved by Governor:

July 21, 2009

Effective:

Upon Governor's approval or July 2, 2009 whichever is later.

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency approval is requested to comply with Senate Bill 2194, which becomes effective July 1, 2009. Also, to avoid possible imminent peril of the health of children, it is imperative that OCCS staff include health insurance that is reasonable and accessible or alternatively request cash medical support in the calculation of a child support guidelines computation.

ANALYSIS:

The purposes of proposed emergency amendments are to codify provisions of state and federal legislation into Chapter 25 of Title 340 of the Oklahoma Administrative Code: Sections 302.56, 303.31, 303.32, and 303.7 of Title 45 of the Code of Federal Regulations (Federal Register/Volume 73, No. 140), that added new requirements for cash medical support and enforcement of a medical support order. The revisions also comply with Oklahoma State Senate Bill 2194, effective July 1, 2009, amending child support guideline provisions in Sections 118 through 118I of Title 43 of the Oklahoma Statutes. Emergency rules also incorporate the division name change, from Child Support Enforcement Division (CSED) to Oklahoma Child Support Services (OCSS).

CONTACT PERSON:

Dena Thayer at (405) 521-4326

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 JULY 2, 2009, WHICHEVER IS LATER:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" means an address for a party or a custodial person in the Central Case Registry of Oklahoma Child Support Services (OCSS) that is used for service of process in support, custody, and visitation actions. An address of record may be different from the party's or custodial person's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.* [10 O.S. § 7700-102]

"Alternative health coverage" means health care services other than health insurance, including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS), which is available to either parent under which medical services could be provided to the dependent child(ren).

"Annual notice" means the yearly notice provided for in Section 237A of Title 56 of the Oklahoma Statutes to notify the noncustodial parent and custodial person of the amount due, actions that may be taken to enforce the child support obligation, actions required of the noncustodial parent and custodial person, and other related information and instructions.

"Arrears," "arrearage," or "past-due support" means the total amount of unpaid support obligations that has accrued under a support order. See also the definition for "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

"Authorized representative" means a person designated by a custodial person, noncustodial parent, or biological parent according to OAC 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or has received child support services and all of the records and actions associated with the group.

"Cash medical support" means an amount ordered to be paid toward the cost of health coverage instead of insurance.

"Central Case Registry" means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry under Section 654a of Title 42 of the United States Code. OCSS maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

"Centralized Support Registry" means a repository maintained by ~~CSED~~ OCSS to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes. It serves as Oklahoma's State Disbursement Unit under Section 654b of Title 42 of the United States Code. The Centralized Support Registry processes payments:

(A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes until all monies owed for child support are no longer owed;*

(B) *in all other cases in which support is being paid by income withholding; and*

(C) *when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]*

"CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services and is also known as Oklahoma Child Support Services (OCSS). ~~CSED~~ OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. ~~CSED~~ OCSS includes all of these offices and their employees and agents.

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person" or "custodian" means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"District office" means a child support services office operated by OKDHS or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance, or included in a cash medical support order.

"Full-service case" means a child support case for which OCSS provides all appropriate IV-D services as described in OAC 340:25-1-1.2.

"Health insurance" means a health care plan provided through:

(A) fee for service;

(B) health maintenance organization; or

(C) preferred provider organization.

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes. [42 U.S.C. § 666]

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

Emergency Adoptions

"IV-A" means Title IV, Part A, of the Social Security Act, codified in Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in Part B of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support.

"IV-D case" means a child support case receiving IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering foster care.

"IV-E foster care" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for IV-E foster care.

"Medicaid" "SoonerCare (Medicaid)," or "Title XIX" means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in Subchapter XIX of Chapter 7 of Title 42 of the United States Code.

"Medical enforcement only case" or "MEO case" means a child support case for which OCSS provides only IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"Medical support" means ~~health or dental insurance, coverage or health benefits ordered to be paid by a parent(s)~~ alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"Member of military service" or "servicemember" means any member of the uniformed service on active duty, including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, and the National Oceanic and Atmospheric Administration, members of the Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries if their service is similar to military service. [50A U.S.C. §§ 511, 514, and 516] A servicemember may be a noncustodial parent or a custodial person.

"Noncustodial parent" means a parent who does not have primary physical custody of the child(ren).

"Non-IV-D case" means a private child support case not receiving IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal IV-E participation requirements.

"Notice of Income Assignment" means the tool used to effect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from noncustodial parents' income and to send the payments to Oklahoma's Centralized Support Registry

for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"OAH" means the OKDHS Office of Administrative Hearings: Child Support, which conducts child support administrative hearings.

"Obligee" or "person entitled" means:

(A) *a person to whom a support debt or support obligation is owed;*

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services; or*

(C) *a person designated in a support order or as otherwise specified by the court. [56 O.S. § 237.7]*

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"OCSS" means Oklahoma Child Support Services. OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents. OCSS is formerly known as the Child Support Enforcement Division of the Oklahoma Department of Human Services.

"Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund, or from an administrative payment such as federal retirement benefits, to satisfy a child support debt.

"OKDHS" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the child support program for the State of Oklahoma.

"Overpayment" means a payment to a custodial person, noncustodial parent, or other entity by OCSS to which the entity or person is not entitled.

"Participant in a case" means a child, parent or alleged father, or custodial person associated with a child support services case.

"Past support" means past-due support or support for a prior period. See the definition for "arrear" in this Section.

"Payment plan" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support. [43 O.S. § 139.1 and 56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrear.

"Payor" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Presumed father" means *a man who, by operation of law under Section 7700-204 of Title 10 of the Oklahoma Statutes, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.* [10 O.S. § 7700-102]

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect.

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services pursuant to the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"Support" means all payments or other obligations due and owing to the custodial person or person entitled by the noncustodial parent under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in ~~Section~~ Sections 118 through 119 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"Support for a prior period" means the amount of child support ordered under the child support guidelines in Sections 118 ~~and through~~ 119 of Title 43 of the Oklahoma Statutes in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" means a *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.* [43 O.S. § 601-101]

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal" means a court or administrative agency authorized to establish, enforce, or modify support orders, or determine parentage. [43 O.S. § 601-101]

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes.

"Unreimbursed public assistance" means money paid as cash assistance from IV-A and IV-E programs that has not yet been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, the UPA is codified in Sections 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential.* [56 O.S. § 183]

(1) All files and records concerning the assistance or services provided under the Child Support Enforcement Program or concerning an alleged father of a child born out

of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237]

(2) Any information the ~~Child Support Enforcement Division (CSED)~~ Oklahoma Child Support Services (OCSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. ~~CSED-OCSS~~ does not disclose or use the contents of any child support records, files, papers, or communications for purposes other than those directly connected to the administration of the Child Support Enforcement Program.

(3) Nothing in this Section authorizes disclosure of the location of a case participant with a family violence indicator set under OAC 340:25-5-67.1.

(b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties, [56 O.S. § 183] including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions and other agencies of the State of Oklahoma and other states, and with federal and tribal agencies and other countries;

(B) exchange of information directly and through statewide automated data processing and information retrieval networks with representatives of OKDHS and other state agencies administering programs under Titles IV-A, IV-E, and XIX of Subchapter IV of Chapter 7 of Title 42 of the United States Code, to the extent necessary to carry out state agency Titles IV-A, IV-E, and XIX responsibilities;

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person under Section 663 of Title 42 of the United States Code representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the United States Code to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or the State of Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support enforcement purposes, such as locating the parents, submitting cases for federal administrative and income tax refund offset, state income tax refund

Emergency Adoptions

- offset, financial institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support enforcement;
- (2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:
- (A) pay records and payment calculations;
 - (B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;
 - (C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;
 - (D) information required by Titles 43 or 56 of the Oklahoma Statutes to be disclosed for the purpose of reviewing, establishing, or modifying a support order; and
 - (E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;
- (3) parents or custodial persons requesting disclosure of address of record under Section 112A of Title 43 of the Oklahoma Statutes and OAC 340:25-5-340.1; and
- (4) persons as directed by court order or by a subpoena that has been approved by a child support attorney.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** Oklahoma Child Support Services (OCSS) refers to federal and state law for establishment of a medical support order pursuant to:

- (1) Section 666 of Title 42 of the United States Code;
- (2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and
- (3) Section 6058A of Title 36, Sections 112, 118 through 118I, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Medical support provision of child support order.** A child support order established by OCSS must contain a medical support provision for ~~medical support~~. ~~The medical support provision must include one of the provisions in (1) through (4) of this subsection.~~

- ~~(1) Either or both parents must secure health insurance for the minor child(ren) when it is available through an employer or other group health insurance plan.~~
- ~~(2) Neither parent is required to secure health insurance for the minor child(ren). Alternative health coverage includes, but is not limited to, an individual policy for the child(ren), Indian Health Services, and military dependent benefits.~~
- ~~(3) Either or both parents are required to secure health insurance for the minor child(ren) in addition to Indian Health Services (IHS).~~

~~(4) Either or both parents are required to seek alternative health coverage other than SoonerCare (Medicaid) if an employer or other group plan is not available at reasonable cost and/or is not accessible. Any alternative health coverage must comply with (1) and (2) of subsection (c) of this Section.~~

(c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, OCSS:

- (1) deducts from the total insurance premium, the cost of coverage for the parent;
- (2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;
- (3) divides the remainder by the number of dependent children covered; and
- (4) multiplies the amount per child by the number of children in the child support case under consideration.

~~(ed) **Standards for health coverage medical support provision.** When OCSS seeks an order for health coverage, OCSS applies the choosing a medical support provision. OCSS requests the court to apply the standards in (1) and (2) of this subsection.~~

~~(1) Health insurance is must be reasonable in cost, which means that the actual out-of-pocket premium cost paid by ~~the insured~~ does not exceed five percent of the gross income of the parent who is ordered to provide health insurance. ~~To calculate the actual premium cost of the health insurance, OCSS:~~~~

- ~~(A) deducts from the total insurance premium the cost of coverage for the parent;~~
- ~~(B) deducts from the total insurance premium the cost of coverage for any other adults in the household, when that cost information is available;~~
- ~~(C) divides the remainder by the number of dependent children covered; and~~
- ~~(D) multiplies the amount per child by the number of children in the child support case under consideration.~~

~~(2) Health insurance is must be accessible, which means that ~~there are available~~ the health care providers appropriate must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).~~

~~(de) **Exceptions to standards for medical support provision.** If the parents agree or the court otherwise orders, the cost of health insurance may exceed five percent of the gross income of the parent ordered to provide health insurance and/or accessibility may exceed 60 miles one way from the primary residence of the child(ren). When the parents agree or it is otherwise appropriate OCSS requests the court to make an exception to the standards for health coverage based on:~~

- (1) the reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or
- (2) the closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).

(f) **Hierarchy of medical support provisions.** The provision for medical support must be consistent with one of the priorities listed in (1) through (4) of this subsection.

(1) Health insurance is provided through a parent's employer or other available group health insurance plan.

(2) No coverage is available under paragraph (1) of this subsection, and a private insurance policy or group health insurance is available to the child(ren) through another source, such as a third party custodian or spouse of a parent, OCSS:

(A) seeks an order for the parent to provide health insurance when insurance is provided through the spouse of a parent; or

(B) seeks an order for the third party custodian to provide health insurance when insurance is provided through a third party custodian and the third party custodian has requested an order to provide the coverage.

(3) No health coverage is available under paragraphs (1) or (2) of this subsection, and alternative health coverage including, but not limited to, Indian Health Services (IHS) and Defense Eligibility Enrollment Reporting System (DEERS) is available to the child(ren).

(4) If none of the provisions in paragraphs (1) through (3) of this subsection are available at reasonable cost or are not accessible, the custodial person is required to make application for the child(ren) for health coverage through a government medical assistance program, such as SoonerCare (Medicaid).

(g) **Health coverage preference.** When health coverage meeting standards in subsection (d) of this Section is available to both parents, OCSS requests the court give priority to the preference of the custodial person.

(h) **Exceptions to hierarchy.** OCSS requests a cash medical order instead of an order for health coverage by the noncustodial parent under paragraphs (1) or (2) of subsection (f) of this Section when:

(1) the court determines an order for health insurance is inappropriate due to family violence concerns; or

(2) the obligor is an applicant for a governmental medical assistance program, such as Insure Oklahoma, State Children's Health Insurance Program (S-CHIP), or SoonerCare (Medicaid).

(i) **Cash medical support.**

(1) When paragraph (4) of subsection (f) of this Section is chosen as the provision for medical support, OCSS requests the court order cash medical support to be paid by the noncustodial parent(s) until insurance is provided under paragraphs (1) through (3) of subsection (f) of this Section.

(2) OCSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site under Section 120 of Title 43 of the Oklahoma Statutes to determine the cash medical support amount.

(3) OCSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the combined gross income for the parents of the child in the

case under consideration and the number of children in the instant case.

(A) When the combined gross income is at or below the income amount for the number of children in the case, OCSS requests the court order a cash medical order at \$0.00 per month;

(B) When the combined gross income exceeds the income amount for the number of children in the case, OCSS computes the requested cash medical order by:

(i) multiplying the amount of \$115.00, which represents the average monthly cost of health care for uninsured children, by the number of children in the case that are not covered by insurance; and

(ii) pro rating the result by the percentage of income for each parent;

(C) The noncustodial parent's share of the cash medical amount is added to the child support obligation.

(D) When neither parent is the obligor or noncustodial parent due to equally shared physical custody and the application of the parenting time adjustment, OCSS requests the court set cash medical support as follows:

(i) if the children receive SoonerCare or other governmental medical assistance, the parent who is not the applicant for governmental medical assistance is ordered to pay the cash medical support;

(ii) if the children do not receive SoonerCare or other governmental medical assistance, the cash medical amount is calculated for each parent and the amounts are offset. The parent owing the larger amount is ordered to pay the net cash medical support.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(i) **Termination of cash medical support.**

(1) When OCSS receives notice that the parent ordered to pay cash medical support has enrolled the child(ren) in health insurance, OCSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not actually covered by health insurance, a party may request a review of the termination of cash medical support within 10 days from the date of mailing of the notice.

(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, OCSS reviews the case within 10 days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. OCSS notifies the parties of the review decision.

(3) When the request for review is denied, parties have 15 days from the date of mailing of the review decision to request a hearing on the termination of cash medical support.

Emergency Adoptions

(4) OCSS files a Notice of Termination of Cash Medical Support with the proper court when:

(A) no party requests a review within the 10 day time period; or

(B) no party requests a hearing after OCSS notifies them of the review decision.

(k) **Fixed medical costs.** If the parties agree or the court orders, OCSS includes the total monthly fixed medical costs in the child support guidelines computation. If the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, OCSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.

(e) **Indian Health Services (IHS).**

(1) A child support order that provides for the enrollment of a child(ren) in Indian Health Services may ~~be considered sufficient to satisfy the requirement of comply with the standards in subsection (b) (d) of this Section.~~ OCSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:

(A) IHS does not meet the standards in subsection (d) of this Section; or

(B) ~~if health insurance is available through an employer or other group plan, in addition to IHS, upon request of the custodial person or noncustodial parent and the custodial person requests it.~~

(2) OCSS does not request cash medical support when IHS is the chosen provider.

(~~fm~~) **Notification requirements.** The noncustodial parent and the custodial person must notify OCSS in writing within 30 days after:

- (1) health insurance becomes available;
- (2) the cost of existing health insurance changes; or
- (3) other provisions of existing health insurance change.

(~~gn~~) **Modification request.** When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

340:25-5-169. Establishment of medical support only enforcement only cases

(a) **Medical enforcement only (MEO) status.** When a person receiving non-TANF (Temporary Assistance for Needy Families) Medicaid notifies ~~the Oklahoma Child Support Services Enforcement Division (CSED) (OCSS)~~ that only IV-D services related to securing medical support are requested, OCSS updates the case as an MEO case and does not provide full child support services under OAC 340:25-1-1.2. CSED OCSS follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; Section 6058A of Title 36, Sections 112, 118E, 118.2, and 119 of Title 43; and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Services provided on MEO cases.**

(1) ~~CSED OCSS~~ establishes paternity, if necessary, and a child support order. The child support order must include:

(~~A~~) a provision for current child support as described in OAC 340:25-5-178;

(~~B~~) a provision for support for a prior period under OAC 340:25-5-179.1, ~~if when~~ appropriate; and

(~~C~~) a provision for medical support as described in OAC 340:25-5-168.

(2) OCSS conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order that includes a provision for medical support when:

(A) the existing child support order does not include a medical support provision;

(B) no insurance is available for the child(ren); or

(C) a parent or custodial person claims that the available health insurance is not accessible or is not reasonable in cost.

(c) **Exception to MEO status.** ~~CSED OCSS~~ opens a full-service case when ~~CSED OCSS~~ receives a non-TANF Medicaid referral from the Family Support Services worker in which:

(1) assigned court-ordered child support is owed under OAC 340:25-5-117;

(2) the child(ren) is in a deprived or delinquent juvenile court action; ~~or~~

(3) assigned cash medical support is owed under OAC 340:25-5-117; or

(4) the custodial person is a child care subsidy recipient.

340:25-5-170. Enforcement of medical support enforcement only cases

When a person receiving non-TANF Medicaid requests medical enforcement only services, ~~Oklahoma the~~ Child Support ~~Enforcement Division (CSED) Services (OCSS)~~ enforces only the medical support health insurance portion of the child support order through the use of the National Medical Support Notice as described in OAC 340:25-5-171. ~~CSED OCSS~~ does not enforce the payment of child support or fixed medical support through the Order/Notice to Withhold Income for Child Support or any other enforcement remedy in a medical enforcement only case.

340:25-5-171. Enforcement of a medical support order

(a) When a parent has been ordered to provide health insurance for the child(ren) and has failed to voluntarily enroll the child(ren), Oklahoma Child Support Services (OCSS), uses the National Medical Support Notice (NMSN) to aid in enrolling the child(ren) in the group health plans for which a parent is eligible. OCSS sends the NMSN to the noncustodial parent's employer as required by Section 666 of Title 42 of the United States Code, Section 609 of the Employee Retirement Income Security Act of 1974, Section 303.32 of Title 45 of the Code of Federal Regulations, and Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(b) When a child is eligible for enrollment in the United States Department of Defense's managed health care program, TRICARE, (a) of this Section does not apply. OCSS notifies the custodial person to contact the Defense Manpower Data Center Support Office at 1-800-538-9552 to enroll the child, using the Defense Enrollment Eligibility Reporting System registration process.

(c) If the employer response to the NMSN indicates that enrollment cannot be completed because ~~of~~ the cost of coverage exceeds the limits of earnings subject to income assignment under Section 1171.2 of Title 12 of the Oklahoma Statutes, OCSS applies OAC 340:25-5-168 to determine if other coverage is available at reasonable cost or if a cash medical order is appropriate. OCSS conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order if the review indicates that modification would result in an enforceable medical support order or that the child support order should be adjusted.

(d) OCSS issues a non-compliance letter to the employer when the employer:

- (1) has not returned the NMSN within 20 business days after the date of the NMSN notifying OCSS that:
 - (A) the employer does not offer group dependent health coverage;
 - (B) the employee is among a class of employees that is not eligible for family coverage under the employer's plans;
 - (C) the employee is not employed by the employer; or
 - (D) state or federal withholding limitations or prioritization of withholding prevent the required employee contribution to obtain coverage;
- (2) has not forwarded the NMSN to the insurer within 20 business days after the date of the NMSN; or
- (3) is the insurer and has not returned the NMSN within 20 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(e) OCSS issues a non-compliance letter to the insurer when the insurer has not returned the NMSN within 40 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(f) OCSS may initiate legal proceedings to request the court to fine employers and insurers when there is no response indicating full compliance with the requirements of the NMSN within ten business days after the date of the non-compliance letter. Fines may be imposed by the court for up to \$200 a month per child for each failure to comply with the requirements of the NMSN under Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(g) If the employer or insurer complies with the requirements of the NMSN, OCSS may dismiss the case against the employer or insurer.

(h) Employers and insurers must send any fine(s) imposed by the court, under Section 235 of Title 56 of the Oklahoma

Statutes, by check or money order to OCSS, Attn: Finance, P.O. Box 53552, Oklahoma City, Oklahoma 73125-3552.

(i) In addition to issuing a NMSN, when the custodial person is ordered to provide medical support for the minor child(ren) and is not complying with the order, OCSS may either:

- (1) enforce the medical support order by a license revocation action under Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action under Section 566.1 of Title 21 of the Oklahoma Statutes; or
- (2) seek a modification of the order under OAC 340:25-5-198.2.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.1. Review of a child support order

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Section 118 through 119 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a child support order is established, reviewed, or modified, the Oklahoma Child Support Enforcement Division (~~CSED~~) Services (OCSS) notifies all parties in a full-service case of the right to request a review of the child support order and the process for requesting a review.

(c) **Initiation of review.** ~~CSED~~ OCSS reviews ~~as a~~ a child support order upon written request in a full-service case. ~~CSED~~ OCSS conducts a review every three years in cases with a Temporary Assistance for Needy Families (TANF) assignment. ~~CSED~~ OCSS determines the tribunal with jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act (FCCSOA), codified in Section 1738B(e) of Title 28 of the United State Code and the Uniform Interstate Family Support Act (UIFSA) in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes to modify the order. If another tribunal has jurisdiction to modify the child support order, ~~CSED~~ OCSS follows the provisions ~~of~~ in (g) of this Section. If Oklahoma has jurisdiction to modify the child support order, ~~CSED~~ OCSS follows the provisions of this subsection. ~~CSED~~ OCSS completes the review and modification process within 180 days after a request is received or the non-requesting party is located, whichever is later.

(1) **OCSS initiative.** OCSS may review child support orders on its own initiative for any reason, at any time, without a request, under Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS notifies the parties of the review with instructions for submitting financial and other information required for the review.

(2) **Party initiative.** ~~CSED~~ OCSS reviews a child support order on the written request of any party in a full-service case when the criteria described in (A) through (C) of this paragraph are met.

(A) It has been more than 12 months since the child support order was established, reviewed, or modified.

Emergency Adoptions

~~CSED~~ OCSS uses the date the order was entered to compute time periods. If an order is not entered after the review or modification process, ~~CSED~~ OCSS uses the completion date of the review to compute time periods. The 12-month time period does not apply when a military reservist custodial person or noncustodial parent is called to active duty, per the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(B) The non-requesting party is located.

(C) There has been a material change in circumstances pursuant to Section ~~118~~ 118I of Title 43 of the Oklahoma Statutes.

~~(2) Within 15 days after receiving a request for a review, CSED determines if the criteria described in paragraph (1) of this subsection are met. CSED notifies the requesting person if the criteria for review are not met. If the criteria are met, CSED sends notice to all parties with instructions for submitting financial and other information needed for the review.~~

~~(3) CSED may initiate reviews of orders in full-service cases on its own initiative for any reason, at any time, without a request, under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED notifies the parties of the review with instructions for submitting financial and other information required for the review.~~

~~(4) **Medical enforcement only (MEO) cases.** When medical insurance becomes available or the cost of existing medical insurance changes, a party in a currently active non-TANF Medicaid case where CSED is providing services may request a review of the support order:~~

~~(A) If When either the custodial person or the non-custodial parent requests a review, ~~CSED~~ OCSS ~~conducts the review~~ changes the services offered from an MEO as to a full-service case. ~~CSED~~ OCSS notifies the parties of the intended action before changing the case from a medical enforcement only case to a full-service case change in services provided.~~

~~(B) If When the noncustodial parent requests the review, the noncustodial parent must complete Form 03EN001E, Application for Child Support Services, described in OAC 340:25-5-110.1.~~

~~(5) Each party must submit any requested financial and other information as instructed within 20 days after the date the notice is sent under paragraphs (2) or (3) of this subsection.~~

~~(d) **Initial review.** Within 15 days after receiving a request for a review, OCSS determines if the criteria described in paragraph (2) of subsection (c) of this Section are met. OCSS notifies the requesting person if the criteria for review are not met. If the criteria are met, OCSS may:~~

~~(1) request further information as necessary from the parties; or~~

~~(2) proceed with the review process when OCSS considers it has information sufficient to complete the process.~~

~~(e) **Review Final review.** Within 30 days after the deadline for the parties to submit requested financial and other information to ~~CSED~~ OCSS under ~~(e)(5)~~ (d)(1) of this Section, ~~CSED~~~~

OCSS completes the review process and notifies parties of its determination as to whether or not the support order should be modified.

~~(ef) **Modification after review.** When ~~CSED~~ OCSS finds the existing ~~child~~ support order deviates in excess of ten percent from the child support order guidelines, ~~CSED~~ OCSS seeks a modification.~~

~~(fg) **Termination of the review process.**~~

~~(1) The person requesting a review may withdraw the request after the review process begins, upon approval by ~~CSED~~ OCSS. ~~CSED~~ OCSS does not accept requests to withdraw the review after making a determination that the child support order should be modified.~~

~~(2) If the requesting person fails to supply information requested by ~~CSED~~ OCSS as instructed, ~~CSED~~ OCSS may terminate the review process, unless ~~CSED~~ OCSS or the non-requesting party requests the process continue.~~

~~(3) When the review is initiated by ~~CSED~~ OCSS, failure of the parties to return requested information does not stop the review process. ~~CSED~~ OCSS proceeds, using the best information available.~~

~~(gh) **Interstate cases.**~~

~~(1) When a tribunal other than an Oklahoma district or administrative court has jurisdiction under UIFSA to modify an order, ~~CSED~~ OCSS obtains the information necessary for the review.~~

~~(A) ~~CSED~~ OCSS transmits the documents to the IV-D agency in the other state within 20 days after receipt of the request to modify the order and of the completed documents from the person requesting the modification.~~

~~(B) ~~CSED~~ OCSS issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or ~~CSED~~ OCSS is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party.~~

~~(C) ~~CSED~~ OCSS may terminate the review process in an interstate case as provided in subsection (g) under Sections 601-611 and 601-613 of Title 43 of the Oklahoma Statutes.~~

~~(2) If Oklahoma has jurisdiction to modify the order of another state, Native American tribe, territory, or foreign country as defined by subsection (b) of FCCSOA, codified in Section 1738B(b) of Title 28 of the United States Code, the order is registered in Oklahoma for modification under Section 1738B(i) and Sections 601-609 through 601-613 of Title 43 of the Oklahoma Statutes.~~

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-351. Allocation and distribution of collections

(a) Basis for allocation and distribution of collections. The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized

Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 657 of Title 42 of the United States Code after collections are allocated according to this Section.

(b) **Overall priority of allocation and distribution.** This subsection has priority over (c) through (h) of this Section.

(1) ~~The OKDHS Child Support Enforcement Division (CSED)~~ Oklahoma Child Support Services (OCSS) allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If ~~CSED~~ OCSS receives a voluntary payment, ~~CSED~~ OCSS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, ~~CSED~~ OCSS allocates voluntary payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) In a non-IV-D case, ~~CSED~~ OCSS allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.

(3) Except as provided for in (e) of this Section, ~~CSED~~ OCSS applies ~~arrears~~ arrearages arrearage collections owed to the custodial parent before paying temporarily or permanently assigned arrears owed to a state.

(4) Temporarily assigned arrears are paid before permanently assigned arrears. If the support amount ordered for a prior period is less than the cumulative amount of cash assistance from the IV-A and IV-E programs, the support is permanently assigned. In cases involving unreimbursed assistance, ~~CSED~~ OCSS retains current monthly support collections in excess of the current assistance payment under Temporary Assistance for Needy Families (TANF) to reimburse the State of Oklahoma for past assistance.

(5) ~~CSED~~ OCSS applies payments to interest owed to a particular custodial person after current child support and the principal arrears balance is paid in full. All interest debt is referred and distributed for ~~IRS~~ Internal Revenue Service (IRS) offset as arrears owed to the custodial person and not as a state debt or as assigned cash medical support. ~~CSED does not apply interest collections from an IRS offset to state debt unless CSED~~ When OCSS has been unable to locate the custodial person after reasonable efforts, OCSS applies interest collections from an IRS offset to state debt.

(c) **Initial allocation to monthly current support obligations.** Except as provided in (e) of this Section, ~~CSED~~ OCSS

initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, ~~CSED~~ OCSS allocates collections ~~to between the current child support due and the assigned cash medical support specified in the order in proportionate shares.~~

(2) After the current child support and cash medical support obligation is met, ~~CSED~~ OCSS allocates collections to current spousal support due.

(d) **Allocation to monthly past-due support obligations under payment plans.** Except as provided in (e) of this Section, after all current support obligations are met, ~~CSED~~ OCSS allocates collections under payment plans to fixed monthly past-due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(1) If collections are less than the amount due under the payment plan, ~~CSED~~ OCSS first allocates collections to past-due ~~monthly~~ current child support.

(2) After the past-due monthly child support obligation is met, ~~CSED~~ OCSS allocates collections to monthly past-due spousal support.

(3) ~~CSED~~ OCSS allocates collections to the total amount in arrears after fixed monthly past-due support obligations in the payment plan are met.

(e) **Allocation and distribution to total amount in arrears.**

(1) ~~CSED~~ OCSS allocates federal income tax refund offset collections to the total amount in arrears.

(2) Except for collections under a payment plan, ~~CSED~~ OCSS allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, ~~CSED~~ OCSS allocates remaining collections to spousal support arrearages.

(f) **Allocation and distribution of arrears to assigned cash medical support.** After the past-due current child support and spousal support are met, OCSS allocates collections to assigned cash medical support.

(g) **Multiple family support orders.** This subsection explains the allocation of collections when a noncustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.

(1) **Current support.** ~~CSED~~ OCSS prorates and applies support collections to each family based on the ~~fixed~~ current monthly child support obligation due each family. The collections are allocated within each family obligation under subsection (c) of this Section.

(A) ~~If collections for current support are less than the amount of current child support due for all families, CSED prorates and allocates collections to each family based on each family's current child support due.~~

(B) ~~After current child support obligations are met, CSED prorates and allocates collections to current spousal support obligations based on the amount of current spousal support due each family.~~

Emergency Adoptions

- (2) **Past-due support under a payment plan.** ~~CSED~~ OCSS prorates and allocates collections to payment plans for multiple families based on each family's fixed monthly payment plan obligations due.
- (3) **Total arrearages, including principal and interest balances.** ~~CSED~~ OCSS prorates and allocates collections to arrearages, including principal and interest balances, for multiple families based on each family's total arrearages due.
- (g) **Past-due support in interstate cases.** In cases where ~~CSED~~ OCSS is collecting support for a custodial person who is receiving services from another state's child support agency, ~~CSED~~ OCSS allocates arrearages arrearage payments based on information provided by the initiating state. After all current support obligations are met, ~~CSED~~ OCSS allocates collections to past-due support for payment plans, total arrearages, and interest as follows:

- (1) **Non-public assistance balance.** If any portion of the past-due balance is owed to the custodial person or will be passed through to the custodial person under federal distribution regulations, ~~CSED~~ OCSS allocates collections to that portion of the past-due balance and pays that amount to the other state's State Disbursement Unit.
- (2) **Public assistance balances.** If no portion of the past-due balance is owed to the custodial person, ~~CSED~~ OCSS allocates collections first to balances owed to Oklahoma and then pro rates between balances owed to the other state(s).
- (h) **Interest.** ~~CSED~~ OCSS distributes interest last in single family, multiple family, and interstate cases.

[OAR Docket #09-1234; filed 8-7-09]

Permanent Final Adoptions

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

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

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

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

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #09-1221]

EDITOR'S NOTE: *The agency submitted this rule (i.e., Appendix) in a permanent rule document that was filed on 4-24-09 and published in the 5-15-09 issue of the Register, with an effective date of 11-1-09 [see 26 Ok Reg 1334; Docket # 09-768]. However, due to publisher error, the Appendix was omitted when the document was published. The agency has re-submitted the Appendix for publication in the document below, with the same effective date of 11-1-09.*

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Appendix A. Competency Exam Requirements by Certification Areas
[REVOKED]

Appendix A Competency Exam Requirements by Certification Areas
[NEW]

AUTHORITY:

Oklahoma Commission for Teacher Preparation; 70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act

DATES:

Comment period:

October 3, 2008 through November 3, 2008

Public hearing:

November 3, 2008

Adoption:

November 13, 2008

Submitted to Governor:

December 16, 2008

Submitted to House:

December 16, 2008

Submitted to Senate:

December 16, 2008

Gubernatorial approval:

January 13, 2009

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2009

Final adoption:

March 24, 2009

Effective:

November 1, 2009

SUPERSEDED RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The rule modifies the program review process and eliminates the on-site portfolio review. The rule also provides for clarification of assessment requirements for new teacher certification areas.

CONTACT PERSON:

Ted Gillispie, Executive Director, (405)525-2612

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FOR THE IN 75 O.S.,
SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF
NOVEMBER 1, 2009:**

Permanent Final Adoptions

APPENDIX A. COMPETENCY EXAM REQUIRMENTS BY CERTIFICATION AREAS [REVOKED]

APPENDIX A. COMPETENCY EXAM REQUIRMENTS BY CERTIFICATION AREAS [NEW]

Subject Area and Grade Level	Test Codes		
	OGET	OSAT	OPTE
Advanced Mathematics			
6-12	74	11	72 or 76
Agricultural Education			
6-12	74	42	72 or 76
Art			
PK-3	74	2	70
1-8	74	2	71
6-12	74	2	72
PK-12	74	2	73 or 75 or 76
Biological Sciences			
6-12	74	10	72 or 76
Blind/Visual Impairment			
PK-3	74	28	70
1-8	74	28	71
6-12	74	28	72
PK-12	74	28	73 or 75 or 76
Business Education			
6-12	74	40	72 or 76
Chemistry			
6-12	74	4	72 or 76
Deaf/Hard of Hearing			
PK-3	74	30	70
1-8	74	30	71
6-12	74	30	72
PK-12	74	30	73 or 75 or 76
Driver/Safety Education			
6-12	74	36	72 or 76
Early Childhood Education			
PK-3	74	05	70 or 75
Earth Science			
6-12	74	08	72 or 76

Elementary Education			
1-8	74	06 or 50 & 51	71 or 75
English			
6-12	74	07	72 or 76
Family/Consumer Science			
6-12	74	09	72 or 76
French			
PK-3	74	20	70
1-8	74	20	71
6-12	74	20	72
PK-12	74	20	73 or 75 or 76
German			
PK-3	74	21	70
1-8	74	21	71
6-12	74	21	72
PK-12	74	21	73 or 75 or 76
Instrumental Music			
PK-3	74	01	70
1-8	74	01	71
6-12	74	01	72
PK-12	74	01	73 or 75 or 76
Intermediate Mathematics			
6-12	74	25	72 or 76
Journalism			
6-12	74	37	72 or 76
Latin			
PK-3	74	23	70
1-8	74	23	71
6-12	74	23	72
PK-12	74	23	73 or 75 or 76
Marketing Education			
6-12	74	41	72 or 76
Middle Level English			
5-8	74	24	71 or 72 or 75 or 76
Middle Level Math			
5-8	74	25	71 or 72 or 75 or 76
Middle Level Science			
5-8	74	26	71 or 72 or 75 or 76
Middle Level Social Studies			

Permanent Final Adoptions

5-8	74	27	71 or 72 or 75 or 76
Mild-Moderate Disabilities			
PK-3	74	29	70
1-8	74	29	71
6-12	74	29	72
PK-12	74	29	73 or 75 or 76
Physical Education/Health/Safety			
PK-3	74	12	70
1-8	74	12	71
6-12	74	12	72
PK-12	74	12	73 or 75 or 76
Physical Science			
6-12	74	13	72 or 76
Physics			
6-12	74	14	72 or 76
Psychology/Sociology			
6-12	74	32	72 or 76
Russian			
PK-3	74	22	70
1-8	74	22	71
6-12	74	22	72
PK-12	74	22	73 or 75 or 76
Severe-Profound/Multiple Disabilities			
PK-3	74	31	70
1-8	74	31	71
6-12	74	31	72
PK-12	74	31	73 or 75 or 76
Spanish			
PK-3	74	19	70
1-8	74	19	71
6-12	74	19	72
PK-12	74	19	73 or 75 or 76
Speech/Drama/Debate			
6-12	74	16	72 or 76
Technology Education			
6-12	74	43	72 or 76
US History/US Govt/OK Hist/Econ			
6-12	74	17	72 or 76
Vocal Music			
PK-3	74	03	70
1-8	74	03	71
6-12	74	03	72
PK-12	74	03	73 or 75 or 76

Vocational Business Education			
6-12	74	40	72 or 76
Vocational Family and Consumer Sciences			
6-12	74	09	72 or 76
World History/Geography			
6-12	74	17	72 or 76
Advanced Certification Areas (without a current teacher certificate)	OGET	OSAT	OPTE
Library-Media Specialist	74	38	73 or 75 or 76
Psychometrist	74	34	73 or 75 or 76
Reading Specialist	74	15	73 or 75 or 76
School Counselor***	74	39	73 or 75 or 76
School Psychologist**	74	33	73 or 75 or 76
Speech-Language Pathologist*		35	
Advanced Certification Areas (with a current teacher certificate)			
Library-Media Specialist		38	
Psychometrist		34	
Reading Specialist		15	
School Counselor***		39	
School Psychologist**		33	
Speech-Language Pathologist*		35	
Administrator Certification Areas			
Elementary Principal		44 and 45	
Middle Level Principal		44 and 46	
Secondary Principal		44 and 47	
Superintendent		48	

*Candidates with a Certificate of Clinical Competence (CCC) for Speech Language Pathology are exempt from Oklahoma assessment requirements.

**Candidates with National School Psychologists Certification (NSPC) are exempt from Oklahoma assessment requirements.

***Candidates with the Nationally Certified School Counselor (NCSC) credential are exempt from Oklahoma assessment requirements.

Permanent Final Adoptions

TEST CODES

Test (OSAT)	Test Code
Advanced Mathematics	11
Agricultural Education	42
Art	02
Biological Sciences	10
Blind/Visual Impairment	28
Business Education	40
Chemistry	04
Deaf/Hard of Hearing	30
Driver/Safety Education	36
Early Childhood Education	05
Earth Science	08
Elementary Education	06 or
Subtest – Red/Lang Arts/Soc Studies (50)	50 & 51
Subtest – Math/Science/Health/Fine Arts (51)	
English	07
Family and Consumer Sciences	09
French	20
German	21
Instrumental/General Music	01
Journalism	37
Latin	23
Marketing Education	41
Middle Level English	24
Middle Level/Intermediate Mathematics	25
Middle Level Science	26
Middle Level Social Studies	27
Mild-Moderate Disabilities	29
Physical Education/Health/Safety	12
Physical Science	13
Physics	14
Psychology/Sociology	32
Russian	22
Severe-Profound/Multiple Disabilities	31
Spanish	19
Speech/Drama/Debate	16
Superintendent	48
Technology Education	43
US History/OK History/Government/Economics	17
Vocal/General Music	03

Vocational Business Education	40
Vocational Family and Consumer Sciences	09
World History/Geography	18
Test (OSAT – Advanced Programs)	Test Code
Library-Media Specialist	38
Psychometrist	34
Reading Specialist	15
School Counselor	39
School Psychologist	33
Speech-Language Pathologist	35
Test (OSAT-Administrator)	Test Code
Principal Common Core	44
Elementary Principal Specialty Test	45
Middle Level Principal Specialty Test	46
Secondary Principal Specialty Test	47
Superintendent	48
Test (OGET)	Test Code
Oklahoma General Education Test	74
Test (OPTE)	Test Code
OPTE: Early Childhood (PK-3)	70
OPTE: Elementary/Middle Level (1-8 or 5-8)	71
OPTE: Middle Level/Secondary (6-12 or 5-8)	72
OPTE: PK-12	73
OPTE: PK-8	75
OPTE: 6-12	76

[OAR Docket #09-1221; filed 8-5-09]

Permanent Final Adoptions

TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #09-1219]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 7. Claims Process
735:80-7-8 [AMENDED]

AUTHORITY:
State Treasurer, 62 O.S. 517.1 - 517.7.

DATES:
Comment period:
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Submitted to Governor:
April 3, 2009

Submitted to House:
April 3, 2009

Submitted to Senate:
April 3, 2009

Gubernatorial approval:
May 4, 2009

Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on
May 27, 2009

Final adoption:
May 27, 2009

Effective:
September 11, 2009

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
These Permanent Rules amend the text of Chapter 80. Disposition of
unclaimed property other than cash.

CONTACT PERSON:
Susan Bateman, Office of the State Treasurer, 2300 North Lincoln
Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone
number (405) 521-3191.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF SEPTEMBER 11, 2009:**

SUBCHAPTER 7. CLAIMS PROCESS

735:80-7-8. Disposition of unclaimed property other than cash

(a) If OST determines after investigation and after an attempt to dispose of the unclaimed property in accordance with the Act, that the property does not have commercial value, OST may destroy or otherwise dispose of the property at any time. If pursuant to the provisions of the Act the property has been sold at public sale, the original owner of the property, or their heirs, devisees, and assigns, if located subsequent to the sale of property, shall be entitled to the proceeds realized from the sale. The proceeds from the sale of the property are subject to the right of the holder to be reimbursed for the cost of the opening of the safe deposit box and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The amount reimbursed to the Holder shall not exceed the proceeds from the sale of the property.

(b) Unclaimed property of intrinsic or historical value, if it is determined that it has no commercial value, may be loaned or donated to other agencies or institutions (such as the Historical Society) if deemed by the Treasurer that the retention of such property would be of public interest. [See: 60 O.S. §667]

(c) If OST determines it to be in the best interest of the state, the stock or other equity interest in a business association deemed to have a value less than the expense of giving notice and the sale, may be sold immediately upon receipt without notice. If pursuant to the provisions of the Act, the stock or other equity interest in a business association have been sold, the original owner of the securities, or their heirs, devisees, and assigns, if located subsequent to the sale of property, shall be entitled to the net proceeds realized from the sale.

[OAR Docket #09-1219; filed 8-3-09]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2009-25.

EXECUTIVE ORDER 2009-25

I, Jari Askins, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Friday, July 31, 2009, to honor Private First Class Dennis J. Pratt, an Oklahoma resident, who died on Wednesday, July 22, 2009, at age 34 while serving in Afghanistan.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 28th day of July, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1220; filed 8-3-09]

1:2009-28.

EXECUTIVE ORDER 2009-28

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. to 5:00 p.m. on Thursday, August 6, 2009, to honor J. Bruce Harvey, an Oklahoma resident, who died on Saturday, August 1, 2009, at age 66.

Judge Harvey was a dedicated public servant and a leader in the Oklahoma State House of Representatives and his community. In addition to his work in the Oklahoma Legislature, Judge Harvey served as mayor of Enid, associate district judge in Harper County, and special judge in Garfield County. Throughout his life, Judge Harvey made great contributions to the State of Oklahoma.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 4th day of August, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1222; filed 8-6-09]

1:2009-29.

EXECUTIVE ORDER 2009-29

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 August 8, 2009, to honor Lance Corporal Jonathan F. Stroud, an Oklahoma resident, who died on Thursday, July 30, 2009, at age 20 while serving in Afghanistan.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

Executive Orders

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 6th day of August, 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

BRAD HENRY

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #09-1235; filed 8-10-09]
